

which, operating through the EEVS and within the time periods specified, compares the name, alien identification or authorization number, or other relevant information provided in an inquiry against such information maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, whether the Secretary's records verify United States citizenship), and such other information as the Secretary may prescribe.

“(ii) As part of the EEVS, the Secretary shall establish reliable, secure method, which, operating through the EEVS, displays the digital photograph described in paragraph (d)(9)(B)(vi).

“(iii) The Secretary shall have authority to prescribe when a confirmation, nonconfirmation or further action notice shall be issued.

“(iv) The Secretary shall perform regular audits under the EEVS, as described in paragraph (d)(9)(B)(iv) of this section and shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner of Social Security pursuant to section 304 of the Comprehensive Immigration Act of 2007, for the purposes of this title and of immigration enforcement in general.

“(v) The Secretary shall make appropriate arrangements to allow employers who are otherwise unable to access the EEVS to use federal government facilities or public facilities in order to utilize the EEVS.

“(F) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the EEVS, the Secretary of State shall provide to the Secretary access to passport and visa information as needed to confirm that passport or passport card presented under section (c)(1)(B) belongs to the subject of the EEVS check, or that passport or visa photograph matches an individual;

“(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretaries of Homeland Security and State shall update their information in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

“(10) LIMITATION ON USE OF THE EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this subsection for any purpose other than for the enforcement and administration of the immigration laws, anti-terrorism laws, or for enforcement of Federal criminal law related to the functions of the EEVS, including prohibitions on forgery, fraud and identity theft.

“(11) UNAUTHORIZED USE OR DISCLOSURE OF INFORMATION.—Any employee of the Department of Homeland Security or another Federal or State agency who knowingly uses or discloses the information assembled under this subsection for a purpose other than one authorized under this section shall pay a civil penalty of \$5,000–\$50,000 for each violation.

“(12) Conforming amendment.—Public Law 104–208, Div. C, Title IV, Subtitle A, sections 401–05 are repealed, provided that nothing in this subsection shall be construed to limit the authority of the Secretary to allow or continue to allow the participation of Basic Pilot employers in the EEVS established by this subsection.

“(13) FUNDS.—In addition to any appropriated funds, the Secretary is authorized to use funds provided in sections 286(m) and (n), for the maintenance and operation of the EEVS. EEVS shall be considered an immigration adjudication service for purposes of sections 286(m) and (n).

“(14) The employer shall use the procedures for EEVS specified in this section for all employees without regard to national origin or citizenship status.

“(e) Compliance.—

“(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary of Homeland Security shall establish procedures—

“(A) for individuals and entities to file complaints respecting potential violations of subsection (a) or (g)(1);

“(B) for the investigation of those complaints which the Secretary deems it appropriate to investigate; and

“(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Secretary determines to be appropriate.

“(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

“(A) immigration officers shall have reasonable access to examine evidence of any employer being investigated; and

“(B) immigration officers designated by the Secretary may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph, the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as a contempt thereof. Failure to cooperate with such subpoena shall be subject to further penalties, including but not limited to further fines and the voiding of any mitigation of penalties or termination of proceedings under subsection (e)(3)(B).

“(3) COMPLIANCE PROCEDURES.—

“(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section or the requirements of this section, including but not limited to subsections (b), (c), (d) and (k), and determines that further proceedings are warranted, the Secretary shall issue to the employer concerned a written notice of the Department's intention to issue a claim for a monetary or other penalty. Such pre-penalty notice shall:

“(i) describe the violation;

“(ii) specify the laws and regulations allegedly violated;

“(iii) disclose the material facts which establish the alleged violation; and

“(iv) inform such employer that he or she shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

“(B) REMISSION OR MITIGATION OF PENALTIES.—Whenever any employer receives a written pre-penalty notice of a fine or other penalty in accordance with subparagraph (A), the employer may file, within 15 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary. If the Secretary finds that such fine, penalty, or forfeiture was incurred erroneously, or finds the existence of such mitigating circumstances as to justify the

remission or mitigation of such fine or penalty, the Secretary may remit or mitigate the same upon such terms and conditions as the Secretary deems reasonable and just, or order termination of any proceedings relating thereto. Such mitigating circumstances may include, but need not be limited to, good faith compliance and participation in, or agreement to participate in, the EEVS, if not otherwise required.

This subparagraph shall not apply to an employer that has or is engaged in a pattern or practice of violations of subsection (a)(1)(A), (a)(1)(6), or (a)(2) or of any other requirements of this section.

“(C) PENALTY CLAIM.—After considering evidence and representations, if any, offered by the employer pursuant to subparagraph (B), the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based. If the Secretary determines that there was a violation, the Secretary shall issue the final determination with a written penalty claim. The penalty claim shall specify all charges in the information provided under clauses (i) through (iii) of subparagraph (A) and any mitigation or remission of the penalty that the Secretary deems appropriate.

“(4) CIVIL PENALTIES.—

“(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of subsection (a)(1)(A) or (a)(2) shall:

“(i) pay a civil penalty of \$5,000 for each unauthorized alien with respect to which each violation of either subsection (a)(1)(A) or (a)(2) occurred;

“(ii) if an employer has previously been fined under subsection (e)(4)(A), pay a civil penalty of \$10,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred; and

“(iii) if an employer has previously been fined more than once under subsection (e)(4), pay a civil penalty of \$25,000 for each unauthorized alien with respect to which a violation of either subsection has occurred. This penalty shall apply, in addition to any penalties previously assessed, to employers who fail to comply with a previously issued and final order under this section.

“(iv) if an employer has previously been fined more than twice under subsection (e)(4)(A), pay a civil penalty of \$75,000 for each alien with respect to which a violation of either subsection (a)(1) or (a)(2) occurred.

“(v) In addition to any penalties previously assessed an employer who fails to comply with a previously issued and final order under this section shall be fined \$75,000 for each violation.

“(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with any requirement of subsection (b), (c), and (d), shall pay a civil penalty as follows:

“(i) pay a civil penalty of \$1,000 for each violation;

“(ii) if an employer has previously been fined under subsection (e)(4)(6), pay a civil penalty of \$2,000 for each violation; and

“(iii) if an employer has previously been fined more than once under subsection (e)(4), pay a civil penalty of \$5,000 for each violation. This penalty shall apply, in addition to any penalties previously assessed, to employers who fail to comply with a previously issued and final order under this section.

“(iv) if an employer has previously been fined more than twice under subsection (e)(4)(B), pay a civil penalty of \$15,000 for each violation.

“(v) In addition to any penalties previously assessed, an employer who fails to comply.