



Fact Sheet

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April 26, 2005

Electronic Signature and Storage of the I-9 Employment Eligibility Verification Form

U.S. Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) have received inquiries from many employers regarding the availability of electronic Employment Eligibility Verification Forms (Form I-9). Employers have expressed their frustration with being required to keep paper forms or to store the forms on microfilm or microfiche when all other aspects of their business have been automated.

On April 28, 2005, a new law will take effect allowing employers to sign and store Forms I-9 electronically. While DHS is still developing a regulation for this new law, ICE is pleased to provide the following background and interim guidelines for making use of these electronic forms.

Background

As part of its mission to ensure national security, DHS is charged with enforcing the laws requiring employers to employ only individuals authorized to work in the United States. The Form I-9 requirement stems from Section 274A of the Immigration and Nationality Act and implementing regulations, which require all U.S. employers (including agricultural associations or employers who recruit or refer persons for employment for a fee) to verify on the Form I-9 the identity and employment eligibility of all employees -- including U.S. citizens -- hired to work in the United States after November 6, 1986.

Completed Forms I-9 are not filed with the federal government. Instead, they must be retained by the employer in its own files and made available for inspection by DHS, the Special Counsel for Immigration-Related Unfair Employment Practices (OSC), or the Department of Labor (DOL) for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later. Recruiters or referrers for a fee are required to retain the Form I-9 records for three years after the date of the hire. Failure to properly complete and retain the Form I-9 subjects the employer to civil penalties ranging from \$110 to \$1,100.

On October 30, 2004, the President signed legislation into law (Public Law 108-390) authorizing employers to retain Forms I-9 in electronic format, in addition to the current choices of paper, microfilm or microfiche. The legislation also authorizes attestations on the Form I-9 to be manifested by an electronic signature. The legislation prescribed an effective date of April 28, 2005, or the effective date of implementing regulations, whichever occurred first.

Guidance for Electronic Signatures and Retention of Form I-9

Under this law, employers will have a variety of electronic Form I-9 options. For example, employers may interpret the law to mean that they may continue to complete Forms I-9 on paper but choose to store the forms electronically. Alternatively, employers may choose to both complete and retain the Form I-9 wholly electronically.

It is important to note that there is no single government-wide electronic signature or record-keeping standard. However, some federal agencies have provided electronic record-keeping standards for their own transactions with the public. For example, the Internal Revenue Service (IRS) has established electronic standards (IRS Revenue Procedure 97-22) that provides helpful guidance for electronic storage of records for taxpayers. These standards may serve as a helpful reference for employers until DHS issues regulations to govern the storage of Forms I-9.

The use of accepted standards ensures the integrity, accuracy and reliability of the electronic signature and storage system. For example, if a Form I-9 is completed electronically, the electronic signatures used to manifest the required attestations should be created through use of a system that includes a method to acknowledge that the attestation to be signed has been read by the signatory and attach (or logically associate) the electronic signature to an electronically completed Form I-9 at the time of the transaction. Currently, electronic signatures are accomplished using various technologies, such as electronic signature pads, Personal Identification Numbers, biometrics and "click to accept" dialog boxes.

The electronic storage system used by an employer to retain the Form I-9 may include a quality assurance program that includes regular evaluations of the system. Such evaluations could include periodic checks of electronically stored data and methods to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored data. To facilitate Form I-9 inspections by officers of DHS, OSC, and DOL, employers may consider an electronic storage system that includes an indexing system and ability to reproduce legible and readable hardcopies of electronically stored Forms I-9.

Advantages of Electronic Signature and Storage

There are a number of real and potential advantages that employers are likely to realize through use of electronic Forms I-9:

- Many employers may experience cost savings by storing Forms I-9 electronically rather than using conventional filing and storage of paper copies or transferring the forms to microfilm or microfiche.
- Electronic forms will allow employers to better ensure that each Form I-9 is properly completed and retained. Some employers may find that electronic completion and storage renders the process less prone to error.
- Electronically retained Forms I-9 are more easily searchable, which is important for re-verification, quality assurance and inspection purposes. This will be especially helpful and cost-effective for large employers that have job sites across the country or that have high employee turnover rates.

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of four integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.