

SUPPORTING STATEMENT
United States Patent and Trademark Office
Practitioner Conduct and Discipline
OMB CONTROL NUMBER 0651-0017
February 2019

A. JUSTIFICATION

1. Necessity of Information Collection

The Director of the United States Patent and Trademark Office (USPTO or Office) has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. §§ 2 and 32-33). The current USPTO Rules of Professional Conduct (37 CFR 11.101-11.901) describes how practitioners should conduct themselves professionally and outlines their responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO, while current procedural rules governing disciplinary investigations and proceedings (37 CFR 11.19-11.60) dictate how the USPTO can discipline practitioners.

The Recordkeeping and Disclosure rules require that registered practitioners and attorneys who appear before the Office maintain complete records of clients, including all funds, securities and other properties of clients coming into his/her possession, and render appropriate accounts to the client regarding such records, as well as report violations of the rules to the Office. Practitioners are mandated by the rules to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation or in the event that said violations become the subject of a disciplinary proceeding, as appropriate. The Office has determined that the recordkeeping and maintenance of such records are excluded from any associated PRA burdens as these activities are usual and customary for practitioners representing clients (5 CFR 1320.3(b)(2)). Additionally, in the case of most attorney practitioners, any requirements for collection of information are not presumed to impose a Federal burden as these requirements are also required by a unit of State or local government, namely State bar(s), and would be required even in the absence of any Federal requirement (5 CFR 1320.3(b)(3)). These rules also require, in certain instances, that written consents or certifications be provided. Such consents or certifications have been determined not to constitute information under 5 CFR 1320.3(h)(1).

The USPTO Rules of Professional Conduct require an attorney or agent to report knowledge of certain violations of the USPTO Rules of Professional Conduct to the USPTO. If the complaint is found to have merit, the USPTO will investigate and possibly bring disciplinary action for violations of the Rules and provide the practitioner with the opportunity to respond to the complaint. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on noncompliance with the regulations. Practitioners who have been excluded or

suspended from practice before the USPTO must keep and maintain records of their steps to comply with the suspension or exclusion order. These records serve as the practitioner's proof of compliance with the order.

If this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce the provisions of the Rules.

Table 1 provides the specific rules and statutes that require the USPTO to collect the information discussed above:

Table 1: Information Requirements for Practitioner Conduct and Discipline

IC Number	Requirement	Statute	Rule
1	Recordkeeping Maintenance & Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney Practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts)	35 U.S.C. §§ 2(b)(2) (D) and 32	37 CFR 11.115 37 CFR 11.404(b) 37 CFR 11.703(c)
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	35 U.S.C. §§ 2(b)(2) (D) and 32	37 CFR 11.58
3	Complaint/Violation Reporting	35 U.S.C. §§ 2(b)(2) (D) and 32	37 CFR 11.801(d) 11.803 ad 11.804(d).

2. Needs and Uses

There are no forms associated with this collection of information.

The information collected, maintained, and used in this collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the OMB information quality guidelines.

Table 2 outlines how this information is used by the public and by the USPTO:

Table 2: Needs and Uses for Practitioner Conduct and Discipline

IC Number	Form and Function	Form #	Needs and Uses
1	Recordkeeping Maintenance & Disclosure	No Form Associated	<ul style="list-style-type: none"> Used by the public to maintain client integrity in the day-to-day operation of their practice. Used by the USPTO to comply with Federal regulations. Used by the USPTO to impose regulations governing the conduct of attorneys, agents, and other persons representing applicants and other parties before the USPTO.

IC Number	Form and Function	Form #	Needs and Uses
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	No Form Associated	<ul style="list-style-type: none"> • Used by practitioners seeking reinstatement after a disciplinary removal to provide increased recordkeeping requirements in order to show compliance with the terms required for reinstatement. • Used by the public to provide evidence that a practitioner has or has not complied with the rules during suspension or exclusion. • Used by the USPTO to determine whether a practitioner qualifies for reinstatement. • Used by the USPTO to monitor recordkeeping requirements of practitioners seeking reinstatement after a disciplinary removal to ensure that compliance with the terms required for reinstatement are being met.
3	Complaint/Violation Reporting	No Form Associated	<ul style="list-style-type: none"> • Used by the public to report knowledge of certain violations of the USPTO Rules of Professional Conduct. • Used by the public to maintain proper documentation in order to fully cooperate with the USPTO in an investigation. • Used by the USPTO to investigate and, where appropriate, to prosecute for violations of the USPTO Rules of Professional Conduct.

3. Use of Information Technology

While respondents to this collection have, in previous renewals, not been allowed to submit responses via automated, electronic, mechanical, or other technological collection techniques due to the sensitive nature of the information in this collection, this renewal will allow the electronic submission of items pertaining to the recordkeeping maintenance items included in this collection.

4. Efforts to Identify Duplication

The data in this collection is not routinely collected or maintained elsewhere. Inasmuch as a report by an attorney or agent of an alleged violation of the USPTO Rules of Professional Conduct is reported to the OED Director, there is no duplication of effort.

5. Minimizing Burden to Small Entities

The reporting and recordkeeping requirements are essentially the same for all attorneys and agents. The collection of this information does not pose a significant economic impact on small entities or small businesses.

6. Consequences of Less Frequent Collection

This information is collected on an event-by-event basis; it is not time-driven. Therefore, this information could not be collected less frequently. An attorney, agent, or other person representing applicants and other parties before the USPTO is obligated to make a report when a violation is discovered.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this collection of information.

8. Consultations Outside the Agency

The 60-Day *Federal Register* Notice was published on December 12, 2018 (83 FR 63841). The public comment period ended on February 11, 2019. One public comment was received.

One commenter suggested that the USPTO should increase its estimates for IC line 3 (Complaint/Violation Reporting). The agency has increased the IC line based on previous years' responses. The commenter also suggested that a revision to rule 11.25(a) be made in order to exclude minor traffic violations from those that need to be reported. USPTO is considering this in future rulemaking activity.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, inventor groups, and users of our public facilities. Views expressed by these groups are considered in developing proposals for information collection requirements and during the renewal of an information collection. No views have been expressed regarding the present renewal.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent. Response to this information collection is necessary to enforce the Rules, to register a report of knowledge of certain violations of the Rules to the USPTO, and to investigate and possibly prosecute violations of the Rules.

10. Assurance of Confidentiality

Confidentiality is governed by 35 U.S.C. § 122 and 37 CFR 1.11 and 1.14. This collection contains information of a confidential (personal) nature, which is subject to the Privacy Act. A System of Records Notice was published in the *Federal Register* on March 19, 2013 (78 FR 16833). Administrative controls are used to safeguard this information as appropriate. Reports of alleged violations of the Rules of Professional Conduct are maintained in confidence until such time as an attorney, agent, or other person representing an applicant or other party before the USPTO is publicly disciplined. Violation of reporting activities may result in notices being published in the *Official Gazette of the United States Patent and Trademark Office* and/or the agency's FOIA reading room. These may include notices of public reprimand, censure, suspension, exclusion, or exclusion on consent. The USPTO has been successful in declining to make available investigatory material in response to a request under the Freedom of Information Act based on 5 U.S.C. §§ 552(b)(6) (unwarranted invasion of personal privacy) and 552(b)(7)(C) (investigatory records).

11. Justification for Sensitive Questions

None of the information collected is considered to be of a sensitive nature.

12. Estimate of Hour and Cost Burden to Respondents

Table 3 calculates the burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that it will receive 11,145 responses to this information collection per year, with an estimated 100 percent of those responses submitted by small entities. Of this total, the USPTO expects that less than 1 percent (50 responses) will be submitted electronically.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public between 1 and 20 hours, depending upon the complexity of the situation, to gather, prepare and/or submit the necessary information.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**

The USPTO expects that agents will complete the Recordkeeping Maintenance & Disclosure item at an hourly rate of \$284 as published in the 2017 AIPLA Report of the Economic Survey and that practitioners will complete the Recordkeeping Maintenance Under Suspension or Exclusion from the USPTO item at an hourly rate of \$438 as published in the 2017 AIPLA Report of the Economic Survey. The USPTO further expects that members of the public will complete the Complaint/Violation Reporting at a blended hourly rate of \$303. This blended rate is based on data from both the 2017 AIPLA Report of the Economic Survey and the 2017 Bureau of Labor Statistics (BLS) National Occupation Employment and Wage Estimates, and is comprised of 50 percent by the practitioner hourly rate of \$438; 25 percent by the agent hourly rate of \$284; and 25 percent by the hourly rate for Scientists and Engineers of \$51.53.

Using these hourly rates, the USPTO estimates \$3,679,220 per year for the total hourly costs associated with respondents.

Table 3: Burden Hour/Burden Cost to Respondents for Practitioner Conduct and Discipline

IC Number	Information Collection Instrument	Estimated Response Time (Hours) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) = (e)
1	Recordkeeping Maintenance & Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts)	1	10,825	10,825	\$284.00	\$3,074,300.00
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	20	40	800	\$438.00	\$350,400.00
3	Complaint/Violation Reporting	3	280	840	\$303.00	\$254,520.00

IC Number	Information Collection Instrument	Estimated Response Time (Hours) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) = (e)
	TOTALS	---	11,145	12,465	---	\$3,679,220.00

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance, or recordkeeping costs for this collection, nor are there any associated filing fees. The recordkeeping costs included with the recordkeeping-related responses are a burden hour/burden cost to respondents and are not part of the annualized cost burden for this collection. There is, however, a non-hour cost burden in the form of postage costs.

Postage

Customers may incur postage costs when submitting some of the items covered by this collection to the USPTO by mail. The USPTO expects that practitioners will submit affidavits with attachments via postal mail or hand delivery in association with the Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion item, and estimates that 99 percent of those affidavits will be submitted by mail with the remainder submitted by facsimile or hand delivery. The USPTO further expects that 25 percent of the Complaint/Violation Reporting item will be submitted electronically. Of the non-electronic submissions for that item, 1 percent of the total responses will be submitted by hand delivery or facsimile and the remaining 74 percent will be submitted by postal mail. These two items are estimated to produce a total of 246 mailed submissions.

The average first-class USPS postage costs for a one-pound mailed submission in a flat-rate envelope and a three-pound mailed submission in a small flat-rate box are \$6.55 and \$7.05, respectively. The Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion item requires the more expensive of those two postage options, while the Complaint/Violation Reporting item requires the cheaper flat-rate envelope.

Table 4 calculates the postage costs for this collection of information:

Table 4: Non-hour Cost Burden for Practitioner Conduct and Discipline (Postage)

IC Number	Information Collection Instrument	Estimated Mailed Responses (a)	Postage Cost Per Item (b)	Total Postage Cost (a) x (b) = (c)
1	Recordkeeping Maintenance & Disclosure	0	\$0.00	\$0.00
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	39	\$7.05	\$274.95
3	Complaint/Violation Reporting	207	\$6.55	\$1,355.85
	TOTAL	246	---	\$1,630.80

Therefore, the total annual (non-hour) cost burden for this information collection, in the form of postage, is projected to be \$1,630.80.

14. Annual Cost to the Federal Government

There are no government costs associated with registered practitioners maintaining their recordkeeping systems.

Various levels of pay grades reflect the different actions involved in reaching the assumptions behind the time and burden to the government for collecting the information in this collection. The Director of the OED and a combination of staff attorneys provide the professional effort to review the complaints/violations, generate inquiries as needed, review responses, and perform other follow-up activities. The clerical staff establishes and maintains the files and associated updates. Paralegals primarily track all case status and docket information. Administrator and analyst efforts generally represent coordination with other functional areas; this type of coordination would primarily track against the unit of work from which all other disciplinary efforts spring, *i.e.*, the complaint/violation reports.

The USPTO estimates that items in this collection will be processed by OED staff in the GS-9, 11, 12 (step 5), 13 (step 8), 15 and SES grades. The agency added an additional 30% to the current OPM hourly wage rates of the D.C. metro area, to account for a fully loaded hourly rate.

Table 5 calculates the processing hours and costs to the Federal Government:

Table 5: Burden Hour/Burden Cost to the Federal Government for Practitioner Conduct and Discipline

IC Number	Information Collection Instrument	Estimated Response Time (hours) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) = (e)
1	Recordkeeping Maintenance & Disclosure	0	10,825	0	\$0.00	\$0.00
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO	0	40	0	\$0.00	\$0.00
3	Complaint/Violation Reporting					
	Director	6	280	1,680	\$91.15	\$153,132.00
	Staff Attorneys	16		4,480	\$60.64	\$271,667.20
	Paralegal	7		1,960	\$44.28	\$86,788.80
	Administrator	2		560	\$60.65	\$33,964.00
	Analyst	3		840	\$57.31	\$48,140.40
	Clerk	6		1,680	\$30.54	\$51,307.20
	TOTAL	- - -	11,145	8,000	- - -	\$644,999.60

15. Reason for Change in Burden

A) Changes in collection since previous renewal in 2016

OMB previously approved this collection in February 2016. That renewal contained:

- 11,065 responses
- 12,225 burden hours

- \$3,827,273.00 in respondent costs
- \$1,083.05 in annual (non-hour) costs

Changes since publication of the 60-day *Federal Register* notice

Since the publication of the 60-day notice in the *Federal Register*, the following changes have been made:

- An increase of 80 responses
- An increase of 240 burden hours
- An increase of \$72,720.00 in respondent costs
- An increase of \$547.75 in annual (non-hour) costs

These increases are the result of the change to the number of responses in IC line 3 in order to reflect more accurate reporting.

B) Changes proposed in this request to OMB.

The proposed collection, as outlined in the tables above, seeks to modify the existing collection. The new proposed collection contains an estimated:

- 11,145 responses
- 12,465 burden hours
- \$3,679,220.00 in respondent (hourly) costs
- \$1,630.80 in annual (non-hour) costs

Changes in Respondent Cost Burden

The total respondent cost burden for this collection has decreased by \$148,053.00 (from \$3,827,273.00 to \$3,679,220.00) due to the decrease in the wage rate for IC line 1 from \$307 to \$284 to reflect more accurate reporting.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses will increase by 80 (from 11,065 to 11,145) and the total burden hours will increase by 240 (from 12,225 to 12,465) from the currently approved burden for this collection. This decrease is not offset by the increase in responses and burden hours.

Changes in Annual (Non-Hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will increase by \$547.75 (from \$1,083.05 to \$1,630.80) from the currently approved costs for this collection. This change is due to an increase mailed responses and postage costs.

16. Project Schedule

There is no plan to publish this information for statistical use.

17. Display of Expiration Date of OMB Approval

There are no forms in this information collection. Therefore, the display of the OMB Control Number and the expiration date are not applicable.

18. Exception to the Certificate Statement

No exceptions to the certificate statement are included in this collection of information.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.