



## E-Verify for Federal Contractors

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## E-Verify for Federal Contractors

**Reference Number:** MTAS-2117

On November 14, 2008, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) published the Federal Acquisition Regulation (FAR) final rules (FAR case 2007-013, Employment Eligibility Verification) that implemented the amended Executive Order 12989. The FAR, effective September 8, 2009, is a set of rules and regulations used to manage the way the federal government acquires supplies and services with appropriated funds.

Also known as the "E-Verify Federal Contractor Rules," the FAR rules direct federal agencies to require many federal contractors to use E-Verify. It requires federal contractors, through language inserted into their federal contracts, to agree to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, as well as their current employees who perform work under a federal contract. Title 48, Subpart 22.1802(a).

Is your city required to use E-Verify? It depends. The E-Verify federal contractor rules only affect federal contractors who were awarded a new contract on or after September 8, 2009, that includes the FAR E-Verify clause (48 C.F.R., Subpart 22.18). E-Verify contracts must also have a period of performance of 120 days or more, a value exceeding the simplified acquisition threshold of \$150,000 and at least some portion of the work under the contract must be performed in the United States. Title 48, Subpart 22.1803(b).

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or another subcontractor. Title 48, Subpart 22.1802(2). Subcontractors also may be subject to the FAR E-Verify clause if: (1) the prime contractor includes the FAR clause; (2) the subcontract is for commercial or non-commercial 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, however, are not subject to the E-Verify federal contractor rules. Title 48, Subpart 52.222.54(e).

If your federal contract contains the FAR E-Verify clause, subject to certain exceptions, you must use E-Verify to confirm the employment authorization of:

- All persons hired during the contract terms and
- Current employees who perform work under the federal contract within the United States.

To verify these individuals, according to Title 48, Subpart 52.222.54(b), the employer must:

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

8 C.F.R. Part 274a(2) provides that after hiring a new employee and completing the Form I-9 required for all new hires (regardless of E-Verify participation), the employer must submit a query into the E-Verify system that includes information from sections 1 and 2 of the form I-9, including:

- Employee's name and date of birth;
- Social Security Number (SSN);
- Citizenship status he or she attest to;
- A number or I-94 number (if applicable);
- Type of document provided on the Form I-9 to establish work authorization status; and
- Proof of identity and its expiration date, if applicable.

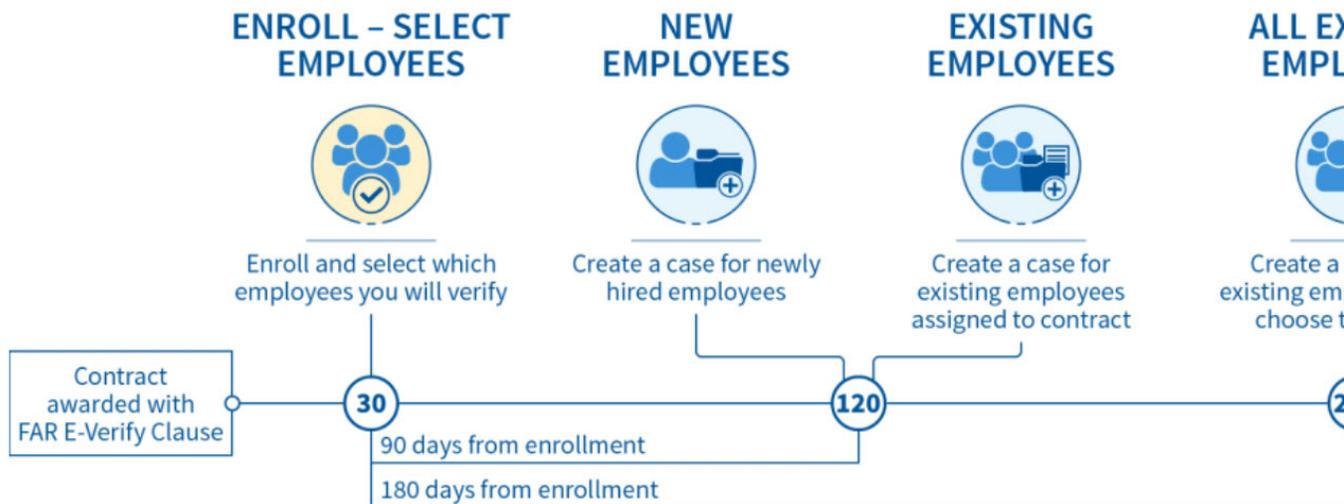
If your federal contract does not contain the FAR E-Verify clause, you are **not required** to enroll in and use E-Verify as a federal contractor but may participate voluntarily.

If your city has federal contracts issued after the September 8, 2009, date that contains the FAR E-Verify clause and your city is not yet enrolled, you must (Title 48, Subpart 52.222.54(b)(1)):

- Enroll in E-Verify as a federal contractor with FAR E-Verify clause within 30 days of the award date of a contract. You can register online for E-Verify at <https://e-verify.uscis.gov/enroll/> [1].

- Begin to use E-Verify to verify all newly-hired employees who are working within the United States within 90 calendar days of your enrollment date (unless you are an organization that qualifies for an exception).
- Create a case for each existing employee assigned to the contract within 90 calendar days of enrolling in E-Verify or 30 calendar days of the employee's assignment to the contract, whichever date is later; or
- If the Federal contractor chooses to verify the entire workforce, create a case for all existing employees within 180 calendar days of enrollment in E-Verify or within 180 days of notifying E-Verify of the decision to exercise this option.

### Timeline for New Federal Contractor Enrollment in E-Verify



If your city is already enrolled in E-Verify but not designated as a federal contractor with FAR E-Verify clause, you must do the following:

- **Do not re-enroll in E-Verify. Update your “Maintain Company” page to “Federal Contractor”** with FAR E-Verify clause within 30 calendar days of the award date of a new federal contract that contains the FAR E-Verify clause.
- After updating your “Maintain Company” page, if your city has been selectively using E-Verify at certain hiring sites but not others, you must begin using E-Verify at all of your city’s hiring sites and where you will be verifying any existing employees.
- As an existing user of E-Verify, you are required to verify new hires within three days of hire. If you are already verifying new hires under a Memorandum of Understanding, you must continue to do so.
- Initiate verification of all existing employees assigned to a qualifying contract within 90 calendar days of designating your city as a federal contractor with FAR E-Verify clause in E-Verify or 30 calendar days of the employee’s assignment to the contract, whichever date is later.
- When E-Verify asks you which employees you will verify, the selection you make will affect the 180-day time period to verify all existing employees.

Some employees are exempt from the E-Verify requirements, and employers are not permitted to verify these employees in E-Verify. Other employees are not required to be verified, but employers may choose to verify them. Employees exempt from E-Verify are (1) those individuals hired on or before November 6, 1986, and continuing in employment with the same employer; and (2) employees previously confirmed as authorized to work in E-Verify.

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 non-exempt employees who are working directly under contract. Title 48, Subpart 22.1802(b)(2):

- State and local governments;
- Institutes of higher education;
- Governments of federally recognized Native American tribes; and
- Sureties performing under a takeover agreement entered into with a federal agency under a performance bond.

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

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**Links:**

[1] <https://e-verify.uscis.gov/enroll/>

*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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