



Legal Alert: DHS Issues Final Rule on Electronic Signature and Storage of I-9s

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Employers must complete Form I-9 to verify the ability of their employees to legally work in the U.S. Traditionally, the Form I-9 was in a hardcopy paper format. In June 2006, however, the Department of Homeland Security (DHS) issued an interim rule permitting electronic completion, signatures, and storage of I-9s as a way of modernizing and improving the accuracy and cost-effectiveness of employers' employment verification programs.

This 2006 "Electronic I-9 Rule" provisionally set forth standards for a compliant I-9 electronic system. These standards were largely based on long-standing IRS electronic recordkeeping guidelines and cover criteria such as accessibility, reproducibility of I-9s, accuracy, security, and quality of data being captured and systems being used for electronic signature and storage. For the last four years, however, this Electronic I-9 Rule remained in an "interim" status and contained a number of ambiguities leading to confusion about how to satisfy the many electronic I-9 parameters.

At long last, on July 22, 2010, the DHS finally issued its final rule on electronic signatures and storage of Form I-9. Although the changes in the final rule are relatively minor, they provide clarification of some ambiguities contained in the initial rule. The primary changes implemented by this rule are as follows:

- employers must complete a Form I-9 by the third business (not calendar) day after an employee started work for pay;
- 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 audit trails of each time a Form I-9 is electronically viewed, but only when the Form I-9 is created, completed, updated, modified, altered, or corrected; and
- 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.

Employers' Bottom Line:

Ultimately, the final Electronic I-9 Rule does not result in any critical changes to the electronic I-9 standards that were established, albeit provisionally, back in 2006. As before, the final rule "permits employers to complete, sign, scan, and store the Form I-9 electronically, as long as certain performance standards... are met." The final rule also does not include any substantive changes to I-9 form content or the list of acceptable verification documents that are currently in effect.

If you are considering converting to an electronic I-9 compliance program (whether created by an in-house IT department or provided by a third party vendor), you must take utmost care to vet the system and ensure that it is fully compliant with the numerous exacting regulatory electronic I-9 standards governing accessibility, reproducibility of I-9s, accuracy, security, quality of data being captured and electronic signatures and storage systems. If you have questions regarding electronic I-9 standards and requirements, please contact the author of this Legal Alert, Geetha Nadiminti, gnadiminti@fordharrison.com, any member of Ford & Harrison's Business Immigration practice group, or the Ford & Harrison attorney with whom you usually work.