



## DHS Issues Final Rule on Electronic Signature and Storage of Form I-9

On July 22, 2010, the Department of Homeland Security (DHS) published a Final Rule that regulates how employers may use electronic systems to complete and store their I-9 Forms.

To view the final rule in its entirety, go to: <http://edocket.access.gpo.gov/2010/2010-17806.htm>

Like the interim final rule, the final rule permits employers to complete, sign, scan and store the Form I-9 electronically as long as certain performance standards set forth in the final rule for the electronic filing system are met.

DHS noted that the final rule makes minor modifications to the interim final rule to clarify that employers:

- Must complete a Form I-9 within three business—not calendar—days.
- May use paper, electronic systems or a combination of paper and electronic systems.
- May change electronic storage systems as long as the systems meet the performance requirements of the regulations.
- Need not retain audit trails for each time a Form I-9 is viewed electronically, but only when the Form I-9 is created, completed, updated, modified, altered or corrected.
- May provide or transmit a confirmation of a Form I-9 transaction but are not required to do so unless the employee requests a copy.

Several commenters on the interim final rule requested guidance on the storage of ancillary documents used to verify an employee's identity and eligibility to work in the United States. DHS clarified that employers may, but are not required to, copy or make an electronic image of a document used to comply. It cautioned, though, that employers should apply consistent policies and procedures for all employees to avoid discrimination.

DHS noted that the Form I-9 and verification documentation may be stored in a separate Form I-9 file or as part of an employee's other employment records. In addition, only the pages of the Form I-9 containing employer- and employee-entered data need be retained. Other pages of the current form are instructions for completing the Form I-9 and need not be retained.

DHS agreed with comments that suggested that it is unnecessary to require an audit trail to record every time a Form I-9 is simply viewed or accessed but not modified. When the Form I-9 is created or modified, though, a secure and permanent record must be created establishing the



date of access, the identity of the individual who accessed the electronic record and the particular action taken.

In response to comments, DHS also amended the interim final rule to require an employer to provide or transmit a confirmation of the transaction only if an employee requests it. Several commenters had objected to the interim final rule's requirement that a printed transaction record be given to the employee even absent a request.

One commenter noted that some companies process thousands of new employees annually; another noted that in the modern work environment many employees work off site. These commenters expressed concern that requiring paper receipts could be a significant burden to businesses. DHS officials did not think the requirement was unduly burdensome but amended the interim final rule in response to the comments.

If requested, a receipt when completing an electronic record should be provided within a reasonable period of time, but it need not be provided at the time of the transaction.

But DHS cautioned that providing the option of electronic preparation and storage does not alter the requirement that the employer physically examine any documentation provided by the employee in the presence of the employee prior to completing the Form I-9.

The final rule takes effect Aug. 23, 2010.