



## SWATeam Newsletter

# E-Verify Rule for Federal Contractors On Hold Until February 20, 2009

After filing a lawsuit challenging the government's authority to implement a rule requiring federal contractors to use E-Verify, the U.S. Chamber of Commerce, the HR Policy Association, and the American Council on International Personnel announced on Friday that the government has agreed to suspend implementation of the regulation until February 20, 2009.

### *The Regulation*

The regulation, published in the Federal Register in November, would require federal contractors and subcontractors to use the Department of Homeland Security (DHS) and the Social Security Administration's (SSA) E-Verify system to verify their employees' eligibility to work in the United States. Federal government agencies were originally required to insert the E-Verify requirement into new contracts issued after January 15, 2009. For details about the regulation, see our alert entitled "[Federal Contractors Required to Use E-Verify Beginning in January 2009.](#)"

### *The Lawsuit*

On December 23, 2008, the U.S. Chamber of Commerce, joined by Associated Builders and Contractors, Inc., the Society for Human Resource Management (SHRM), the HR Policy Association, and the American Council on International Personnel, filed a lawsuit in the U.S. District Court for the District of Maryland challenging the rule and requesting an injunction.

The lawsuit claims that the government has exceeded its authority by making E-Verify mandatory for federal contractors and subcontractors. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorized the creation of a "pilot program" such as the E-Verify system, but it specifically stated that "the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program."

The parties have agreed to an expedited briefing schedule, and the Court is expected to decide whether to enjoin implementation of the regulation before February 20th. If an injunction is issued, the federal government will be prohibited (at least temporarily) from enforcing the rule.

## *Where to Find Help*

The Seyfarth Workforce Authorization Team (SWATeam) is a team of attorneys and paralegals with experience in the workforce authorization area. The SWATeam provides employers with detailed information about and support with E-Verify registration, use, and compliance. For more information about E-Verify, state laws relating to E-Verify, or other workforce authorization matters, please contact the Seyfarth attorney with whom you work, or any Business Immigration attorney on our website ([www.seyfarth.com/businessimmigration](http://www.seyfarth.com/businessimmigration)). We stand ready to assist you.



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