E-Verify

Supplemental Guide

For Federal Contractors

September 8, 2009

U.S. Citizenship and Immigration Services

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1.0 REGULATIONS AFFECTING FEDERAL CONTRACTORS

1.1 BACKGROUND

A presidential executive order and subsequent Federal Acquisition Regulation (FAR) rule require federal contractors to use E-Verify to electronically verify the employment eligibility of employees working under Federal contracts. The order and rule reinforces Federal government policy that the Federal government does business with organizations that have a legal workforce.

1.1.1 EXECUTIVE ORDER 12989

On June 11, 2008, President George W. Bush amended Executive Order 12989 to direct all Federal departments and agencies to require contractors to use an electronic employment eligibility verification system to verify the employment eligibility of employees performing work under a federal contract. The Department of Homeland Security (DHS) designated E-Verify as the electronic employment eligibility verification system that all federal contractors must use as required by the amended Executive Order 12989.

1.1.2 THE FEDERAL CONTRACTOR RULE

On November 14, 2008, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published a FAR final rule (FAR case 2007-013, Employment Eligibility Verification) that implements the amended Executive Order 12989. The FAR is a set of rules and regulations used to manage the way the Federal government acquires supplies and services with appropriated funds.

The FAR final rule, known as the Federal contractor rule, directs Federal agencies to require many Federal contractors to use E-Verify to electronically verify the employment eligibility of certain of their employees. It requires Federal contractors to agree, through language inserted into their Federal contracts, to use E-Verify to confirm the employment eligibility of all persons they hire during a contract term, as well as their current employees who perform work under a Federal contract within the United States. The rule's requirements to include language on E-Verify in Federal contracts take effect on September 8, 2009.

1.1.3 ABOUT E-VERIFY

E-Verify is a free, Internet-based system operated by DHS in partnership with the Social Security Administration. E-Verify allows participating employers to electronically verify their employees' employment authorization. Results are returned online within seconds.

E-Verify is the best method for employers to verify the employment authorization of their employees. E-Verify:

- Virtually eliminates Social Security mismatch letters
- Improves the accuracy of wage and tax reporting;
- Protects jobs for authorized workers; and
- Helps U.S. employers maintain a legal workforce.

More than 96 percent of E-Verify verification queries receive immediate employment authorization. Employees who do not receive instant authorization and choose to correct their government records to confirm their employment authorization must be allowed to continue to work during this process.

As of August 2009, more than 142,718 employers participate in E-Verify. In fiscal year 2008, U.S. employers completed more than 6.6 million E-Verify queries; this number represents 1 out of every 8 nonagricultural hires made in the United States.

1.2 HOW TO DETERMINE WHETHER YOU ARE AFFECTED BY THE RULE

The rule will only affect Federal contractors who are awarded a new contract on or after the effective date of the rule, September 8, 2009, that includes the Federal Acquisition Regulation (FAR) E-Verify clause (73 FR 67704).

Your government contracting official, not the E-Verify program, determines whether your contract will include the FAR E-Verify clause. You should review your contract for the FAR E-Verify clause, and check with your government contracting official if you have questions.

Using E-Verify as a Federal contractor requires you to verify the employment authorization of:

- Existing employees currently assigned to a Federal contract, and
- All new hires.

Federal contractors also have the option of verifying their entire workforce, which includes all other existing company employees regardless of whether they are assigned to a Federal contract. If your company is not a Federal contractor, or if your Federal contract does not include the FAR E-Verify clause, you may only use E-Verify to verify new employees.

2.0 INSTRUCTIONS FOR VERIFYING NEW AND EXISTING EMPLOYEES ON FORMS I-9

2.1 VERIFYING NEW EMPLOYEES

Newly hired employees must complete Form I-9, regardless of whether they are assigned to a Federal contract. Employers should comply with Form I-9, Employment Eligibility Verification, procedures found in the Handbook for Employers: Instructions for Completing Form I-9 (Rev.07/31/09) (M-274) found at www.uscis.gov. As an E-Verify employer, you also have additional requirements for Form I-9 that other employers do not have:

- You may only accept a List B document that contains a photo (if your employee cannot provide such a document because of religious objections, contact E-Verify Customer Support at 1-888-464-4218).
- You must photocopy any Employment Authorization Document (Form I-766) or Permanent Resident Card (Form I-551) if your employee presents one of these documents and keep it with that employee's Form I-9.
- Your employees must write their Social Security numbers on Section 1 of Form I-9.

To initiate an E-Verify query, enter the information from the employee's completed Form I-9 into E-Verify. For detailed information and guidelines on using E-Verify, refer to the Federal Contractor User Manual.

2.2 VERIFYING EXISTING EMPLOYEES

To comply with the FAR rule, you must verify all new hires and existing employees assigned to the contract. However, you may decide to exceed the requirements of the rule and verify your entire workforce. Then, you must decide how to verify your employees. This process will require three steps:

Step 1: **Decide whether you want to verify**:

- Only those existing employees for whom you must initiate verification as explained in Sections 3, 4 and 5 of this guide, or
- Your entire existing workforce.

You must mark your selection in E-Verify when enrolling in the system for the first time or if your company is already enrolled, by selecting the Maintain Company link in E-Verify to update your company's information.

NOTE
If you choose to verify your entire existing workforce in E-Verify, you must verify all of your existing employees except those that are exempt. Once you decide whether to verify the entire workforce.

Step 2: **Determine which existing employees are exempt from the Form I-9 process or have special requirements relating to the verification process:**

Verification of your employees requires that you complete or update Form I-9 as well as perform an E-Verify query. However, some employees are exempt from the employment verification process, including Form I-9, under the Federal contractor rule.

Employees Exempt from the Form I-9 Process

Employees who were hired before November 7, 1986 are exempt from completing Form I-9 and cannot be verified in E-Verify.

Employees with Special Requirements Relating to the Verification Process

Although you may not be required to verify certain employees in E-Verify, you must still comply with Form I-9 regulations. For more information on updating and reverification of Form I-9, consult the Handbook for Employers: Instructions for Completing Form I-9 (M-274) (rev. 07/31/09) found at www.uscis.gov.

Figure 1: Employees with Special Requirements in the Verification Process

	FORM I-9	E-VERIFY
Employees previously verified in E-Verify	You must update or reverify these employees as necessary under Form I-9 regulations, such as when their biographical or immigration status information changes.	These employees may not be reverified in E-Verify. See also Section 3.3, Figure 5.
Employees who have an active confidential, secret, or top secret security clearance in accordance with the National Industrial Security Program Operating Manual (NISPOM) or Homeland Security Presidential Directive-12 (HSPD-12) credential	If these individuals are new employees, they must complete Form I-9. If the individuals are existing employees, you must update or reverify them as necessary under Form I-9 regulations, such as when their biographical or immigration status information changes.	If these employees meet certain requirements, you are not required to verify them in E-Verify. See Section 3.3 for additional information.

Step 3: Completing new Forms I-9 or Updating Existing Forms I-9

Decide how you will verify your existing employees' information on their Form I-9. You may either:

- Complete new Forms I-9 for your existing employees, or
- Update your employees' existing Forms I-9.

NOTE ON RETENTION OF FORMS I-9
Whichever option you choose, you will be required to retain any previously completed Form I-9 for that employee. You are also required to make the previous form available for inspection if it is requested by an authorized official.

To assist you in making this decision, please review the chart below.

Figure 2: Options for Updating Existing Employees on Form I-9

	VERIFICATION PROCESS	AVOIDING LIABILITY	HOW THIS DECISION AFFECTS YOU
Option I: **Complete new Forms I-9 for all employees**	Complete new Forms I-9 for those existing employees that need to be verified. The current rules for Form I-9 apply.	Verifying all employees the same way helps avoid possible discrimination.	You may find this option easier because the process is the same as the process for newly hired employees.
Option II: **Complete new Forms I-9 when necessary and update existing Forms I-9 when allowable**	You must carefully examine and review with those employees that need to be verified, their previously submitted Forms I-9 to determine: 1) which employees must be verified on a new Form I-9; and 2) which employees can be verified by updating their existing Form I-9.	To avoid possible Form I-9 violations, you must carefully determine which cases require a new Form I-9 using the guidance in Section 2.2.1.	This option may suit your company's needs if you: 1) have few employees and/or 2) have sufficient resources to determine if your company needs to complete a new Form I-9 or update the existing one for each employee, using the guidance in Section 2.2.1.

2.2.1 INSTRUCTIONS FOR OPTION II: COMPLETE NEW FORM I-9 WHEN NECESSARY AND UPDATE EXISTING FORMS I-9 WHEN ALLOWABLE

Note: This section only applies to employers who have selected Option II

If you choose to review and verify with the existing employees, their information on their existing Forms I-9, there will be instances where you must complete a new Form I-9. A new Form I-9 must be completed if your employee:

- Presented an ***expired*** document on a previous Form I-9 that allowed for such documents;
- Is an alien whose employment authorization as stated in Section 1 of Form I-9 has expired;
- Presented a List B document that did not have a photo when he or she completed the previous Form I-9;
- Presented a List B document on a previous Form I-9 and you are unable to determine if that document had a photo;
- Was at the time of attestation a Noncitizen National of the United States and was unable to attest to his or her correct status in Section 1 of Form I-9 with a revision date before 02/02/09;
- Had a change in his or her immigration status;
- Changed his or her name; or

- Completed his or her previous Form I-9 and it did not comply with Form I-9 requirements at the time of completion.

Instructions for updating a previously completed Form I- 9:

- If your employee presented an ***unexpired*** Form I-551 or U.S. Passport on a previous Form I-9 and that document has since expired, and his or her employment authorization is still current, **you may not request that the employee present an unexpired version of either document**. However, as is stated in Section 2.2.1, a new Form I-9 can be completed.

SPECIAL E-VERIFY INSTRUCTION FOR PHOTO MATCHING TOOL
Because the E-Verify system only accepts unexpired documents, if you enter an expired document into the system, this may result in that employee receiving a tentative nonconfirmation. To find out how to avoid this situation, call E-Verify Customer Support at 1-888-464-4218.

- If your employee presented an unexpired Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) and it is still unexpired, photocopy the document and keep it with the employee's Form I-9.
- If your employee did not provide his or her Social Security number (SSN) when completing a previous Form I-9, or if the employee claims that his or her number has changed since then, the employee should update Section 1 of the previous Form I-9 with his or her current Social Security number.
- If your employee's Alien number has changed, the employee should update Section 1 of the previous Form I-9 with his or her current Alien number.

3.0 E-VERIFY ENROLLMENT AND PARTICIPATION AS A FEDERAL CONTRACTOR

Companies awarded a Federal contract that includes the FAR E-Verify clause must enroll in E-Verify. This section will assist you in when and how to enroll in and use E-Verify.

3.1 OVERVIEW OF E-VERIFY ENROLLMENT AND USE

If you are awarded a Federal contract that contains the FAR E-Verify clause, you must enroll in E-Verify and use it to confirm the employment authorization of:

- All newly hired employees, regardless of whether they are assigned to the qualifying Federal contract (note that certain exceptions apply, see Section 4 for additional information), and
- Existing employees assigned to the qualifying Federal contract.

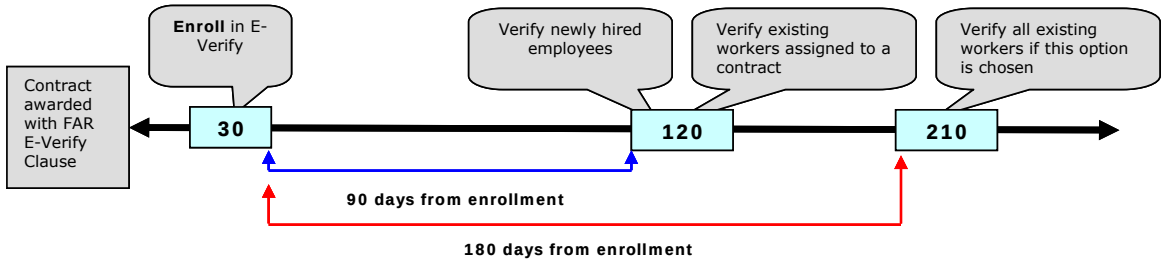
If your company or organization qualifies under the FAR contractor rule exemption or exception, you may not be required to verify all newly hired employees. For more information on exemptions and exceptions, see Section 5.

3.2 DEADLINES FOR ENROLLMENT AND VERIFYING EMPLOYEES

If your company is not yet enrolled in E-Verify, you must:

- Enroll in E-Verify as a Federal contractor within 30 calendar days of the award date of a contract that contains the FAR E-Verify clause.
- Begin verifying all newly hired employees within 90 calendar days of your enrollment date, unless your company qualifies for an exemption.
- Initiate verification of all existing employees assigned to the qualifying contract within 90 calendar days of your enrollment date.
- Initiate verification of all existing employees within 180 calendar days of notifying us that you've chosen to verify your entire workforce.

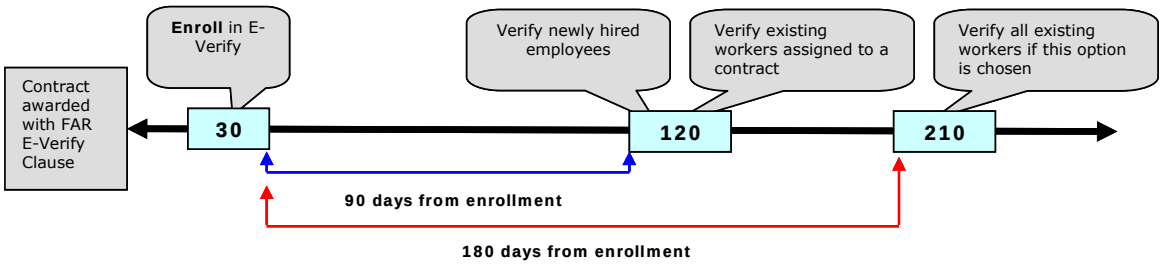
Figure 3: Timeline for New Federal Contractors Enrolling in E-Verify



If your company is already enrolled in E-Verify, but not designated as a Federal contractor in E-Verify, you must:

- Update your company profile in E-Verify and designate your company as a Federal contractor within 30 calendar days of the award date of a contract that contains the FAR E-Verify clause or an existing contract that has been modified to include the E-Verify clause.
- Begin verifying all newly hired employees within 90 calendar days of designating your company as a Federal contractor in E-Verify. Note that if you are already verifying new hires under the MOU, you should not stop doing so.
- Initiate verification of all existing employees assigned to the qualifying contract within 90 calendar days of designating your company as a Federal contractor in E-Verify.
- Initiate verification of all existing employees within 180 calendar days of notifying us that you've chosen to verify your entire workforce.

Figure 4: Timeline for Existing E-Verify Participants



If your company is already enrolled but not designated as a Federal contractor in E-Verify, and you have been using E-Verify only for selected hiring sites, you must determine if the E-Verify clause is in your contract. If it is, you must:

- Begin verifying all newly hired employees from all hiring sites within 90 calendar days of updating your company profile and designating your company as a Federal contractor in E-Verify. For more information, please see Section 8 of this guide.

If your company is already enrolled in E-Verify as a Federal Contractor, and the E-Verify clause is in your contract, you must:

- Initiate verification of all existing employees assigned to the Federal contract that includes the FAR E-Verify clause within either:
  - 90 calendar days of the contract award date, or
  - 30 calendar days of the employee's assignment to the contract, whichever date is later.

3.3 EMPLOYEES WHO ARE EXEMPT FROM E-VERIFY

Some employees are exempt from the E-Verify requirement to verify current employees assigned to the contract.

Figure 5: Employees Completely Exempt from E-Verify

EMPLOYEE:	EXEMPT FROM E-VERIFY
Hired before November 7, 1986 and continuing in employment	√
Previously confirmed as authorized to work in E-Verify (but not exempt if a new hire)	√

Figure 6: Employees You are Not Required to E-Verify

EMPLOYEES WHO:	E-VERIFY NOT REQUIRED
Perform support work such as general company administration or indirect or overhead functions and do not perform any substantial duties applicable to the contract (but not exempt if a new hire).	√
Have an active confidential, secret, or top secret security clearance in accordance with the National Industrial Security Program Operating Manual (NISPOM) or Homeland Security Presidential Directive-12 (HSPD-12) credential; a background check alone is not enough to qualify for this exemption (also exempt if new hire). *Note: Transportation Worker Identification Credential (TWIC) cards do not qualify.*	√

For example: XYZ, Inc. hires Jane Doe, who has a top secret clearance, to work on a Federal contract. XYZ still must enroll in E-Verify and use E-Verify for its other employees, but is not required to use E-Verify for Jane. XYZ should note on Jane's Form I-9 that she was exempt from E-Verify because of her security clearance. Even if every employee at XYZ has a security clearance, XYZ still must enroll in E-Verify because the Federal contractor rule contains no enrollment exception for companies whose employees all have security clearances.

3.4 GOING FORWARD

Once your company has completed the above requirements and has been enrolled for 90 days or more, you must ensure that you continue to verify all of your newly hired, nonexempt employees in E-Verify within 3 business days of their start dates.

3.5 FEDERAL CONTRACTOR ENROLLMENT AND VERIFICATION TIMELINE

REMINDER: You may only verify employees working in the United States who were hired after November 6, 1986.

	WHEN DO I ENROLL IN E-VERIFY?	**WHEN DO I VERIFY *NEW HIRES?***	**WHEN DO I VERIFY *EXISTING EMPLOYEES* ASSIGNED TO A CONTRACT?**	**WHEN DO I VERIFY *ALL EXISTING EMPLOYEES* IF I CHOOSE TO DO SO?**
NEW E-VERIFY USERS	Within **30** calendar days of contract award.	Begin verification of all new hires within **90** calendar days of enrollment. Once you begin verifying new hires, initiate a query no later than the 3rd business day after the employee's start date. *	Verify all existing employees assigned to a contract within **90** calendar days of enrollment OR Within **30** calendar days of employee's assignment to a contract, whichever date is later.	Verify all existing employees, regardless of whether they are assigned to a Federal contract, within **180** calendar days of notifying DHS through E-Verify.
EXISTING E-VERIFY USERS	Do **NOT** re-enroll. Instead, update your "Maintain Company" page in E-Verify to reflect "Federal Contractor" and complete the Federal Contractor Refresher Tutorial.	<u>Enrolled **90** calendar days or more:</u> No later than the 3rd business day after the employee's start date. * --- <u>Enrolled less than **90** calendar days:</u> Begin verification of new hires within **90** calendar days of enrollment. Once you begin verifying new hires, initiate a query no later than the 3rd business day after the employee's start date. *	Verify all existing employees assigned to a contract within **90** calendar days of contract award OR Within **30** calendar days of employee's assignment to a contract, whichever date is later.	Verify all existing employees, regardless of whether they are assigned to a Federal contract, within **180** calendar days of notifying DHS through E-Verify.

* For new hires, you must initiate a query anytime after an individual has accepted an offer of employment <u>and</u> the employer and employee have completed the Form I-9, but no later than the 3rd business day after the employee begins working for pay.

4.0 ENROLLMENT INSTRUCTIONS FOR Certain ORGANIZATIONS THAT QUALIFY FOR EXCEPTIONS

Certain organizations that are awarded a Federal contract that includes the FAR E-Verify clause qualify for an exception. This exception only requires the use of E-Verify for new hires and existing employees who work directly under a covered contract. These organizations include:

- State and local governments
- Institutions of higher education (as defined at 20 U.S.C. 1001(a))
- Governments of Federally recognized Native American tribes
- Sureties performing under a takeover agreement entered into with a Federal agency under a performance bond

You will indicate that your organization qualifies for the exception when you enroll in E-Verify or when you update your company profile, if your company is already enrolled.

Note: Your Form I-9 requirements are equivalent to the requirements for any other Federal contractor whose contract contains the FAR E-Verify clause. See Section 2 for more information.

4.1 YOUR OPTIONS

Your organization may choose which new employees you will verify through E-Verify:

- All new employees throughout your company, or
- Only those new employees working on a Federal contract that includes the FAR E-Verify clause.

You may also choose which existing employees you will verify in E-Verify:

- Only those existing employees working on a Federal contract that includes the FAR E-Verify clause, or
- All existing employees throughout your company (your company's entire workforce).

NOTE: If you choose to verify your entire existing workforce in E-Verify, you must verify all of your existing employees except those that are exempt. Once you decide either to verify the entire workforce or to verify only those employees assigned to a contract with the FAR E-Verify clause, you cannot change that decision.

For more information on exceptions for certain organizations, see Section 5.

4.2 VERIFYING YOUR ENTIRE WORKFORCE

If you choose to verify your entire workforce rather than just the employees assigned to a qualifying Federal contract, you must:

1. Notify us that you've chosen to verify your company's entire workforce by:
    - Choosing the entire workforce option during the E-Verify initial enrollment process, or
    - Updating your company profile.

2. Initiate an E-Verify query for each employee within 180 calendar days of notifying us that you've chosen to verify your entire workforce.

4.3 INITIAL ENROLLMENT IN E-VERIFY

If your organization is not yet enrolled in E-Verify, you must enroll in E-Verify. During enrollment:

1. You will be asked, **Which category best describes your organization?** Choose **Federal Contractor**.
2. You will then be asked, **Which Federal contractor category best describes your organization**? Choose the option that best describes your company, then click **Next**.
   - To verify your entire workforce, you must select **None of these categories apply** even if your company qualifies for one of the other categories.
3. You will then be asked, **Which employees will your company verify**? Choose the option which best fits your company's needs.

4.4 INSTRUCTIONS FOR UPDATING YOUR COMPANY PROFILE FOR EXISTING E-VERIFY PARTICIPANTS

If your organization is already enrolled in E-Verify, you must update your company profile in E-Verify. To do so:

1. Log in to E-Verify as a program administrator or ask your company's E-Verify program administrator to perform this function.
2. Once logged in, click **Maintain Company** on the left-hand side menu.
3. From the **Maintain Company** page, click on the first **View/Edit** button.
4. On the Organization Designation section, next to Employer Category, click **Edit**.
5. When asked, **Which category best describes your organization?** choose **Federal Contractor**, then click **Next**.
6. When asked, **Which Federal Contractor category best describes your organization?** choose the option that best describes your company, then click **Next**.
   - To verify your entire workforce, you must select **None of these categories apply** even if your company qualifies for one of the other categories.
7. When asked, **Which employees will your company verify?** choose the option that best fits your company's needs, then click **Next**.
8. Review your company information, then click **Save & Continue**.

5.0 QUALIFYING CONTRACTS, EXEMPTIONS AND EXCEPTIONS FOR E-VERIFY

This section will assist you in determining whether your company has a qualifying Federal contract, which existing employees are exempt from verification in E-Verify and which companies are exempt from the Federal Contractor rule.

5.1 THE E-VERIFY CLAUSE IN A FEDERAL CONTRACT

Only Federal contracts awarded and solicitations issued after September 8, 2009, will include the FAR E-Verify clause that requires government contractors to use E-Verify. Your government contracting official will determine whether your contract qualifies for the FAR E-Verify clause, based on the criteria below. Subcontracts for more than $3,000 for services or construction also qualify for the clause.

If your Federal contract contains the FAR E-Verify clause, subject to certain exceptions as described in the Federal contractor rule and this Manual, you must use E-Verify to confirm the employment authorization of:

- All persons hired during a contract term, and
- Current employees who perform work under a Federal contract within the United States.

To verify these individuals, you must:

- Enroll in E-Verify within 30 days of the contract award date.
- Use E-Verify to initiate verification of all your new hires and existing employees working directly on Federal contracts are authorized to work in the United States.

If your Federal contract does not include the FAR E-Verify clause, you are ***not*** required to enroll in and use E-Verify as a Federal contractor, but may participate voluntarily.

5.2 HOW TO DETERMINE WHETHER YOUR FEDERAL CONTRACT QUALIFIES

Your government contracting official, not the E-Verify program, will decide whether your Federal contract qualifies for the E-Verify clause if it meets the following criteria:

- The contract was awarded on or after the Federal contractor rule effective date of September 8, 2009 and includes the FAR E-Verify clause.
- The contract has a period of performance that is more than 120 days.
- The contract's value exceeds the simplified acquisition threshold of $100,000.
- At least some portion of the work under the contract is performed in the United States.

If you already have a Federal contract that meets any of these criteria, your government contracting official may modify your contract as needed.

If you have further questions about whether your Federal contract qualifies under the Federal Contractor rule:

- Check with your government contracting official and staff to clarify your obligations.

- Speak with your legal counsel if the government contracting official cannot assist you.

5.3 IDIQ CONTRACTS

If you have an existing indefinite-delivery/indefinite-quantity (IDIQ) contract, your government contracting official may modify it on a bilateral basis to include the FAR E-Verify clause for future orders, in accordance with FAR 1.108(d)(3), when

- The remaining period of performance extends at least six months after the effective date of the rule and/or
- The amount of work or number of orders expected under the remaining period of performance is substantial.

If the clause is included in a modification of your IDIQ contract, you will be required to participate in E-Verify within 30 days of the modification date.

5.4 CONTRACTS EXEMPT FROM THE FEDERAL CONTRACTOR RULE

Companies whose contracts are exempt from the Federal contractor rule are not required to enroll in E-Verify. A contract is considered exempt if any one of the following apply:

- It is for fewer than 120 days.
- It is valued at less than $100,000 the simplified acquisition threshold.
- All work is performed outside the United States.
- It includes only commercially available off-the-shelf (COTS) items and related services.

Your company may voluntarily enroll in and use E-Verify at any time. If your company is awarded a Federal contract in the future that includes the FAR E-Verify clause, then at that time, you would be required to enroll and use E-Verify.

5.5 SPECIAL REQUIREMENTS FOR CERTAIN ORGANIZATIONS

The Federal contractor rule generally requires use of E-Verify for all new employees, regardless of whether they are assigned to a Federal contract. However, the following organizations awarded a Federal contract that includes the FAR E-Verify clause are only required to use E-Verify for new hires and existing employees who are working directly under a covered contract:

- State and local governments
- Institutions of higher education (as defined at 20 U.S.C. 1001(a))
- Governments of federally recognized Native American tribes
- Sureties performing under a takeover agreement entered into with a federal agency under a performance bond

For example: A city government has a Federal contract that includes the FAR E-Verify clause. After the Federal contractor rule implementation date, it hired Doris to work on a contract containing the FAR E-Verify clause and hired Frank to work on a project that is not part of a Federal contract. The city government need only verify new and existing employees assigned to a qualifying Federal contract. Therefore, the

city government must use E-Verify to verify Doris, but is not required to verify Frank. The city is not required to verify anyone else on the staff not working on the Federal contract, but may choose to verify the entire staff.

6.0 SUBCONTRACTORS, INDEPENDENT CONTRACTORS AND AFFILIATES

6.1 SUBCONTRACTORS

The Federal contractor rule requires certain Federal prime contractors to require their subcontractors to use E-Verify when:

1. The prime contract includes the FAR E-Verify clause;
2. The subcontract is for commercial or noncommercial services or construction;
3. The subcontract has a value of more than $3,000; and
4. The subcontract includes work performed in the United States

Subcontractors who are suppliers are not subject to the Federal contractor rule.

6.2 PRIME CONTRACTOR AND SUBCONTRACTOR OBLIGATIONS

The prime contractor should provide general oversight to subcontractors to ensure that they meet the E-verify requirement. The prime contractor may be subject to fines and penalties if it knowingly continues to work with a subcontractor who is in violation of the E-Verify requirement. As proof of enrollment, the subcontractor should provide the prime contractor a copy of its **Maintain Company** page, which can be printed directly from E-Verify.

Prime contractors are not responsible for verifying the subcontractors' individual employees. However, the prime contractor must, by whatever means the contractor considers appropriate, ensure that all covered subcontracts at every tier incorporate the E-Verify clause at FAR 52.222-54, Employment Eligibility Verification, and that all subcontractors use the E-Verify system.

The subcontractor may designate the prime contractor as its agent for ensuring E-Verify compliance. The prime contractor must be enrolled in E-Verify as a designated agent to verify its subcontractors' employees.

6.3 INDEPENDENT CONTRACTORS AND SELF-EMPLOYED INDIVIDUALS

Form I-9 rules govern whether an individual is considered self-employed with respect to using E-Verify. Generally, self-employed individuals are not required to complete Forms I-9 on themselves, and therefore, are not required to use E-Verify. However, all employers, including sole proprietorships, are required to complete a Form I-9 for each employee they hire. Employers will need to confirm the employment authorization in E-Verify of each employee working under a Federal contract that includes the FAR E-Verify clause.

Employers are not required to complete Forms I-9 and use E-Verify for their independent contractors. The Form I-9 regulations use common-law understandings of employer-employee relationships to describe who is an independent contractor.

Employers are not required to verify employees of its independent contractor. However, if the independent contractor is a subcontractor under a Federal contract

covered by the E-Verify clause, the E-Verify requirement will flow down to the independent contractor, who must use E-Verify to verify its own employees.

For example: Acme Corporation enters into a Federal contract covered by the E-Verify clause to construct a Federal building and must verify its own employees in E-Verify. Acme subcontracts with Don Draftsman, a self-employed individual, to provide some technical drawings. Acme also subcontracts with Edwards Engineering to install some equipment. Both subcontracts are for more than $3,000 and are covered by the E-Verify clause. Both companies carry on independent business, perform their work according to their own means and methods, and are subject to Acme's control only as to results.

Acme does not use E-Verify to verify either Don Draftsman's employment authorization or the employment authorization of Edwards Engineering's employees. However, Acme is responsible under the Federal contractor rule for ensuring that Edwards Engineering, as Acme's subcontractor on a covered Federal contract, enrolls in E-Verify and verifies its new hires and its existing employees assigned to the Federal subcontract.

While Acme is also responsible for ensuring Don Draftsman's compliance with the E-Verify clause, as a self-employed individual, Don does not need to complete a Form I-9 on himself or enroll in E-Verify. Nor does ACME need to run Don through E-Verify. Under the employer sanction rules applicable to any employer, Acme cannot use an independent contractor if it knows that the independent contractor is an alien who is not authorized to work in the United States.

6.4 SUBSIDIARIES AND AFFILIATES

Only the legal entity (business) that signs the contract is considered the contractor, and is bound by the E-Verify obligation.

Whether certain subsidiaries and affiliates are a part of the legal contracting entity depends on the specific factual context. Consult your legal counsel if you have additional questions about this topic.

Remember, the Federal Acquisition Regulation, and therefore the Federal contractor rule, does not extend to contracts under which all work is exclusively performed outside the United States. The U.S. territories of American Samoa and the Commonwealth of the Northern Mariana Islands are not considered part of the United States as defined for purposes of the Federal contractor rule.

7.0 ENROLLMENT INSTRUCTIONS FOR CONTRACTORS NOT YET ENROLLED IN E-VERIFY

If your company is awarded a Federal contract that includes the FAR E-Verify clause, you must enroll in E-Verify. This section will help you to enroll in E-Verify if you are a new E-Verify user that has never before enrolled.

7.1 OPTIONS FOR VERIFYING EXISTING EMPLOYEES

At a minimum, your company must verify existing employees who work on a Federal contract that includes the FAR E-Verify clause. Before you enroll in E-Verify, decide whether you would like to verify:

- **Only those employees working on the Federal contract with the FAR E-Verify clause**

  - With this option, you must track which employees are assigned to a Federal contract that includes the FAR E-Verify clause to ensure that you only verify those employees working on the qualifying contract. You must also track which employees have already been verified through E-Verify.

- **Your entire workforce**
  - For some employers, choosing to verify your entire workforce may simplify the E-Verify process.

7.2 FEDERAL CONTRACTOR ENROLLMENT STEPS

When you enroll your company, you will need to tell us some basic information about your company and agree to follow the rules of our program in the Memorandum of Understanding (MOU). During enrollment:

1. You'll be asked **Which category best describes your organization?**
   - If your company has been awarded a Federal contract that includes the FAR E-Verify clause, click **Federal Contractor,** then click **Next.**
   - If your company has not yet been awarded a Federal contract that includes the FAR E-Verify clause, choose the category that best describes your organization, then click **Next.**
2. If you selected Federal Contractor as the category which best describes your organization, you'll be asked **Which Federal Contractor category best describes your organization?** Choose the Federal contractor category that best describes your organization, then click **Next.**
3. You'll then be asked **which employees will your company verify?** Choose the option that best applies to your company and then click **Next**. Your options are:
   - Use E-Verify for all new employees throughout your company and for only those existing employees working on a Federal contract that includes the FAR E-Verify clause, or
   - Use E-Verify for all new employees and existing employees throughout your company.

Once you are enrolled, you can register yourself and others to use the system.

8.0 INSTRUCTIONS FOR FEDERAL CONTRACTORS ALREADY ENROLLED IN E-VERIFY

If your company is awarded a Federal contract that includes the FAR E-Verify clause, you must enroll in E-Verify. This section will help you to update your company profile and verification process in E-Verify if you are already enrolled.

8.1 UPDATING YOUR VERIFICATION PROCESS

The Federal contractor rule adds some new requirements and removes some of the flexibility that your company traditionally has had in deciding how it uses E-Verify. Depending on how your company has been using E-Verify, you may need to make some changes to how you use the system. For instance, if your company has been

selectively using E-Verify at certain hiring sites, but not others, you must begin using E-Verify at all of your company's hiring sites.

For example: You only use E-Verify to verify employees at your Arizona locations. In your company profile, only your Arizona locations are listed. As a Federal contractor, you must include all of your company's hiring sites in your company profile. Also, because you are required to verify all of your newly hired employees with certain exceptions, you'll no longer be able to use E-Verify on a location-by-location basis.

You do not need to wait to expand your use of E-Verify to all of your company's hiring sites until you are awarded a Federal contract that includes the FAR E-Verify clause. If you expand your E-Verify use now, your company will be ready if it is awarded a Federal contract that includes the FAR E-Verify clause.

8.2 UPDATING YOUR COMPANY PROFILE

Once your company is awarded a Federal contract that includes the FAR E-Verify clause, you must designate your company as a Federal contractor in E-Verify. You should not do so until you officially receive a qualifying Federal contract.

To designate your company as a Federal contractor, you must update your company profile:

1. Log in to E-Verify as a program administrator. If you are not a program administrator, ask your E-Verify program administrator to perform this function.
2. Once logged in, click **Maintain Company** in the left-hand side menu.
3. From the Maintain Company page, click on the first **View/Edit** button.
4. On the Organization Designation section, next to Employer Category, click **Edit.**
5. On the Company Designation page, you'll be asked, ***Which category best describes your organization*?** Click **Federal Contractor**, then click **Next**.
6. You'll then be asked **Which Federal Contractor category best describes your organization?** Click the option which best describes your organization
7. You'll then be asked **Which employees will your company verify?** Click the option which best meets your company's needs and then click **Next**.
8. Review your company information and click **Save & Continue.**

8.3 FEDERAL CONTRACTOR TUTORIALS

Once you have changed your company designation to Federal contractor, your E-Verify program administrators and general users must successfully complete a Federal contractor-specific tutorial and pass a mastery test before they can use E-Verify again.

8.4 MEMORANDUM OF UNDERSTANDING

As a Federal contractor using E-Verify, your company must comply with the Federal contractor-specific terms of the E-Verify Memorandum of Understanding (MOU).

- Depending on when your company enrolled in E-Verify, the MOU that your company signed may not contain the new Federal contractor-specific terms.
- All E-Verify-enrolled companies must comply with the terms of the current MOU.

- We recommend that you review the current MOU to ensure your company complies with any new terms.

9.0 INFORMATION FOR DESIGNATED AGENTS

E-Verify service providers, also known as designated agents, use E-Verify to verify the employment authorization of their clients' employees. This section will assist designated agents and their clients in preparing for the effects of the Federal contractor rule.

9.1 RECOMMENDED ACTIONS FOR DESIGNATED AGENTS

1. **Update E-Verify profiles**
   - **For your Federal contractor clients**
     Update each of your Federal contractor client company profiles separately to designate it as a Federal contractor.
   - **For your own company**
     Only update your designated agent profile to designate yourself as a Federal contractor if you are a Federal contractor that was awarded a contract that contains the FAR E-Verify clause.
2. **Ensure that you meet the tutorial requirement**

   Before updating a company profile to designate Federal contractor, inform the program administrators and general users of that profile that they must complete a Federal contractor-specific tutorial and pass a mastery test before accessing E-Verify again.
3. **Review the latest E-Verify Memorandum of Understanding (MOU)**

   All E-Verify-enrolled companies must comply with the terms of the current E-Verify MOU, which contains Federal contractor-specific terms with which both Federal contractor client companies and their designated agents must comply. Depending on when you enrolled in E-Verify, your original MOU may not contain these terms. Therefore, you should review the current MOU to ensure your company complies with the Federal contractor-specific terms of the current E-Verify MOU.

9.2 USING WEB SERVICES

Companies using Web Services to perform E-Verify queries must update their software to support the E-Verify system functions for federal contractors. If you are an employer or designated agent that uses E-Verify Web services whose clients are affected by the Federal contractor rule, you should use the Web browser application of E-Verify until you have upgraded to the latest Interface Control Document (ICD). You may continue to use your Web Services software to process queries for non-Federal contractors.

NOTE
E-Verify Photo Tool is not yet available for designated agents.