

Regulatory Impact Analysis
Employment Eligibility Verification
(Federal Acquisition Regulation Case 2007-013)

Notice of Proposed Rulemaking
May 29, 2008

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Executive Summary

The accompanying rule proposes to amend the Federal Acquisition Regulation (FAR) to require that certain contracts contain a clause requiring that the contractor and subcontractor utilize the E-Verify System to verify employment eligibility of all newly hired employees of the contractor or subcontractor and all employees directly engaged in the performance of work in the United States under those contracts.

The E-Verify System is an internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), in partnership with the Social Security Administration (SSA). E-Verify works by allowing employers to electronically compare employee information taken from the Form I-9 to ensure employees are authorized to work in the United States and that the employees' name, Social Security number, and date of birth match government records.

In the initial fiscal year the rule is expected to be effective (2009), we estimate that there will be approximately 169,000 contractors and subcontractors that will be required to enroll in E-Verify due to this rule and that there will be an additional 3.8 million employees vetted through E-Verify. In the initial year, the cost of the proposed rule at 7% net present value is approximately \$107.0 million and over the ten year period of analysis (2009-2018), the cost of the proposed rule is approximately \$550.3 million. In the initial year, the cost of the proposed rule at 3% net present value is approximately, \$111.2 million and over the ten year period of analysis (2009-2018), the cost of the proposed rule is 668.9 million. Compliance costs from E-Verify are in the following general categories and Table ES-1 below provides a summary of the costs:

- **Startup Costs** – Employers must register to use the E-verify System and sign a Memorandum of Understanding with USCIS and SSA. A very small number of employers may need to purchase a computer and internet connection for their hiring site if that hiring site does not already have internet access.
- **Training** – Employees that use the E-Verify System are required to take an on-line tutorial. While USCIS does not charge a fee for this training, employers will incur the opportunity cost of the time the employee spends for this training, as the employee's time could have been spent on other activities.
- **Employee Verification** – Employers will incur the opportunity cost of the time spent entering data into E-Verify and if the employee receives a tentative nonconfirmation, employers would inform the employee, and spend time closing out the case after resolution of the tentative nonconfirmation. In addition, the employer would incur lost productivity when an employee would need to be away from work to visit SSA to correct his/her information. We believe the employee would bear the cost of driving to SSA.
- **Employee Replacement (Turnover) Cost** – There may be a small percentage of workers who are authorized to work in the U.S. and receive a tentative nonconfirmation, but choose not to take the steps necessary to resolve the tentative nonconfirmation (despite the strong economic incentives to resolve the issue). To the extent that the accompanying E-Verify rulemaking results in the termination of a worker authorized to

work in the U.S., those costs would be considered to be a cost of the rule. However, the termination and replacement costs of unauthorized workers are not counted as a direct cost of this rule since current immigration law prohibits employers from hiring or continuing to employ aliens whom they know are not authorized to work in the U.S. The termination and replacement of unauthorized employees will impose a burden on employers, but INA section 274A(a)(1), (2), 8 U.S.C. 1324a(a)(1), (2), expressly prohibits employers from hiring or knowingly continuing to employ an alien whom they know is not authorized to work in the United States. Accordingly, costs that result from employers' knowledge of their workers' illegal status are attributable to the Immigration and Nationality Act, not to the Federal Acquisition Regulation requiring Employment Eligibility Verification for certain federal contractors and subcontractors.

- **Federal Government Cost** – The government will incur operating costs from each query that an employer runs and will also incur costs from resolving tentative nonconfirmations.

Table ES-1 Total Cost of Proposed Rule - 7% NPV

Year	Employer			Employee	Government	Total
	Startup & Training Costs	Authorized Employee Replacement Cost	Verification Cost	Verification Cost	Verification Cost	
2009	\$ 61,630,740	\$ 18,980,895	\$ 24,174,247	\$ 677,403	\$ 1,547,194	\$ 107,010,479
2010	\$ 28,859,143	\$ 9,840,872	\$ 12,533,427	\$ 351,208	\$ 802,161	\$ 52,386,811
2011	\$ 28,319,789	\$ 9,656,932	\$ 12,299,159	\$ 344,643	\$ 787,167	\$ 51,407,690
2012	\$ 27,790,462	\$ 9,476,427	\$ 12,069,267	\$ 338,201	\$ 772,454	\$ 50,446,811
2013	\$ 28,040,474	\$ 9,299,296	\$ 11,843,671	\$ 331,880	\$ 758,015	\$ 50,273,336
2014	\$ 27,516,328	\$ 9,125,478	\$ 11,622,295	\$ 325,676	\$ 743,847	\$ 49,333,625
2015	\$ 27,002,030	\$ 8,954,912	\$ 11,405,060	\$ 319,589	\$ 729,944	\$ 48,411,535
2016	\$ 26,497,248	\$ 8,787,531	\$ 11,191,882	\$ 313,615	\$ 716,300	\$ 47,506,576
2017	\$ 26,589,062	\$ 8,623,278	\$ 10,982,689	\$ 307,753	\$ 702,911	\$ 47,205,693
2018	\$ 26,092,101	\$ 8,462,096	\$ 10,777,406	\$ 302,001	\$ 689,773	\$ 46,323,377
Total	\$ 308,337,378	\$ 101,207,717	\$ 128,899,103	\$ 3,611,970	\$ 8,249,766	\$ 550,305,932

In order to further inform our understanding of the economic impact of this rule on small entities, we considered hypothetical contractors with 10, 50, 100, and 500 employees and estimated the economic impact of the rule on those 4 sizes of entities in their initial year of enrollment. The initial year a contractor enrolls in E-Verify is expected to be the year with the highest compliance cost, as the contractor is incurring both the start-up costs of enrolling in E-Verify as well as the costs of vetting new employees through the E-Verify system.

We estimate the average direct cost of this rule to a contractor with 10 employees to be \$419 in the initial year, for a contractor with 50 employees, we estimate the average cost of participating in E-Verify to be \$1,168 in the initial year, for a contractor with 100 employees we estimate an initial year impact of \$2,102, while a contractor with 500 employees is expected to have an initial year impact of \$8,964. This level of direct cost burden is well under 1% of the expected annual revenue of these 4 sizes of small entities, and therefore does not appear to represent a significant impact on a cost-per-contractor basis.

Benefits Statement

Because illegal aliens are at risk of being apprehended in immigration enforcement actions, contractors who hire illegal aliens will necessarily have a more unstable workforce than contractors who do not hire unauthorized workers. Given the vulnerabilities in the paper I-9 system, even many employers that do not knowingly employ illegal aliens nevertheless may have unauthorized workers, undetected, on their workforce.

This rule will promote economy and efficiency in Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose workforce is unstable will likely be less able to produce goods and services economically and efficiently than a contractor whose work force is more stable. Because of the Executive Branch's obligation to enforce the immigration laws, including the detection and removal of illegal aliens identified through vigorous worksite enforcement, contractors that employ illegal aliens cannot rely on the continuing availability and service of those illegal workers, and such contractors inevitably will have a less stable workforce than contractors that do not employ such persons. Where a contractor assigns illegal aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of disruption, delay, and increased expense in Federal contracting. Therefore, we consider such contractors to be less dependable procurement sources, even if they do not knowingly hire or knowingly continue to employ unauthorized workers.

Contractors that use E-Verify to confirm the employment eligibility of their workforce are much less likely to face immigration enforcement actions, and generally should be more efficient and dependable procurement sources than contractors that do not use that system to verify the work eligibility of their workforce. In addition, rigorous employment verification through E-Verify will help contractors to confirm the identity of the persons working on federal contracts, which will contribute to enhancing national security. For example, contractors operating at sensitive national infrastructure sites may require some type of background investigation. Such investigations are likely to be significantly more efficient for a workforce whose identity and work authorization status have been confirmed through E-verify.

OMB Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/omb/circulars/index.html), DHS has prepared an accounting statement showing the classification of the costs and benefits associated with this rule. Table ES-2 provides an estimate of the dollar amount of these costs and benefits expressed in 2007 dollars, at three percent and seven percent discount rates. DHS estimates the cost of this rule will be approximately \$78.4 million annualized (7 percent discount rate) and approximately \$78.4 million annualized (3 percent discount rate).

Table ES-2. OMB Accounting Statement of Annualized Costs and Benefits (2009-2018)

	3% discount rate			7% discount rate		
	Primary Estimate	Minimum Estimate	Maximum Estimate	Primary Estimate	Minimum Estimate	Maximum Estimate
COSTS						
Annualized monetized costs	\$78.4 million	\$73.4 million	\$83.4 million	\$78.4 million	\$73.2 million	\$83.5 million
Annualized quantified, but un-monetized costs		None			None	
Qualitative (un-quantified) costs		None			None	
BENEFITS						
Annualized monetized benefits		None			None	
Annualized quantified, but un-monetized benefits		This rule will reduce the instability and disruption that results from the presence of unauthorized alien workers in the Government contract workforce, and thereby promote economy and efficiency in Government procurement. This rule will prevent reliance on unauthorized labor in Government procurement, and improve security in Government contract worksites			This rule will reduce the instability and disruption that results from the presence of unauthorized alien workers in the Government contract workforce, and thereby promote economy and efficiency in Government procurement. This rule will prevent reliance on unauthorized labor in Government procurement, and improve security in Government contract worksites	
Qualitative (un-quantified) benefits						

1. Background

In 1986, Congress passed the Immigration Reform and Control Act (IRCA), explicitly prohibiting the employment of persons not authorized to work in the United States. Employers that hire or employ workers whom they know are unauthorized, including employers that act with constructive knowledge that those they hire or employ are unauthorized to work, face civil and criminal sanctions under the Act. IRCA also established a paper-based system for employers to verify employment eligibility by examining documents produced by an employee to establish his or her identity and work authorization, filling out an employment eligibility verification form (known as the Form I-9), and keeping these records in the employer's files for possible inspection by Federal immigration authorities.

The security and reliability of this paper-based system is dependent on the diligence with which employers implement it, and on the security of the identity and work eligibility documents that the employee presents for the employer's examination. In recent years the quality of counterfeit documents and the sophistication of identity theft efforts have steadily increased, resulting in a steady deterioration in the ability of the paper-based employment verification system to identify illegal workers, even where employers seek in good faith to comply with their obligations under IRCA. ICE's enforcement experience as well as that of the former Immigration and Naturalization Service (INS) shows that large numbers of illegal aliens are working in the United States for employers who have followed, at least in form, the I-9 process.

In 1996, President Clinton issued an executive order prohibiting Federal agencies from contracting with employers that employ unauthorized workers in violation of IRCA, noting that the presence of unauthorized aliens on a contractor's workforce rendered that contractor's workforce less stable and reliable than the workforces of contractors who do not employ unauthorized aliens. *See* Executive Order 12989, 61 FR 6091 (February 15, 1996).

Later that same year, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which established the Basic Pilot program, a free program for verifying employment eligibility of both U.S. citizens and non-citizens, as a supplement to the paper-based employment verification system created in 1986. The Basic Pilot program—now known as E-Verify—is a significantly more robust means for confirming employment eligibility than the Form I-9 system. In renewing the E-Verify program twice in the last six years, Congress has repeatedly acknowledged that the I-9 system is so vulnerable to fraud that “the easy availability of counterfeit documents has made a mockery of” the statutory bar against employment of unauthorized workers, H.R. Rep. 107-310 at 2; H.R. Rep. 108-304 at 3.

The E-Verify system is the best currently available means of verifying employment eligibility. Participating employers submit queries to the web-based E-Verify system after they have filled out the Citizenship and Immigration Services Form I-9 and accepted the documents proffered by an employee. E-Verify then confirms the legitimacy of

information and documents that have already been reviewed and accepted as reasonably appearing to be genuine on their face. In contrast with the paper-based I-9 system, which relies on employers to attempt to confirm the legitimacy of the identity and work-authorization documents presented by an employee, and which does not involve any routine examination or confirmation by the government, E-Verify is an interactive electronic mechanism for the employer to confirm an employee's work authorization with the relevant Federal authorities, usually in a matter of seconds. Throughout its voluntary operation to date, E-Verify has consistently identified instances in which an employee has submitted false identity and work authorization documents that were not detected in the ordinary I-9 review. The most recent study of the E-Verify system, completed in 2007, showed that the system rejects between 5.2 percent and 5.3 percent of all queries submitted seeking confirmation of an employee's work authorization. In fiscal year 2007, when E-Verify received approximately 3 million queries, approximately 157,000 individuals without work authorization who have managed to evade the I-9 process were stopped from obtaining illegal employment by E-Verify. Recent enhancements of the E-Verify system, such as the addition of a "photo tool" (currently able to be used only for certain documents presented by non-citizens) which allows the employer to compare the photograph on the identity document submitted by the employee with the official record for that document, have further improved E-Verify's ability to prevent identity theft or more sophisticated forms of fraud.

The E-Verify System is expected to help contractors avoid employment of unauthorized aliens, and will assist Federal agencies to avoid contracting with companies that knowingly hire unauthorized aliens. This promotes economy and efficiency in federal contracting, and it also enhances the Government's ability to protect national security and ensure compliance with the nation's immigration laws.

Need for the Proposed Rule

Even though federal contractors can currently choose to enroll in E-Verify and electronically verify the employment eligibility of their newly hired employees, it is not a legal or contractual requirement, thus many have chosen not to enroll. Some contractors may be reluctant to use E-Verify because, as DHS's experience in worksite enforcement shows, government contractors are not immune from the temptation to knowingly hire illegal workers in a tight labor market. Moreover, even employers do not knowingly hire illegal workers can face the same disruptions in staffing and production if illegal workers are found in their employ.

DHS's worksite enforcement efforts include criminal investigations and arrests of illegal aliens at the worksite, causing disruptions in staffing and production by employers—including Federal contractors—who employ unauthorized workers. Such disruptions can harm the overall operations of the affected business; where illegal workers are assigned to a specific project or contract, their detention or their decision to abandon their jobs to avoid detection directly harms the employer's ability to complete that project or contract. These negative impacts, however, are generally passed on in higher costs to the government, both in pure price terms and in terms of interfering with the projects for

which the government depends on contractors' support. Moreover, because of limited enforcement resources some firms may conclude that the likelihood of a worksite enforcement action is not high enough, and the share of the impact felt by the contractor itself not large enough, to justify the effort required to use the E-Verify system.

Since contractors nevertheless may suffer serious consequences if they are found to knowingly employ unauthorized aliens, some contractors have invested resources in reducing the probability of hiring unauthorized aliens. In a competitive marketplace, however, contractors will not normally choose to make additional investments to reduce the probability of hiring unauthorized aliens over their privately optimal amount, since they would consequently be choosing to increase their cost of production and would be at a disadvantage when competing with companies that have chosen not to make similar investments.

For example, existing debarment rules, established in response to Executive Order 12989 (February 16, 1996) only penalize contractors that knowingly hire unauthorized workers, and do not encourage contractors to adopt additional means to ensure that they do not unwittingly hire or assign to federal contracts persons that are not authorized to work in the United States. Executive Order **xxxxxx** of June **xx**, 2008 amends Executive Order 12989 in light of the recent advances in the reliability, convenience, and accuracy of the E-Verify system and directs federal agencies to use this powerful tool to avoid both the general inefficiencies that flow from contracting with employers burdened with unstable workforces as well as the direct costs of disruptions to federal contract performance that result when unauthorized aliens are found in, and must be subsequently removed from, the federal contract workforce. As this rulemaking requires covered federal contractors to enroll in E-Verify, the competitive advantage that may be currently enjoyed by those contractors not participating in E-Verify would be expected to disappear.

The Employment Eligibility Verification (E-Verify) Program

The E-Verify program is an internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). E-Verify assists employers in determining the employment eligibility of individual workers and the validity of the documents submitted with the Form I-9.

Before an employer can participate in the E-Verify program, the employer must enter into a written agreement called a memorandum of understanding (MOU) with DHS. This MOU requires employers to agree to abide by current legal hiring procedures and to ensure that no employee will be unfairly discriminated against as a result of the E-Verify program. Violation of the terms of this agreement by the employer is grounds for immediate termination of its participation in E-Verify.

Both the User Manual and Tutorial for the E-Verify program contain instructions and other related materials on E-Verify procedures and requirements. Once the user has

signed the MOU and completed an online tutorial, he or she may begin using the system to verify the employment eligibility of all newly hired employees.

Employers participating in the E-Verify program are still required to complete an Employment Eligibility Verification Form (Form I-9)¹ for each newly hired employee, as required under current law. Within three days of the worker's hire date an employer must enter the newly hired worker's information as presented on the I-9 form. This includes information such as the employee's name, Social Security number (SSN), and citizenship status or alien number. The information that is entered on the E-Verify website is then checked against information contained in SSA and USCIS databases.

SSA first verifies that the name, SSN, and date of birth are correct and, if the employee has stated that he or she is a US citizen, confirms whether this is in fact the case through its databases. If the employee is a U.S. citizen, SSA establishes that the employee is employment-eligible. In the cases of newly naturalized citizens, however, SSA is sometimes unable to confirm their U.S. citizenship and must forward the inquiry to USCIS. This is usually the case when the newly naturalized citizen has not yet notified SSA of the change in his or her citizenship status.

USCIS also verifies through database checks that any non-U.S. citizen employee is in an employment-authorized immigration status.

If the information provided by the worker matches the information in the SSA and USCIS records, no further action will generally be required, and the worker may continue employment. E-Verify procedures require only that the employer record on the I-9 form the verification ID number and result obtained from E-Verify, or print a copy of the transaction record and retain it with the I-9 form.

If SSA is unable to verify information presented by the worker, the employer will receive an "SSA Tentative Nonconfirmation" notice. Employers can receive a tentative nonconfirmation notice for a variety of reasons, including inaccurate entry of information into the form on the E-Verify website, name changes, or changes in immigration status that are not reflected in the SSA database.

If the individual's information does not match the SSA records, the employer must provide the employee with a written notice of the fact, called a "Notice to Employee of Tentative Nonconfirmation." The worker must then check a box on the notice stating that he or she contests or does not contest the tentative Nonconfirmation, and both the worker and the employer must sign the notice.

If the worker chooses to contest the tentative nonconfirmation, the employer must print a second notice, called a "Referral Letter," which contains information about resolving the tentative nonconfirmation, as well as the contact information for SSA. The worker then

¹<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=0572194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=91919c7755cb9010VgnVCM10000045f3d6a1RCRD>

has eight federal government work days to visit an SSA office to try to resolve the discrepancy. Under the MOU, if the worker contacts SSA to resolve the tentative Nonconfirmation, the employer is prohibited from terminating or otherwise taking adverse action against the worker while he or she awaits a final resolution from the government agency.

In the past the employer had to wait 24 hours to resubmit the query after a SSA Tentative Nonconfirmation. However, SSA has since enhanced their function so that in nearly all cases the system response, after the employee visits an SSA office, goes automatically to the employer, obviating the need for the employer to resubmit the case. If the worker fails to show up at SSA within 10 federal government work days (from the date the worker was referred to SSA), chooses not to contest the tentative nonconfirmation, or if SSA was unable to resolve the discrepancy the employer will receive a notice of final nonconfirmation and the employee must be terminated.

In September 2007, E-Verify was enhanced with the addition of a photo screening tool which enables employers to determine whether certain documents produced during Employment Eligibility Verification Form I-9 (herein Form I-9) completion are fraudulent, to more accurately verify an employee's identity, and to help prevent identity theft. The Photo Screening Tool step of E-Verify currently applies to non-citizens who choose to provide a DHS document with a photograph for completion of the Form I-9. Accepted documents with photographs include Form I-551 Permanent Resident Card (PRC or "Green Card") and Form I-766 Employment Authorization Document (EAD). If the employee does not provide one of these documents, the E-Verify query process will be exactly the same as before. When the photo screening tool is triggered, the employer must determine whether the photo on the employee's documentation and the photo displayed in E-Verify reasonably appear identical and select "yes," "no," or "cannot determine."

If USCIS is unable to automatically verify that the worker is employment-authorized, the employer will receive a "DHS verification in progress" notice from USCIS while an immigration status verifier (ISV) manually checks USCIS records. If the ISV is unable to verify the worker's employment authorization, the employer will receive a "DHS Tentative Nonconfirmation" notice from USCIS. Employers can receive a tentative nonconfirmation notice for a variety of reasons, including inaccurate entry of information into the form on the E-Verify website, name changes, or changes in immigration status that are not reflected in either SSA or USCIS databases.

If the individual's information does not match the USCIS records, the employer must provide the employee with a written notice of the fact, called a "Notice to Employee of Tentative Nonconfirmation." The worker must then check a box on the notice stating that he or she contests or does not contest the tentative Nonconfirmation, and both the worker and the employer must sign the notice.

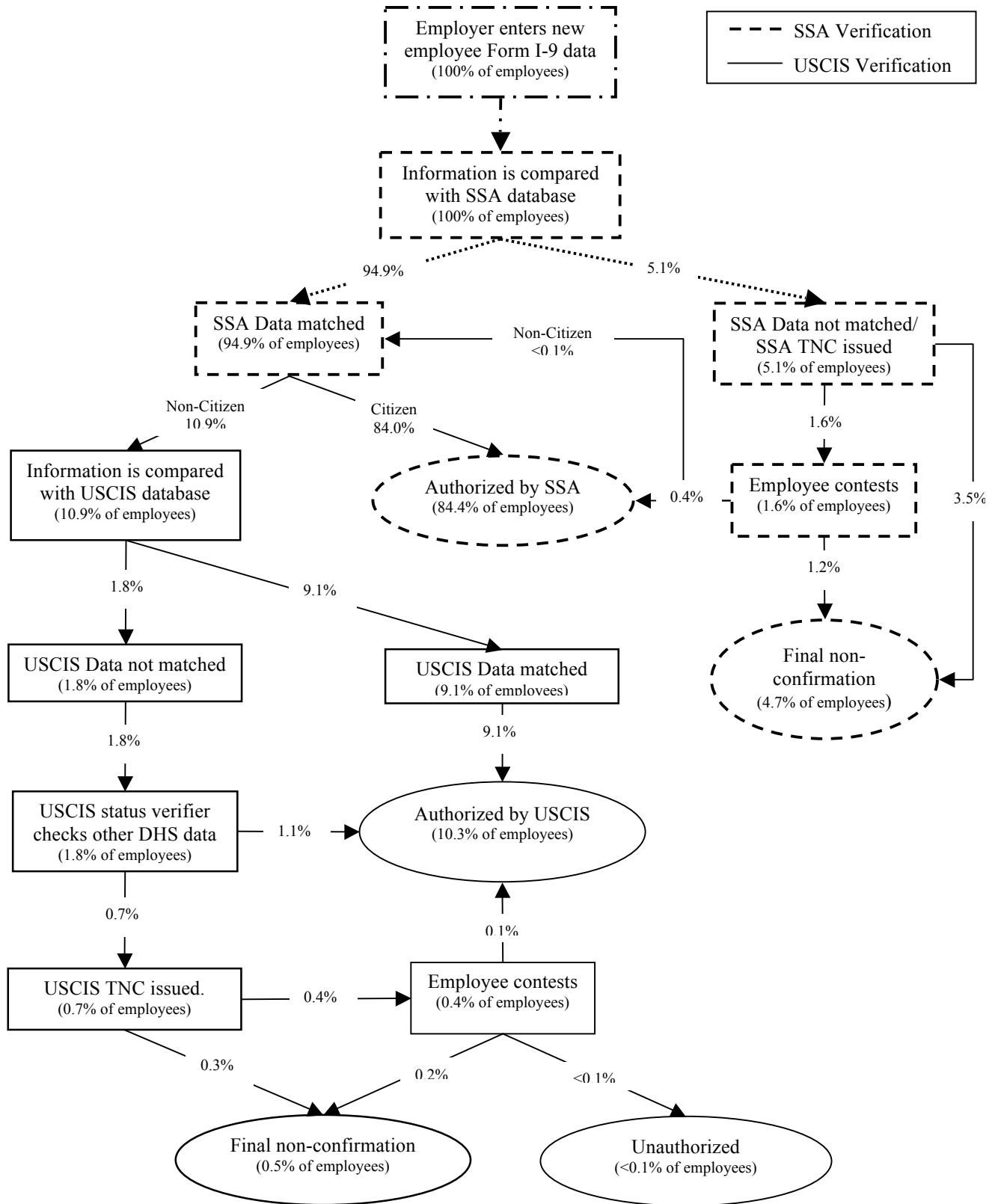
If the worker chooses to contest the DHS tentative nonconfirmation, the employer must print a second notice, called a "Referral Letter," which contains information about resolving the tentative nonconfirmation, as well as the contact information for USCIS.

The worker then has eight federal government work days to contact USCIS via phone to try to resolve the discrepancy. Under the MOU, if the worker contacts USCIS to resolve the tentative Nonconfirmation, the employer is prohibited from terminating or otherwise taking adverse action against the worker while he or she awaits a final resolution from the government agency.

To resolve a DHS tentative nonconfirmation notice, employees can contact USCIS through a toll-free number provided in the referral letter. If contacted by the employee, USCIS has 10 federal government work days after the employee receives the referral letter to resolve the case. If the case is resolved, USCIS will electronically send the result of the referral back to the employer within the 10 federal government work days. However, if an employee has failed to contact USCIS within the requisite period, the employer will be notified of the “DHS no show,” which requires the employer to terminate the worker from employment. Likewise, if the worker does not contest the “tentative nonconfirmation,” it automatically becomes a “final nonconfirmation” and the employer is required to terminate the worker.

Chart 1 displays the authorization process and the different stages involved in receiving authorization. Note that the percentages reported in the chart are based on statistics from the current voluntary E-verify program collected from October 2006 through March 2007. Under the current E-Verify program, approximately 95% of the employees are authorized to work and only 5% receive a final nonconfirmation.

Chart 1: The E-Verify Authorization Process (Data from Oct. 2006 – Mar. 2007)



2. Population Estimates

This section details the assumptions used to estimate the number of federal contractors, subcontractors, and their employees that are expected to be affected by this rule. The period of analysis is from 2009 to 2018. We assume that costs will be incurred beginning in 2009. Costs are discounted at 7 and 3 percent to their present value (PV) in 2007 dollars.

Affected Population

Initial Year Company Population Estimate

Prime contractors and subcontractors meeting the criteria set forth in the accompanying rulemaking will be required to verify the employment eligibility of employees using United States Citizenship and Immigration Service's E-Verify program. The types of federal contracts excluded from the scope of the rulemaking are:

- Contracts with no work within the U.S.
- Contracts under the micro threshold (generally \$3,000)
- Contracts for commercial off the shelf supplies

In order to estimate the number of contractors impacted by this rule we queried the Federal government's electronic system for collecting contract placement data known as the *Federal Procurement Data System-Next Generation* (FPDS-NG). A query of FPDS-NG revealed that there were 127,456 unique prime contractors with contracts signed in FY 2006 that would fall within the scope of this rulemaking.

In order to estimate the number of FY 2007 contractors, we compared the amount of federal dollars spent on contracts in FY 2007 to the amount of dollars spent on federal contracts in FY 2006. In FY 2007, there was \$439 billion spent on federal contracts, while in FY 2006 there was \$429 billion spent. Consequently, FY 2007 saw a 2.3 percent increase in the amount of dollars spent on contracts. However, the consumer price index increased by approximately 2.8 percent between 2006 and 2007, so the amount of dollars spent on federal contracts increased roughly by the rate of inflation. As the number of real dollars spent on federal contracts remained nearly the same in FY 2006 and FY 2007, we did not increase the number of contractors above the 127,456 contractors estimated in 2006 and we assume the amount of federal contractors in FY 2007 remained at 127,456.

It is difficult to project the number of contractors over the ten year period of analysis (FY 2009- FY 2018) due to the number of variables that could influence the amount of government spending and the amount of that spending that would be used to purchase contract support. For the purpose of this cost analysis, we will assume a small amount of growth in the number of contractors and project the number of FY 2008 prime contractors to increase by 5%. We increase FY 2007's 127,456 unique prime contractors by 5% to estimate 133,829 (127,456 X 1.05) unique prime contractors within the scope of the rulemaking in FY 2008. We increase FY 2008's estimate of 133,829 by 5% to

determine that the number of unique contractors within the scope of this rulemaking for FY 2009 (the initial of the period of analysis) is 140,520 ($133,829 \times 1.05$).

Please note that the FPDS-NG database does not include the number of subcontractors utilized by prime contractors. However, in order to estimate the full scope of the contractors impacted by this rule, we must make assumptions regarding the number of subcontractors used. As such, we have estimated the number of subcontractors who are not otherwise a prime contractor on another contract within the scope of the rule to be 20% the number of prime contractors, approximately 28,104 ($140,520 \times .2$).² Subcontractors that serve as a prime contractor on other contracts within the scope of the rulemaking must already comply with the rule's requirements. Consequently, we estimate that the total number of contractors and subcontractors that will initially have to enroll in E-Verify to be approximately 168,624 ($140,520$ prime contractors + $28,104$ subcontractors = $168,624$) in FY 2009.

Recurring Year Company Population Estimate

As explained above, in FY 2009, we estimate there will be approximately 168,624 contractors and subcontractors required to enroll in E-Verify. However, we must make several assumptions in order to estimate the number of additional companies that will be required to enroll in E-Verify in the subsequent years:

1. Many of the companies who receive a covered contract or subcontract in the initial year will also receive a covered contract or subcontract in the subsequent year and consequently will continue their participation in the E-Verify program.³ We have assumed that 80% of the contracts each year would be performed by contractors and/or subcontractors that worked on a contract within the scope of the rule in the previous year and consequently were already required by this rule to be enrolled in E-Verify. For the subsequent years, we estimate 20% of the contractors will be newly required to enroll into the E-Verify program.
2. Table 1 represents the estimated number of prime and subcontractors that will initially enroll in the E-Verify program and those contractors that will be required to enroll in the E-Verify program in subsequent years. In the initial year, 2009, we estimate that all of the contractors that are awarded contracts covered by this rule will need to enroll in the E-Verify program, as this rule represents a new requirement. In the subsequent years, 2010-2018, we assume that 80% of the contractors will either receive a new contract requiring them to continue to be enrolled in the E-Verify program or will continue to work on an existing contract that will require them to continue to be enrolled in the E-Verify program. Consequently, we assume that the remaining 20% of the contractors will be new to the E-Verify program and will be newly required to participate.

² The 20% estimate of covered subcontractors is a "best guess" provided by government contracting professionals.

³ For the purposes of the cost analysis, it is important to differentiate between companies that are newly enrolled in the E-Verify program from companies that are already enrolled in the E-Verify program. Newly enrolled companies incur start-up costs that are not incurred by companies already enrolled in E-Verify.

In addition, in FY 2010, we have estimated that there will be a 5% growth rate per year in the number of contractors enrolling in E-Verify. As such, we have assumed that there will be a 5% increase in the number of new contractors per year that will need to register in the E-Verify program to account for future growth.

Table 1: Number of Prime and Subcontractors Annually Enrolled in the E-Verify Program

Fiscal Year	New Registrants in EEV	Continuing EEV Users	Total Number of EEV Users
2009	168,624	-	168,624
2010	42,156	134,899	177,055
2011	44,264	141,644	185,908
2012	46,477	148,727	195,204
2013	48,801	156,163	204,964
2014	51,241	163,971	215,212
2015	53,803	172,170	225,973
2016	56,493	180,778	237,271
2017	59,318	189,817	249,135
2018	62,284	199,308	261,592

Initial Year Employee Population Estimates

In order to estimate the cost of the proposed rule, we need to know the number of additional employees that will be vetted through the E-Verify system. The additional employees that will be vetted through the E-Verify system are:

- All new hires of a covered contractor or subcontractor, whether working under a federal contract or not.
- For existing employees, all assigned employees (i.e.; those performing work under a covered contract).

However, the federal government does not have an estimate of the total number of assigned employees that perform work on government contracts or an estimate of the number of new hires at a covered contractor or subcontractor. In order to estimate the number of employees that will be vetted through the E-Verify system, we must make a series of assumptions that allow us to estimate the amount of contract labor being purchased by the government and then convert the amount of labor being purchased into Full Time Equivalent positions (FTE's). Specifically, we will estimate the amount of federal contracting dollars within the scope of the rulemaking and then estimate the amount of those contract dollars that will be used for the categories of direct labor, overhead, materials, and general and administrative (G&A) expense.⁴ We will then convert the amount of labor dollars into FTE's by dividing the total amount of labor dollars by an estimate of the cost of an FTE. Below outlines the methodology on a step-

⁴ Our estimate of the percentage of contracting dollars allocated to direct labor, overhead, materials, and G&A expenses is based on the professional estimate of senior government procurement professionals.

by-step basis. Table 2 shows these calculations. We understand that these assumptions are rough estimates and we welcome public comment providing more precise information.

1. The first step is to determine the amount of contracting dollars that will be covered by the scope of the rule. In FY 2007, according to the FPDS-NG database, there were approximately \$439 billion in federal contracts. However, some of these contracting dollars are for contracts that will not be within the scope of the proposed rule and should be excluded from the analysis. We will assume 10% of the contracting dollars are for contracts outside of the scope of the rule.⁵ Excluding the dollars spent for contracts outside of the scope of the rule, we estimate there is \$395.1 billion ($\$439 \text{ billion} * .9 = \395.1 billion) in contracts within the scope of the proposed rule in FY 2007.

2. Once we determine the amount of contracting dollars covered by the rule (see step 1 above), we then must estimate how much of those contracting dollars would be used to pay for direct labor. We estimate 26% of the \$395.1 billion is used to pay direct labor costs. Therefore, the direct labor cost of the covered contracts is calculated at \$102.7 billion ($26\% \text{ direct labor} * \$395.1 \text{ billion} = \102.7 billion). The employees whose salaries are paid by this \$102.7 billion would be considered to be assigned employees and would be required to be vetted through E-Verify.

In order to estimate the number of employees, we must convert the \$102.7 billion in labor dollars to FTE's. To determine the number of FTE's, we divide the direct labor cost of \$102.7 billion by the average expected annual wage of a contractor. Unfortunately, we do not have data on the average salary of a covered federal contractor, but we do estimate the average salary for a federal employee at \$66,705.⁶ We will use the average salary of a federal employee as a proxy for the average wage of a covered federal contractor.

We considered using data from the Bureau of Labor Statistics, which reports the average wage rate of "all occupations" in the U.S. is approximately \$40,000 annually as a proxy for the wage of a covered contractor, but do not believe the average wage for the nationwide workforce is a reasonable substitute for the average wage of a federal contractor. Statistics show that the Federal government workforce is more highly educated than the general U.S. workforce.⁷ Consequently, we believe it is reasonable to assume that as the work the federal government is required to perform requires a more

⁵ Ten percent is an approximate, but reasonable estimate as approximately 9.25% of contracting dollars are for contracts with no work performed inside the U.S.

⁶ <http://www.opm.gov/feddata/html/paystructure/2004/table2.asp> The average annual salary of federal employees within the United States was \$60,772 in 2004. Adjusting for inflation, \$60,772 in 2004 dollars is equivalent to \$66,705 in 2007 dollars. <http://www.bls.gov/bls/inflation.htm>

⁷ According to information from the U.S. Census Bureau, in 2006 approximately 28% of the U.S. population 25 years and over has attained a college degree (Bachelor, Master's, Professional, or Doctoral degree) and 10 percent has a graduate degree (Master's, Professional, or Doctoral) <http://www.census.gov/population/socdemo/education/cps2006/tab10-01.xls>. However, according to a study by the Congressional Budget Office, in 2005 49% of full-time permanent federal employees had a college degree and over 17% had a graduate degree. The March 2007 CBO study is titled "Characteristics and Pay of Federal Civilian Employees" www.cbo.gov/ftpdocs/78xx/doc7874/03-15-Federal_Personnel.pdf.

highly educated workforce, the work that the government hires contractors to perform would also require a higher education level relative to the average U.S. workforce. Consequently, we believe the average wage of a federal employee is a better proxy for the wage of a covered federal contractor than the average wage of the nationwide workforce.

Dividing \$102.7 billion in direct labor by \$66,705 yields an estimate of 1,540,004 employees (102.726 billion/ \$66,705 cost per employee). Over the course of a year, there would also be turnover in these employees. In order to adjust for turnover we assumed an annual turnover rate of 40.7% as the Bureau of Labor Statistics estimated the annual turnover rate for all industries and regions in 2006 at 40.7%.⁸ Multiplying 1,540,004 employees by 1.407 to account for turnover equals 2,166,786 employees in the initial year that are a result of direct labor expenditures and who will be vetted through E-verify.

3. After we estimate the amount of direct labor, we estimate how much of the contract is overhead expenses. We assume that overhead expenses are equal to direct labor expenses of 26% (an overhead rate of 100%). Overhead expenses typically pay for items such as rent, electricity, computers, support personnel and employee benefits (i.e. health insurance and paid leave). Support personnel include IT support, janitors, and human resources. Consequently, some of the overhead expenses will be used to pay for labor. We estimate that 40% of the overhead expense will be used to pay for labor. The amount of the labor component of the overhead is calculated as \$41.09 billion (26% overhead expense * 40% labor component of overhead * \$395.1 billion).

Dividing \$41.09 billion by our estimate of the average contractor FTE wage of \$66,705 yields 616,002 overhead support employees. However, the employees who provide overhead support functions are not considered to be assigned employees and would not need to be vetted. But, as additional support personnel are newly hired by the contractor, these new hires would need to be vetted through E-Verify. Multiplying 616,002 overhead support employees by the turnover rate of 40.7% yields 250,713 overhead support new hires that would need to be vetted thorough E-Verify.

4. The next category is material expenses. Material expenses represent goods and services purchased directly for a contract. Examples of goods would be the steel purchased for the building of a ship or a radar system (if the contractor did not build it). We assume that material expenses represent 26% of the total contract cost and of that 26%, 80% of the material costs represent goods purchased and 20% represents services purchased. The services purchased represent hired subcontractors.⁹ The covered subcontractors are estimated to follow the same assumptions for direct labor, overhead, materials, and G&A expenses as the prime contractors. The total number of employees that will be vetted through the material expense category is 137,443 employees (including turnover). See Table 2 for details of the calculation.

⁸ “Job Openings and Labor Turnover: January 2007”

⁹ These covered subcontracts are subcontractors that are not otherwise a prime contractor. If a subcontractor was also a prime on another contract, the subcontractor would already be required to particulate in E-Verify

5. The general and administrative (G&A) category represents management, financial and other expenses which are incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. For example, the expenses for operating a corporate headquarters, including the salaries of the personnel working at the corporate headquarters could be considered G&A expenses. We assume G&A is equal to 15% of the sum of the direct labor, overhead, and, material expenses. We further assume that 80% of the G&A expense represents an expenditure on labor. The amount of G&A that we estimate is an expenditure on labor is \$36.981 billion. This is calculated by multiplying the 15% G&A rate * \$308.178 billion total of direct labor, overhead, and, material expenses * 80 % labor component of G&A.

Dividing \$36.981 billion by the estimate of the average contractor FTE wage of \$66,705 yields 554,402 G&A related support employees. However, the employees who provide G&A support functions are not considered to be assigned employees and would not need to be vetted. But, as additional G&A support personnel are newly hired by the contractor, these new hires would need to be vetted through E-Verify. Multiplying 554,402 overhead support employees by the turnover rate of 40.7% yields 225,641 G&A support new hires that would need to be vetted through E-Verify.

6. Steps 2 through 5 above show that we estimate there will be an additional 2,780,584 employees vetted through E-Verify due to the rulemaking (2,166,786 direct labor + 250,713 overhead + 137,443 materials (subcontractors) + 225,641 G&A). This estimate of 2,780,584 employees is not likely to include all possible new hires of a covered contractor or subcontractor, whether working under a federal contract or not. For example, contractors covered under this rulemaking may hire employees to perform work for other private sector firms and not for the government. While many contractors have enough federal contracting business that they have organized themselves into business units that solely perform federal contracting, many contractors service both federal and non-federal clients. Unfortunately, we do not have the data necessary to say how many new hires have not been counted in Steps 2 through 5 above. In order to attempt to take these additional employees into account, we are multiplying our estimate of 2,780,584 employees that we have previously calculated will be vetted through E-Verify by an additional 25%. Allowing for this additional 25% of potential employees will increase our estimate to 3,475,730 employees (2,780,584 employees * 1.25) being vetted through E-Verify.

Since the 3,475,730 employee estimate shown directly above is calculated based on FY 2007, data we then need to adjust this FY 2007 estimate to the initial year of the period of analysis (FY 2009).

In order to estimate the FY 2009 number of employees vetted through E-Verify, we increase the FY 2007 approximation to account for potential future growth.¹⁰ Consequently, for FY 2008 the number of employees vetted through E-Verify would be 3,649,516 (3,475,730 * 1.05), and for FY 2009 the number of employees vetted through E-Verify would be 3,831,992 (3,649,516 * 1.05).

¹⁰ Recall that we previously assumed a 5% growth rate in the number of covered contractors each year.