

U.S. Rule Requires Use of E-Verify

The Federal Government is moving toward requiring all Federal contractors to use the electronic employment authorization program known as E-Verify and obligating those contractors to require their subcontractors to use E-Verify. The Internet-based E-Verify system is operated by the U.S. Department of Homeland Security in partnership with the Social Security Administration. As of the current implementation date, September 8, 2009, prime Federal contracts above \$100,000 with performance terms of 120 days or longer will require contractors to:

- Enroll in the E-Verify program within 30 calendar days of contract award (if not already enrolled);
- Within 90 calendar days after enrollment or 30 calendar days after an employee is assigned to the contract, whichever is later, verify the employment eligibility of employees assigned to the contract;
- Within 90 days after enrollment, verify the employment eligibility of all new hires within three business days of hire, whether or not the employee is assigned to the contract; and
- Include the E-Verify requirements in subcontracts for commercial or noncommercial services or construction whose value exceeds \$3,000 and which include work performed in the U.S.

This new Federal Contractor Rule applies to solicitations issued and contracts awarded after the implementation date. It exempts contracts for commercially available off-the-shelf items, and some employers, including institutions of higher education and state and local governments, need only verify employees assigned to the covered Federal contract.

Implementation of this new Federal Contractor Rule has been postponed several times. It may be postponed again because of litigation or other reasons. Nevertheless, the Department of Homeland Security announced that the Administration is pushing ahead with full implementation of the rule, Congress is considering making the rule a statute, and the Federal government advises, "Although Federal Contractors are not yet required to participate in E-Verify, you are encouraged to enroll in E-Verify now." All employers, including Federal contractors, may enroll in E-Verify at any time without waiting for the applicability date. [Here is a link to the enrollment process.](#)

E-Verify Issues

Many legal issues are associated with E-Verify, including which employees are "assigned to the contract" and whether to utilize E-Verify for all existing employees. Additionally, employers commit to a Memorandum of Understanding that contains certain responsibilities including these:

- All employees of Federal contractors must present a photographic identification document, which is a broader requirement than the basic requirement that a "List B Identity Document" for the I-9 employment eligibility process must contain the employee's photograph;
- If an employee presents a permanent resident card, the employer must make a photocopy of the card;

- An employer who is a Federal contractor may have to prepare a new Form I-9 for an existing employee unless the previously completed Form I-9 complies with certain criteria; and
- Employers may not use the system to pre-screen applicants for employment.

Currently, over 133,000 employers voluntarily use the E-Verify system and 12 states, including Missouri, have made using E-Verify a requirement for state workers, state contractors or both. Failing to abide by the rule in Missouri may result in suspension of a company's licenses, permits, and exemptions until required documents are supplied. Knowingly falsifying E-Verify information may result in fines or other sanctions.

E-Verify may present challenges to contractors unfamiliar with the system because understanding some of the language, instructions and requirements of E-Verify and the rule may prove daunting. More information is available at the [U.S. Department of Homeland Security website](#), or from a qualified attorney who specializes in matters of government law and immigration.

David J. Harris is an attorney with St. Louis-based law firm Gallop, Johnson & Neuman, L.C. who focuses his practice in matters of immigration, government law and relations, and real estate.