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December 4, 2008

The Honorable Patrick J. Leahy
Chairman
The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
The Honorable Lamar Smith
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Defense, General Services Administration, National Aeronautics and Space Administration: Federal Acquisition Regulation; FAR Case 2007-013, Employment Eligibility Verification*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration (the agencies), entitled “Federal Acquisition Regulation; FAR Case 2007-013, Employment Eligibility Verification” (RIN: 9000-AK91). We received the rule on November 19, 2008. It was published in the *Federal Register* as a final rule on November 14, 2008, with a stated effective date of January 15, 2009. 73 Fed. Reg. 67,651.

The final rule amends the Federal Acquisition Regulation (FAR) to require certain federal contractors and subcontractors to use the E-Verify system administered by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), as the means of verifying that certain of the contractors’ employees are eligible to work in the United States. The E-Verify system is an Internet-based system operated by USCIS, in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. If the E-Verify system is unable to verify the information submitted by the employer, SSA or USCIS will notify the employer of the nonconfirmation, who will then notify the employee. The employee may choose to contest a nonconfirmation. Participation in E-Verify does not exempt the employer from the responsibility of complying with other applicable laws.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Although this rule was published on November 14, 2008, it was not received until November 19, 2008. The final rule has an announced effective date of January 15, 2009. Therefore, this final rule will not have the required 60-day delay in its effective date.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, except for the delay in the effective date, the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: David A. Drabkin
Senior Procurement Executive
General Services Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF DEFENSE,
GENERAL SERVICES ADMINISTRATION,
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
ENTITLED
"FEDERAL ACQUISITION REGULATION; FAR CASE 2007-013,
EMPLOYMENT ELIGIBILITY VERIFICATION"
(RIN: 9000-AK91)

(i) Cost-benefit analysis

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration (the agencies) analyzed the costs and benefits of this final rule. During fiscal year 2009, the agencies estimate that this rule will require approximately 168,624 contractors and subcontractors to enroll in E-Verify and that there will be an additional 3.8 million employees vetted through the system. The agencies estimate the costs of the rule in 2009 to be approximately \$245.4 million at 7-percent discount rate and \$254.9 million at 3-percent discount rate. From 2009 to 2018, the agencies estimate the total costs of the rule will be approximately \$1,105.4 million at 7-percent and \$1,336.5 million at 3-percent.

The agencies expect this final rule to benefit employers by providing an economical, web-based method for verifying employment eligibility of employees, thus improving the ease and reliability of the verification employers are already required to perform. The agencies also expect federal contractors' participation in E-Verify to reduce the likelihood that contractors will discover they hired unauthorized aliens at some point after making investments in those employees. This initial screening of employees thereby may spare contractors the cost of terminating and replacing such employees after resources have been expended on the training of those employees. This final rule will also have the benefit, according to the agencies, of enhancing the federal government's procurement system by decreasing the employment of unauthorized aliens in the supply chain, thereby fostering a more stable and dependable contracting community.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603–605, 607, and 609

The agencies did not certify that this final rule will have a significant impact on a substantial number of small entities under the Act. However, the agencies do expect this rule to impact nearly every small entity in the federal contractor base. According to the agencies, the direct costs imposed by this rule do not appear to have a significant economic impact on a substantial number of small entities. The

agencies did conduct a Final Regulatory Analysis under the Act. The agencies also made a number of changes in this rule to lessen the impact on small businesses, including extending timelines, raising the dollar amount and performance period thresholds, and allowing the verification of all employees.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

The agencies did not discuss any agency actions relevant to the Act in its submission to the Comptroller General. The agencies indicated that preparing a written statement under the Act was not applicable to this final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The agencies promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On June 12, 2008, the agencies published a notice of the proposed rule. 73 Fed. Reg. 33,374. The agencies received over 1,600 comments on the proposed rule from individuals, organizations, corporations, trade associations, chambers of commerce, and government entities. The agencies responded to those comments in the final rule. 73 Fed. Reg. 67,655–67,701.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

This final rule increases the estimated burden of a previously approved information collection requirement (OMB Control Number 1615-0092). The agencies are soliciting comments and seeking Office of Management and Budget (OMB) approval on the proposed amendments. The agencies estimate that the burden of this amended information collection requirement to be approximately 3,882,482 hours.

Statutory authorization for the rule

The agencies promulgated this final rule under the authority of sections 101 and 121 of title 40, United States Code.

Executive Order No. 12,866

The agencies determined that this is a significant rule under the Order because there is significant public interest in issues pertaining to immigration and because the estimated annual costs are greater than \$100 million. The rule was reviewed by the Office of Management and Budget.