

## **E-Verify Final Regulation for Federal Contractors Is Released**

**November 13, 2008**

The Bush Administration will publish in the November 14, 2008 Federal Register a final rule requiring that most federal government contractors and subcontractors use E-Verify for all new hires and all employees (existing and new) directly performing work under federal contracts. The effective date of the final rule is January 15, 2009. After this date, all federal contracts and solicitations will contain this requirement. In addition, federal agencies will amend existing indefinite-delivery/indefinite-quantity contracts if the remaining period of performance extends after July 15, 2009.

The following is a link to the final rule in the Federal Register: <http://edocket.access.gpo.gov/2008/pdf/E8-26904.pdf>

To review our prior Immigration Alerts on this subject, please follow these links:

- October 21, 2008 Immigration Alert: [http://www.morganlewis.com/pubs/ImmigrationAlert\\_FinalE-VerifyRegulation\\_21oct08.pdf](http://www.morganlewis.com/pubs/ImmigrationAlert_FinalE-VerifyRegulation_21oct08.pdf)
- June 9, 2008 Immigration Alert: [http://www.morganlewis.com/pubs/ImmigrationAlert\\_EVerify\\_09jun08.pdf](http://www.morganlewis.com/pubs/ImmigrationAlert_EVerify_09jun08.pdf)

### **What Is E-Verify?**

E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program) is an Internet-based system operated by the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). E-Verify enables participating employers to electronically verify the employment eligibility of new hires. At present, the use of E-Verify is voluntary and applies only to new hires. The final rule changes the terms of E-Verify, making its use mandatory for most federal contractors, and requiring that existing employees directly performing work under a federal contract be processed through E-Verify. Further information on the use of E-Verify is available at <http://www.dhs.gov/E-Verify>.

### **How Does the Final Rule Differ from the Proposed Rule?**

Below are some of the major differences between the proposed and final rules.

- The final rule extends the period in which employers must begin to use E-Verify for new and existing employees from 30 calendar days from enrollment to 90 calendar days from enrollment (enrollment is required within 30 days of the award of the contract).
- The Covered Prime Contract Value Threshold is raised from \$3,000 to \$100,000.
- The E-Verify clause does not need to be inserted into prime contracts with performance terms of fewer than 120 days.
- The phrase "employee assigned to the contract" has been refined to refer to individuals who are "directly performing work under the contract," and to exclude employees who normally perform support work,

- such as general company administration or indirect or overhead functions, and who do not perform any substantial duties applicable to an individual contract.
- USCIS will publish a new Memorandum of Understanding (MOU) for federal contractors who register for E-Verify.

### How Does This Affect You?

If you are a federal government contractor, or a subcontractor on a federal government project, you will probably be required to participate in E-Verify. USCIS has posted Frequently Asked Questions for reference on the agency's website at [http://www.uscis.gov/files/article/FAR\\_FAQ\\_13nov08.pdf](http://www.uscis.gov/files/article/FAR_FAQ_13nov08.pdf).

### I-9 eSource Technology from Morgan Lewis

Morgan Lewis offers clients a hosted, web-based software product, called I-9 eSource, that ensures Form I-9 compliance and seamlessly interfaces with the E-Verify program. The following links will provide you with additional information about I-9 eSource:

**Brochure:** <http://www.morganlewis.com/pubs/I-9eSourceBrochure.pdf>

**Description:** <http://morganlewis.com/documents/I-9eSourceNarrativeBrochure.pdf>

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