



## **Standard Operating Procedures**

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**Issuance Date: November 5, 2021**

**Procedures for Adjudication of Requests for  
Legal Exemptions from the COVID-19  
Vaccination Mandate**

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### **1. INTRODUCTION**

Pursuant to Executive Order 14043, Department of Homeland Security (DHS) employees must be fully vaccinated except in limited circumstances where the law requires an exemption. Accordingly, DHS may be required to provide an exemption to the vaccine requirement as a reasonable accommodation to employees who establish that they are unable to comply with the vaccine mandate because of a disability or a sincerely held religious belief, practice, or observance, or because of documented medical circumstances that require additional time to comply with the mandate.

### **2. PURPOSE**

- 2.1 These standard operating procedures establish minimum requirements that DHS must follow in adjudicating requests for a COVID-19 vaccination religious exemption and/or a medical exemption or temporary delay in complying with the vaccine mandate.
- 2.2 Pursuant to these procedures, DHS Components will consider and adjudicate reasonable accommodation requests to be exempted from the COVID-19 vaccination mandate for medical or religious reasons. Additionally, DHS Components will consider and, in appropriate circumstances, grant extensions of time to comply with the vaccine mandate due to temporary medical circumstances.

### **3. SCOPE**

- 3.1 This instruction applies to all civilian employees of DHS, including all personnel temporarily assigned to DHS (e.g., intergovernmental and volunteer personnel). Excluded are uniformed service members and employees who are on detail to DHS from outside of DHS. This policy does not apply to contractor employees.

### **4. REFERENCES**

- 4.1 Title VII of the Civil Rights Act of 1964, as amended, Pub. L. No. 88-352, July 2, 1964, 42 USC § 2000e *et seq.*;

- 4.2 The Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, Nov. 16, 1993, 42 USC § 2000bb *et seq.*;
- 4.3 The Rehabilitation Act of 1973, 29 USC § 791 *et seq.*;
- 4.4 The Privacy Act of 1974, 5 USC § 552a;
- 4.5 Executive Order 14043, “Requiring Coronavirus Disease 2019 Vaccination for Federal Employees”, September 14, 2021, 86 FR 50989;
- 4.6 29 CFR Part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act;
- 4.7 29 CFR Part 1614, Federal Sector Equal Employment Opportunity;
- 4.8 Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA, October 17, 2002, EEOC-CVG-2003-1, Number 915.002;
- 4.9 Section 12: Religious Discrimination, January 15, 2021, EEOC-CVG-2021-3, Number 915.063;
- 4.10 DHS Directive: 259-01, Providing Reasonable Accommodation for Employees and Applicants with Disabilities, Rev. 00, March 8, 2013; and
- 4.11 DHS Instructions: 259-01-001, Providing Reasonable Accommodation for Employees and Applicants with Disabilities and Personal Assistance Services for Targeted Disabilities, Rev. 01, March 23, 2021.
- 4.12 DHS/ALL/PIA-025a Accessibility Compliance Management System (ACMS)
- 4.13 DHS/ALL-033 Reasonable Accommodations Records System of Record Notice

## 5. DEFINITIONS

- 5.1 **Board** – A Component-level group of decisionmakers established for the purpose of reviewing and making determinations on vaccine exemption or delay requests on behalf of the Component.
- 5.2 **Direct Threat** –a showing that an individual poses a significant risk of substantial harm to their own health or safety or the health and safety of others.
- 5.3 **Essential Functions** – The job duties that an employee must be able to perform with or without accommodation, which may or may not be the job duties listed on the employee’s position description. Factors to consider in determining whether a duty is essential include (1) whether the reason the position exists is to perform that function, (2) the number of other employees available to perform the function or among whom the

performance of the function can be distributed, (3) whether the function is specialized, and (4) whether the employee was hired based upon his or her ability to perform the duty.

- 5.4 **Exemption** – A Component determination made by the Board temporarily or permanently excusing an employee from the vaccine requirement for medical and/or religious reasons. For temporary medical circumstances, an exemption may be granted only for a limited or finite period.
- 5.5 **Individual with a Disability** (under the Rehabilitation Act) – An individual with a physical or mental impairment that substantially limits one or more major life activities. This includes people who have a record of such an impairment.
- 5.6 **Individual with a Documented Medical Need for Delay** – An individual whose documented medical circumstances necessitate delaying or deferring vaccination for COVID-19, even though the documented medical circumstances do not constitute a “disability” for purposes of the Rehabilitation Act.
- 5.7 **Least Restrictive Means** – The most narrowly tailored means or manner possible necessary to achieve the government’s compelling interest.
- 5.8 **Qualified Individual with a Disability** – A individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position that such individual holds or desires.
- 5.9 **Requestor** – The employee seeking an exemption to the COVID-19 vaccination mandate for medical or religious reasons or a delay in complying with the vaccine mandate due to temporary medical circumstances.
- 5.10 **Substantial Burden** – When an individual must act contrary to their religious belief to receive a government benefit or avoid facing a legal penalty.
- 5.11 **Undue Hardship**- Action requiring the Component to bear significant difficulty or expense, as based upon the resources and circumstances of the Component in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature of the position or operation of the business. Whether a particular reasonable accommodation based on disability would cause undue hardship is assessed on a case-by-case basis.

## 6. ROLES AND RESPONSIBILITIES

- 6.1 The **Office for Civil Rights and Civil Liberties (CRCL)** is responsible for developing, in consultation with the Office of the Chief Human Capital Officer, necessary policies, guidelines, and procedures for processing requests for exemptions to the COVID-19 vaccination mandate under Executive Order 14043. CRCL also participates in oversight of Component Boards.

- 6.2 The **Office of the Chief Human Capital Officer (OCHCO)** is responsible for providing appropriate notification to the workforce and labor unions regarding COVID-19 vaccination exemption requests and for administering the Vaccination Status System (VSS) for data collection and reporting. OCHCO, in consultation with Component-level Human Capital Offices, is also responsible for providing information and assistance on medical requirements of positions, classification, position descriptions, and job duties. OCHCO also participates in oversight of Component Boards
- 6.3 The **Office of the General Counsel (OGC)** provides counsel on all legal matters concerning the implementation of DHS's obligations under Executive Order 14043.
- 6.4 **Component Heads** are responsible for ensuring compliance with these procedures, including appointing members to serve on the Board and ensuring that members are qualified to serve. Component Heads may also develop their own Component-specific procedures for adjudicating requests for vaccine exemptions, provided such procedures are consistent with the requirements set forth herein. Also, Component Heads may, at their discretion, delegate these responsibilities as appropriate and assign and utilize Component staff, as needed, to manage and implement the administrative requirements of these procedures. For purposes of these procedures, the Executive Director, Human Resources Management Services (HRMS), Office of the Human Capital Officer is responsible for implementing these instructions for headquarters directorates and programs.
- 6.5 **Component EEO or Civil Rights Directors** assist Component Heads in implementing these procedures, including providing advice regarding Board membership diversity. They are also responsible for providing internal controls and communications with HRMS and Component-level Human Capital Offices.
- 6.6 **Component Disability Program Managers (DPMs) or Reasonable Accommodation Managers/Coordinators (RAMs/RACs)** are responsible for assisting Boards by accessing ACMS to retrieve requests and supporting documentation to assist Boards in making determinations and advising Boards regarding reasonable accommodations for medical exemptions. DPMs/RAMs/RACs are also responsible for populating ACMS records and/or other related administrative documents when required, including notification of the disposition and results of their requests.
- 6.7 **Vaccine Exemption Boards**, as defined in Section 5.1. above, are responsible for determining whether requests for vaccine exemptions or delays should be granted and thoroughly documenting each determination.
- 6.8 **Supervisors and Managers** are responsible for directing employees who wish to seek an exemption request to ACMS or to other places where the Vaccine Exemption forms are made widely available. Supervisors or managers ensure employees comply with COVID-19 safety mitigation measures, including those approved as an accommodation

## INTAKE/DOCUMENTATION

- 7.1 Employees seeking an exemption from the COVID-19 vaccination mandate for medical or religious reasons or seeking a delay in complying with the vaccine mandate should submit their request(s) through ACMS. The ACMS system includes electronic DHS COVID-19 Vaccine Exemption Request forms for medical and/or religious exemption requests. Information requested will be considered to determine whether an exemption should be granted. For medically based exemption requests and requests for a delay due to a documented medical need, employees must also upload their supporting medical documentation to ACMS once completed by their healthcare provider. If a Component has received an exemption request prior to the issuance of this guidance, the Component EEO or Civil Rights Director, or other recipient of that request, must advise the requestor to complete the applicable DHS COVID-19 Vaccine Exemption Request form in ACMS, as these forms request information that will help the Board determine whether the employee is entitled to an exemption.
- 7.2 ACMS will acknowledge receipt of the request and produce a unique identification number for the request. In addition to completing their request in ACMS, employees must also report their vaccination status in VSS reflecting that they are not vaccinated to ensure accurate tracking of their vaccination status pending a determination on their exemption request and to maintain data integrity throughout DHS.
- 7.3 Components should advise employees to submit their exemption requests through ACMS by November 9, 2021, though Components can and should consider requests submitted after that date.
- 7.4 For employees who do not have access to ACMS, copies of the requisite Vaccine Exemption forms for religious and medical exemptions (Appendices A and B, respectively) will be made available on the DHS.gov website for completion and submission to the Component's servicing DPMs/RAMs/RACs as appropriate. If an employee submits a request for an exemption directly to their manager or supervisor, the request must be acknowledged, but the employee must be referred to ACMS or the component's servicing DPM or RAM/RAC for further processing.
- 7.5 DPMs or RAMs/RACs extract and assemble employee requests and supporting documentation from ACMS for consideration by the Boards. After extraction, the DPMs or RAMs/RACs review exemption requests for completeness and securely transmit those requests and associated documents to the Board for review and disposition. DPMs or RAMs/RACs are also responsible for requesting additional information from employees when the Board determines there is a need to do so, Employees' inquiries regarding the status of their exemption request should be directed to their servicing DPMs or RAMs/RACs.
- 7.6 Employees' requests for exemptions based on disability or requests to delay taking the vaccine based on medical reasons must be supported by a certification from an appropriate healthcare provider. The Board may also request additional medical

information or documentation if needed to reach a determination on the exemption or delay request. If additional information is requested, employees should produce the requested information in writing to their servicing DPM or RAM/RAC within 10 business days of the request. Absent an explanation of good cause by the employee for not providing the requested additional information within this time frame, the Board will proceed with rendering a determination on the request based on the information previously provided.

- 7.7 For vaccination exemption requests based on a sincerely held religious belief, observance, or practice, additional information or documentation may be requested to further ascertain the nature of the belief or practice and whether or how the vaccine requirement would substantially burden the religious belief or practice at issue. If additional information is requested, employees should produce the requested information in writing to their servicing DPM or RAM/RAC within 10 business days of the request unless instructed otherwise. Absent an explanation of good cause by the employee for not providing the requested additional information within this time frame, the Board will proceed with rendering a determination on the request based on the information previously provided. Employees making requests based on a sincerely held religious belief, practice, or observance are not required to provide personal medical information or a certification from a healthcare provider.
- 7.8 The Board or its advisors may request the requestor's manager(s) or supervisor, and/or the servicing human capital office to provide additional information and documents, including information and documents regarding the extent to which COVID-19 protection measures such as distancing, masking, and/or testing are feasible given the duties of the employee's position, the essential functions and duties of the requestor's position that may be impacted by a vaccination exemption, and/or alternative accommodations. This information must be documented in writing.

## **8. VACCINE EXEMPTION BOARDS**

- 8.1 Each Component shall create a Component-specific Vaccine Exemption Board to consider and make determinations on exemption requests. To the extent possible, Board member selections should reflect the Component's employee workforce and geographic diversity.
- 8.2 The Board shall be composed as follows:
- An odd number of (at least three) voting members to render final determinations by majority vote.
  - A Chairperson, who will serve as the primary point of contact for the Board, especially for purposes of oversight and accountability under paragraph 8.6. Other duties include arranging meeting logistics and ensuring requests are adjudicated within a reasonable period of time. The Chairperson is also a voting member of the Board.

- Voting members must be members of the Senior Executive Service. As Board members, they should not participate in the adjudication of any matter in which they have a conflict of interest, including a matter that relates to their own pending exemption request.

8.3 The Board shall be advised by:

- Medical/health subject matter experts. For disability exemption requests and requests for delays due to documented medical needs, these experts will review requests, including medical certification and documentation, and, among other things, offer advice on whether the request establishes that the disability prevents the employee from safely vaccinating. These experts may also provide the Board with information and advice on CDC recommendations and guidelines, including clinical considerations for use of COVID-19 vaccines, and information about vaccine safety. Medical/health subject matter experts may also advise the Board whether additional information is necessary to consider the request. For all exemption and delay requests that are granted (medical and religious), these experts may, at the request of the Board, advise on the full range of COVID-19 protective measures that are or may be implemented to protect both the employee granted the exemption or delay and others with whom the employee may come into contact.
- Legal advisors. Legal advisors will advise on all exemption requests and review exemption determinations prior to finalization. Legal advisors will advise the Board and other advisors to the Board on the applicable legal standards and considerations for both medical and religious accommodation requests.
- Civil rights subject matter experts will advise on Board diversity, technical compliance with reasonable accommodation obligations and Component resources available to do so.

The Board may also seek advice from operational and human resource subject matter experts regarding applicable job requirements and duties, including whether and to what extent a requestor's duties require close interaction with other employees and the general public. DPMs and RAPMs/RACs should be utilized by the Board to access documentation from ACMS, to request additional information from employees when needed, to populate ACMS with Board determinations and supporting records, and to provide advice regarding accommodations if needed.

8.4 Each Component Board is encouraged to implement its own procedures that build on and are consistent with the procedures contained herein.

- 8.5 Training. Prior to making determinations on requests for an exemption to the vaccine mandate, Components, in coordination with their servicing legal and civil right offices, shall provide training to the Boards on legal requirements, including appropriate legal standards, confidentiality, and how to identify categories of similarly situated employees for purposes of the vaccine Mandate and reasonable accommodations decision-making.
- 8.6 Oversight. CRCL and OCHCO, with legal support from OGC, shall jointly provide oversight and guidance to the Component Boards. Oversight responsibilities include providing guidance when requested, reviewing Board internal procedures, setting periodic reporting requirements, and setting other oversight requirements as necessary. CRCL and OCHCO, with legal support from OGC, will jointly consider waiver requests from specific requirements of these procedures upon a showing from the Board or Component Heads that compliance would materially harm its efforts to effectuate its mission or its overall responsibilities under these procedures.

## **9. Board Determinations**

- 9.1 The Board shall consider each employee request for a medical or religious exemption or delay. The Board shall review the request for exemption or delay, along with any supporting documentation, and issue a written determination. The Board in considering requests for an exemption or delay should conduct an individualized assessment prior to making a determination, but the determination should be made in consideration of requests made by other employees with the same or similar position and/or with the same or similar position requirements. Relevant factors for consideration may include, but are not limited to, the basis for the request; the nature of the employee's job duties and responsibilities; the number of employees in the workplace who reportedly are already partially or fully vaccinated against COVID-19; the extent of the employee's contact with other Component employees as well as non-employees who may be ineligible for a vaccination or whose vaccination status may be unknown; and the reasonably foreseeable effects or impact of an exemption on the Component's operations, including the increased risk of illness for unvaccinated employees and their unpredictable unavailability for duty for indefinite or potentially long periods of time, and protecting other employees and the public from the spread of COVID-19.
- 9.2 Board determinations shall be issued in writing and must set forth an explanation of the basis for the determination and a description of the information relied on by the Board. Board determinations must be reviewed by the servicing legal office prior to issuance. Components must establish procedures for records retention for Board operations consistent with federal and Component-specific record retention requirements.
- 9.3 To the extent possible, Components should utilize existing procedures to notify employees and their supervisors of the Board's determination, including providing the determination to Component's DPM or RAM/RAC for uploading into the ACMS.



### **Determinations for Religious Exemption Requests**

- 9.4 If an employee's request demonstrates that the vaccine requirement substantially burdens the exercise of the employee's sincerely held religious belief, practice, or observance, the Board must determine if the employee's vaccination is the least restrictive means of furthering the federal government's compelling interest in ensuring the health and safety of the workforce and efficiency of the civil service. Components must also consider religious exemption requests under Title VII of the Civil Rights Act of 1964 (Title VII), which requires employers to reasonably accommodate an employee's sincerely held religious belief, practice or observance that prevents the employee from receiving the COVID-19 vaccination, unless to do so would pose more than a de minimis hardship. Title VII does not protect social, political, or economic views, or personal preferences of employees who seek an exemption to the COVID-19 vaccination requirement.
- 9.4.1 **Substantial Burden** - In determining whether employees have shown that the vaccine requirement substantially burdens a sincerely held religious belief or practice, Components are not prohibited from evaluating the sincerity of an employee's religious belief or their explanation as to how receiving the vaccine would require them to act contrary to their religious beliefs in order to receive a government benefit or avoid a legal penalty. Components, however, are cautioned to do so carefully and respectfully. Simply because an employee's belief may not be associated with an established religion or it deviates from the norm of an established religion should not, standing alone, be considered disqualifying, though it may require further investigation.
- 9.4.2 **Least restrictive means** - In determining whether the vaccine mandate is the least restrictive means of furthering the government's compelling interest, Components shall consider whether alternative mitigation protocols (e.g., masking, distancing, testing) will effectively satisfy the compelling interest of promoting the health and safety of the Federal workforce and the efficiency of the civil service.

### **Determinations for Disability Exemption Requests**

- 9.5 For disability exemption requests, the employee is responsible for providing documentation and information to show that they are a qualified individual with a disability – that is, evidence of an impairment that substantially limits one or more major life activities and that they can perform the essential functions of their position with or without an accommodation. If the Board determines that an employee's request meets this standard, it must evaluate whether the employee may be entitled to an exemption for the vaccine mandate as a reasonable accommodation, unless to do so would pose an undue hardship or direct threat to the health or safety of others. When considering exemption requests based on a disability, Boards must assess whether the employee has submitted information and documentation demonstrating that it would not be safe for the employee to receive any vaccine due to their disability and if so, whether there are available alternatives that would effectively mitigate the risk of infection and illness to

employees and others in the workplace, including the general public (if applicable) should an exemption be granted. Available alternatives might include job restructuring, telework, social distancing from coworkers or the public or other measures. However, Components are not required to alter essential functions of the employee's position as an accommodation. If an employee with a disability cannot be vaccinated nor accommodated with an exemption because to do so would pose a direct threat to the health or safety of others that cannot be eliminated by any form of reasonable accommodation, the exemption cannot be granted.

### **Determinations for Documented Need for Delay**

- 9.6 Boards shall consider CDC recommendations when making determinations on requests for extensions (not exemption) from employees with a documented medical need for delaying vaccination. For instance, the CDC recommends delaying vaccination in cases of employees with known COVID-19 infections until they are recovered from any acute illness or have met the local criteria for isolation. The CDC also recommends a vaccination delay of 90 days after receiving monoclonal antibodies or convalescent plasma for COVID-19 treatment. The Board, in coordination with medical/health advisors, shall consult CDC guidelines regarding [interim considerations](#). When a delay results in an employee being not fully vaccinated by November 22, 2021, the Board shall establish an end date to the extension that is no later than 14 days after the conclusion of the medical circumstance(s) upon which the extension approval is based.

### **Determinations Generally**

- 9.7 If the Board denies an employee's exemption request, the employee must be informed of the denial, including a description of the reasons for the denial, as well as the process for requesting reconsideration. In addition, the Board shall instruct the requestor that they must receive their first (or, if a one-dose series, only) dose within 14 calendar days of the final determination to deny the accommodation. If receiving a two-dose series, the employee must receive the second dose within 6 weeks of receiving the first dose. If the employee received a first dose of a two-dose series prior to seeking an accommodation, the employee must receive their second dose within 14 days of the final determination to deny the accommodation, or within a week of the earliest day by which they can receive their second dose, whichever is later. Employees must be instructed that, upon receiving their first and second dose, they must update their vaccination status in the VSS.
- 9.8 In the event that a request is approved, the Board shall issue a written determination, including a short description of the reasons for the approval. When approving a request, the Board may determine that it will revisit the approval at a future date if it concludes that facts and circumstances, such as the approval of additional vaccines, could warrant re-evaluation of the employee's request. The Board shall advise the employee of the timeframe for such re-evaluation.

## **10. REQUESTS FOR RECONSIDERATION**

- 10.1 Components must allow a requester to request reconsideration of the Board's determination. In seeking reconsideration, the requester must show that the Board's initial determination contained a material error in fact or law which, if not made, would have produced a result favorable to the requester. Components may allow the Board to reconsider its own initial decision, or create a separate Board or appoint a senior management official to review denied exemption or delay requests. Components may utilize their existing reconsideration procedures for reasonable accommodation determinations, including applying existing timeframes for employees to submit such requests. If a Component's existing procedures do not provide a specific timeframe for employees to submit reconsideration requests, Components should allow requestors to file requests for reconsideration within 15 days of receipt of the Board's initial determination. Requestors seeking reconsideration shall not be subject to disciplinary action for noncompliance with the Mandate while their request for reconsideration is pending. Similar to initial determinations, the requestor must be notified in writing on the results of their reconsideration request and, if denied, the reconsideration determination should contain instructions for compliance with the Mandate as well as inform the requestor of the right to file an EEO complaint.

## **11. COMPLAINT RIGHTS**

- 11.1 Employees may file an EEO complaint within forty-five (45) calendar days of receipt of a final determination on their exemption or delay request pursuant to 29 C.F.R. Part 1614. EEO Counseling may be requested by contacting the servicing EEO Office.
- 11.2 Non-Bargaining Unit Employees may file an Administrative Grievance in accordance with their Component's Administrative Grievance Procedures, as applicable, following receipt of a final determination on their exemption or delay request. Employees may contact their Component Labor Employee Relations Office about the availability of a Component administrative grievance procedure.
- 11.3 Bargaining Unit Employees may file a negotiated grievance under the provisions of their collective bargaining agreement, if applicable.

## **12. MISCELLANEOUS**

- 12.1 This process is designed to solely address requests for exemptions to, or delays in taking, the COVID-19 vaccination based on religious, disability, and/or medical reasons. DHS may discontinue the use of this process once the need for COVID-19 vaccination exemptions is no longer required or necessary.

**13. PRIVACY AND CONFIDENTIALITY**

- 13.1 All exemption and delay requests and any related medical documentation, including confirmation of a COVID-19 vaccination, must be kept confidential and stored separately from the employee’s personnel files. This includes an employee’s statement regarding their disability or any medical condition, or a Component official’s notes or other documentation regarding an employee’s medical condition(s). Components may store medical information related to COVID-19, vaccination, and testing in existing medical files.
- 13.2 Components are prohibited from sharing or disclosing an employee’s medical information except on a strict need-to-know basis (e.g., reporting to appropriate officials so that they can take actions consistent with guidance from the Component, CDC and other public health authorities).

**14. NO PRIVATE RIGHT**

- 14.1 This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of DHS.

**15. QUESTIONS**

- 15.1 Questions may be sent to your Component EEO or Civil Rights Office or Human Capital Office.

*Veronica Venture*

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Veronica Venture  
Director, Equal Employment Opportunity and Diversity

November 5, 2021

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Date