

DHS Issues Final Rule on Form I-9

On July 22, 2010, the Department of Homeland Security published a Final Rule that regulates how employers may use electronic systems to complete and to store their I-9 Forms. <http://edocket.access.gpo.gov/2010/2010-17806.htm>

The Final Rule will take effect on August 22, 2010. The rule is substantially similar to an interim rule issued in 2006, but there are some changes worth noting, such as:

- Employers must complete Section 2 of the Form I-9 within three **business** (not calendar) days.
- Employers may use paper, electronic systems, or a combination of paper and electronic systems.
- Employers may change electronic storage systems as long as the systems meet the performance requirements of the regulations.
- Employers need not retain an audit trail that reflects each time a Form I-9 is electronically viewed; the trail need only reflect when the Form I-9 is created, completed, updated, modified, altered, or corrected. (The audit trail is intended to help Immigration and Customs Enforcement (ICE) determine whether the data on an electronically generated Form I-9 has been improperly tampered with.)
- Employers 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.

Format of the Form I-9

The Form I-9 is available online at the U.S. Citizenship and Immigration Services (USCIS) website, <http://www.uscis.gov/files/form/i-9.pdf>, as a Portable Document Format (.pdf) fillable and printable form. The final rule permits employers to complete, sign, scan, and store the Form I-9 electronically (including an existing Form I-9), as long as certain performance standards set forth in this final rule for the electronic filing system are met.

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.