

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, D.C. 20001

REASONABLE ACCOMMODATION PROCEDURES FOR INDIVIDUALS WITH DISABILITIES

I. General Provisions

A. Introduction

The Federal Mine Safety and Health Review Commission (“Commission”) is committed to providing reasonable accommodations for individuals with disabilities in a prompt, fair and efficient manner, unless doing so would create undue hardship for the Commission. In furtherance of that commitment, the Commission has entered into a partnership with the Computer/Electronic Accommodations Program (“CAP”) to provide needs assessments and assistive computer/electronic technology, devices and services.

These accommodation procedures provide general guidance and are intended only to improve the internal management of requests for reasonable accommodation and do not create any substantive or procedural rights or benefits. Exceptions may occur based on the circumstances of a particular case.

B. Scope

These procedures apply to Commission employees with disabilities who require accommodation(s) to perform the essential functions of their current position or who need accommodation in order to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities. The procedures also apply to employment applicants with disabilities who need assistance in the application process when responding to Commission vacancy announcements.

C. Definitions

Applicable definitions are included in Appendix A.

II. Process for Requesting Reasonable Accommodation

A. Individual Makes Initial Request for Reasonable Accommodation

(1) An applicant may request reasonable accommodation orally but must follow up by forwarding a completed "Confirmation of Request" form (Appendix B) to any employee of the Commission involved in the application process.

(2) An employee may request reasonable accommodation orally but must follow up by forwarding a completed "Confirmation of Request" form (Appendix B) to his/her supervisor or any manager in his/her chain of command. CAP may be consulted if computer or electronic assistive technology is at issue. See www.tricare.mil.cap and Appendix E for contact information for CAP.

(3) A family member, health professional or other representative may request an accommodation on behalf of a Commission employee or applicant. The request should go to one of the same persons to whom the employee or applicant could make the request.

(4) A request for reasonable accommodation does not have to use any special words such as "reasonable accommodation," "disability" or "Rehabilitation Act." However, a written confirmation should be made as soon as possible following the request so that the Commission fully understands the precise nature of the disability and the accommodation sought. A written confirmation is not required every time an individual needs reasonable accommodation on a repeated basis, e.g., obtaining assistance of sign language interpreters or readers.

B. Evaluating the Request

(1) The employee's immediate supervisor will serve as the "Deciding Official." In the case of an applicant for employment, the Commission's selecting official will normally serve as the "Deciding Official." The procedure for processing the request involves a dialogue between the Deciding Official and the employee or applicant and should include consultation with other Commission officials. The individual requesting accommodation and the Deciding Official are encouraged to exchange information and discuss possible accommodations with the goal of reaching a reasonable and appropriate resolution. CAP may be consulted if computer or electronic assistive technology is at issue. CAP's contact information and additional selected resources are listed in Appendix E.

(2) The Deciding Official is responsible for processing the request and making the decision to grant or deny the requested accommodation or offer some alternative form of accommodation.

C. Requests for Medical Information

(1) If the need for the accommodation is not obvious, the individual requesting accommodation must submit to the Deciding Official medical information that supports the existence of the disability, the functional limitations imposed by the disability, and how the proposed accommodation will remedy the situation.

(2) The Commission has the right to have medical information reviewed by a medical expert of the Commission's choosing at the Commission's expense.

(3) If the information provided by the medical provider is insufficient to enable the Deciding Official to determine whether an accommodation is appropriate, the Deciding Official may ask the individual to provide additional information. If the information provided is still insufficient to support the request, the Commission may request an individual to go to an appropriate medical provider of the Commission's choice at the Commission's expense. In such a case, an individual will be required to sign a release permitting the medical provider to answer questions pertinent to the nature of the disability. See Appendix D for release form.

D. Confidentiality of Medical Information Submitted to the Commission

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential and may only be disclosed to individuals who have a verifiable need to know of the medical information. All medical information, including information about functional limitations and reasonable accommodation needs that the Commission obtains in connection with a request for reasonable accommodation, must be kept by the Administrative Office in the employee's Medical Folder, separate from the individual's Official Personnel Folder.

E. Time Frames for Decision on a Request for Reasonable Accommodation

Absent extenuating circumstances, requests for reasonable accommodation will be granted or denied within 20 business days of the Deciding Official's receipt of the request. It is the policy of the Commission to encourage that a request for accommodation be acted on as soon as possible.

F. If the Reasonable Accommodation is Granted

As soon as the Deciding Official determines that a reasonable accommodation will be provided, that decision should be communicated in writing to the individual indicating the projected time frame for providing the accommodation. The Deciding Official will also indicate whether a temporary accommodation will be provided on an interim basis.

G. If the Request for Accommodation is Denied

If a request for reasonable accommodation is denied, the Deciding Official is required to identify in writing the specific reasons for not providing the requested accommodation. The reasons can include but are not limited to the following: the proposed accommodation would be ineffective; the proposed accommodation would cause undue hardship; the medical documentation offered is inadequate and additional documentation was not provided; the proposed accommodation would require removal of a critical function of the position; or the proposed accommodation would require lowering a performance or production standard. The Deciding Official must be specific in the description of the reason for the denial and/or the nature of the undue hardship created by the accommodation. The denial of the request will set forth the Commission's procedures for reconsidering a request for accommodation as well as inform the individual of the right to file a Equal Employment Opportunity ("EEO") complaint or an appeal with the Merit Systems Protection Board ("MSPB").

If the Deciding Official determines that an accommodation other than the one requested is appropriate, the denial of the request should explain the alternative accommodation that is being offered.

H. Reconsideration

All requests for reconsideration must be made within 10 business days of the written denial to the next line supervisor in the Deciding Official's chain of command. The next line supervisor will respond to the request for reconsideration within 10 business days in writing, and, if the decision is not reversed, the reasons for the denial must be specified.

I. Federal Claims

(1) This policy is in addition to Federal protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requesting reconsideration does not suspend any time limits for

initiating Federal claims.

(2) If an individual chooses not to request reconsideration or is dissatisfied with the reconsideration decision, the employee may pursue a claim under only one of the following processes:

(a) For an EEO complaint, contact the Commission's EEO Director within 45 days from the date of receipt of the written notice of denial (the EEO Director will arrange for EEO counseling for the employee); or

(b) Initiate an appeal to the MSPB within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3. Note: not all denials of reasonable accommodation qualify as appealable adverse actions.

(3) If a Commission EEO officer has had any involvement in the processing of the request for reasonable accommodation, that officer will be disqualified from any involvement in the EEO counseling or consideration of the complaint associated with the request.

J. Tracking and Reporting

(1) Upon completion of the accommodation review process, the Deciding Official must complete the Commission's "Reasonable Accommodation Information Reporting Form," attached as Appendix C. This form, together with any other written information relating to the request of accommodation, shall be provided to the Administrative Office.

(2) The Commission's Administrative Office will (1) maintain records related to a requesting individual for the duration of that person's employment; and (2) retain the records for three years thereafter.

May 18, 2007

APPENDIX A

Definitions

(1) Rehabilitation Act of 1973, 29 U.S.C § 701 et seq., is the federal law that prohibits discrimination on the basis of disability. It also requires reasonable accommodation for qualified employees and applicants for employment with disabilities, unless doing so would create an undue hardship.

(2) Individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty, such as walking, breathing, seeing, hearing, speaking, learning and working.

(3) Qualified individual with a disability is an employee or applicant with a disability who satisfies skill, experience, education and other job-related requirements for the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

(4) Reasonable accommodation is a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. Reasonable accommodation may be made to enable an individual with a disability to apply for a job, to perform a job function, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities.

(5) Essential functions are those job duties that are so fundamental to the position that the individual cannot do the job without performing them. The employee's critical performance elements may indicate essential functions.

(6) Reassignment is the permanent placement of an employee in a different position at the same grade and pay for which the employee qualifies. Reassignment will be considered for employees (not applicants) only if no accommodations are available to enable the individual to perform his or her current job.

(7) Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for reasonable accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as

reasonably necessary.

(8) Undue hardship may arise when a specific proposed accommodation causes significant difficulty or expense. If the specific proposed accommodation creates an undue hardship, then the Commission does not have to provide that particular accommodation. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the proposed accommodation needed and the impact of the proposed accommodation on the operations of the Commission.

(9) Deciding Official is the individual charged with making the initial determination on a request for reasonable accommodation. For Commission employees, the Deciding Official is the immediate supervisor of the requesting employee. For applicants, the Deciding Official is normally the Commission's selecting official.

APPENDIX B

Federal Mine Safety and Health Review Commission

CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION	
Applicant's or Employee's Name: _____	Applicant's or Employee's Telephone No.: _____
Today's Date: _____	Applicant's or Employee's Location: _____ _____
Date of Request: _____	
ACCOMMODATION REQUESTED. (Be as specific as possible, e.g., adaptive equipment, reader, interpreter). If accommodation is time sensitive, please explain (Continue on separate sheet if necessary): 	
REASON FOR REQUEST (Continue on separate sheet if necessary): 	
DESCRIPTION OF THE DISABILITY (Continue on separate sheet if necessary): 	
Employee/Applicant Signature: _____	
Supervisor/Administrator Signature: _____	

APPENDIX C

Federal Mine Safety and Health Review Commission

REASONABLE ACCOMMODATION INFORMATION REPORTING FORM
Name of Individual Requesting Reasonable Accommodation: _____
Office of Requesting Individual: _____
Instructions: Provide information requested in all items. You may continue answers on separate sheet.
1. Accommodation (check one) <input type="checkbox"/> Approved <input type="checkbox"/> Denied (If denied, attach copy of the written denial letter/memo.)
2. Date of accommodation requested: _____ Who received request: _____
3. Date accommodation request referred to Deciding Official (<i>i.e. supervisor, administrative officer, selecting official</i>): _____
4. Date accommodation approved or denied: _____
5. Date accommodation provided (if different from date approved): _____
6. If time frames outlined in the Reasonable Accommodation Procedures were not met, please explain why.
7. Job held or desired by individual requesting accommodation (<i>including occupational series, grade level, and office</i>):
8. Accommodation needed for (<i>check one</i>) <input type="checkbox"/> Application Process <input type="checkbox"/> Performing Job Functions or Accessing the Work Environment <input type="checkbox"/> Accessing a Benefit or Privilege of Employment (<i>e.g., attending a training program or social event</i>)
9. Type(s) of accommodation requested (<i>e.g., adaptive equipment, staff assistant, removal of architectural barrier</i>):

10. Type(s) of accommodation provided (if different from what was requested):

11. Was medical information required to process this request? If yes, explain why.

12. Sources of technical assistance, if any, consulted in trying to identify possible accommodations, (e.g., Job Accommodation Network, disability organization EEOC):

13. Was reconsideration sought? If so, from whom and what was the result, specifying reasons for the decision. If reconsideration was sought, all involved supervisors must review and sign this form.

Comments:

Submitted by: _____ **Date:** _____

_____ **Date:** _____

Attach copies of all documents obtained or developed in processing this request.

APPENDIX D

**Federal Mine Safety and Health Review Commission
601 New Jersey Avenue, NW - Ste. 9500
Washington, DC 20001**

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION	
EMPLOYEE/APPLICANT NAME: _____	
THIS FORM MUST BE COMPLETED IN FULL	
I authorize and request _____ (Name of doctor, hospital, or other health professional releasing information)	
_____ (Address)	
to release to _____ (Name of individual to receive information)	
_____ (Address)	
medical information related to the nature, severity and duration of the disability; the activity or activities the disability limits; and the extent to which the disability limits the ability to perform certain activities.	
TO BE FILLED OUT BY THE DOCTOR, HOSPITAL OR OTHER HEALTH PROFESSIONAL	
What are possible workplace accommodations that will enable the individual to perform the essential duties in the attached position description or to enjoy the benefits and privileges of employment (Continue on separate sheet if necessary):	

I understand I may revoke this consent at any time except to the extent that action has already been taken on it and that it will expire automatically one (1) year from the date indicated below.	
_____ Signature of Employee/Applicant	_____ Date
_____ Witness	_____ Date

Attach Position Description

RESOURCES FOR LOCATING REASONABLE ACCOMMODATION

CAP: Computer/Electronic Accommodations Program

(703) 681-8813 (Voice) (703) 681-0881 (TTY)

<http://tricare.osd.mil/cap>

- FMSHRC has a partnership with CAP such that CAP will provide a needs assessments and appropriate computer/electronic accommodation.

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TTY)

<http://www.eeoc.gov>

- The EEOC's Publication Center has many free documents on the Americans with Disabilities Act and the Rehabilitation Act. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. Most of these documents are available through the Internet.
- EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act. The Manual includes a 200-page Resource Directory, including federal and state agencies, disability organizations that can provide assistance in identifying and locating reasonable accommodations. This Manual is found in the Commission's library.

U.S. Department of Labor

Requests for written materials: 1-800-959-3652 (Voice) 1-800-326-2577 (TTY)

To ask questions: (202) 219-8412 (Voice)

President's Committee on Employment of People with Disabilities

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TTY)

Registry of Interpreters for the Deaf (301) 608-0050 (Voice/TTY)

Rehabilitation Engineering and Assistive Technology Society of North America

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TTY)

<http://www.resna.org/hometal.htm>

- Information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- Centers where individuals can try out devices and equipment;
- Assistance in obtaining funding for and repairing devices; and
- Equipment exchange and recycling programs.

Job Accommodation Network (JAN)

1-800-526-7234 (Voice/TTY)

<http://www.jan.wvu.edu>

Access Board

An independent agency devoted to accessibility for people with disabilities.

<http://www.access-board.gov>