Legislative Watch

Issues important to today's dairy farmers

Homeland Security Issues Social Security Number Mismatch Rules

A new Department of Homeland Security (DHS) rule that goes into effect on September 14, 2007 will hold employers accountable for the workers they hire and poses to crack down on employers who knowingly hire illegal workers.

The rule deals with Social Security Administration (SSA) "no match" letters that are sent to employers on a yearly basis informing the employer when certain employee's names and Social Security numbers provided on W-2 forms do not match SSA records.

SSA "mismatch" letters are not uncommon. SSA receives over 250,000,000 earnings reports from employers each year; in as many as 4 percent of the reports, SSA is unable to match the combinations of names and SSNs to SSA records. In many instances, the causes for the no-match are mere clerical errors or name changes. One cause, however, is the submission of information for an alien who is not authorized to work in the U.S. and is using a false SSN or an SSN assigned to another person. The purpose of the new regulation is to describe steps that DHS would consider a reasonable response by an employer who would receive a match letter such that the employer would not be found to have constructive knowledge that it is employing an alien not authorized to work in the United States.

According to National Milk Producers Federation, the government has delayed sending out its 2007 letters this year and plans to release them around the effective date of the Rule. The new rule will apply to those letters. This enforcement effort is not restricted to agriculture and is likely to have a significant economic impact on a number of sectors of the U.S. economy.

"We realize this is an issue of great concern to a number of companies and producers. Unfortunately, we are unlikely to see action from Congress in the near future that would provide relief from this issue," NMPF said in a news alert to cooperative leaders.

NMPF has long championed AgJOBS legislation as a way to provide relief from the uncertainty and risks inherent in the status quo, and notes that AgJOBS is still the best vehicle for reforming the country's broken immigration system. NMPF continues to work hard for the passage of AgJOBS by Congress, but urges that members of Congress must hear from their constituents about the extent of the problem facing the dairy industry. NMPF strongly urges you to again contact your members of Congress regarding this latest action by DHS and to press for passage of AgJOBS.

Additional information on the issue can be found at the U.S. Immigration and Customs Web site at www.ice.gov

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Board Members Meet with Senator Stabenow

Several of MMPA's Board of Directors met with Senator Debbie Stabenow on August 13 and had the opportunity to discuss various issues important to Michigan's dairy industry. Board members stressed the industry's support of the 2007 Farm Bill as it was passed by the House of Representatives as well as the need for immigration reform. Senator Stabenow serves on the Senate Agriculture Committee. The committee is expected to begin mark-up of the 2007 Farm Bill following Labor Day.

Highlights of Final DHS Rule

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• Upon receipt of a no match letter from DHS or SSA, an employer will have to review the letter within 30 days of its receipt to determine whether it properly recorded the listed employees' names and social security number (SSN) or alien documents. If the employer did not and made a clerical mistake, it is required to make the correction and file the corrected information with SSA or DHS within the 30-day time period. The employer must verify the corrections with SSA or DHS within the 30-day period. Keep a record!

• If the employer reported the information correctly on its I-9 or W-2 forms, it must confirm with the employee that the employee provided accurate information. If the employee did report the information accurately, the employer must ask the employee to ascertain and correct the problem with the appropriate agency. While the employer does not have a duty to solve the problem for the employee, it must inform the employee of the 90-day time frame within which the employee must provide verifiably legitimate documents.

• The employer and employee have 90 days from the receipt of the agency letter within which to complete this process.

• If during the 90-day period the employee provides corrected information, the employer is responsible for verifying the correction with DHS or SSA. Keep a record!

• If at the end of the 90-day period the employer cannot obtain verification from DHS or SSA that the document in question is acceptable, then the employer will have to take action to terminate the employee or face the risk that DHS may find that it had constructive knowledge that the employee was unauthorized.

• If at the end of the 90 days the employer cannot obtain verification, it has an additional 3 days within which to complete a new I-9 Form for the employee, using the same procedures as if the employee were newly hired. In completing the form, the employer may not accept any document referenced in the written notice that is disputed. The employer must require that a document establishing identity or identity and work authorization contain a photograph.

• An employer that follows DHS' procedures will have a "safe harbor." It will not be considered by DHS to have constructive knowledge that it employed unauthorized workers, unless DHS could prove independently that the employer had actual or other knowledge that the employee in question was unauthorized to work. The safe harbor would be available even if the worker later were determined to be unauthorized, assuming the employer followed the DHS procedures and could prove that it did so.

• An employer that fails to follow the procedures set forth in DHS' rule will be considered by DHS to have constructive knowledge that it employed unauthorized workers. This will influence DHS' exercise of its prosecutorial discretion in deciding whether it will bring charges against employers that receive no match letters and do not follow up on them.

EPA Extends Clean Water Act Deadlines for Animal Feeding Operations

To respond properly to citizen comment on a federal court order, EPA announced a final rule extending certain compliance deadlines from July 31, 2007 to Feb. 27, 2009 for concentrated animal feeding operations (CAFOs).

One extension applies to water pollution permit application deadlines for certain facilities that EPA defined as CAFOs for the first time in 2003. The other extension relates to when CAFOs that have a Clean Water Act permit are required to develop and implement their nutrient management plans (NMPs). An NMP is a plan that specifies the amount of manure that can be applied to crops so the potential for nutrient runoff to water bodies is minimized.

Until NMPs and other aspects of the regulation can be implemented in accordance with the court ruling, state and existing federal rules unaffected by the court ruling will continue to protect water quality.

These actions are extensions of the deadlines originally promulgated in the 2003 rule. The extensions are necessary to ensure that EPA finalizes the 2006 CAFO rule in response to the court decision before the compliance dates come into effect. These extensions will allow EPA time to respond adequately to a wide array of public comments on the court decision and will also provide time for states and the agricultural community to adjust to the new requirements of the 2006 proposal once it goes final.

EPA is encouraging its regional offices and States to continue to implement their existing regulatory programs while the agency's response to the court decision is being finalized.