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LEGAL ALERT



## Legal Alert: President Signs Executive Order Requiring Federal Contractors to Use Electronic Employment Eligibility Verification System

6/13/2008

President Bush recently signed an Executive Order amending Executive Order 12989, requiring all federal contractors to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of their employees. Department of Homeland Security (DHS) Secretary Michael Chertoff has designated the federal E-Verify program as the system to be used in accordance with the Executive Order.

According to the Executive Order, this policy will ensure greater stability and dependability in the contractor's workforce. The Executive Order states that an electronic employment verification system provides the best available means to confirm the identity and work eligibility of all employees that join the Federal workforce. According to the Executive Order, "private employers that choose to contract with the Federal Government should meet the same standard."

Accordingly, Executive Order 12989 is amended to state that 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 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.

On June 12, 2008, the relevant federal agencies published a proposed rule amending the Federal Acquisition Regulation (FAR), which governs federal government contracting, to require certain contractors and subcontractors to use E-Verify, in accordance with the Executive Order. Generally, the proposed rule would require covered contracts (generally those in excess of \$3,000, with certain exceptions) to include a clause committing the contractor to use the E-Verify system to verify that all of the contractor's new hires, and all employees (existing and new) directly engaged in the performance of work on a covered contract are authorized to work in the United States. This requirement would also apply to subcontracts over \$3,000 for services or for

construction.

The proposed rule notes that its requirements differ in one significant respect from the requirements generally applicable to employers participating in E-Verify in that it requires verification of current employees assigned to work on covered federal contracts as well as new hires. The U.S. Citizenship Immigration Services (USCIS) is in the process of amending its E-Verify System materials to reflect the new federal contractor obligations.

This is a proposed rule only; the FAR Secretariat will accept comments on the proposed rule until August 11, 2008. A final rule will not be published until after the comment period has closed. Thus, at this point, it is not clear exactly what the final FAR and/or any other regulations issued will require.

**Employers' Bottom Line:**

Although the President has signed the Executive Order, its requirements will not take effect until final regulations are issued. Of course, all employers are required to comply with the federal immigration laws and should always ensure their employees are authorized to work in the United States. Employers with federal contracts should review those contracts to determine which employees and work locations may be affected by the Executive Order. We will keep you updated regarding the status of the proposed rule and any other regulations issued.

If you have any questions regarding the Executive Order or other business immigration related issues, please contact Joyce Fleming, [jfleming@fordharrison.com](mailto:jfleming@fordharrison.com), 404-888-3888 or Geetha Nadiminti, [gnadiminti@fordharrison.com](mailto:gnadiminti@fordharrison.com), 404-888-3940. If you have any questions regarding requirements applicable to federal contractors, please contact Karin Verdon, [kverdon@fordharrison.com](mailto:kverdon@fordharrison.com), 303-592-8865, or Karen Tyner, [kytner@fordharrison.com](mailto:kytner@fordharrison.com), 864-699-1134.