

February 2009

Rule Requiring Federal Contractors to Use E-Verify Suspended Until May 21

On January 27, 2009, the U.S. Chamber of Commerce [announced](#) that [the final rule](#) requiring certain federal contractors to enroll in and use the E-Verify system (“the Rule”) has again been delayed. The Rule, which requires federal contractors to check the employment authorization of new hires and of employees assigned to federal contracts through government databases, will now be in effect no earlier than May 21, 2009. The government published notice of the delayed implementation date in the [Federal Register](#) on January 30, 2009.

This is the second delay in implementation. On [January 9](#), the Chamber announced a delay until February 20, 2009 so that briefing could take place in a lawsuit filed in federal court in <

Now, the litigants in that suit, including the Chamber and various business groups, have agreed with the Government to extend the applicability date to May 21, 2009 and ask the court to stay the proceedings to allow President Barack Obama’s administration an opportunity to review the Rule.

This delay comes on the heels of a January 20, 2009 memorandum issued by Rahm Emanuel, President Barack Obama’s Chief of Staff, to the heads of all executive departments and agencies governing issuance and possible suspension of regulations. The memorandum stated that agencies should “[c]onsider extending for 60 days the effective date of regulations that have been published in the Federal Register but not yet taken effect.” The Chamber requested the Office of Management and Budget to apply the memorandum to the Rule and made the same request to government’s counsel.

Meanwhile, the statutory authorization for the E-Verify rule expires on March 9, 2009 and will need to be renewed in Congress.

For more information on the lawsuit, please see the Firm’s Client Alerts, [“Federal Contractor E-Verify Requirement Challenged in Court”](#) (December 24, 2008); [“Government Delays Imposition of Federal Contractor E-Verify Requirement”](#) (January 9, 2009); and [“Imposition of Federal Contractor E-Verify Requirement Delayed to May 21, 2009”](#) (January 28, 2009).