



JUNE 2008

**MANY FEDERAL CONTRACTORS AND
SUBCONTRACTORS WILL SOON BE
REQUIRED TO USE E-VERIFY**

A proposed rule has now been released that will implement President Bush's amended Executive Order 12989 requiring federal contractors and subcontractors, unless exempt, to use E-Verify in order to confirm the work authorization of their employees during the term of their federal contracts. The stated intention of the amendment is to promote economy and efficiency in federal procurement. Until now, E-Verify has been a voluntary program that employers could utilize for checking employment authorization of new hires. The system verifies employment authorization by confirming data with the Department of Homeland Security ("DHS") and the Social Security Administration. The rule not only mandates use of E-Verify for new hires, but also broadens its application by requiring its use for the contractor's existing employees, as well as new hires.

The proposed rule will require that all future federal solicitations and contracts include a clause requiring federal prime contractors to utilize E-Verify unless the contract is for 1) commercially available off-the shelf items, 2) an amount under the micro-purchase threshold (normally \$3,000), or 3) work not performed in the United States. The proposed rule goes further to require that subcontractors generally also must utilize E-Verify, if the subcontracts are for services or construction. Again, this only applies to contracts in excess of \$3,000 and work performed in the United States.

Federal contractors and subcontractors who are required to use E-Verify will be required to enroll in E-Verify within 30 calendar days of the contract award. The rule also provides requirements for timeframes in which new employees and current employees who will be performing work in the United States under the contract must be verified utilizing E-Verify.

Public comments will be accepted until August 11, 2008 for consideration in the final rule.

Federal contractors and subcontractors may wish to take this time to prepare by auditing I-9 forms, reviewing policies related to I-9 forms, and ensuring appropriate individuals receive up-to-date training on I-9 form completion and retention. Thompson Hine's immigration team is experienced in counseling employers with these matters.

We will keep you apprised of further developments as the proposed rule is modified and finalized.

For More Information

If you would like more information about the proposed rule, please contact Staci Jenkins at 513.352.6734 or Staci.Jenkins@ThompsonHine.com, or your primary Thompson Hine Labor & Employment lawyer. For a list of Thompson Hine Labor & Employment lawyers, please go to <http://www.ThompsonHine.com/practices>.

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