

Final E-Verify Regulation for Federal Contractors Appears Imminent

October 21, 2008

A final regulation that will make the use of E-Verify mandatory for federal government contractors is expected to be published soon in the Federal Register. Details of the final regulation are not public; however, the original proposed regulation included provisions that would require federal government contractors (and most subcontractors) to use E-Verify to confirm the employment eligibility of all new hires and all existing employees assigned by the contractor to work on the federal contract.

Background

- Under an amendment to Executive Order No. 12989, signed by President Bush on June 6, 2008, executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security [E-Verify] to verify the employment eligibility of (i) all persons hired during the contract term by the contractor to perform employment duties within the United States, and (ii) all persons assigned by the contractor to perform work within the United States on the federal contract.
- A proposed regulation implementing the Executive Order was published in the Federal Register on June 12, 2008 (<http://edocket.access.gpo.gov/2008/E8-13358.htm>).
- The public comment period ended on August 11, 2008.
- On October 14, 2008 the rule was submitted to the Office of Management and Budget (OMB) for final clearance. Technically, OMB is allowed 90 days to clear a rule; however, indications are that OMB is under pressure to move this rule more quickly. After a rule is cleared by OMB, it usually appears in the Federal Register within five days.

Note that despite independent analysis by both the U.S. Chamber of Commerce and the Small Business Administration Office of Advocacy that found that the proposed rule carries a potentially substantial cost to business, the final rule is described by OIRA as not “economically significant.” This apparent disregard of major business interests may signal that the more onerous provisions of the proposed rule remain in the final rule.

What Is E-Verify?

E-Verify is a web-based program operated by the Department of Homeland Security (DHS) through U.S. Citizenship and Immigration Services and in partnership with the Social Security Administration (SSA). Participating employers submit information collected on the Form I-9 to E-Verify, which checks the information against government database records and generates one of three results: “employment authorized,” “SSA tentative nonconfirmation,” or “DHS verification in process.”

How This Affects You

If you are a federal government contractor, or a subcontractor on a federal government project, you will be required to participate in E-Verify. The final regulation is expected to address a number of questions related to

timing of implementation, whether it will apply to future or current contracts, and other details. We will continue to monitor the situation and provide more information as it becomes available.

I-9 eSource Technology from Morgan Lewis

Morgan Lewis offers clients a hosted, web-based software product, called I-9 eSource, which 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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