

made. Should the fifth day of the month fall on a weekend or holiday, assessments are due by the first business day prior to the fifth day of the month.

Each handler shall pay interest of one percent per month on any unpaid assessments levied pursuant to § 955.42 and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments were due, until the delinquent handler's assessments, plus applicable interest, has been paid in full.

Dated: June 8, 2006.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

8 CFR Part 274a

[BICE 2345-05; DHS-2005-0046]

RIN 1653-AA47

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

AGENCY: Bureau of Immigration and Customs Enforcement, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Homeland Security regulations to provide that employers and recruiters or referrers for a fee who are required to complete and retain Forms I-9, Employment Eligibility Verification, may sign and retain these forms electronically. This interim rule implements statutory changes to the Form I-9 retention requirements by establishing standards for electronic signatures and the electronic retention of the Form I-9.

DATES: *Effective Date:* This interim rule is effective June 15, 2006.

Comment Date: Written comments must be submitted on or before August 14, 2006.

ADDRESSES: You may submit comments, identified by *docket number*, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Jim Knapp, Associate Legal Advisor, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I. St., NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Jim Knapp, Associate Legal Advisor, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I St., NW., Washington, DC 20536. Telephone (202) 514-8138 (not a toll-free number).

SUPPLEMENTARY INFORMATION

I. Background

A. Employment Eligibility Verification Requirement

Section 274A of the Immigration and Nationality Act (Act), 8 U.S.C. 1324a, requires all United States employers, agricultural associations, agricultural employers, farm labor contractors, or persons or other entities who recruit or refer persons for employment for a fee, to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. To comply with the law, an employer, or a recruiter or referrer for a fee, is responsible for the completion of an Employment Eligibility Verification form (Form I-9) for all employees, including United States citizens. 8 CFR 274a.2.

Completed Forms I-9 are not filed with the Federal Government; instead, the completed I-9 form is retained by the employer. Employers are required to retain Forms I-9 in their own files for three years after the date of hire of the employee or one year after the date that employment is terminated, whichever is later. 8 CFR 274a.2(c)(2). Recruiters or referrers for a fee are required to retain the Forms I-9 for three years after the date of hire. *Id.* at (d)(2). The failure to properly complete and retain the Forms I-9 subjects the employer to civil money penalties. Section 274A of the Act, 8 U.S.C. 1324a(e)(5).

B. Format of the Form I-9

Form I-9 has been made available to the public in numerous paper and electronic means since 1986. The Form I-9 is currently available online at the U.S. Citizenship and Immigration Services (USCIS) Web site at (<http://www.uscis.gov>) as a Portable Document Format (.pdf) fillable—printable form <http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>. In short, an employer or employee can retrieve the form, type the required information into it for a prospective employee, and print it. The form may then be retained in paper, microfilm, or microfiche form. In conjunction with this interim rule, the Department of Homeland Security (DHS) is upgrading the downloadable PDF version of Form I-9 to enable employers and employees to electronically sign and save the filled Form I-9. This provides employers an

additional option for convenience and savings. This PDF version of Form I-9 complies with the electronic form requirements of this rule.

However, existing DHS regulations do not permit the form to be completed and stored electronically as an original record. On October 30, 2004, Public Law 108-390, 11 Stat. 2242, authorized employers to retain Forms I-9 in electronic format, effective April 29, 2005, or the effective date of implementing regulations, whichever occurred first. The legislation also allows employers and employees to manifest attestations using electronic signature technology.

This interim rule conforms the regulations to the requirements of Public Law 108-390 and permits employers to complete, sign, and store Forms I-9 electronically, as long as certain performance standards set forth in this interim rule for the electronic filing system are met. This interim rule also permits employers to electronically scan and store existing Forms I-9, as long as standards set forth in this interim rule for the electronic storage system are met. The interim rule adopts performance standards that have been proven by other agencies in the past and provides flexibility for employers to choose a method of retention that is the most economically feasible for their specific business. Utilizing the most widely applicable standards, those adopted by the Internal Revenue Service (IRS) for tax records, provides the widest possible cost savings within the business community because of existing compliance with those standards.

C. Electronic Recordkeeping Standards

There is no single United States Government-wide electronic recordkeeping standard for recordkeeping by private individuals and entities. However, some United States Government agencies provide electronic recordkeeping standards for use in transactions with that agency. These standards provide a baseline for proven practices. To the extent that these standards are applicable to the electronic storage of Form I-9, DHS attempts to use the requirements and language of existing standards. At the same time, DHS recognizes that systems for electronic recordkeeping develop rapidly with the creation of new storage mechanisms, mediums, and methods. Accordingly, the standards adopted in this rule are “product neutral” and will guide the application of new products to meet minimum performance standards, rather than establishing specific requirements.

The Internal Revenue Service's Rev. Proc. 97-22, 1997-1 C.B. 652, 1997-13 I.R.B. 9 (March 31, 1997), and Rev. Proc. 98-25, 1998-1 C.B. 689, 1998-11 I.R.B. 7 (March 16, 1998), specify electronic

recordkeeping standards for taxpayers. This regulation closely follows the widely accepted electronic storage standards and requirements set forth in the IRS Rulings previously published.

The derivation of the substantive standards of this interim rule is set forth below.

DERIVATION OF SUBSTANTIVE STANDARDS FOR ELECTRONIC RETENTION OF FORM I-9

Provision of this rule	Source of provision	Description of provision
8 CFR 274a.2(e)(1)	Rev. Proc. 97-22, section 4.01(2)	Requirements for the electronic generation or storage system.
8 CFR 274a.2(e)(2)	Rev. Proc. 97-22, section 4.01(3)	Requires reproduced documents to exhibit a high degree of legibility and readability.
8 CFR 274a.2(e)(3)	Rev. Proc. 97-22, section 4.01(7)	Requires that any electronic storage system must not be subject to any agreement that would limit or restrict the relevant Government personnel's access or use on the premises.
8 CFR 274a.2(e)(4)	Rev. Proc. 97-22, section 4.01(9)	Allows use of multiple electronic systems so long as each meets the relevant standards.
8 CFR 274a.2(e)(5)	Rev. Proc. 97-22, section 4.01(5)	Requires that descriptions of the system, including procedures for use and indexing systems, be maintained and made available upon request.
8 CFR 274a.2(e)(6)	Rev. Proc. 97-22, section 4.02(1)	Defines indexing system that complies with requirements.
8 CFR 274a.2(e)(7)	Rev. Proc. 97-22, section 4.01(10)	Permits reasonable data compression and formatting technologies.
8 CFR 274a.2(e)(8)	Rev. Proc. 97-22, section 4.01(6)	Requirements for inspection.

The widespread application of these IRS standards by the business community is the critical reason for adoption of these standards. This adoption of existing standards should reduce any potential burden on the portion of the business community that decides to utilize electronic retention.

In 17 CFR 240.17a4, the Securities and Exchange Commission (SEC) specifies electronic recordkeeping standards for certain exchange members, brokers and dealers. DHS did not incorporate specific language from the SEC provisions; however, it did find them instructive on how to establish electronic systems. In particular, 8 CFR 240.17a4(f) provides instruction on audit and indexing systems that employers could find helpful when complying with the similar provisions set forth in this regulation.

Also instructive are the regulations of the National Archives and Records Administration found in 36 CFR part 1234, which set standards for federal agencies to use in order to enhance the trustworthiness of an agency's own electronic records and their admissibility as evidence in court proceedings. Employers utilizing electronic retention and signature technology for Form I-9 may find it helpful to review system requirements placed upon Federal agencies. These standards define terms of art related to the requirements of this regulation and provide information that could help guide businesses establish security and maintenance procedures for electronic records.

Using precedents set by 36 CFR part 1234 and other United States Government agencies, this interim rule

provides a reasonable set of standards for creating a trustworthy system for Form I-9 completion and storage. The standards are technology neutral, and allow businesses the flexibility to keep records in a manner consistent with other business processes. They also provide DHS investigators with a framework for inspecting the records and assessing their trustworthiness.

DHS is working with the IRS to develop audit protocols to minimize requirements on businesses to provide information from Forms I-9 when the DHS Bureau of Immigration and Customs Enforcement (ICE) determines that audit and review is necessary.

D. Development of the Rule

After the President signed Public Law 108-390, a working group was established within DHS, consisting of representatives from ICE and USCIS. This regulation was developed, drawing upon work begun under the legacy Immigration and Naturalization Service, as well as relying on standards developed by other Federal agencies utilizing electronic retention and signature methods. On December 10, 2004, at the request of the United States Chamber of Commerce, DHS representatives met with the Electronic I-9 Coalition. This Coalition consisted of representatives from a wide array of business interests. The Chamber of Commerce facilitated the meeting so the Coalition members could express views to DHS regarding the importance of the statute and to offer insight on methods of storage and attestation being contemplated by the business community. DHS representatives listened to the views presented, but

could not offer any guidance on specific aspects of the regulation. DHS has carefully considered the views expressed and, to the extent practical and in the public interest, incorporated those suggestions. There are a number of potential advantages that employers may gain 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 may 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.

On April 26, 2005, a fact sheet was published on the ICE Web site to provide information on the development of the regulation based on IRS Revenue Procedure 97-22. The fact sheet included suggested standards established by IRS, and advantages for using electronic signature and retention of Form I-9.

E. Employer Compliance

An employer that is currently complying with the recordkeeping and retention requirements of current 8 CFR 274.2 is not required to take any additional or different action to comply

with the revised rules. The revised rules offer an additional option. Businesses will be permitted to adopt one or more of a number of different electronic recordkeeping, attestation, and retention systems that are compliant with the existing IRS standards.

For example, a small business may wish to download and retain .pdf versions of the employment verification record. DHS made this system available on the USCIS Web site.

Employers who already utilize electronic data recordkeeping as part of their accounting and tax functions may expand those functions to include the employment verification process. As long as the electronic records system remains IRS-compliant, the system will be ICE-compliant.

F. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism affects that might result from this proposed rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the street at the address noted above by making an appointment with the individual listed as the individual to contact for further information.

II. Regulatory Requirements

A. Administrative Procedure Act (Good Cause Exception)

Implementation of this rule as an interim rule effective on June 15, 2006, with a request for public comment after the effective date of the rule is based upon the "good cause" exceptions found under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B) and (d)(3). DHS has determined that delaying implementation of this rule until after a period for public notice and

comment, analysis of the public comments (if any), preparation of a final rule, and providing a delayed post-publication effective date of at least 30 days, are impracticable and contrary to the public interest for the following reasons:

This regulation adopts existing, widely-utilized standards for electronic recordkeeping to permit any employer who is required to retain Form I-9, to retain that form in an electronic format. Because of the widespread application of the same rules required to establish taxable income and other matters within the jurisdiction of the IRS in the larger accounting context, it is impractical to adopt differing rules for a specific set of employment forms. Accordingly, providing an opportunity for notice and comment on whether to adopt such widely accepted standards is impractical and unnecessary. Also, the rule provides additional optional methods for complying with an existing requirement. The methods may be utilized or not utilized, in the discretion of the employer. Therefore, a delayed effective date is not necessary.

DHS recognizes that the effective date of the underlying statute authorizing electronic retention of Form I-9 was April 28, 2005. DHS will not require that forms created between that date and the effective date of the rule must comply with this rule. If an audit of such records is required, DHS will permit the employer to provide the forms in paper form; this rule does not require that any employer use an electronic record keeping system.

Moreover, as far as DHS can determine at this time, "off the shelf" computer programs and commercial automated data processing systems in use comply with the standards required by this rule. DHS is not aware of systems that would not immediately be useable under the regulations.

Accordingly, DHS finds that no employer required to retain Form I-9 would be adversely affected by the adoption of this rule without pre-promulgation notice and comment or a delayed effective date.

DHS nevertheless invites comments on this interim rule and will consider all timely comments in the preparation of a final rule. In particular, DHS is interested in identifying whether any existing systems for electronic record keeping do not comply with these standards in order to adjust the standards or provide a means to resolving any discrepancies.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that DHS conduct an RFA

analysis when an agency is "required by section 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule." 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore, no RFA analysis under 5 U.S.C. 603 is required for this rule.

C. Unfunded Mandates Reform Act of 1995

This interim rule will not result in an expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim rule will not result in an annual effect of \$100 million or more on the economy; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Since utilizing electronic signature and storage technologies are optional, DHS expects that small businesses will only choose electronic methods if they will save costs and/or lessen overall burden. Providing this option should, therefore, have a net cost-saving effect to small businesses.

E. Executive Order 12866 (Regulatory Planning and Review)

This interim rule is considered by DHS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the rule has been submitted to the Office of Management and Budget (OMB) for review.

DHS has assessed both the cost and benefits of this interim rule as required by Executive Order 12866 section 1(b)(6), and has made a reasoned determination that the benefits of this interim rule justify its costs to the public and Government. In fact, DHS anticipates that both the public and

Government will experience a net cost savings as a result of this rule. Whether to store Forms I-9 in an electronic format will be within the discretion of the employer or the recruiter or referrer for a fee—those that are already required under 8 CFR 274a.2 to retain the Forms I-9.

The number of Forms I-9 maintained throughout the country is extremely large. Storage of Forms I-9 to meet the statutory retention requirement may require the employer to make a significant investment in personnel and storage space. Currently, storage costs for the paper Form I-9 vary, depending on the storage facility used and the number of Forms I-9 that must be stored. DHS believes that Form I-9 storage costs are highest with large employers or those who have a high employee attrition rate. At an estimated employer total labor cost of \$20 per hour, employer burden savings are estimated to be \$13,000,000 annually. DHS considers this a conservative estimate, which is based on agency experience since the Form I-9 requirement was implemented. Further, we expect that some employers will have capital costs at the outset, depending on the size and complexity of the system chosen. DHS is unable to estimate possible capital costs as these could vary widely as employers implement a range of electronic options, from simply using a scanner to electronically retain a completed Form I-9 to a complex database that facilitates electronic completion, attestation, retention, production, etc.

Employers utilizing electronic Forms I-9 will bear additional costs associated with the documentation that this rule requires to establish the integrity of the electronic Form I-9 process chosen. This is an initial cost to the employer and will vary depending on the sophistication and capacity of each system deployed. The documentation necessary should accompany the software and hardware being used by the employer to implement the electronic Form I-9.

For employers responsible for a significant number of Forms I-9, these costs are expected to be lower than the costs associated with retaining Forms I-9 in paper format. For employers who do not have a large number of Forms I-9 to retain, utilizing an electronic Form I-9 may not be economical. However, the benefits of using an electronic Form I-9 extend beyond storage space. DHS believes that employers using electronic Forms I-9 will improve their accuracy rate. By completing and/or storing Forms I-9 electronically, employers will be better able to self-audit Forms I-9 in

order to detect and correct errors. Employers could create an electronic process for Form I-9 completion that minimizes the possibility of errors. The process could include prompts that preclude the user from completing the rest of the form until an acceptable response is provided. Employers would also be better able to create a reliable system to re-verify an employee's employment authorization when it is about to expire. The forms could be stored on a computer maintained onsite rather than in boxes off-site or other difficult-to-access locations, which DHS has observed when conducting past Form I-9 audits. Electronically stored forms could be presented for review in a matter of minutes rather than the lengthy period required to access paper or microfiche archives. While employers converting to an electronic Form I-9 format may incur initial costs, DHS anticipates that employers who use an electronic Form I-9 system tailored to their needs will generally achieve a net cost-savings in both the short term and long term. In addition, DHS anticipates that its Form I-9 audits will reveal a lower error rate. This should translate into a more efficient employment eligibility verification process for employers and, therefore, a lower incidence of unauthorized workers in the workplace. In recent years, DHS has received many queries from the employer community regarding the possibility of using electronic Forms I-9, with electronic attestation, and storing the forms electronically. Employers have expressed their frustration with the requirement to keep paper forms or maintain the forms on microfilm or microfiche when all other aspects of their businesses have been automated.

For some employers, particularly small employers, retaining the paper Form I-9 may continue to be the most cost-effective and efficient storage method. This rule does not eliminate this option or discourage employers from using it. The paper Form I-9 has the advantage of recording the unique signature of the employee and of the employer representative. This interim rule does not make any change to the current paper Form I-9 process. Additionally, employers can utilize a combination of paper and electronic methods for fulfilling the Form I-9 requirements. For example, an employer can complete the paper Form I-9 and use a scanner to retain electronically. Conversely, an employer can choose to complete the Form I-9 electronically and retain the printed form.

For the Government, amending the regulations to permit the electronic

signatures and retention of Form I-9 has many advantages, particularly with respect to DHS's enforcement efforts. When conducting audits, DHS will be able to receive Forms I-9 electronically, rather than using staff resources to physically appear at a worksite. Once the Form I-9 data is received electronically, DHS will have increased flexibility in how it reviews and analyzes them. DHS will be able to more easily compare data among multiple audits to locate unauthorized workers, and store audit records for easy access. When investigating the presence of unauthorized workers in the workplace, employers violating the immigration laws, or national security risks, DHS will have this information immediately available and with less risk of human error. Additionally, there are circumstances in which the Department of Labor and the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices, access Forms I-9 in order to exercise their responsibilities.

DHS anticipates that its own additional costs will be minimal. DHS currently inputs Form I-9 information manually into a database. If an employer chooses to electronically retain Form I-9, then the rule's requirement that Form I-9 information be presented in a particular electronic format will enable the electronic transfer of information from employer to DHS to be nearly instantaneous. Therefore, rather than invest DHS investigator time in data entry, investigators will be free to conduct more-thorough investigations.

Once employers begin to utilize electronic Forms I-9 and the various electronic Form I-9 storage options, DHS will be able to better gauge what additional or alternative database and storage options would further increase the efficiency of its investigations. At present, DHS will utilize current systems to implement this rule.

This rule does not limit employers to using one system for the storage of Forms I-9 electronically, nor does it identify one method for acceptable electronic signatures. Instead, this rule seeks to set acceptable standards for employers. Electronic signatures can be accomplished using various technologies including, but not limited to, electronic signature pads, Personal Identification Numbers (PIN), biometrics, and "click to accept" dialog boxes. DHS considered specifying acceptable technologies, but rejected this alternative as being too inflexible for employers' needs and economic means. Moreover, to specify a particular technology would require continuous

amendments to the regulations reflecting the rapid changes in technology. DHS concluded that this approach would be impractical and detrimental to employers since it would require continuous and potentially costly changes to employers' business practices.

F. Executive Order 13132 (Federalism)

This interim rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., all Departments are required to submit any reporting or recordkeeping requirements inherent in a rule to the Office of Management and Budget (OMB) for review and approval. This interim rule requires employers to complete the Form I-9 which has been approved for use by OMB (OMB Control Number 1615-0047); it also permits the employer to continue to retain the Form I-9 in paper, microfiche, or microfilm, and allows a new option: to retain the Form I-9 electronically. The DHS believes that storing the I-9 electronically will reduce the burden on businesses by 650,000 hours (see discussion below). Accordingly, DHS submitted the required Paperwork Reduction Change Worksheet (OMB-83C) to the Office of Management and Budget (OMB) reflecting the reduction in burden hours for Form I-9, and the OMB has approved the changes.

DHS estimates that there will be a total of 78,000,000 respondents annually who will complete the required Form I-9 in either paper or electronic format. DHS has estimated that it takes 9 minutes to gather the required evidence to complete the paper Form I-9 and an additional 4 minutes for employer verification, filing and storage. Because this regulation is technology neutral, it is difficult for DHS to estimate the average time required to complete a Form I-9

electronically, as completion methods may vary widely depending upon the range of systems implemented by employers. However, DHS does not believe the time per respondent will change significantly as the documentation required is unchanged. Many businesses could reduce the time burden by using an electronic Form I-9, as the documentation could be collected from an employee in conjunction with other types of personnel forms (*i.e.*, tax withholding forms, insurance and other benefit forms) that require similar personal information.

For employers who choose electronic retention methods for the Form I-9, DHS does expect a burden reduction. DHS previously estimated that employers spend four minutes per form to verify and file. We project that half of the estimated 78,000,000 Forms I-9 completed annually will involve some method of electronic generation or retention. Employers utilizing at least a partial electronic process for retention of the Form I-9 should save a minimum of one minute of burden time per form based on the previous estimate of 4 minutes per form for verification and filing. Based on 39,000,000 Forms I-9, the total labor hours saved would be 650,000 hours annually.

Under 8 CFR 274a.2(e) through (i), any employer who stores Form I-9 electronically or any employer that applies an electronic signature to the Form I-9 must demonstrate that its electronic storage system is properly maintained and protected against tampering, and that any electronic signature can be authenticated. In addition, an employer or entity who chooses to complete and/or retain Forms I-9 electronically must maintain, and make available to the Department upon request, documentation of the business process that: (1) Creates the retained Forms I-9; (2) Modifies and maintains the retained Forms I-9; and (3) Establishes the authenticity and integrity of the Forms I-9, such as audit trails. These additional requirements are considered information collections under the Paperwork Reduction Act. These requirements are reflected in the Paperwork Reduction Change Worksheet (Form OMB 83-C) that has been submitted to OMB and that specifies the estimated net reduction in burden hours that will result from this rule.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 2. Section 274a.2 is amended:

- a. By revising paragraph (a);
- b. By revising paragraph (b)(1)(i)(A);
- c. By revising paragraph (b)(1)(ii)(B);
- d. By revising the last sentence in paragraph (b)(1)(iv);
- e. By revising the last sentence of paragraph (b)(1)(vii);
- f. By revising paragraph (b)(2)(i) introductory text;
- g. By revising paragraph (b)(2)(ii);
- h. By adding paragraph (b)(2)(iv);
- i. By revising paragraph (b)(3);
- j. By adding the term "or electronic images" immediately after "copies" in paragraph (b)(4); and
- k. By adding new paragraphs (e), (f), (g), (h), and (i).

The revisions and additions read as follows:

§ 274a.2 Verification of employment eligibility.

(a) *General.* This section establishes requirements and procedures for compliance by persons or entities when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States.

(1) *Recruiters and referrers for a fee.* For purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470 (29 U.S.C. 1802)).

(2) *Verification form.* Form I-9, Employment Eligibility Verification Form, is used in complying with the requirements of this 8 CFR 274a.1—274a.11. Form I-9 can be in paper or electronic format. In paper format, the Form I-9 may be obtained in limited quantities at USCIS district offices, or ordered from the Superintendent of Documents, Washington, DC 20402. In electronic format, a fillable electronic Form I-9 may be downloaded from <http://www.uscis.gov>. Alternatively, Form I-9 can be electronically generated or retained, provided that the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional

data elements or language are inserted; and the standards specified under 8 CFR 274a.2(e), (f), (g), (h), and (i), as applicable, are met. When copying or printing the paper Form I-9, the text of the two-sided form may be reproduced by making either double-sided or single-sided copies.

(3) *Attestation Under Penalty and Perjury.* In conjunction with completing the Form I-9, an employer or recruiter or referrer for a fee must examine documents that evidence the identity and employment eligibility of the individual. The employer or recruiter or referrer for a fee and the individual must each complete an attestation on the Form I-9 under penalty of perjury.

- (b) * * *
- (1) * * *
- (i) * * *

(A) Completes section 1—"Employee Information and Verification"—on the Form I-9 at the time of hire and signs the attestation with a handwritten or electronic signature in accordance with paragraph (h) of this section; or if an individual is unable to complete the Form I-9 or needs it translated, someone may assist him or her. The preparer or translator must read the Form I-9 to the individual, assist him or her in completing Section 1—"Employee Information and Verification," and have the individual sign or mark the Form I-9 by a handwritten signature, or an electronic signature in accordance with paragraph (h) of this section, in the appropriate place; and

- * * * * *
- (ii) * * *

(B) Complete section 2—"Employer Review and Verification"—on the Form I-9 within three days of the hire and sign the attestation with a handwritten signature or electronic signature in accordance with paragraph (i) of this section.

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(iv) * * * If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or referrer with a photocopy or printed electronic image of the Form I-9, electronic Form I-9, or a Form I-9 on microfilm or microfiche.

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(vii) * * * The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and relate to the individual, re-verify by noting the document's identification number and expiration date, if any, on the Form I-9 and signing the attestation by a handwritten signature or electronic

signature in accordance with paragraph (i) of this section.

- * * * * *
- (2) * * *

(i) A paper (with original handwritten signatures), electronic (with acceptable electronic signatures that meet the requirements of paragraphs (h) and (i) of this section or original paper scanned into an electronic format that meets the requirements of 8 CFR 274a.2(e), (f), and (g)), or microfilm or microfiche copy of the original signed version of the Form I-9 must be retained by an employer or a recruiter or referrer for a fee for the following time periods:

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(ii) Any person or entity required to retain Forms I-9 in accordance with this section shall be provided with at least three days notice prior to an inspection of the Forms I-9 by officers of an authorized agency of the United States. At the time of inspection, Forms I-9 must be made available in their original paper, electronic form, a paper copy of the electronic form, or on microfilm or microfiche at the location where the request for production was made. If Forms I-9 are kept at another location, the person or entity must inform the officer of the authorized agency of the United States of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at an office of an authorized agency of the United States. A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy or printed electronic image of the Form I-9 in lieu of presenting the Form I-9 in its original paper or electronic form or on microfilm or microfiche, as set forth in paragraph (b)(1)(iv) of this section. Any refusal or delay in presentation of the Forms I-9 for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act. No Subpoena or warrant shall be required for such inspection, but the use of such enforcement tools is not precluded. In addition, if the person or entity has not complied with a request to present the Forms I-9, any officer listed in 8 CFR 287.4 may compel production of the Forms I-9 and any other relevant documents by issuing a subpoena. Nothing in this section is intended to limit the subpoena power under section 235(a) of the Act.

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(iv) Paragraphs (e), (f), (g), (h), and (i) of this section specify the standards for electronic Forms I-9.

(3) *Copying of documentation.* An employer, or a recruiter or referrer for a

fee may, but is not required to, copy or make an electronic image of a document presented by an individual solely for the purpose of complying with the verification requirements of this section. If such a copy or electronic image is made, it must be retained with the Form I-9. The copying or electronic imaging of any such document and retention of the copy or electronic image does not relieve the employer from the requirement to fully complete section 2 of the Form I-9. An employer, recruiter or referrer for a fee should not, however, copy or electronically image only the documents of individuals of certain national origins or citizenship statuses. To do so may violate section 274B of the Act.

(4) *Limitation on use of Form I-9.* Any information contained in or appended to the Form I-9, including copies or electronic images of documents listed in paragraph (c) of this section used to verify an individual's identity or employment eligibility, may be used only for enforcement of the Act and 18 U.S.C. 1001, 1028, 1546, or 1621.

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(e) *Standards for electronic retention of Form I-9.* (1) Any person or entity who is required by this section to complete and retain Forms I-9 may complete or retain electronically Form I-9 in an electronic generation or storage system that includes:

- (i) Reasonable controls to ensure the integrity, accuracy and reliability of the electronic generation or storage system;
- (ii) Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored Form I-9, including the electronic signature if used;
- (iii) An inspection and quality assurance program evidenced by regular evaluations of the electronic generation or storage system, including periodic checks of the electronically stored Form I-9, including the electronic signature if used;
- (iv) In the case of electronically retained Forms I-9, a retrieval system that includes an indexing system that permits searches by any data element; and
- (v) The ability to reproduce legible and readable hardcopies.

(2) All documents reproduced by the electronic retention system must exhibit a high degree of legibility and readability when displayed on a video display terminal or when printed on paper, microfilm, or microfiche. The term "legibility" means the observer must be able to identify all letters and

numerals positively and quickly, to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize any group of letters or numerals that form words or numbers as those words or complete numbers. The employer, or recruiter or referrer for a fee, must ensure that the reproduction process maintains the legibility and readability of the electronically stored document.

(3) An electronic generation or storage system must not be subject, in whole or in part, to any agreement (such as a contract or license) that would limit or restrict access to and use of the electronic generation or storage system by an agency of the United States, on the premises of the employer, recruiter or referrer for a fee (or at any other place where the electronic generation or storage system is maintained), including personnel, hardware, software, files, indexes, and software documentation.

(4) A person or entity who chooses to complete or retain Forms I-9 electronically may use more than one electronic generation or storage system. Each electronic generation or storage system must meet the requirements of this paragraph, and remain available as long as required by the Act and these regulations.

(5) For each electronic generation or storage system used, the person or entity retaining the Form I-9 must maintain, and make available upon request, complete descriptions of:

(i) The electronic generation and storage system, including all procedures relating to its use; and

(ii) The indexing system.

(6) An "indexing system" for the purposes of paragraphs (e)(1)(iv) and (e)(5) of this section is a system that permits the identification and retrieval for viewing or reproducing of relevant books and records maintained in an electronic storage system. For example, an indexing system might consist of assigning each electronically stored document a unique identification number and maintaining a separate database that contains descriptions of all electronically stored books and records along with their identification numbers. In addition, any system used to maintain, organize, or coordinate multiple electronic storage systems is treated as an indexing system. The requirement to maintain an indexing system will be satisfied if the indexing system is functionally comparable to a reasonable hardcopy filing system. The requirement to maintain an indexing system does not require that a separate electronically stored books and records description database be maintained if

comparable results can be achieved without a separate description database.

(7) Any person or entity choosing to retain completed Forms I-9 electronically may use reasonable data compression or formatting technologies as part of the electronic storage system as long as the requirements of 8 CFR 274a.2 are satisfied.

(8) At the time of an inspection, the person or entity required to retain completed Forms I-9 must:

(i) Retrieve and reproduce (including printing copies on paper, if requested) only the Forms I-9 electronically retained in the electronic storage system and supporting documentation specifically requested by an agency of the United States, along with associated audit trails. Generally, an audit trail is a record showing who has accessed a computer system and the actions performed within or on the computer system during a given period of time, and

(ii) Provide a requesting agency of the United States with the resources (e.g., appropriate hardware and software, personnel and documentation) necessary to locate, retrieve, read, and reproduce (including paper copies) any electronically stored Forms I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records.

(iii) Provide, if requested, any reasonably available or obtainable electronic summary file(s), such as a spreadsheet, containing all of the information fields on all of the electronically stored Forms I-9 requested by a requesting agency of the United States.

(f) *Documentation.*

(1) A person or entity who chooses to complete and/or retain Forms I-9 electronically must maintain and make available to an agency of the United States upon request documentation of the business processes that:

(i) Create the retained Forms I-9;

(ii) Modify and maintain the retained Forms I-9; and

(iii) Establish the authenticity and integrity of the Forms I-9, such as audit trails.

(2) Insufficient or incomplete documentation is a violation of section 274A(a)(1)(B) of the Act.

(3) Any officer listed in 8 CFR 287.4 may issue a subpoena to compel production of any documentation required by 8 CFR 274a.2. Nothing in this section is intended to limit the subpoena power of an agency of the United States under section 235(a) of the Act.

(g) *Security.*

(1) Any person or entity who elects to complete or retain Forms I-9 electronically must implement an effective records security program that:

(i) Ensures that only authorized personnel have access to electronic records;

(ii) Provides for backup and recovery of records to protect against information loss, such as power interruptions;

(iii) Ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and

(iv) Ensure that whenever the electronic record is created, accessed, viewed, updated, or corrected, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

(2) An action or inaction resulting in the unauthorized alteration, loss, or erasure of electronic records, if it is known, or reasonably should be known, to be likely to have that effect, is a violation of section 274A(b)(3) of the Act.

(h) *Electronic signatures for employee.*

(1) If a Form I-9 is completed electronically, the attestations in Form I-9 must be completed using a system for capturing an electronic signature that meets the standards set forth in this paragraph. The system used to capture the electronic signature must include a method to acknowledge that the attestation to be signed has been read by the signatory. The electronic signature must be attached to, or logically associated with, an electronically completed Form I-9. In addition, the system must:

(i) Affix the electronic signature at the time of the transaction;

(ii) Create and preserve a record verifying the identity of the person producing the signature; and

(iii) Provide a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

(2) Any person or entity who is required to ensure proper completion of a Form I-9 and who chooses electronic signature for a required attestation, but who has failed to comply with the standards set forth in this paragraph, is deemed to have not properly completed the Form I-9, in violation of section 274A(a)(1)(B) of the Act and 8 CFR 274a.2(b)(2).

(i) *Electronic signatures for employer, recruiter or referrer, or representative.* If a Form I-9 is completed electronically, the employer, the recruiter or referrer for a fee, or the representative of the

employer or the recruiter or referrer, must attest to the required information in Form I-9. The system used to capture the electronic signature should include a method to acknowledge that the attestation to be signed has been read by the signatory. Any person or entity who has failed to comply with the criteria established by this regulation for electronic signatures, if used, and at the time of inspection does not present a properly completed Form I-9 for the employee, is in violation of section 274A(a)(1)(B) of the Act and 8 CFR 274a.2(b)(2).

Dated: June 8, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6-9283 Filed 6-14-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS-2006-0020]

States Approved To Receive Stallions and Mares From CEM-Affected Regions; Indiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On April 27, 2006, the Animal and Plant Health Inspection Service published a direct final rule. (See 71 FR 24806-24808.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Indiana to the lists of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis. We did not receive any written adverse comments regarding the addition of Indiana to those lists or written notice of intent to submit adverse comments in response to the direct final rule.

DATES: *Effective Date:* The effective date of the direct final rule is confirmed as June 26, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Freeda E. Isaac, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

Authority: 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6-9350 Filed 6-14-06; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE249; Special Conditions No. 23-189-SC]

Special Conditions: Societe de Motorisation Aeronautiques (SMA) Engines, Cessna Models 182Q and 182R: Installation of Model SR305-230 Aircraft Diesel Engine for Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: This proposes special conditions for the Cessna Models 182Q and 182R airplanes with a Societe de Motorisation Aeronautiques (SMA) Model SR305-230 aircraft diesel engine (ADE). The supplemental type certificate for these airplanes will have a novel or unusual design feature associated with the installation of an aircraft diesel engine that uses an electronic engine control system instead of a mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 7, 2006. Comments must be received on or before July 17, 2006.

ADDRESSES: Comments on the special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE-7, Attention: Rules Docket, Docket No. CE249, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE249. Comments may be inspected in the Rules Docket

weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816-329-4135, fax: 816-329-4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE249." The postcard will be date stamped and returned to the commenter.

Background

On March 19, 2004, the Societe de Motorisation Aeronautiques Engines, Inc. applied for Supplemental Type Certification of Cessna Models 182Q and 182R airplanes for the installation of an SMA Model SR305-230. The airplane is powered by a SMA Model SR305-230 that is equipped with an electronic engine control system with full authority capability in these airplanes.