

DHS Announces Federal Regulations to Improve Worksite Enforcement and Asks Congress to Approve Social Security “No Match” Data Sharing

The Department of Homeland Security (DHS) announced on June 9 the release of two federal regulations to help businesses comply with current legal hiring requirements intended to reduce the employment of unauthorized aliens. Mid American Ag and Hort Services (MAAHS) will post the new regulations at www.midamservices.org under "What's New" soon after they are published in the Federal Register. MAAHS will develop additional compliance guidance for its paid members.

The first proposal would permit U.S. businesses to digitize their I-9 employment forms, which are used to verify eligibility to work in the United States. The other proposed regulation would set forth guidance for U.S. businesses when handling no-match letters from the Social Security Administration (SSA) concerning submitted employee Social Security numbers or from DHS concerning documents submitted by employees during the I-9 process.

“Most businesses want to do the right thing when it comes to employing legal workers,” said Homeland Security Secretary Michael Chertoff. “These new regulations will give U.S. businesses the necessary tools to increase the likelihood that they are employing workers consistent with our laws. They also help us to identify and prosecute employers who are blatantly abusing our immigration system.”

Typically, when a worker’s Social Security number does not match that worker’s name on tax or employment eligibility documents, the federal government sends out a “no-match” letter asking them to resolve the discrepancy. In fact, out of 250 million wage reports the Social Security Administration (SSA) receives each year, as many as ten percent belong to employees whose names don’t match their Social Security numbers.

Employers have also expressed their frustration with being required to keep paper forms or to store the forms on microfilm or microfiche when all other aspects of their record-keeping have been computerized. The interim regulation would give employers the option to sign and store Forms I-9 electronically. It’s expected that many employers will experience cost savings by storing these forms electronically rather than using conventional filing and storage methods. In addition, because of the automated way in which electronic forms are completed and retained, they are less likely to contain errors. Finally, electronically retained forms are more easily searchable, which is important for verification, quality assurance and inspection purposes.

The “no match” regulation reviews the legal obligations of an employer, under current immigration law, when the employer receives a no-match letter from the SSA or DHS. It also describes “safe-harbor” procedures for employers to use in dealing with such a letter. If followed in good faith, these procedures would provide certainty that DHS will not find, based on a receipt of a “no-match” letter, the employer in violation of their legal obligations.

These proposed regulations are now subject to a 60-day public comment period, although the I-9 regulation will become effective on an interim basis as soon as it is published.

As Congress continues to consider comprehensive immigration reform, DHS continues to urge them to increase the authority of the SSA to share information about Social Security “no match” letters with DHS worksite enforcement agents. This information would allow DHS to learn which employers had received “no match” letters from SSA. It also assists investigators in identifying companies with the highest rate of immigration fraud.

“Identifying businesses that are habitually flagged for submitting mismatched Social Security numbers would bolster our worksite enforcement efforts,” added Secretary Chertoff. “Congressional approval of this legislation is critical to ensuring that U.S. businesses hire legal workers.”

Chertoff also noted that fixing the problem of illegal immigration requires a comprehensive solution that must include a temporary worker program. A temporary worker program would replace illegal workers with lawful taxpayers, help us hold employers accountable, and let us know who is in our country and why they are here.

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