

a *TEI certifying family member* and cover other *TEI family members*.

(d) Cancellations under this section will become effective at the end of the pay period that you submit your request.

**Subpart G—Annuitants and Compensationers**

■ 21. Revise § 894.702 to read as follows:

**§ 894.702 May I participate in open season and make changes to my enrollment as an annuitant or compensationer?**

Yes. *Annuitants* and *compensationers* may participate in open season and make enrollment changes under the

same circumstances as active *employees* or employees of the United States Postal Service.

■ 22. Amend § 894.704 by revising the section heading and paragraphs (a) and (b) to read as follows:

**§ 894.704 What happens if I retire and then come back to work for the Federal Government or the United States Postal Service?**

(a) If you have FEDVIP coverage as an *annuitant*, and you become reemployed in an eligible position in Federal service or United States Postal Service, you must contact the *Administrator* so it can send the request for allotments to your agency so your agency can start making the allotments from your pay.

(b) If you did not enroll in FEDVIP coverage as an *annuitant* and become reemployed in an eligible Federal position or United States Postal Service, you have 60 *days* to enroll in FEDVIP.

\* \* \* \* \*

§§ 894.101, 894.301, 894.302, 894.308, 894.404, 894.405, 894.406, 894.510, 894.601, 894.704, and 894.901 [Amended]

■ 23. In addition to the amendments above to 5 CFR part 894, in the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Section	Remove	Add
§ 894.101 introductory text	enrollee	<i>enrollee.</i>
§ 894.101, definition of “Acquiring an eligible child”, paragraph (4)	enrollee	<i>enrollee.</i>
§ 894.101, definition of “Acquiring an eligible child”, paragraph (6)	enrollee’s	<i>enrollee’s.</i>
§ 894.101, definition of “Acquiring an eligible child”, paragraph (6)	enrollee	<i>enrollee.</i>
§ 894.101, definition of “Child”, paragraph (1)(iii)	enrollee	<i>enrollee.</i>
§ 894.101, definition of “Covered position”	employee	<i>employee.</i>
§ 894.101, definition of “Dependent”	enrollee	<i>enrollee.</i>
§ 894.101, definition of “Employee”	employee additionally	<i>employee additionally.</i>
§ 894.101, definition of “Employee”	employee of the District	<i>employee of the District.</i>
§ 894.101, definition of “Enrollment reconsideration”	Administrator’s	<i>Administrator’s.</i>
§ 894.101, definition of “Recognized natural child”	enrollee	<i>enrollee.</i>
§ 894.101, definition of “Regular parent-child relationship”	enrollee	<i>enrollee.</i>
§ 894.301(c)(1)	employee	<i>employee.</i>
§ 894.302(d)	employees	<i>employees.</i>
§ 894.302(k)(1) and (2)	employee	<i>employee.</i>
§ 894.308(a) and (b) introductory text	enrollee	<i>enrollee.</i>
§ 894.308(b)(2)	enrollee’s	<i>enrollee’s.</i>
§ 894.308(b)(3)	enrollee	<i>enrollee.</i>
§ 894.404	employees	<i>employees.</i>
§ 894.405(a)	Administrator	<i>Administrator.</i>
§ 894.405(c)	enrollee	<i>enrollee.</i>
§ 894.406(c)	enrollee	<i>enrollee.</i>
§ 894.510(c)(1)	type of enrollment	<i>type of enrollment.</i>
§ 894.601(b)	enrollee	<i>enrollee.</i>
§ 894.704(c)	employee	<i>employee.</i>
§ 894.901(a) and (b)	enrollees	<i>enrollees.</i>

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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 274a**

[DHS Docket No. ICEB–2021–0010]

RIN 1653–AA86

**Optional Alternative 1 to the Physical Document Examination Associated With Employment Eligibility Verification (Form I–9)**

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** Authorization of alternative procedure.

**SUMMARY:** U.S. Immigration and Customs Enforcement is announcing the authorization of an optional alternative procedure to the in-person physical examination of the documentation presented by individuals seeking to establish identity and employment authorization for the purpose of completing the Form I–9, Employment Eligibility Verification (Form I–9).

**DATES:** The alternative procedure is available beginning on August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sharon Hageman, Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW,

Washington, DC 20536. Telephone 202–732–6960 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

*A. Final Rule*

This action accompanies a DHS final rule, *Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I–9)*, that appears in this edition of the **Federal Register**. Under the rule, the Secretary of Homeland Security (the Secretary) may, as an optional alternative to the in-person physical document examination (physical examination) method employers have followed as part of the Form I–9 process set forth in current regulations, authorize alternative documentation examination procedures.

The Secretary may authorize alternative documentation examination procedures with respect to some or all employers as part of a pilot program, or upon a determination that such procedures offer an equivalent level of security, or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services (pursuant to Section 319 of the Public Health Service Act) or a national emergency declared by the President (pursuant to Sections 201 and 301 of the National Emergencies Act). Consistent with that rule and following consideration of the public comments received on the notice of proposed rulemaking (NPRM) that preceded issuance of the final rule, this notice introduces the parameters of an alternative procedure to complete the Form I-9.<sup>1</sup>

### B. Form I-9 Physical Examination Requirements

Separate from the Form I-9 flexibilities that were announced by DHS during the COVID-19 national emergency,<sup>2</sup> current regulations for the Form I-9 require that, within three business days after the first day of employment (*i.e.*, the first day of work in exchange for wages or other remuneration), employers must physically examine the documentation presented by new employees from the Lists of Acceptable Documents (“Form I-9 documents”),<sup>3</sup> or an acceptable receipt,<sup>4</sup> to ensure that the documentation presented reasonably appears to be genuine and to relate to the individual who presents it. *See* 8 CFR 274a.2(b)(1)(ii)(A), (b)(1)(vi). Employers must then complete Section

2, “Employer Review and Verification,” of the Form I-9. *See* 8 CFR 274a.2(b)(1)(ii)(B). If reverification is required, the employee or referred individual must present a document that shows continued employment authorization or a new grant of employment authorization. *See* 8 CFR 274a.2(b)(1)(vii). If the employer rehires an individual for whom it previously completed the Form I-9 and complied with the corresponding verification requirements, the employer may inspect the original Form I-9. *See* 8 CFR 274a.2(c). If the rehired employee’s employment authorization, as noted on the original Form I-9, is expired when the individual is rehired, the employer must conduct reverification. *See* 8 CFR 274a.2(c). Employers cannot discriminate against employees based on citizenship, immigration status, or national origin during the Form I-9 process. *See, e.g.*, 8 U.S.C. 1324b.

Currently, employers who physically examine the documentation presented by new employees may choose to make and retain copies or scans of the documentation presented by employees for the purpose of completing the Form I-9. However, employers that use E-Verify *must* make and retain copies of documentation presented by employees for List A of the Form I-9. If copies of an employee’s Form I-9 documents are retained for reasons unrelated to E-Verify requirements, they must be retained for all employees, regardless of actual or perceived national origin, citizenship, or immigration status, or the employer may risk violating anti-discrimination laws.<sup>5</sup> Copies or electronic images of documents must be retrievable, consistent with DHS’s standards on electronic retention, documentation, security, and electronic signatures for employers and employees, as specified in 8 CFR 274a.2(b)(3). Copies or electronic images of the employee’s Form I-9 documents must be retained with the corresponding Form I-9 or with the employee’s records according to the electronic records retention standards specified in 8 CFR 274a.2(b)(3) and be made available at the time of a Form I-9 audit by DHS.

DHS provides instructions and guidance to employers on how to complete the Form I-9 in the Form I-9 instructions and in other related guidance on the I-9 Central website,

including additional guidance in the M-274, *Handbook for Employers*.<sup>6</sup>

## II. Core Components of the Alternative Procedure for Document Examination

Under applicable regulations, employers or their authorized representatives must physically examine each original document from the employee (unless alternative procedures under 8 CFR 274a.2(b)(1)(ix) apply) to determine that the documentation reasonably appears to be genuine and to relate to the person presenting it. *See* 8 CFR 274a.2(b)(1)(ii)(A). Generally, the employer or employer’s authorized representative examines these documents in the physical presence of the employee presenting them.<sup>7</sup>

Physically examining identity and employment authorization documents offers important security benefits to enable employers to assess if the documents reasonably appear to be genuine and to relate to the individual who presents them. Employers who physically examine documents can touch and more clearly see identification security features like holograms and microprinting, as well as the card stock on which certain documents are printed.

Given the important benefits of physical inspection, DHS is proceeding with an alternative procedure, described more fully below, that does not require the physical examination of acceptable documents but instead includes additional requirements to offer at least an equivalent level of security, in exercise of the Secretary’s authority at 8 CFR 274a.2(b)(1)(ix)(B).

### A. Employers Qualified To Use the Alternative Procedure

At this time, the alternative procedure is available only to qualified employers, meaning those employers who are participants in good standing, in E-Verify. A participant in good standing in E-Verify is an employer that has enrolled in E-Verify with respect to all hiring sites in the United States that use the alternative procedure; is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continues to be a participant in good standing in E-Verify at any time during which the employer uses the alternative procedure. If a qualified employer

<sup>1</sup> This notice incorporates the statement of basis and purpose and discussion of public comments contained in the accompanying rule.

<sup>2</sup> The last announcement, issued on October 11, 2022, extended the Form I-9 flexibilities first announced in March 2020 until July 31, 2023.

<sup>3</sup> The Lists of Acceptable Documents is part of Form I-9 at <https://www.uscis.gov/sites/default/files/document/forms/i-9-paper-version.pdf> (last visited on June 1, 2023).

<sup>4</sup> Occasionally, employees may present a “receipt” in place of a List A, B, or C document. An acceptable receipt is valid for a specified period of time so an employer can complete the Form I-9. Employers cannot accept receipts if employment will last less than three days. An acceptable receipt may be a receipt for the application to replace a List A, B, or C document that was lost, stolen, or damaged; the arrival portion of Form I-94 (Arrival/Departure Record) with a temporary Form I-551 stamp and a photograph of the individual; the departure portion of Form I-94 (Arrival/Departure Record) with an unexpired refugee admission stamp; or an admission code of “RE.” *See* USCIS, *Handbook for Employers, M-274*, available at <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/40-completing-section-2-of-form-i-9/43-acceptable-receipts> (last visited May 24, 2023).

<sup>5</sup> *See* *Handbook for Employers M-274*, section 9.2 Retaining Copies of Form I-9 Documents, available at <https://www.uscis.gov/i-9-central/handbook-for-employers-m-274/90-retaining-form-i-9/92-retaining-copies-of-form-i-9-documents> (last visited May 26, 2023).

<sup>6</sup> Available at <https://www.uscis.gov/i-9-central> (last visited May 24, 2023).

<sup>7</sup> *See* M-274, *Handbook for Employers*, § 4.0 (Completing Section 2 of Form I-9).

chooses to offer the alternative procedure to new employees at an E-Verify hiring site, that employer must do so consistently for all employees at that site. However, a qualified employer may choose to offer the alternative procedure for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose or treat employees differently based on their citizenship, immigration status, or national origin.<sup>8</sup> Qualified employers who use an alternative procedure with an employee must retain a clear and legible copy of all documents presented by the employee seeking to establish identity and employment eligibility for the Form I-9.<sup>9</sup>

In part because DHS lacks data to assess the full impact of the Form I-9 COVID-19 flexibilities, DHS is limiting this alternative procedure to employers who are E-Verify participants in good standing. Such employers must confirm the identity and employment authorization of their newly hired employees by using E-Verify to electronically compare information from the Form I-9 to records available to DHS. Specifically, E-Verify electronically compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to DHS and the SSA to confirm the validity of identity and employment authorization documents. E-Verify confirms List A documents that evidence identity and employment authorization, such as U.S. passports, Permanent Resident Cards, and Employment Authorization Documents (EADs), and electronically sends the photograph from the official record to the employer to compare with the photo on the document provided by the employee. E-Verify requires all cases to include the employee's Social Security number (SSN), and E-Verify electronically compares employer-entered data with SSA records. E-Verify requires that all List B identity documents presented by employees contain a photo and user data sources

<sup>8</sup> See, e.g., 8 U.S.C. 1324b(a)(1), which prohibits employment discrimination based on citizenship, immigration status, or national origin.

<sup>9</sup> E-Verify employers who do not apply the alternative procedure are only required to retain a photocopy of the following documents with an employee's Form I-9 if the employee chooses to present them: U.S. passport, U.S. passport card, Form I-551, Permanent Resident Card, Form I-766, Employment Authorization Document, available at <https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf> (last visited May 25, 2023).

available to DHS to electronically verify the identity information provided on most state-issued identification cards and driver's licenses. Ongoing user support is available in the form of webinars, E-Verify announcements communicated through E-Verify's robust distribution list, and a comprehensive resource web page. In addition to its normal roster of user training, E-Verify also grants enrolled employers access to training about employee rights and responsibilities.<sup>10</sup>

### B. Document Retention

Qualified employers who choose to use the alternative procedure must retain a clear and legible copy of all documents presented by the employee seeking to establish identity and employment eligibility for the Form I-9 under the alternative procedure.<sup>11</sup> Retained document copies allow DHS to assess the documents that were presented to, and remotely examined by, the employer in the event of an audit, and help to determine whether the documents examined by the employer reasonably appeared on their face to be genuine and to relate to the employee, that the employer has not discriminated against employees, and that the employer has complied with other Form I-9 requirements as required by statute (8 U.S.C. 1324a(b)(1)(A)(ii)) and regulation (8 CFR 274a.2(b)(1)(ii)(A)).

### C. Training

Employers who enroll in E-Verify and any users who manage and create E-Verify cases must complete an E-Verify tutorial that includes fraud awareness and anti-discrimination training. The tutorial is free and accessible as part of the E-Verify enrollment process to any users who manage and create E-Verify cases. Anti-discrimination training provides an overview of how to avoid discrimination in the Form I-9 and E-Verify processes, such as by requesting more, different, or specific Form I-9 documents, or rejecting valid documentation, because of an employee's citizenship, immigration

<sup>10</sup> The Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division also has a free employer hotline, 1-800-255-8155, and educational resources for employers to help them avoid unlawful discrimination, available at <https://www.justice.gov/ier>.

<sup>11</sup> E-Verify-enrolled employers who do not use the alternative procedure are only required to retain a photocopy of the following documents with an employee's Form I-9 if the employee chooses to present them: U.S. passport, U.S. passport card, Form I-551, Permanent Resident Card, Form I-766, Employment Authorization Document, available at <https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf> (last visited May 25, 2023).

status, or national origin. The fraud awareness training provides an overview of fraud indicators in identity and employment eligibility documentation and describes how an employer can examine Form I-9 documentation at various angles to help identify common document anomalies. Employers can do this as part of a physical examination process or a remote examination process.

### III. Determination

DHS has determined that the measures outlined in this notice, including (1) limiting participation to E-Verify participants in good standing; (2) expanding document retention requirements to include clear and legible copies of all presented documents for the Form I-9; (3) requiring training through E-Verify; and (4) conducting a live video interaction after the employee transmits a copy of the document(s) to the employer, offers at least an equivalent level of security as compared to physical document examination. These requirements appropriately mitigate the risk of undetected fraud or error and labor exploitation, position employers to ascertain whether the documents presented reasonably appear on their face to be genuine and to relate to the individual who presents them, ensure employers can confirm the validity of document information and therefore confirm employment eligibility via E-Verify, and provide additional accountability in the event of an audit. DHS believes these requirements appropriately address concerns about the potential for increased fraud in the Form I-9 process while allowing some employers to have access to this alternative procedure.

DHS currently lacks data on rates of fraud or error associated with use of the alternative procedure as it relates to the baseline physical inspection requirements. DHS has also been unable to determine whether any observable change in rates of fraud or error occurred during the COVID-19 flexibilities period. The requirements for the flexibilities first announced in March 2020 also differ from the requirements for this alternative procedure and are thus not directly comparable. Although DHS is confident that the alternative procedure offers at least an equivalent level of security, DHS will monitor and evaluate data and information from ICE Form I-9 audits after the implementation of this alternative procedure to assess any measurable impacts to system integrity (such as error or fraud rates). Based on this information, the Secretary may

announce new procedures or requirements, or implement a pilot program to collect further data, or seek public comment thereon, as appropriate, in the **Federal Register**.

#### IV. Description of Alternative Procedure

##### A. What does the alternative procedure entail?

Within three business days of an employee's first day of employment, a qualified employer (or an authorized representative acting on such an employer's behalf, such as a third-party vendor) who chooses to use the alternative procedure must:

1. Examine copies (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt<sup>12</sup> to ensure that the documentation presented reasonably appears to be genuine;

2. Conduct a live video interaction with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and related to the individual. The employee must first transmit a copy of the document(s) to the employer (per Step 1 above) and then present the same document(s) during the live video interaction;

3. Indicate on the Form I-9, by completing the corresponding box, that an alternative procedure was used to examine documentation to complete Section 2 or for reverification, as applicable;<sup>13</sup>

4. Retain, consistent with applicable regulations,<sup>14</sup> a clear and legible copy of the documentation (front and back if the documentation is two-sided);<sup>15</sup> and

5. In the event of a Form I-9 audit or investigation by a relevant federal

<sup>12</sup> For a description of acceptable receipts, see footnote 4.

<sup>13</sup> The new edition of the Form I-9 is effective on August 1, 2023. Employers may continue to use the 10/21/2019 edition of the Form I-9 from August 1, 2023 until the end of October 31, 2023. As described elsewhere in this rule and accompanying notice, if during this grace period an employer uses the 10/21/2019 edition of the Form I-9 for the alternative procedure, the employer must indicate its use of the alternative procedure by writing "alternative procedure" in the Additional Information field in Section 2. No later than November 1, 2023, employers must begin using the August 1, 2023 edition of the Form I-9. When using the August 1, 2023, edition of the Form I-9, an employer must indicate their use of the alternative procedure by completing the corresponding box in Section 2 or in the section corresponding to reverification (which is Supplement B in the August 1, 2023 edition of Form I-9), as appropriate.

<sup>14</sup> See 8 CFR 274a.2(b)(3), (e), (f), (g).

<sup>15</sup> Employers must retain and store the Form I-9 for three years after the date of hire, or for one year after employment ends, whichever is later. See 8 U.S.C. 1324a(b)(3); 8 CFR 274a.2(b)(2). Additional information for employers and employees about the Form I-9 is available at <https://www.uscis.gov/i-9>.

government official, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee for document examination in connection with the employment eligibility verification process.<sup>16</sup>

##### B. Which employers are qualified to use the alternative procedure?

At this time, employers who are participants in good standing in E-Verify are qualified to use the alternative procedure. A participant in good standing in E-Verify in this context refers to an employer that has enrolled in E-Verify with respect to all hiring sites in the United States that use the alternative procedure; is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and continues to be enrolled and a participant in good standing in E-Verify at any time during which the employer uses the alternative procedure.

##### C. Must qualified employers using the alternative procedure use E-Verify to create cases?

Yes. Once enrolled in E-Verify, employers will be required to create a case for all newly hired employees,<sup>17</sup> whether or not the alternative procedure is used, at each hiring site that is enrolled in E-Verify, in accordance with the E-Verify Memorandum of Understanding.

E-Verify employers will be required to follow all applicable requirements, such as requirements imposed by the Federal Acquisition Regulation (FAR) E-Verify clause<sup>18</sup> for certain contracts or federal contractors. E-Verify employers must also avoid unlawful discrimination in the E-Verify process such as treating employees differently based on their citizenship, immigration status, or national origin, in order to avoid violating 8 U.S.C. 1324b and remain in compliance with E-Verify requirements.

##### D. May a qualified employer continue to examine documents physically instead of using the alternative procedure?

Yes. Use of this alternative procedure is entirely optional. Nothing in the alternative procedure prevents qualified employers from physically examining documents for the Form I-9.

<sup>16</sup> See 8 U.S.C. 1324a, 1324b; 8 CFR part 274a.; 28 CFR part 44.

<sup>17</sup> E-Verify participants will not create a case in E-Verify when Form I-9 reverification is completed for an existing employee, including situations when a case was never created for such employee.

<sup>18</sup> See 48 CFR Subpart 22.18.

##### E. May a qualified employer offer the alternative procedure to only some employees?

A qualified employer does not need to use the alternative procedure, but if a qualified employer chooses to offer the alternative procedure to some employees at an E-Verify hiring site, that employer must do so consistently for all employees at that site. However, a qualified employer may choose to offer the alternative procedure for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose or treat employees differently based on a protected characteristic.<sup>19</sup> Under no circumstances can employers unlawfully discriminate, such as by deciding who is eligible for the alternative procedure based on a protected characteristic.

##### F. Can all employers take advantage of this alternative procedure?

No. At this time, only employers who are participants in good standing in E-Verify are eligible to use the alternative procedure.

##### G. Are there special Form I-9 reporting requirements associated with the alternative procedure?

Yes, as noted above, qualified employers must indicate by completing the corresponding box, on the Form I-9, that an alternative procedure was used to examine documentation for either Section 2 or when conducting reverification.

##### H. Are there additional document retention requirements associated with the alternative procedure?

Yes, as noted above, qualified employers applying the alternative procedure must retain clear and legible copies of all documents presented by the employee seeking to establish identity and employment eligibility for the Form I-9 and, in the event of an audit, provide access to these copies upon request. The alternative procedure retention requirement applies only to employees for whom the employer used the alternative procedure, not all employees of the employer.

##### I. When does the alternative procedure go into effect?

Qualified employers may use the alternative procedure starting on August

<sup>19</sup> See, e.g., 8 U.S.C. 1324b(a)(1), which prohibits employment discrimination based on citizenship, immigration status, or national origin.

1, 2023. Except as outlined in Question N below, employers cannot apply the alternative procedure to employees hired prior to the effective date of this notice. Other employers (those not enrolled in E-Verify) may do so after becoming a participant in good standing in E-Verify by enrolling and receiving the required training.

*J. How long will the alternative procedure be available?*

The alternative procedure described in this document does not expire. However, DHS may amend or cancel it upon the Secretary's determination that doing so is necessary to maintain an equivalent level of security or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services pursuant to Section 319 of the Public Health Service Act, or a national emergency declared by the President pursuant to Sections 201 and 301 of the National Emergencies Act. The Secretary will announce any such changes to this alternative procedure, or seek public comment thereon, as appropriate, in the **Federal Register**.

*K. If the employee does not want the employer to apply the alternative procedure with respect to that employee, can qualified employers refuse to perform physical document examination?*

No, qualified employers must allow employees who are unable or unwilling to submit documentation using the alternative procedure to submit documentation for physical examination. Nothing in the alternative procedure prevents an employer from physically examining documents when requested to do so by an employee.

*L. What methods of document verification are acceptable?*

To determine whether the documentation reasonably appears to be genuine, the qualified employer (or an authorized representative acting on the employer's behalf, such as a third-party vendor) must examine a copy of each document presented by the employee. In addition, the qualified employer must conduct a live video interaction with the employee who presents the document(s) to ensure that the documentation relates to the employee. The employee must first transmit a copy of the document(s) to the employer and then present the same document(s) during the live video interaction.

*M. Can qualified employers that were enrolled in E-Verify during the COVID-19 temporary flexibilities use this alternative procedure to satisfy the requirement to physically examine Form I-9 documentation that had been examined remotely under the COVID-19 flexibilities?<sup>20</sup>*

Yes, if certain conditions are met. Qualified employers that (1) were enrolled in E-Verify at the time they performed a remote examination of an employee's Form I-9 documentation for Section 2 or reverification while using the COVID-19 flexibilities, (2) created an E-Verify case for that employee (except for reverification), and (3) performed the remote inspection between March 20, 2020 and July 31, 2023, can use the alternative procedure to satisfy the required physical examination of the employee's documents for that Form I-9. Such employers should not create a new case in E-Verify.

All employers that use the alternative procedure instead of physical examination as described above must follow the steps of the alternative procedure and add "alternative procedure" with the date of examination (*i.e.*, the date the employer performed a live video interaction as required under the alternative procedure) to the Section 2 Additional Information field on the Form I-9 or in Section 3, as appropriate.<sup>21</sup> As noted in Question E above, under no circumstances can employers unlawfully discriminate, such as by deciding who is eligible for this use of the alternative procedure based on a protected characteristic.

Employers who were not enrolled in E-Verify at the time they initially performed a remote examination of an employee's documents (*i.e.*, within three business days of the employee's first day of employment) under the COVID-19 flexibilities between March 20, 2020 and July 31, 2023, are required to physically examine the employee's Form I-9 documents in the employee's physical presence. As previously announced, such physical examination

<sup>20</sup> See "ICE announces extension, new employee guidance to I-9 compliance flexibility," U.S. Immigration and Customs Enforcement (Effective Apr. 1, 2021), available at <https://www.ice.gov/news/releases/ice-announces-extension-new-employee-guidance-i-9-compliance-flexibility> (last visited May 20, 2023).

<sup>21</sup> Additional information related to flexibility in Form I-9 requirements due to COVID-19 is available at <https://www.uscis.gov/i-9-central/form-i-9-related-news/questions-and-answers-related-to-covid-19> (last visited June 29, 2023).

must be completed no later than August 30, 2023.<sup>22</sup>

*N. Audits and Evaluating the Alternative Procedure*

The INA specifically authorizes DHS, IER, and DOL officers to inspect Forms I-9, including any copies of employee documents retained with the corresponding Form I-9.<sup>23</sup> All employers are subject to audits and investigations. DHS will monitor and evaluate data and information from ICE audits conducted to assess any measurable impacts to system integrity as between the employers that use the alternative procedure and those that continue with physical document inspection. Additionally, the final rule authorizes the Secretary to conduct a pilot program. DHS will evaluate all data and information collected through ICE audits after the implementation of this alternative procedure and future pilot programs with a continued goal of reducing unnecessary burdens and ensuring the security of any alternative procedures relative to physical document examination. The Secretary will announce any such pilot programs, new procedures, or changes to this alternative procedure, or seek public comment thereon, in the **Federal Register**.

*O. Permitted Continued Use of Form I-9 (Edition: 10/21/2019) During a Grace Period*

As of August 1, 2023, employers should begin using Form I-9 with a version date of "(Edition: 08/01/2023)" to comply with their employment eligibility verification responsibilities. The version date is located in the bottom corner of the form. However, employers may continue using the prior version of Form I-9 (Edition: 10/21/2019) through October 31, 2023. If using the 10/21/2019 version of the Form I-9 for the alternative procedure, employers must indicate their use of the alternative procedure by writing "alternative procedure" in the Additional Information field in Section 2. After the grace period has elapsed, no later than November 1, 2023 employers must use the new Form I-9 (Edition: 08/01/2023) and indicate their use of the alternative procedure by completing the corresponding box in Section 2 or in the section corresponding to reverification (which is Supplement B in the August

<sup>22</sup> See ICE, Press Release, ICE updates Form I-9 requirement flexibility to grant employers more time to comply with requirements (May 4, 2023), <https://www.ice.gov/news/releases/ice-updates-form-i-9-requirement-flexibility-grant-employers-more-time-comply> (last visited June 29, 2023).

<sup>23</sup> See 8 U.S.C. 1324a(b)(3).

1, 2023 edition of Form I-9), as appropriate.

After October 31, 2023, the prior version of Form I-9 will no longer be valid for use and will be obsolete. The public can download the new Form I-9 from [www.uscis.gov/i-9](http://www.uscis.gov/i-9). After October 31, 2023, employers who fail to use Form I-9 (Edition: 08/01/2023) may be subject to all applicable penalties under section 274A of the INA, 8 U.S.C. 1324a, as enforced by ICE.

Employers do not need to complete the new Form I-9 (Edition: 08/01/2023) for current employees who already have a properly completed Form I-9 on file, unless reverification applies. Unnecessary verification may violate the INA's anti-discrimination provision, section 274B of the INA, 8 U.S.C. 1324b, which is enforced by the Immigrant and Employee Rights Section (IER) in the Department of Justice's Civil Rights Division.

*P. Obtaining Forms I-9 (Edition: 08/01/2023)*

Employers may download the new Form I-9 (Edition: 08/01/2023) from the USCIS website at [www.uscis.gov/i-9](http://www.uscis.gov/i-9). Employers can order the paper Form I-9 at [www.uscis.gov/forms/forms-by-mail](http://www.uscis.gov/forms/forms-by-mail). For more information, the public can contact the USCIS Contact Center at 800-375-5283 or visit USCIS' I-9 Central web page at [www.uscis.gov/i-9central](http://www.uscis.gov/i-9central).

A Spanish-language version of the new Form I-9 is also available at [www.uscis.gov/i-9](http://www.uscis.gov/i-9) for use in Puerto Rico only.

**Alejandro N. Mayorkas,**

Secretary, U.S. Department of Homeland Security.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50 and 52

[NRC-2022-0143]

#### Regulatory Guide: Criteria for Programmable Digital Devices in Safety-Related Systems of Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 4 to Regulatory Guide (RG), 1.152, "Criteria for Programmable Digital Devices in Safety-Related Systems of

Nuclear Power Plants." This RG describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for promoting high functional reliability, design quality, and a secure development and operational environment (SDOE) for the use of programmable digital devices (PDDs) in the safety-related systems of nuclear power generating stations.

**DATES:** Revision 4 to RG 1.152 is available on July 25, 2023.

**ADDRESSES:** Please refer to Docket ID NRC-2022-0143 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0143. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 4 to RG 1.152 and the regulatory analysis may be found in ADAMS under Accession Nos. ML23054A463 and ML22132A293, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301-415-3104; email: [Michael.Eudy@nrc.gov](mailto:Michael.Eudy@nrc.gov)

*nrc.gov*, and Khoi Nguyen, Office of Nuclear Reactor Regulation, telephone: 301-415-6839; email: [Khoi.Nguyen@nrc.gov](mailto:Khoi.Nguyen@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Discussion

The NRC is issuing a revision in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 4 to RG 1.152 was issued with a temporary identification of Draft Regulatory Guide, (DG)-1374 (ADAMS Accession No. ML23012A242). This revision (Revision 4) of the guide endorses, with some exceptions and clarifications, Institute of Electrical and Electronics Engineers (IEEE) Standard (Std) 7-4.3.2-2016, "IEEE Standard Criteria for Programmable Digital Devices in Safety Systems of Nuclear Power Generating Stations." Specifically, this revision removes the previous SDOE guidance from this guide and instead endorses, with clarifications, the SDOE criteria within IEEE Std 7-4.3.2-2016. This revision also includes additional guidance for fault detection and self-diagnostics, if used, in digital instrumentation and controls systems. In addition, this revision endorses Annex D of IEEE Std 7-4.3.2-2016 and clarifies the applicability of the control of access guidance for safety-related PDDs.

##### II. Additional Information

The NRC published notice of the availability of DG-1374 in the **Federal Register** on March 10, 2023 (88 FR 14957), for a 30-day public comment period. The public comment period closed on April 10, 2023. Public comments on DG-1374 and the staff responses to the public comments are available in ADAMS under Accession No. ML23132A164.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the "Rules" section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

##### III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of