

Summary
Federal Acquisition Circular 2005-29
Employment Eligibility Verification

E-Verify is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees.

This amendment of the Federal Acquisition Regulation requires all contracts above the simplified acquisition threshold to include a clause requiring the contractor to enroll in the E-Verify System and to agree to the E-Verify Memorandum of Agreement. Current law requires an employer to complete Employment Eligibility Verification Form (I-9) for each newly hired employee to verify each employee's identity and eligibility to work in the United States. This new rule will require Federal contractors and subcontractors to additionally enter the workers identity and employment eligibility into the E-Verify System. The System will then check that information against records of the SSA, the United States Citizenship and Immigration Service (USCIS) and other Government databases. If the information is consistent with records in the system, the employer will receive notification of employment eligibility. If the information cannot be verified the employer will receive a "DHS Tentative Nonconfirmation Notice. The employer would then notify the employee and offer the employee to contest the tentative determination. If the employee chooses to contest, the E-Verify System is queried a second time to produce a "Referral Letter" which the employee must take to a SSA or a USCIS office and attempt to resolve the discrepancy. The employer is prohibited from dismissing the employee while the Tentative Nonconfirmation is contested. If the employee fails to contest the tentative nonconfirmation or if SSA or USCIS is unable to resolve the discrepancy, the employer will receive a Final Nonconfirmation and the individual's employment must be terminated.

The following contracts are not subject to use of the clause:

- Contracts performed outside the United States;
- Contracts of less than 120 days duration
- Contracts for commercially available off-the-shelf (COTS) items;
- Contracts for items that would be COTS except for minor modifications;
- Items that would be COTS items if they were not bulk cargo; and
- Commercial services.

(Full text available at <http://www.archives.gov/federal-register/the-federal-register/indexes.html> November 14, 2008, 73 FR 67651)