

SUPPORTING STATEMENT
U.S. Patent and Trademark Office
COVID-19 Vaccine Supplemental Medical Provider Statement
OMB Control No. 0651-NEW
November 2021

Abstract

The purpose of this emergency request of Paperwork Reduction Act (PRA) clearance is to allow the U.S. Patent and Trademark Office (USPTO) to collect information from individuals applying for medical exemption to the COVID-19 Mandatory Vaccinations as specified in the COVID-19 Vaccine Supplemental Medical Provider Statement. Given the critical role of the collection of information to meeting our commitments as outlined in Executive Order (E.O.) 14043 of September 9, 2021, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees* and the Safer Federal Workforce Task Force guidance, USPTO cannot reasonably comply at present with the normal clearance procedures.

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the information collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Consistent with guidance from the Centers for Disease Control and Prevention (CDC), guidance from the Safer Federal Workforce Task Force established pursuant to E.O. 13991 of January 20, 2021, *Protecting the Federal Workforce and Requiring Mask-Wearing*, and E.O. 14043 of September 9, 2021, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, the request for this collection of information is essential to implement the USPTO health and safety measures regarding the Federal employee medical exemptions to the COVID-19 mandatory vaccinations. The Rehabilitation Act of 1973, as amended, requires Federal agencies to provide reasonable accommodations to qualified employees with disabilities unless that reasonable accommodation would impose an undue hardship on the employee’s agency. See 29 U.S.C. 791; 29 CFR Part 1614; see also 20 CFR Part 1630 and E.O.13164 of July 26, 2000, *Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation*. Section 2 of E.O. 14043 mandates that each agency “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law.” This COVID-19 Vaccine Supplemental Medical Provider Statement is necessary for USPTO to determine legal exemptions to the vaccine requirement under the Rehabilitation Act.

Government agencies have an urgent need to request medical exemption information with input from medical providers from Federal employees. Applying regular PRA clearance procedures is likely to cause harm because of the threat of COVID-19 exposure and transmission (5 CFR § 1320.13(c)).

Table 1: Information Requirements

| Item No. | Requirement | Statutes | Executive Orders | Regulations |
|----------|--|---------------|---------------------------------------|---|
| 1 | COVID-19 Vaccine Supplemental Medical Provider Statement | 29 U.S.C. 791 | E.O. 13991, E.O.13164, and E.O. 14043 | 29 CFR § 1614, 20 CFR § 1630, and 5 CFR § 1320.13 |

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new information collection, indicate the actual use the agency has made of the information received from the current information collection.

This information is being requested to promote the Federal workforce, the safety of Federal buildings, and others on site at Agency facilities or those interacting with the public consistent with the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force and guidance from the CDC. To request a medical exemption from the COVID-19 vaccination requirement, employees go to [USPTO Accommodation Point](#) and have their medical provider complete the COVID-19 Vaccine Supplemental Medical Provider Statement (USPTO-OEEOD Form 303).

Equal Employment Opportunity Specialists would receive this form from the requester (employee) along with the employee's original request. Attorneys from the Office of General Counsel would receive this form to provide advice and counsel to Deciding Officials from various business units. Deciding Officials use the form to make a decision as to whether an accommodation can be provided.

This form will also ensure the information collected is consistent and minimize the need to seek additional evidence. The information collected, maintained, and used in this information collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the PRA (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the OMB information quality guidelines.

USPTO seeks OMB's approval to process the form as emergency clearance requests in accordance with 5 CFR § 1320.13, Emergency Processing.

Table 2: Needs and Uses of Information Collected

| Item No. | Form and Function | Form Number | Needs and Uses |
|----------|--|----------------------|---|
| 1 | COVID-19 Vaccine Supplemental Medical Provider Statement | USPTO-OEEOD Form 303 | <ul style="list-style-type: none">Used by Federal employees to request medical exemption from COVID-19 Vaccine Mandates.Used by the Federal employee's medical provider for medical certification of COVID-19 Vaccine exemption.Used by USPTO staff to process the request and enforce the COVID-19 Vaccine Mandates. |

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

USPTO utilizes its [USPTO Accommodation Point](#) for employees to request accommodations. The individual responder/medical service provider will fill out the required fields of the form and submit the completed form to the appropriate USPTO personnel/employee requesting the accommodation. A link to this form or a PDF version may be emailed to respondents who will then print it out to complete it manually or complete it electronically. USPTO will continue to explore options to use technology to reduce the burden on respondents.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2.

The USPTO is unaware of other sources of similar information available for use by the respondents.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The USPTO expects that the submission of the information provided places no undue burden on small businesses or other small entities. The same information is required from every respondent and is not available from any other source.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Less frequent collection of this information would inhibit USPTO's ability to meet the mandates of the Safer Federal Workforce Task Force and established USPTO-specific COVID-19 workplace safety protocols.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances involved in the collection of this information.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received

in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

USPTO has requested and has been granted a waiver from the requirement to publish a notice in the Federal Register in connection with a request for emergency clearance of this information collection request.

Aside from discussions with Office of Management and Budget (OMB) personnel, and other Federal agencies, no additional consultation was conducted for this submission.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This information collection does not involve a payment or gift to any respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a system of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

The authority for this Request for a Reasonable Accommodation to the COVID-19 Vaccination Requirement is derived from Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021) and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. The information in this system is used to decide on requests for accommodation, any subsequent complaints of alleged discrimination, and possibly to evaluate the effectiveness of the EEO program. The collection of this information is authorized by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e-16, as amended. The Agency will maintain a record of all accommodation requests, including this form, which will be utilized to determine the efficacy and consistency of the reasonable accommodation process. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the Agency is a party or has an interest; to a government agency in order to obtain information relevant to an Agency decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your request, to an expert, consultant or other person under contract with the Agency to fulfill an agency function; to the National Archives and Records Administration for records management activities; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of Agency finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment

Opportunity Commission for investigation of a formal EEO complaint under 29 CFR Part 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; and to a labor organization as required by the Federal Service Labor-Management Relations Statute. The applicable System of Records Notices for this information are: COMMERCE/DEPT-18, Employees Personnel Files Not Covered by Notices of Other Agencies, Except as Prohibited by Law (72 FR 6200 / February 9, 2007 / available at: <https://www.osec.doc.gov/opog/PrivacyAct/SORNS/DEPT-18.html>) and EEOC/GOV-1, Equal Employment Opportunity in the Federal Government Compliant and Appeal Records (67 FR 49354 / July 30, 2002 / available at: <https://www.osec.doc.gov/opog/PrivacyAct/sorns/GOV-Wide/EEOC-GOV1-18895.pdf>). Completion of this form is voluntary; however, an accommodation may be denied to a qualified individual without this written information.

USPTO Privacy Policy: <https://www.uspto.gov/privacy-policy>

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The questions included on this form are consistent with OMB's guidance for requesting a medical exemption.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government'.**

Table 3 calculates the anticipated 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 approximately 150 total responses per year for this information collection.

The USPTO estimates that approximately 100% of the annual responses for this information collection will be submitted electronically via email.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public approximately 10 minutes to complete the information in this information collection. This includes the time to gather the necessary information, create the documents, and submit the completed request to the USPTO/the employee. Using these burden factors, USPTO estimates that the total respondent hourly burden for this information collection is 25 hours per year.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$55.93 per hour for respondent cost burden calculations based on the [U.S. Bureau of Labor Statistics Wage Report](#). Using this hourly rate, the USPTO estimates that the total respondent cost burden for this information collection is \$1,398 per year.

Table 3: Total Hourly Burden

| Item No. | Item | Estimated Annual Respondents | Responses per Respondent | Estimated Annual Responses | Estimated Time For Response (hours) | Estimated Burden (hour/year) | Rate ¹ (\$/hour) | Estimated Annual Respondent Cost Burden |
|----------|--|------------------------------|--------------------------|----------------------------|-------------------------------------|------------------------------|-----------------------------|---|
| | | (a) | (b) | (a) x (b) = (c) | (d) | (c) x (d) = (e) | (f) | (e) x (f) = (g) |
| 1 | COVID-19 Vaccine Supplemental Medical Provider Statement | 150 | 1 | 150 | 0.167 (10 minutes) | 25 | \$103.06 | \$2,577 |
| | Totals | --- | --- | 150 | --- | 25 | --- | \$2,577 |

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and

¹ 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); <file:///C:/Users/dhall3/AppData/Local/Microsoft/Windows/NetCache/Content.Outlook/DM2VYW9I/aipia-2021-report---final-locked-for-web.pdf>; pg. F-27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is \$435 per hour.

use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There are no annualized costs to respondents other than the labor burden costs addressed in question 12 of this document to complete this information collection.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The USPTO estimates that the cost of an EEO/Reasonable Accommodation Specialist as a [GS-13, step 6](#) employee is \$75.34 per hour (GS hourly rate of \$57.96 with 30% (\$17.38) added for benefits and overhead).

The USPTO estimates that the cost of an Office of General Law Attorney as a [GS-15, step 4](#) employee is \$98.76 per hour (GS hourly rate of \$75.97 with 30% (\$22.79) added for benefits and overhead).

The USPTO estimates that the cost of a Deciding Official as a [SES employee](#) is \$103.35 per hour (GS hourly rate of \$79.50 with 30% (\$23.85) added for benefits and overhead).

Table 4: Burden Hour/Burden Cost to the Federal Government

| Item No. | Item | Estimated Annual Responses | Estimated Time for Response | Estimated Burden (hour/year) | Rate (\$/hour) | Estimated Annual Respondent Cost Burden |
|----------|--|----------------------------|-----------------------------|------------------------------|----------------|---|
| | | (a) | (b) | (a) x (b) = (c) | (d) | (c) x (d) = (e) |
| 1 | COVID-19 Vaccine Supplemental Medical Provider Statement (EEO/Reasonable Accommodation Specialist) | 150 | 1 (60 minutes) | 150 | \$75.34 | \$11,301 |
| 1 | COVID-19 Vaccine Supplemental Medical Provider Statement (Office of General Law/Legal Review) | 150 | 0.5 (30 minutes) | 75 | \$98.76 | \$7,407 |
| 1 | COVID-19 Vaccine Supplemental Medical Provider Statement (Deciding Official) | 150 | 0.5 (30 minutes) | 75 | \$103.35 | \$7,751 |
| | Total | | | | | \$26,459 |

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet in ROCIS.

ICR Summary of Burden:

| | Requested | Program | Program | Change Due to | Change Due to | Previously |
|--|-----------|---------|---------|---------------|---------------|------------|
|--|-----------|---------|---------|---------------|---------------|------------|

| | | Change Due to New Statute | Change Due to Agency Discretion | Adjustment in Agency Estimate | Potential Violation of the PRA | Approved |
|----------------------------|-----|---------------------------|---------------------------------|-------------------------------|--------------------------------|----------|
| Annual Number of Responses | 150 | 0 | 150 | 0 | 0 | 0 |
| Annual Time Burden (Hr) | 25 | 0 | 25 | 0 | 0 | 0 |
| Annual Cost Burden (\$) | 0 | 0 | 0 | 0 | 0 | 0 |

This is a new information collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

USPTO will not publish the results of this information collection.

However, this data will be provided to the CDC in an aggregate form. Also, USPTO is required to report to OMB on the total number of employees who are fully vaccinated, partially vaccinated, requesting reasonable accommodations, or not vaccinated.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The form in this information collection will display the OMB Control Number and the expiration date of OMB approval.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

This collection of information does not include any exceptions to the certificate statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.