



LEGAL ALERT

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Rebecca Winterscheidt
602.382.6343
bwinterscheidt@swlaw.com

Manny Cairo
602.382.6534
mcairo@swlaw.com

Snell & Wilmer
L.L.P.
LAW OFFICES

Federal Contractors/ Subcontractors Have Additional E-Verify Requirements

Beginning January 15, 2009, federal contractors and subcontractors will be required to E-Verify not only all new employees, but also all existing employees who will be assigned to the contract unless certain exemptions apply. The new rule will not apply if a prime contract is 1) less than \$100,000, 2) is for a commercially available off-the-shelf (COTS) item; or 3) is for less than 120 days in duration. Prime contractors must include a clause in their subcontracts requiring subcontractors to use E-verify if the value of the subcontract is more than \$3,000 and is for services or construction. Covered contractors and subcontractors must enroll in the E-Verify program within 30 calendar days of the contract or subcontract award date. Other highlights of this new rule which was published this month in the Federal Register include the following:

- Option to E-Verify all employees
Although current E-verify users can only verify new hires, contractors and subcontractors will have the option of E-verifying all of their current employees rather than try to keep track of those who will be performing work on the covered contract or subcontract. If a company chooses to E-verify all employees, it must notify DHS of the decision and initiate verification for the entire workforce within 180 days of notice to DHS. Beware, however, that if a company chooses this option, it may be forced to terminate existing employees who are not required to be E-Verified after submitting their names through the system.
- Exclusion of some employees "assigned to the contract"
Employees who merely perform support-type work, including general company administrative work, and who do not perform any substantial duties applicable to the individual contract are not considered "assigned



to the contract” and do not need to be E-verified unless they are new hires or the contractor has decided to E-Verify all of its employees.

- Timetable if already enrolled in E-Verify

If a company is already participating in E-Verify for at least 90 days, it can simply continue processing new hires as normal. The company will have 90 days from the date the federal contract is awarded to E-Verify its existing employees who will be working on the new contract. The company will have to update its company profile in E-Verify to register as a federal contractor through the “Maintain Company” page once the contract has been awarded.

- Timetable if not already enrolled in E-Verify

If a company has not yet signed up for E-Verify, it will have 30 days from the date the contract is awarded to enroll. The company will then have 90 days from the date of E-Verify enrollment to initiate verification of its existing employee who will be working on the project and to begin using the system for new hires.

- New Hires must be E-Verified even if they will not work on the federal contract

Once awarded a federal contract or subcontract, a company must continue to use E-Verify for all its new hires, even if those new hires will not be assigned to work on the federal contract.

- Exemption for agricultural and food products

Food and agricultural products generally fall within the definition of “commercially available off-the-shelf” (COTS) items and are therefore exempt from this rule. Subcontracts that provide supplies, such as food, are also exempt from this rule.

- E-Verify use creates a “rebuttable presumption” for company

While the use of E-Verify does not create a safe harbor for a company against worksite enforcement by either ICE or local law enforcement agencies, it does create a rebuttable presumption that a company has not knowingly hired an unauthorized alien. Use of the E-Verify system, along with using other immigration best practices can help protect a company.

- To sign up for E-Verify

Employers can register online for E-Verify at <http://www.vis-dhs.com/EmployerRegistration>.