

# Memorandum

**TO:** Honorable Mayor &  
City Council Members

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** The Public Record  
February 2-8, 2007

**DATE:** February 9, 2007

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**ITEMS TRANSMITTED TO THE ADMINISTRATION**

**ITEMS FILED FOR THE PUBLIC RECORD**

- (a) Letter from David S. Wall to Mayor Reed and City Council dated February 7, 2007 regarding Funding for Certified Shorthand Reporter: 2<sup>nd</sup> Request.

Lee Price, MMC  
City Clerk

LP/np

Distribution: Mayor/Council  
City Manager  
Assistant City Manager  
Assistant to City Manager  
Council Liaison  
Director of Planning  
City Attorney  
City Auditor  
Director of Public Works  
Director of Finance  
Public Information Officer  
San José Mercury News  
Library

**David S. Wall**  
**455 North San Pedro Street**  
**San José, California 95110**  
**Phone (408) - 287 - 6838**  
**Facsimile (408) - 295 - 5999**

RECEIVED  
San Jose City Clerk

2007 FEB -7 A 10: 54

**February 7, 2007**

Mayor Reed and Members San José City Council  
200 East Santa Clara Street  
San José, California 95113-1905

**Re: Funding for Certified Shorthand Reporter: 2<sup>nd</sup> Request**  
**Reform # 34 could have negated this necessity**

**In March**, there is a matter pending before the **Civil Service Commission** that will require the services of a Certified Shorthand Reporter.

The matter pending before the Civil Service Commission is whether or not they will investigate the egregious administrative misconduct of administrative officials at ESD along with the inaptitude and or coercion of Human Resources in regards to (3) SENIOR ENVIRONMENTAL INSPECTOR positions at ESD.

Should the Honorable Civil Service Commissioners decide to investigate this matter, they will need the services of a Certified Shorthand Reporter to accurately record testimonies to provide them the ability to make the best adjudication possible.

The mess at ESD could have been resolved during the initial period of administrative incompetence by senior ESD administrators had REFORM # 34; the expansion of the Auditor's staff, authority, and more performance audits of City operations been in place.

The on going administrative problems at ESD, brings to my mind the age old southern expression of trying to dress up a disgusting situation by putting "lipstick on a pig". In this case, a whole herd of them.

Cost should not exceed \$20,000 dollars.

Respectfully submitted,

*David S. Wall 02.07.2007*

///  
///  
///

**Cc: City Attorney / City Auditor / Interim City Manager**  
**Civil Service Commissioners**



# MEMORANDUM

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**TO:** City Clerk **FROM:** Vice Mayor Dave Cortese  
**SUBJECT:** Project Diversity **DATE:** February 1, 2007

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**APPROVED:** *Dave Cortese R.C.* **DATE:** *2/1/07*

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I would like to submit the following names for consideration for appointment to the Project Diversity Screening Committee:

- Reverend R.G. Moore
- Dahlia Eltoumi
- Sahib Mann

Thank you.

# Memorandum



**TO:** Lee Price  
City Clerk

**FROM:** Councilmember Constant

**SUBJECT:** Project Diversity Screening  
Committee Nomination

**DATE:** February 7, 2007

Approved

Date

2-7-2007

After careful consideration, I have decided to nominate Alexander Hull to the Project Diversity Screening Committee. Mr. Hull, a resident of Council District 8, offers a committed work ethic, experience in the community, and diverse background. He has worked hard to establish and lead several non-profit organizations, including the Korean American Chamber of Commerce, the Silicon Valley Korean American Alliance, and the International Association of Youth. The development of non-profit organizations, such as these, demands a considerable time commitment and continued support and I believe this reflects Alexander's willingness to dedicate himself to the needs of a volunteer group.



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2007 FEB -9 P 2:13

# Memorandum

**TO: Rules Committee**

**FROM: Councilmember  
Judy Chirco**

**RE: PROJECT DIVERISTY**

**DATE: February 9, 2007**

Approved

*S.M. for J.C.*

Date

*2/9/07*

I would like to submit District 9 resident Jeannie LoFranco for consideration for appointment to the Project Diversity Screening Committee.



# Memorandum

**TO:** Rules Committee

**FROM:** Councilmember Williams  
District Two

**SUBJECT:** Arts Commission Appointment

**DATE:** February 5, 2007

Approved

*Forrest Williams*

Date

*2/5/07*

I would like to recommend Patricia Borba McDonald be appointed to the Arts Commission to fill the current vacancy for the unexpired term of Jenny Do who recently resigned.

Cc: Mayor and City Council  
City Clerk



# Memorandum

**TO:** Rules and Open Government  
Committee

**FROM:** Gerald A. Silva  
City Auditor

**SUBJECT:** *REFERRAL OF AUDIT OF  
RESOURCES FOR FAMILIES  
AND COMMUNITIES*

**DATE:** February 8, 2007

On February 7, 2007, the City Attorney's Office recommended that the Rules and Open Government Committee add an audit of the Resources for Families and Communities (RFC) to the City Auditor's 2006-07 workplan. Specifically, the City Attorney's office requires the City Auditor's expertise in reviewing all pertinent financial and contractual records to determine if RFC still owes Neighborhood Revitalization Strategy and Community Development and Block Grant funds to the City.

The City Attorney's Office is in the process of obtaining additional and crucial financial information about RFC. We anticipate having available staff to conduct the audit of RFC once the City Attorney's Office obtains this information.

I will be available at the Rules and Open Government Committee's February 14, 2007 meeting to answer any questions Committee members may have.

Gerald A. Silva  
City Auditor

GS:bh  
0627

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San Jose City Clerk  
2007 FEB -8 PM 1:34



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Richard Doyle,  
City Attorney

**SUBJECT:** Addition to City Auditor's  
2006-07 Work Plan To Review  
Resources For Families and  
Communities' Financial  
information

**DATE:** January 29, 2007

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## **RECOMMENDATION**

The City Attorney's Office recommends that the City Auditor add to its 2006-07 work plan, a review of the financial information of Resources for Families and Communities ("RFC"), a 501(c)3 non-profit organization.

## **BACKGROUND**

The City Attorney's Office is currently evaluating the extent to which RFC owes the City reimbursement of funds.

The City Attorney's Office seeks an accounting of the Neighborhood Revitalization Strategy (NRS) funds the City of San Jose awarded to RFC in the approximate amount of \$581,296 and the Community Block Grant Program (CDBG) funds the City of San Jose awarded to RFC in the approximate amount of \$126,630 for an approximate total of \$707,926. RFC has paid the City back approximately \$258,014 and possibly an additional \$70,000 for a total of \$328,014.

The City Attorney's Office needs the City Auditor's expertise to determine the amounts that are still owed to the City of San Jose. Accordingly, the City Attorney's Office recommends that the City Auditor add to its 2006-07 work plan, a review of RFC's financial information.

## **ANALYSIS**

The City of San Jose's Parks, Recreation, and Neighborhood Services (PRNS) entered into four agreements with RFC to administer NRS funds. The parties executed one agreement in 2000, two in 2001, and one in 2002. The purpose of these agreements was to provide a mechanism for City funding to be applied to neighborhood projects identified through the NRS program. Under these contracts, the City of San Jose transferred approximately \$581,296 to RFC, with RFC obligated to oversee the proper expenditure of such funds, the terms of which are outlined in each agreement. City staff has been examining the status of the RFC's spending pursuant to the agreements.

In 2005, the City of San Jose terminated the four NRS agreements, a Community Action and Pride Grant, and one San Jose After School (SJAS) Level 1 Homework Center Grant and requested that RFC cease all spending on a CDBG Grant.

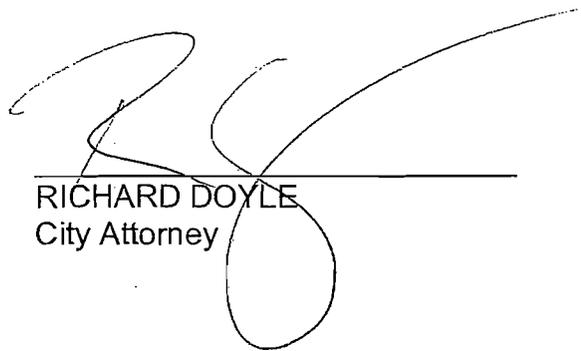
In addition to the NRS agreements, in July 2002, RFC entered into a contractual agreement with the City of San Jose's CDBG Program for the fiscal year 2002-2003. RFC received approximately \$126,630 for the renovation of a City-owned property in San Jose. The City Attorney's Office needs the City Auditor's expertise in reviewing all appropriate documents to determine what the amounts, if any, are still owed to the City.

### **COORDINATION WITH CITY AUDITOR**

The City Attorney's Office has coordinated this request with the City Auditor.

### **CONCLUSION**

The City Attorney's Office recommends that the City Auditor add to its 2006-07 work plan, a review of RFC's financial information.



RICHARD DOYLE  
City Attorney



## Memorandum

**TO:** Rules Committee

**FROM:** Mayor Chuck Reed

**SUBJECT:** Proposal to Convert Agnews  
Development Center To a  
State Prison

**DATE:** February 7, 2007

Approved

*Chuck Reed*

Date

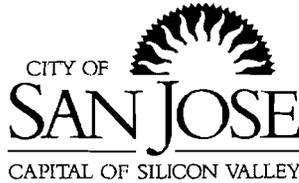
### RECOMMENDATIONS

It is recommended that the San Jose City Council adopt a resolution in opposition to the proposal to convert Agnews Development Center to a state prison.

### BACKGROUND

This week it was announced that several legislators are seeking to ease inmate overcrowding by possibly converting several developmental centers, including Agnews, into prisons.

This proposal would interfere with longstanding plans for commercial and residential development in North San Jose. North San Jose is the most vibrant tech community in Silicon Valley and host to the largest concentration of driving industry technology companies and jobs. It is an area that strengthens the local and state economy. This proposal could cause these companies to rethink their investment in San Jose.



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Joseph Horwedel

**SUBJECT:** ROYAL COACH TOURS

**DATE:** February 5, 2007

Approved

Date

2/6/07

## RECOMMENDATION

Acceptance of staff's recommendation that, due to site improvements, the Royal Coach Tours facility, located at 690 Stockton Avenue, does not constitute a public nuisance.

## BACKGROUND

On October 25, 2006, in response to complaints from neighborhood residents regarding automobile, truck and bus horn honking, upon entering and exiting the Royal Coach Tours facility, located at 690 Stockton Avenue, the Rules Committee requested that City staff determine whether the horn honking was causing a public nuisance necessitating an adverse impact action.

## ANALYSIS

On November 7, 2006, staff from the Department of Planning, Building and Code Enforcement and the Department of Transportation visited the subject property to assess the level of noise associated with buses and vehicles entering or leaving the property. In addition, City staff met with a representative of Royal Coach Tour to identify modest site improvements that would eliminate the need for the honking of bus horns and/or passenger vehicle horns as they exit onto Stockton Avenue. Royal Coach Tours expressed a willingness to install site improvements, such as mirrors and signage, which would reduce the need for horns to be honked as automobiles, trucks and buses exited the property.

On December 5, 2006, Code Enforcement revisited the site in an effort to determine when the site improvements to reduce bus/vehicle honking would occur. Code Enforcement was provided a letter addressed to Royal Coach Tours employee's that stated the following:

"...we are removing the sign and requesting that you (referring to the employee's) do not honk while exiting. Please stop at the gate and look both directions and proceed with caution. Please be alert with the surroundings of our Company."

RULES AND OPEN GOVERNMENT COMMITTEE

**Subject: Royal Coach Tours**

February 5, 2007

Page 2

The letter was distributed to all Royal Coach Tours employees on December 1, 2006. The sign referenced in the letter, which has been removed, was located on the fence and instructed the drivers of exiting buses/vehicles to honk for pedestrian/vehicle safety.

Code Enforcement conducted surveillance of the Royal Coach Tours premises on three separate occasions (December 7, 12, and 14, 2006) to determine whether employees were adhering to this company policy. (Attached) Code Enforcement noted that no automobiles, trucks or buses honked their horns as they exited the property.

**CONCLUSION**

Code Enforcement has spoken to the neighborhood resident and has confirmed that the honking of horns by automobiles/trucks/horns has ceased. The resident was appreciative of staff's efforts.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", with a large, stylized flourish at the end.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

For questions please contact Michael Hannon, Deputy Director, at (408) 277-4703.

Attachment

Royal Coach Tours  
630 Stockton Avenue  
Inspection Survey

December 7, 2006

Observations by Code Enforcement Inspector Roger Beaudoin:

14:50 arrived at site

14:53 two privately owned vehicles entered; no horn

15:00 Responsible Party came out and took pictures of me on the street in my vehicle

15:17 bus exited; no horn

15:21 bus entered; no horn

15:22 bus entered; no horn

15:22 four privately owned vehicles entered; no horn

15:26 bus entered; no horn

15:27 bus entered; no horn

15:29 bus exited; no horn

15:33 bus exited; no horn

15:34 a privately owned vehicle entered; no horn

15:39 two privately owned vehicles exited; no horn

15:40 a privately owned vehicle entered; no horn

15:40 a privately owned vehicle exited; no horn

15:41 a privately owned vehicle exited; no horn

15:44 a privately owned vehicle entered; no horn

15:50 departed site

December 12, 2006

Observations by Code Enforcement Inspector John Hernandez:

09:15 privately owned vehicle exited; no horn  
09:30 Mission Laundry truck entered; no horn  
09:35 privately owned vehicle exited; no horn  
09:38 privately owned vehicle entered; no horn  
09:40 privately owned truck entered; no horn  
09:50 Mission Laundry truck exited; no horn  
09:57 privately owned vehicle entered; no horn  
10:07 privately owned vehicle entered; no horn  
10:10 departed site

December 14, 2006

Observations by Code Enforcement Inspector John Hernandez:

15:10 arrived at site  
15:16 bus exited; no horn  
15:20 privately owned vehicle entered; no horn  
15:25 privately owned vehicle exited; no horn  
15:28 bus entered; no horn  
15:35 bus entered; no horn  
15:38 two busses entered; no horn  
15:54 bus exited; no horn  
16:07 privately owned entered; no horn

Approached by owner; identified myself, explained my actions, gave my card, left the premises at 16:10 hours.

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

MEMORANDUM

TO: RULES AND OPEN GOVERNMENT COMMITTEE	FROM: HARRY S. MAVROGENES EXECUTIVE DIRECTOR
SUBJECT: SEE BELOW	DATE: FEBRUARY 8, 2007

SUBJECT: CAMERA CINEMA COMMERCIAL BUILDING LOAN

RECOMMENDATION

The Redevelopment Agency recommends that the Rules and Open Government Committee authorize the addition of an audit of the Camera Pavilion Management Corporation to the City Auditor's 2006-2007 work plan.

BACKGROUND

In October 2003, the Redevelopment Agency entered into a loan agreement with Camera Pavilion Management Corporation (Cameras) for the rehabilitation of the shuttered United Artists Cinema at Second Street and Paseo de San Antonio. Cameras had already successfully negotiated a lease with the building's owner, Forest City. The initial Agency loan was in the amount of \$2,500,000, and subsequently increased in 2004 by \$750,000 to accommodate additional unforeseen costs for a new loan amount of \$3,250,000 (the "Loan"). The Agency's loan terms required a 20-year repayment schedule, starting with interest only payments for the first 18 months, and then commencing with equal monthly payments of \$18,024.42 on May 30, 2005, until April 2025.

Cameras made the required monthly payments on the Loan until May 2005. However, while Cameras has been performing well enough to sustain a quality theater operation in downtown, the revenues have not been enough for Cameras to make loan payments to the Agency. Staff has since notified Cameras of the debt owed to bring the loan balance current and Cameras has agreed to begin payments immediately of \$4,000 per month, until such time as a formal resolution can be reached. (As of January 31, 2007, the total principal and interest due to bring the Loan current is \$429,222.)

The presence of Cameras promotes downtown San Jose and provides an important entertainment option for residents and visitors, and a venue and marketing partner for arts groups like Cinequest. With the number of residents in downtown increasing dramatically every year, the continuing growth in convention business, and the continuing retail growth, it is critical to maintain the presence of a theater operation downtown.

Agency staff and Cameras have been working together to determine a payment plan that would assure the long term viability of the theater and protect the Agency's investment in it. The Agency engaged the firm of Keyser Marston to look at several payment and loan structuring alternatives. In October 2006, I requested that the City Auditor review the Cameras' financial viability (much as had been done with the San José Repertory Theater) so that the Agency Board and staff would have a solid basis for any decisions regarding loan repayment options.

According to the City Auditor, an audit of the Cameras will not only include the Cameras' operations (which is being conducted in connection with the potential restructure of the Cameras loan) but will also include its compliance with its Commercial Building Loan Agreement with the Agency.

The Cameras and the Auditor's office have reached an accommodation on access to financial information. In addition, the Cameras is keeping the theater open and paying rent to Forest City. The Agency will continue to pursue the payment of any monies the Camera owe the Agency.

The Agency requests that the Rules and Open Government Committee add an audit of the Camera Pavilion Management Corporation to the City Auditor's 2006-2007 work plan.

#### COORDINATION

This memorandum has been coordinated with the City Auditor and the Agency's General Counsel.



HARRY S. MAVROGENES  
Executive Director



# Memorandum

**TO:** Rules and Open Government  
Committee

**FROM:** Gerald A. Silva  
City Auditor

**SUBJECT:** *REFERRAL OF AUDIT OF  
CAMERA PAVILION MANAGEMENT  
CORPORATION*

**DATE:** February 8, 2007

The Redevelopment Agency is recommending that the Rules and Open Government Committee add an audit of the Camera Pavilion Management Corporation to the City Auditor's 2006-07 workplan. The addition of this assignment will not interrupt our current workplan as it is consistent with work my office is already doing for the Redevelopment Agency.

I will be available at the Rules and Open Government Committee's February 14, 2007 meeting to answer any questions Committee members may have.

Gerald A. Silva  
City Auditor

GS:bh  
0628

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2007 City Clerk  
2007-02-08 PM 4:34



# Memorandum

**TO: Rules Committee**

**FROM: Les White**

**SUBJECT: SEE BELOW**

**DATE: February 9, 2007**

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**SUBJECT: City Process on Responding to No-Match Letters from the Social Security Administration**

## **RECOMMENDATION**

Acceptance of report on City's process on responding to no-match letters from the Social Security Administration.

## **BACKGROUND**

On January 31, 2007, the San Jose Human Rights Commission (HRC) presented to the Rules & Open Government Committee a resolution for adoption by the San Jose City Council "opposing the Department of Homeland Security's proposed rule on the use of the Social Security Administration 'no-match' letters to enforce immigration laws." Attached are copies of the HRC resolution and proposed Department of Homeland Security (DHS) rule. (Attachment A and B, respectively).

Consequently, the Rules & Open Government Committee directed staff to provide additional information on the City's current process for responding to no-match letters from the Social Security Administration (SSA).

## **ANALYSIS**

All persons hired by the City are required as a condition of employment to complete an Employment Eligibility Verification Form at the time of hire. This form is also referred to as Form I-9 (Attachment C). The information collected is used to verify the eligibility of individuals for employment to prevent unlawful hiring of persons not authorized to work in the United States. Under the Immigration Reform and Control Act of 1986, an individual may not begin employment unless this form is completed. Furthermore, an employer can be subject to civil or criminal penalties if it fails to comply with this rule.

The City also reports employee earnings by name and social security number (as part of an annual electronic data check) to the Social Security Administration. Discrepancies in the information reported typically occur due to clerical error, name change, etc. When this happens, the SSA notifies the City electronically and the City works with the employee and the SSA to resolve the problem by checking City records to determine whether the discrepancy results from

Subject: City Process on Responding to No-Match Letters from the Social Security Administration  
February 9, 2007  
Page 2 of 2

a clerical error in the City's records of in the communication to SSA, contacting the employee to confirm his/her records are correct and, revising records accordingly.

In 2006, the City received two no-match letters and responded accordingly to legal requirements. Thus far, the City has not had problems resolving discrepancies.

It is important to note that no-match letters do not imply that an employer or employee intentionally provided incorrect information nor do they make a statement about an employee's immigration status. And as such, the City would not take any adverse action against an employee solely based on the receipt of a no-match letter from the SSA, and further investigation or discussion with the employee would be completed before any action is taken.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, Finance Department, Human Resources Department and the Office of Employee Relations.

  
for Les White  
City Manager

**For questions, please contact Vilcia Rodriguez, City Manager's Office at (408) 535-8253.**

**Attachments:**

- (A) San Jose Human Relations Resolution
- (B) Department of Homeland Security Proposed Rule
- (C) Employment Eligibility Form (Form I-9)

January 10, 2007

The Honorable Mayor and City Council  
San Jose City Hall  
200 E. Santa Clara Street  
San Jose, CA 95113

Dear Mayor Reed and Councilmembers:

In an action taken by passing a resolution 11-0 at its November 16, 2006 meeting, the San Jose Human Rights Commission (HRC) has expressed its concern and belief that something must be done to protect the interests of workers in this City, whose employment status and whose occupational contributions to its economy and social welfare are threatened by the precipitous action of employers who react to the "no match" letters from the Social Security Administration (SSA). These letters to employers warn of inconsistency in its records pertaining to the SSN's on record for certain persons, the full names of those persons, and their registered addresses. The proposed regulation that prompted one San Jose employer, Cintas Corp., late last Fall to suspend and ultimately to terminate the employment of some workers at its San Jose plant, was never formally adopted by the SSA as a regulation.

The enclosed resolution is the formal memorialization of the HRC action. Among other things, it calls upon the City Council to follow suit with the sister cities of Berkeley and San Francisco, to speak out against the use of such tactics as jeopardize and prejudice employees within its City limits. We are requesting that its provision, for the City Council to consider and enact a formal condemnation of such practices, be taken up at the next available Council meeting. We will have a delegation from the HRC available, to provide further information, at such a meeting.

Thank you for your consideration. As do all of the other HRC commissioners, I appreciate the opportunity to serve on a commission that considers and takes action on matters of concern to San Jose residents, employers and employees alike.

Very truly yours,  
Lawrence M. Boesch  
Chair, San Jose' Human Rights Commission

LMB:tih  
Enc.  
cc: Mr. Les White, City Manager

**Resolution opposing the Department of Homeland Security's proposed rule on use of Social Security Administration "no-match" letters to enforce immigration law.**

WHEREAS, The Department of Homeland Security (DHS) has proposed a rule, entitled "Safe Harbor Procedures for Employers Who Receive a No-Match Letter," that requires employers to take action upon receiving "no-match" letters, that the Social Security Administration sends to employers in the event of a discrepancy between an employee's name and Social Security information; and

WHEREAS, Many discrepancies between Social Security and employer records occur due to surname changes, marriage or divorce, clerical errors, common surnames, or differences in date writing conventions; and

WHEREAS, The new rule would create burdensome, inappropriate, and unclear new requirements for employers by forcing them to act as agents of the federal government to enforce immigration law; and

WHEREAS, The new rule could lead to a large number of law-abiding workers losing their jobs due to employers misunderstanding the rule, or using it as a device to fire, intimidate, harass, or underpay employees; and

WHEREAS, The City of San Jose values and relies upon the contributions of all workers to the city's workforce, in both public and private sectors; now, therefore, be it

RESOLVED, The Human Rights Commission of the City of San Jose opposes the Department of Homeland Security's proposed rule on the use of Social Security Administration "no-match" letters to enforce the law, entitled "Safe Harbor Procedures for Employers Who Receive a No-Match Letter"; and, be it

FURTHER RESOLVED, That the Human Rights Commission encourages that the City of San Jose, upon receipt of a "no-match" letter, take no adverse action against any city employee listed on the letter except as required by law; and, be it

FURTHER RESOLVED, That the Human Rights Commission recommends that the City of San Jose continue to comply with all legal requirements, provide the employee with a copy of any "no-match" letter received, prepare W-2c forms (Corrected Wage and Tax Statement) for any records they are able to correct and, for any record they are unable to correct, instruct the employee to work directly with the Social Security Administration to make any necessary corrections; and, be it

FURTHER RESOLVED, that the Human Rights Commission encourages private employers in the City of San Jose to oppose the proposed DHS rule and to urge DHS to withdraw this confusing and unfair rule; and, be it

FURTHER RESOLVED, that the Human Rights Commission encourages the City of San Jose to adopt a resolution opposing this proposed DHS rule, as have the cities of San Francisco, Berkeley and Santa Fe, New Mexico.

AYES: 11

NOES: 0

ABSTAINED: 0

## Proposed Rules

Federal Register

Vol. 71, No. 114

Wednesday, June 14, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

### DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[ICE 2377-06; Docket No. ICEB-2006-0004]

RIN 1653-AA50

#### Safe-Harbor Procedures for Employers Who Receive a No-Match Letter

**AGENCY:** Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Immigration and Customs Enforcement proposes to amend the regulations relating to the unlawful hiring or continued employment of unauthorized aliens. The amended regulation describes the legal obligations of an employer, under current immigration law, when the employer receives a no-match letter from the Social Security Administration or the Department of Homeland Security. It also describes "safe-harbor" procedures that the employer can follow in response to such a letter and thereby be certain that DHS will not find that the employer had constructive knowledge that the employee referred to in the letter was an alien not authorized to work in the United States. The proposed rule adds two more examples of situations that may lead to a finding that an employer had such constructive knowledge to the current regulation's definition of "knowing." These additional examples involve an employer's failure to take reasonable steps in response to either of two events: (1) The employer receives written notice from the Social Security Administration (SSA) that the combination of name and social security account number submitted to SSA for an employee does not match agency records; or (2) the employer receives written notice from the Department of Homeland Security (DHS) that the immigration-status or employment-authorization documentation presented or referenced by the employee in completing Form

I-9 was not assigned to the employee according to DHS records. (Form I-9 is retained by the employer and made available to DHS investigators on request, such as during an audit.) The proposed rule also states that whether DHS will actually find that an employer had constructive knowledge that an employee was an unauthorized alien in a situation described in any of the regulation's examples will depend on the totality of relevant circumstances. The "safe-harbor" procedures include attempting to resolve the no-match and, if it cannot be resolved within a certain period of time, verifying again the employee's identity and employment authorization through a specified process.

**DATES:** Written comments must be submitted on or before August 14, 2006.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. ICEB-2006-0004, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: You may submit comments directly to ICE by email at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). Include docket number in the subject line of the message.
- Mail: Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377. To ensure proper handling, please reference DHS Docket No. ICEB-2006-0004 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

**FOR FURTHER INFORMATION CONTACT:** Charles Wood, Regulatory Counsel, Office of the Principal Legal Advisor, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, 425 I Street, NW., Washington, DC 20536. Contact Telephone Number (202) 514-2845.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Immigration and Customs Enforcement (ICE) also invites comments that relate to the potential economic, environmental, or federalism effects of this proposed rule. Comments that will provide the most assistance to ICE in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. ICE would be particularly interested in comments on the time limits described in the rule. Comments that will provide the most assistance to ICE will include specific factual support, including examples of circumstances under which it would be difficult for the commenting employer to resolve the issues raised in a no-match letter within the stated time frame.

**Instructions:** All submissions received must include the agency name and DHS docket No. ICEB-2006-0004 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See **ADDRESSES** above for information on how to submit comments.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the office of the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

#### II. Background

Employers annually send the Social Security Administration (SSA) millions of earnings reports (W-2 Forms) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a letter that informs the employer of this fact. The letter is commonly referred to as a "no-match letter." There are many causes for such a no-match, including clerical

error and name changes. But one of the causes is the submission of information for an alien who is not authorized to work in the United States and is using a false SSN or a SSN assigned to someone else. Such a letter may be one of the only indicators to an employer that one of its employees may be an unauthorized alien.

ICE sends a similar letter after it has inspected an employer's Employment Eligibility Verification forms (Forms I-9) and after unsuccessfully attempting to confirm, in agency records, that an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I-9 was assigned to that person. (After a Form I-9 is completed by an employer and employee, it is retained by the employer and made available to DHS investigators on request, such as during an audit.)

This proposed regulation describes an employer's current obligations under the immigration laws, and its options for avoiding liability, after receiving a no-match letter from either SSA or DHS. The proposed regulation specifies the steps to be taken by the employer that will be considered by DHS to be a reasonable response to receiving a no-match letter—a response that will eliminate the possibility that DHS, when seeking civil money penalties against an employer, will allege, based on the totality of relevant circumstances, that an employer had constructive knowledge that it was employing an alien not authorized to work in the United States, in violation of section 274A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(a)(2). This provision of the Act states:

*It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment. [Emphasis added.]*

Both regulation and case law support the view that an employer can be in violation of section 274A(a)(2), 8 U.S.C. 1324a(a)(2) by having constructive rather than actual knowledge that an employee is unauthorized to work. A definition of "knowing" first appeared in the regulations on June 25, 1990 at 8 CFR 274a.1(l)(1). See 55 FR 25928. That definition stated:

The term "knowing" includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.

As noted in the preamble to the original regulation, that definition, which is essentially the same as the definition adopted in this rule, is consistent with the Ninth Circuit's holding in *Mester Affg. Co. v INS*, 879 F.2d 561, 567 (9th Cir. 1989) (an employer who received information that some employees were suspected of having presented a false document to show work authorization was held to have had constructive knowledge of their unauthorized status when he failed to make any inquiries or take appropriate corrective action). The court cited its opinion in *United States v Jewell*, 532 F.2d 697 (9th Cir.) (en banc), and explained its ruling in *Jewell* as follows: "deliberate failure to investigate suspicious circumstances imputes knowledge." 879 F.2d at 567. See also *New El Rey Sausage Co. v INS*, 925 F.2d 1153, 1158 (9th Cir. 1991).

The regulatory language quoted above also begins the current regulatory definition of "knowing," which is still at 8 CFR 274a.1(l)(1). In the current definition, additional language follows this passage, describing situations that may involve constructive knowledge by the employer that an employee is an unauthorized alien. The Immigration and Naturalization Service added this language on August 23, 1991. See 56 FR 41767. The current definition contains an additional, concluding paragraph, which relates to foreign appearance or accent, and to the documents that may be requested by an employer as part of the verification system that must be used at the time of hiring, as required by INA section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). This paragraph will be described in greater detail below. The verification system referenced in this paragraph is described in INA section 274A(b), 8 U.S.C. 1324a(b).

### III. Proposed rule

The proposed rule would amend the definition of "knowing" in 8 CFR 274a.1(l)(1), in the portion relating to "constructive knowledge." First, it would add two more examples to the existing examples of information available to an employer indicating that an employee could be an alien who is not authorized to work in the United States. It also explicitly states the employer's obligations under current law, which is that if the employer fails to take reasonable steps after receiving such information, and if the employee is in fact an unauthorized alien, the employer may be found to have had constructive knowledge of that fact. The proposed rule would also state explicitly another implication of the employer's obligation under current law—whether an employer would be

found to have constructive knowledge in particular cases of the kind described in each of the examples (the ones in the current regulation and in the proposed regulation) depends on the "totality of relevant circumstances" present in the particular case.

The additional examples are:

(1) Written notice from SSA that the combination of name and SSN submitted for an employee does not match SSA records; and

(2) written notice from DHS that the immigration status document, or employment authorization document, presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to anyone.

The proposed regulation also describes more specifically the steps that an employer might take after receiving a no-match letter, steps that DHS considers reasonable. By taking these steps in a timely fashion, an employer would avoid the risk that DHS may find, based on the totality of circumstance present in the particular case, that the employer had constructive knowledge that the employee was not authorized to work in the United States. The steps that a reasonable employer may take include one or more of the following:

(I) A reasonable employer would check its records promptly after receiving a no-match letter, to determine whether the discrepancy results from a typographical, transcribing, or similar clerical error in the employer's records or in its communication to the SSA or DHS. If there is such an error, the employer would correct its records, inform the relevant agencies (in accordance with the letter's instructions, if any; otherwise in any reasonable way), and verify that the name and number, as corrected, match agency records—in other words, verify with the relevant agency that the discrepancy has been resolved—and make a record of the manner, date, and time of the verification. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within 14 days of receipt of the no-match letter.

(II) If such actions do not resolve the discrepancy, the reasonable employer would promptly request the employee to confirm that the employee's records are correct. If they are not correct, the employer would take the actions needed to correct them, inform the relevant agencies (in accordance with the letter's instructions, if any; otherwise in any reasonable way), and verify the corrected records with the relevant

agency. If the records are correct according to the employee, the reasonable employer would ask the employee to pursue the matter personally with the relevant agency, such as by visiting a local SSA office, bringing original documents or certified copies required by SSA, which might include documents that prove age, identity, citizenship or alien status, and other relevant documents, such as proof of a name change, or by mailing these documents or certified copies to the SSA office, if permitted by SSA. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within 14 days of receipt of the no-match letter. The proposed regulation provides that a discrepancy will be considered resolved only if the employer verifies with SSA or DHS, as the case may be, that the employee's name matches in SSA's records a number assigned to that name, and the number is valid for work or is valid for work with DHS authorization (and, with respect to the latter, verifies the authorization with DHS) or that DHS records indicate that the immigration status document or employment authorization document was assigned to the employee. In the case of a number from SSA, the valid number may be the number that was the subject of the no-match letter or a different number, for example a new number resulting from the employee's contacting SSA to resolve the discrepancy. Employers may verify a SSN with SSA by telephoning toll-free 1-800-772-6270, weekdays from 7 a.m. to 7 p.m. EST. See <http://www.ssa.gov/employer/ssnadditional.htm>. For info on SSA's online verification procedure, see <http://www.ssa.gov/employer/ssnv.htm>. Employers should make a record of the manner, date, and time of any such verification, as SSA may not provide any documentation.

(III) The proposed regulation also describes a verification procedure that the employer may follow if the discrepancy is not resolved within 60 days of receipt of the no-match letter. This procedure would verify (or fail to verify) the employee's identity and work authorization. If the described procedure is completed, and the employee is verified, then even if the employee is in fact an unauthorized alien, the employer will not be considered to have constructive knowledge of that fact. Please note that, as stated in the "PUBLIC PARTICIPATION" section above, ICE is interested in receiving public comments on the time frames in this proposed regulation. That would include the 60-

day period, and also possible alternatives, such as a 30-day or 90-day time frame. In determining the time frame to be included in the final rule, ICE will consider all comments received. As further stated in "PUBLIC PARTICIPATION," the comments that will provide the most assistance to ICE on this issue will include specific factual support, including examples of circumstances under which it would be difficult for the commenting employer to resolve the issues raised in a no-match letter within 60 days of receipt of the letter.

If the discrepancy referred to in the no-match letter is not resolved, and if the employee's identity and work authorization cannot be verified using a reasonable verification procedure, such as that described in the proposed rule (see below), then the employer must choose between taking action to terminate the employee or facing the risk that DHS may find that the employer had constructive knowledge that the employee was an unauthorized alien and therefore, by continuing to employ the alien, violated INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2).

The procedure to verify the employee's identity and work authorization described in the proposed rule would involve the employer and employee completing a new Form I-9, Employment Eligibility Verification Form, using the same procedures as if the employee were newly hired, as described in 8 CFR 274a.2, with certain restrictions. The proposed rule identifies these restrictions:

(1) Under the proposed rule, both Section 1 ("Employee Information and Verification") and Section 2 ("Employer Review and Verification") would have to be completed within 63 days of receipt of the no-match letter. Therefore, if an employer tried to resolve the discrepancy described in the no-match letter for the full 60 days provided for in the proposed rule, it would have an additional 3 days to complete a new I-9. Under current regulations, three days are provided for the completion of the form after a new hire. 8 CFR 274a.2(b)(1)(ii).

(2) No document containing the SSN or alien number that is the subject of the no-match letter, and no receipt for an application for a replacement of such a document, may be used to establish employment authorization or identity or both.

(3) No document without a photograph may be used to establish identity (or both identity and employment authorization). (This is consistent with the documentary requirements of the Basic Pilot Program. See <http://uscis.gov/graphics/services/SAFE.htm>.)

Employers should apply these procedures uniformly to all of their employees having unresolved no-match

indicators. If they do not do so, they may violate applicable anti-discrimination laws. In this regard, the proposed regulation also amends the last paragraph of the current definition of "knowing." The current rule provides, in relevant part, that—

Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

The proposed rule clarifies that this language applies to employers who receive no-match letters, but that employers who follow the safe harbor procedures set forth in this rule will not be found to have violated the provisions of 274B(a)(6) of the INA. This clarification is accomplished by adding the following language after "individual": "except a document about which the employer has received a notice described in paragraph (I)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraph (I)(2)(i)(B) or (I)(2)(ii)(B) of this section." Alternative documents that show work authorization are specified in 8 CFR 274a.2(b)(1)(v). Examples are a U.S. passport (unexpired or expired), a U.S. birth certificate, or any of several documents issued to lawful permanent resident aliens or to nonimmigrants with work authorization.

There may be other procedures a particular employer could follow in response to a no-match letter, procedures that would be considered reasonable by DHS and inconsistent with a finding that the employer had constructive knowledge that the employee was an unauthorized alien. But such a finding would depend on the totality of relevant circumstances. An employer that followed a procedure other than the "safe-harbor" procedures described in the regulation would face the risk that DHS may not agree.

It is important that employers understand that the proposed regulation describes the meaning of constructive knowledge and specifies "safe-harbor" procedures that employers could follow to avoid the risk of being found to have constructive knowledge that an employee is not authorized to work in the United States. The regulation would not preclude DHS from finding that an employer had actual knowledge that an employee was an unauthorized alien. An employer with actual knowledge

<sup>4</sup> Please note this citation is inaccurate and should read "section 274A(b) of the Act." The proposed rule makes this correction.

that one of its employees is an unauthorized alien could not avoid liability by following the procedures described in the proposed regulation. The burden of proving actual knowledge would, however, be on the government. Finally, it is important that employers understand that the resolution of discrepancies in a no-match letter, or other information that an employee's Social Security Number presented to an employer matches the records for the employee held by the Social Security Administration, does not, in and of itself, demonstrate that the employee is authorized to work in the United States.

#### IV. Regulatory Requirements

##### A. Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule would not affect small entities as that term is defined in 5 U.S.C. 601(6). This rule would describe when receipt by an employer of a no-match letter from the Social Security Administration or the Department of Homeland Security may result in a finding that the employer had constructive knowledge that it was employing an alien not authorized to work in the United States. The rule would also describe steps that DHS would consider a reasonable response by an employer to receipt of a no-match letter. The rule would not mandate any new burdens on the employer and would not impose any new or additional costs on the employer, but would merely add specific examples and a description of a "safe harbor" to an existing DHS regulation for purposes of enforcing the immigration laws and providing guidance to employers.

##### B. Unfunded Mandates Reform Act of 1995

This rule would not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of

1996. This rule would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or foreign markets.

##### D. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is considered by the Department of Homeland Security (DHS) to be a "significant regulatory action" under Executive Order 12866. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this rule would describe what specific steps an employer that has received a no-match letter could take that would eliminate the possibility that DHS would find that the employer had constructive knowledge that it is employing an unauthorized alien, this rule may raise novel policy issues.

##### E. Executive Order 13132 (Federalism)

This rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

##### F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

##### G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This proposed rule would not impose any additional information collection burden or affect information currently collected by ICE.

##### List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 5 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.1(l) is revised to read as follows:

##### § 274a.1 Definitions.

(1)(1) The term *knowing* includes having actual or constructive knowledge. Constructive knowledge is knowledge which may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition. Examples of situations where the employer may, depending on the totality of relevant circumstances, have constructive knowledge that an employee is an unauthorized alien include, but are not limited to, situations where the employer:

- (i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I-9;
- (ii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf;
- (iii) Fails to take reasonable steps after receiving information indicating that the employee may be an alien who is not employment authorized, such as—
  - (A) Labor Certification or an Application for Prospective Employer;

(B) Written notice from the Social Security Administration that the combination of name and social security account number submitted for the employee does not match Social Security Administration records; or

(C) Written notice from the Department of Homeland Security that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to any person.

(2)(i) An employer who receives the notice from SSA described in paragraph (1)(1)(iii)(B) of this section will not be deemed to have constructive knowledge that the employee is an unauthorized alien if—

(A) The employer takes reasonable steps, within 14 days, to attempt to resolve the discrepancy; such steps may include:

(1) Checking the employer's records promptly after receiving the notice, to determine whether the discrepancy results from a typographical, transcribing, or similar clerical error, and if so, correcting the error(s), informing the Social Security Administration of the correct information (in accordance with the letter's instructions, if any; otherwise in any reasonable way), verifying with the Social Security Administration that the employee's name and social security account number, as corrected, match in Social Security Administration records, and making a record of the manner, date, and time of such verification; and

(2) If no such error is found, promptly requesting the employee to confirm that the name and social security account number in the employer's records are correct—and, if they are correct according to the employee, requesting the employee to resolve the discrepancy with the Social Security Administration, such as by visiting a Social Security Administration office, bringing original documents or certified copies required by SSA, which might include documents that prove age, identity, and citizenship or alien status, and other documents that may be relevant, such as those that prove a name change, or, if the employee states that the employer's records are in error, taking the actions to correct, inform, verify, and make a record described in paragraph (1)(2)(i)(A)(1) of this section; and

(B) In the event that, within 60 days of receiving the notice, the employer does not verify with the Social Security Administration that the employee's name matches in the Social Security Administration's records a number

assigned to that name and that the number is valid for work or is valid for work with DHS authorization (and, with respect to the latter, verify the authorization with DHS), the employer takes reasonable steps, within an additional 3 days, to verify the employee's employment authorization and identity, such as by following the verification procedure specified in paragraph (1)(2)(iii) of this section.

(ii) An employer who receives the notice from DHS described in paragraph (1)(1)(iii)(C) of this section will not be deemed to have constructive knowledge that the employee is an unauthorized alien if—

(A) The employer takes reasonable steps, within 14 days of receiving the notice, to attempt to resolve the question raised by DHS about the immigration status document or the employment authorization document; and

(B) In the event that, within 60 days of receiving the notice, the employer does not verify with DHS that the document was assigned to the employee, the employer takes reasonable steps, within an additional 3 days, to verify the employee's employment authorization and identity, such as by following the verification procedure specified in paragraph (1)(2)(iii) of this section.

(iii) The verification procedure referenced in paragraphs (1)(2)(i)(B) and (1)(2)(ii)(B) of this section is as follows:

(A) The employer completes a new Form I-9 for the employee, using the same procedures as if the employee were newly hired, as described in § 274a.2(a) and (b) of this part, except that—

(1) Both Section 1—"Employee Information and Verification"—and Section 2—"Employer Review and Verification"—of the new Form I-9 should be completed within 63 days of receiving the notice referred to in paragraph (1)(1)(iii)(B) or (C) of this section;

(2) No document containing the social security account number or alien number that is the subject of a written notice referred to in paragraph (1)(1)(iii)(B) or (C) of this section, and no receipt for an application for a replacement of such document, may be used to establish employment authorization or identity or both; and

(3) No document without a photograph may be used to establish identity or both identity and employment authorization; and

(B) The employer retains the new Form I-9 with the prior Form(s) I-9 for the same period and in the same manner as if the employee were newly hired at

the time the new Form I-9 is completed, as described in § 274a.2(b) of this part.

(3) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274A(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual, except a document about which the employer has received a notice described in paragraph (1)(1)(iii) of this section and with respect to which the employer has received no verification as described in paragraph (1)(2)(i)(B) or (1)(2)(ii)(B) of this section.

Dated: June 8, 2006.

Michael Chertoff,

Secretary.

IFR Doc E6-9303 Filed 6-13-06; 8:45 am  
BILLING CODE 4410-10-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

[Docket No. PRM-35-19]

#### William Stein III, M.D.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by William Stein III, M.D. (petitioner). The petition has been docketed by the NRC and has been assigned Docket No. PRM-35-19. The petitioner is requesting that the NRC amend the regulations that govern medical use of byproduct material concerning training for parenteral administration of certain radioactive drugs used to treat cancer. The petitioner believes that these regulations do not adequately consider the training necessary for a class of physicians, namely medical oncologists and hematologists, to qualify as an Authorized User (AU) physician to administer these drugs. The petitioner requests that the regulations be amended to clearly codify an 80-hour training and experience requirement as appropriate and sufficient for physicians desiring to attain AU status for these unsealed byproduct materials.

## INSTRUCTIONS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1 - Employee.** All employees, citizens and noncitizens, hired after November 6, 1986, must complete Section 1 of this form at the time of hire, which is the actual beginning of employment. The employer is responsible for ensuring that Section 1 is timely and properly completed.

**Preparer/Translator Certification.** The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1.

**Section 2 - Employer.** For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, Section 2 must be completed at the time employment begins. **Employers must record: 1) document title; 2) issuing authority; 3) document number, 4) expiration date, if any; and 5) the date employment begins.** Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. **However, employers are still responsible for completing the I-9.**

**Section 3 - Updating and Reverification.** Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1. Employers **CANNOT** specify which document(s) they will accept from an employee.

- If an employee's name has changed at the time this form is being updated/ reverified, complete Block A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.

- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B and:
  - examine any document that reflects that the employee is authorized to work in the U.S. (see List A or C),
  - record the document title, document number and expiration date (if any) in Block C, and complete the signature block.

**Photocopying and Retaining Form I-9.** A blank I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

**For more detailed information, you may refer to the INS Handbook for Employers, (Form M-274). You may obtain the handbook at your local INS office.**

**Privacy Act Notice.** The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor and the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

**Reporting Burden.** We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about this form, 5 minutes; 2) completing the form, 5 minutes; and 3) assembling and filing (recordkeeping) the form, 5 minutes, for an average of 15 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4034, Washington, DC 20536. OMB No. 1115-0136.

# Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification.** To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
<b>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</b>		I attest, under penalty of perjury, that I am (check one of the following): <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A Lawful Permanent Resident (Alien # A _____) <input type="checkbox"/> An alien authorized to work until ___/___/___ (Alien # or Admission #) _____	
Employee's Signature			Date (month/day/year)

**Preparer and/or Translator Certification.** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

**Section 2. Employer Review and Verification.** To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): ___/___/___		___/___/___		___/___/___
Document #: _____		_____		_____
Expiration Date (if any): ___/___/___		_____		_____

**CERTIFICATION -** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_/\_\_\_/\_\_\_ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name		Date (month/day/year)
Address (Street Name and Number, City, State, Zip Code)		

**Section 3. Updating and Reverification.** To be completed and signed by employer.

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____ Document #: _____ Expiration Date (if any): ___/___/___	

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
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## LISTS OF ACCEPTABLE DOCUMENTS

LIST A	LIST B	LIST C
Documents that Establish Both Identity and Employment Eligibility	Documents that Establish Identity	Documents that Establish Employment Eligibility
<ol style="list-style-type: none"> <li>1. U.S. Passport (unexpired or expired)</li> <li>2. Certificate of U.S. Citizenship (<i>INS Form N-560 or N-561</i>)</li> <li>3. Certificate of Naturalization (<i>INS Form N-550 or N-570</i>)</li> <li>4. Unexpired foreign passport, with <i>I-551 stamp</i> or attached <i>INS Form I-94</i> indicating unexpired employment authorization</li> <li>5. Permanent Resident Card or Alien Registration Receipt Card with photograph (<i>INS Form I-151 or I-551</i>)</li> <li>6. Unexpired Temporary Resident Card (<i>INS Form I-688</i>)</li> <li>7. Unexpired Employment Authorization Card (<i>INS Form I-688A</i>)</li> <li>8. Unexpired Reentry Permit (<i>INS Form I-327</i>)</li> <li>9. Unexpired Refugee Travel Document (<i>INS Form I-571</i>)</li> <li>10. Unexpired Employment Authorization Document issued by the INS which contains a photograph (<i>INS Form I-688B</i>)</li> </ol>	<p style="font-size: 1.2em; font-weight: bold; margin: 0;">OR</p> <ol style="list-style-type: none"> <li>1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address</li> <li>2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address</li> <li>3. School ID card with a photograph</li> <li>4. Voter's registration card</li> <li>5. U.S. Military card or draft record</li> <li>6. Military dependent's ID card</li> <li>7. U.S. Coast Guard Merchant Mariner Card</li> <li>8. Native American tribal document</li> <li>9. Driver's license issued by a Canadian government authority</li> </ol> <p style="text-align: center; font-weight: bold; margin: 0;">For persons under age 18 who are unable to present a document listed above:</p> <ol style="list-style-type: none"> <li>10. School record or report card</li> <li>11. Clinic, doctor or hospital record</li> <li>12. Day-care or nursery school record</li> </ol>	<p style="text-align: center; font-size: 1.2em; font-weight: bold; margin: 0;">AND</p> <ol style="list-style-type: none"> <li>1. U.S. social security card issued by the Social Security Administration (<i>other than a card stating it is not valid for employment</i>)</li> <li>2. Certification of Birth Abroad issued by the Department of State (<i>Form FS-545 or Form DS-1350</i>)</li> <li>3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal</li> <li>4. Native American tribal document</li> <li>5. U.S. Citizen ID Card (<i>INS Form I-197</i>)</li> <li>6. ID Card for use of Resident Citizen in the United States (<i>INS Form I-179</i>)</li> <li>7. Unexpired employment authorization document issued by the INS (<i>other than those listed under List A</i>)</li> </ol>

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)



# Memorandum

**TO:** Rules and Open Government  
Committee

**FROM:** San Jose Elections  
Commission

**SUBJECT:** Public Funded Campaigns  
(Voter-Owned Campaigns)

**DATE:** February 9, 2007

## Background

In March of 2006, the City Council directed the Elections Commission to explore the creation of a fully public funded voter-owned campaign ordinance by taking public testimony and obtaining expert input. The Council requested that the Commission:

- 1) Research comprehensively the concept and current examples of public campaign funding,
- 2) Present a recommendation to the Mayor and City Council regarding adoption or rejection of public financing for San Jose, and
- 3) Present possible implementation procedures should the City decide to proceed with public financing of mayoral and/or council campaigns.

The Elections Commission conducted three public hearings and received public testimony and input on public financing from numerous members of the public. Additionally, Commission members surveyed current and former office holders and unsuccessful candidates for office. A report which was previously issued to the City Council which details the Commission's study and review of public financing of elections is attached to this report.

## Recommendation to Defer Consideration of Public Financing of Campaigns

In surveying office holders, unsuccessful candidates and members of the public, the Elections Commission found that the need for public financing articulated in other communities might not exist here because of San Jose's unique voluntary spending limit law. The Elections Commission also found that concerns about the recent rise in independent expenditures merit consideration of new rules addressing independent expenditures before an experiment in public financing is commenced. The Elections Commission has received additional referrals from the Mayor and City Council relating to the City's election laws since accepting the public financing assignment, and its resources have been spread thin handling complaints and addressing lobbyist reform. The Elections Commission therefore recommends deferring further consideration of

public financing until a reasonable time after the other referrals, the independent expenditure issue, and lobbyist reform are resolved. In fact, the Elections Commission believes that at least one election cycle should pass with new regulations addressing these findings before further consideration of public financing is undertaken.

### **Public Financing of Campaigns – Identified Trends and Findings**

The Elections Commission identified the following trends and has made the following findings:

- 1) **Public financing of campaigns in San Jose does not necessarily improve or diversify the candidate pool.** The vast majority of successful and unsuccessful candidates, both past and current, indicated that qualified candidates abound in city races.
- 2) **Public financing of campaigns would allow candidates to spend more time meeting and educating constituents.** A majority of those surveyed felt that the campaign length is adequate for constituent interaction; in fact, several subjects indicated that the campaign “season” was too long, and others felt that this was true whether or not fund raising was required.
- 3) **Public financing would have little if any impact on wealthy “special interest” spending and independent expenditures.** No one person who was surveyed believed that funds currently contributed to campaigns would disappear if campaigns were publicly funded. Instead, all indicated that the money currently raised by candidates would be redirected to other expenditures on behalf of one candidate or another. One topic of discussion related to this observation concerned disclosure: while candidates now must disclose all contributions in a somewhat timely manner, independent committees making independent expenditures have a looser, less timely and perhaps less thorough reporting procedure. There was no agreement regarding whether or not public funding would at least mitigate the public’s perception of corruption and/or special interests’ undue influence of and access to elected officials.
- 4) **San Jose already has progressive spending and contribution rules in place with 100% voluntary compliance to date.** In fact, the benefit of public funding programs most often cited in other jurisdictions is the implementation of spending limits. This is true even in Los Angeles, where average Council spending on individual open seat races has gone from \$209,000 pre-1993 (when public matching funding was voted in) to \$433,000 in 1995 and \$553,000 in 2001-2002. In one Council and one Mayor race in

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independent expenditures in the two races. The Mayor's race alone involved total candidate spending of \$7.8M – in addition to independent expenditures.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tom Mertens". The signature is written in black ink and is positioned above a horizontal line.

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Tom Mertens, Chair  
San Jose Elections Commission

Attachment

Cc: City Manager  
City Attorney  
City Clerk