

FEDERAL CONTRACTORS TO USE E-VERIFY PROGRAM

The final rule requiring federal contractors and subcontractors to participate in the Department of Homeland Security's E-Verify program was published in the federal register on November 14, 2008. These regulations implement Executive Order 12989 signed by President Bush on June 6, 2008 as the next step in the federal government's policy of only doing business with companies that have a legal workforce. The new rule becomes effective January 15, 2009 and covers most prime contracts and most subcontracts in excess of \$3000 awarded after January 15th. Contracts for less than \$100,000, contracts lasting less than 120 days, contracts for commercially available off-the-shelf items, and contracts where all the work is performed outside the U.S. are exempt.

Covered contracts awarded after January 15th will contain a clause obligating the contractor to enroll in the E-Verify program within 30 days of the contract date. Under this program, contractors must verify an individual's eligibility to work in the U.S. using an online national database verification system. This program does not replace, but is in addition to the I-9 verification program. Posters informing employees of the E-Verify program must also be posted in the workplace where employees can see them.

Contractors must E-Verify: 1) all new hires within 3 days of their start date, whether or not the employee is assigned to a covered contract, and 2) current employees working on covered federal contracts using the information provided on their I-9 Form. Contractors have the option of E-Verifying all employees if they do not wish to expend the time and costs associated with determining which employees are working on covered contracts. The program may not be used as an applicant screening tool and Contractors are prohibited from E-Verifying an individual until after the individual has accepted the job offer. Institutions of higher education, as well as state and federal governments, are only required to E-Verify current employees assigned to a covered contract.

There is no charge to E-Verify an individual's eligibility directly through the program. However, there are a number of third-party vendors who are providing a verification service to contractors for a fee.

More than 92,000 employers currently use the voluntary E-Verify program. During Fiscal Year 2008, more than 6.6 million employment verification queries were run through the system representing 1 out of every 8 hires made in the United States. Approximately 96.1 percent of all cases queried through E-Verify are instantly found to be employment authorized, and individuals who are not immediately cleared are given the opportunity to correct their government records in order to confirm their work eligibility.

Employers may fire employees based on E-Verify only after receipt of a final non-confirmation result from E-Verify or if the employee does not contest a tentative non-confirmation.

For more information and to register for the E-Verify program, visit the Department of Homeland Security's website at <http://www.dhs.gov/e-verify>.