

Appendix B

Response to 30-Day Public Comments:

DHS received only one comment to the revised E-Verify MOUs. The comment received by the agency was outside of the scope of the comment request, but the agency will reply to the comment for informational purposes only.

The commenter suggested that DHS should improve E-Verify's accuracy and that DHS should fine employers not using E-Verify.

DHS continuously strives to make E-Verify more accurate, and the system's accuracy has increased over time. A recent independent study by the Westat Corporation found that as measured by the E-Verify erroneous Tentative Nonconfirmation (TNC) rate (*i.e.*, the percentage of workers found to be employment authorized who initially received a TNC), the TNC error rate declined from 0.7 percent (calculated for the period April through June 2005 in the Westat report from 2009) to 0.3 percent (calculated for the period April through June 2010 in the current Westat report). Based on these findings, the E-Verify TNC accuracy rate is 99.7% for work-authorized employees. Similarly, Westat found that the E-Verify Final Nonconfirmation (FNC) accuracy rate in 2009 was approximately 94 percent. Of the approximately 191,000 workers receiving FNCs, an estimated 176,000 were accurately identified by E-Verify as not work-authorized. Accordingly, DHS believes that the E-Verify system is already highly accurate, but is working to make the system even more accurate.

With respect to fining employers who do not use E-Verify, some state governments have enacted laws that sanction employers who do not use E-Verify. As a matter of Federal law, the E-Verify program remains a voluntary Federal program, and DHS does not "fine" employers for failing to use E-Verify.