

Implementation of DOT Order 1011.1

**Procedures for Processing Reasonable
Accommodation Requests by DOT Job
Applicants and Employees with Disabilities**

September 16, 2002

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590
September 16, 2002

MEMORANDUM TO: Departmental Employees

FROM: Norman Y. Mineta

SUBJECT: Implementation of DOT Order 1011.1 (Procedures for Processing Reasonable Accommodation Requests by DOT Job Applicants and Employees with Disabilities)

I am pleased to announce the implementation of the U.S. Department of Transportation's (DOT) Procedures for the Processing of Requests for Reasonable Accommodation by DOT Job Applicants and Employees With Disabilities (DOT Order 1011.1). Enactment of this order is critical to the Department becoming a model employer for people with disabilities.

It enables DOT to fulfill its obligations under Executive Order 13164, which requires all Federal agencies to develop effective written procedures for the processing of reasonable accommodation requests. Further, it will assist the Department in meeting reasonable accommodation requirements under the Rehabilitation Act of 1973, as amended. Additionally, this order will facilitate implementing the important initiatives to increase employment opportunities for people with disabilities at the Department.

I expect managers and employees at the Department to fully comply with the requirements of this order. Total integration of people with disabilities in the DOT workforce is one of my top priorities. Utilization of tools like the DOT procedures for processing reasonable accommodation requests will help the Department to achieve this important goal.



U.S. Department of Transportation
Office of the Secretary of Transportation

ORDER
DOT 1011.1

September 16, 2002

**U.S. DEPARTMENT OF TRANSPORTATION
PROCEDURES FOR PROCESSING
REASONABLE ACCOMODATION REQUESTS
BY EMPLOYEES AND APPLICANTS
WITH DISABILITIES**

DISTRIBUTION: All Secretarial Offices and Operating Administrations

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CHAPTER 1. GENERAL

1-1. PURPOSE: This Order implements Executive Order 13164, which requires each Federal agency to establish effective written procedures for processing requests for reasonable accommodation by its employees and job applicants with disabilities. Further, it assists the U.S. Department of Transportation (the Department) in fulfilling its obligation to provide reasonable accommodations pursuant to the Rehabilitation Act of 1973, as amended. The Order is intended to provide a framework under which the Department will process reasonable accommodation requests. This Order is not intended to include or restate all applicable laws, regulations, Executive Orders, directives, policy statements, or binding legal precedents that set forth the substantive requirements governing such requests or that may affect the processing of such requests, and should be implemented in a manner consistent with such authorities. See Chapter 11, below.

1-2. SCOPE: The written procedures contained in this Order apply to all organizational components of the Department and all requests for reasonable accommodation made by or on behalf of DOT employees with disabilities and applicants for employment with disabilities. For purposes of this Order, the term "Operating Administrations" (OAs) refers to the Department's Operating Administrations, the Office of the Secretary (OST), the Office of the Inspector General (OIG), the Bureau of Transportation Statistics and the Transportation Administrative Service Center (TASC). The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, rotational assignments, and developmental assignments, as well as the benefits and privileges of employment. Operating Administrations may supplement these procedures with written procedures tailored to their specific needs, provided such procedures are consistent with the requirements and framework set forth in this Order.

1-3. DEFINITIONS: This Order makes reference to legal terms that are critical to understanding the Department's responsibilities. The following definitions are taken from the U.S. Equal Employment Opportunity Commission's (EEOC's) Americans with Disabilities Act, Title I Technical Assistance Manual and other EEOC guidance documents. They are provided for convenience only; applicable statutes, regulations, Executive Orders, directives, policy statements, and binding legal precedents should be consulted.

- a. **An Individual with a Disability:** An individual 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.
- b. **Physical or Mental Impairment:** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. **Major Life Activities:** Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. **Reasonable Accommodation:** Any change in the work environment or in the way things are usually done that results in equal employment opportunity for an individual with a disability.

Some examples of reasonable accommodation include:

- making existing facilities readily accessible to, and usable by, employees and applicants with a disability;
- job restructuring;
- modifying work schedules;
- reassignment to a vacant position;
- acquiring or modifying equipment or devices;
- adjusting or modifying examinations, training materials, or policies;
- providing qualified readers or interpreters.

e. **Undue Hardship:** Any action that requires significant difficulty or expense. If a specific reasonable accommodation causes undue hardship, the Department is not required to make that particular accommodation. Determination of undue hardship must always be determined on a case by case basis, considering factors that include the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the agency. A determination that an accommodation will not be provided because to do so would result in undue hardship must be made by the Secretary or his or her designee.

f. **Qualified Individual with a Disability:** An individual with a disability who (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) is able to perform the essential functions of the position, with or without reasonable accommodation.

g. **Essential Functions:** Those job duties that are so fundamental to the position that the individual holds or desires that he or she cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his or her ability to perform it. A determination of the essential functions of a position is made on a case-by-case basis and reflects the job as actually performed. It is not simply the components of a generic position description.

1-4. RESPONSIBILITIES:

- a. **The Departmental Office of Civil Rights (DOCR).** DOCR will provide policy guidance and oversee compliance with this Order. DOCR and civil rights offices within each OA will provide expert advice and consultant services to OAs on matters related to reasonable accommodation.
- b. **Operating Administrations (OAs).** Each OA must establish and implement effective reasonable accommodation policies and procedures, consistent with this Order, within the organization and shall ensure that employees and managers are aware of this Order and all other applicable policies and procedures and understand their obligations under them. Each OA, through its designated decision maker(s), has the ultimate responsibility for accepting, processing, and determining whether to grant or deny requests for reasonable accommodations from its employees and from individuals applying for jobs in that OA. Such actions must be made in conformity with the framework set forth in this Order, including applicable deadlines. OAs are responsible for training managers and supervisors to recognize requests for reasonable accommodations and to handle them appropriately in accordance with prescribed procedures.
- c. **Offices of Human Resources (HR).** The Departmental Office of Human Resource Management, as well as HR offices within each OA, are responsible for providing advice and guidance to supervisors, managers, and employees within their respective organizations concerning reasonable accommodation requests and related issues; and addressing, along with selecting officials, if appropriate, reasonable accommodation requests related to recruitment actions. Unless otherwise provided in applicable OA procedures, the HR office within each OA will serve as the deciding office on requests for reasonable accommodation from job applicants with disabilities. HR offices will also assist decision makers in locating appropriate vacant positions for employees with disabilities who have requested reassignment as a reasonable accommodation.
- d. **Legal Offices.** The Department's Office of the General Counsel, as well as legal offices within each OA, are responsible for providing advice and guidance to supervisors, managers, and entities (such as the Disability Resource Center) within their respective organizations on legal aspects of the accommodation process, such as the determination of whether an individual is a qualified individual with a disability, as defined in the Rehabilitation Act.
- e. **The Disability Resource Center (DRC).** The DRC, under the sponsorship of DOCR, serves as a resource to assist supervisors, managers, employees, and job applicants throughout the Department with issues related to reasonable accommodation requests. DRC services include providing: information and resources on the requirements for job accommodations; assistance in conducting job needs assessments; advice on selecting the equipment or obtaining the services needed for accommodations; and assistance in locating training resources. In many cases the DRC also provides funding for reasonable accommodations and related costs such as training. Although DRC staff will provide technical assistance concerning laws applicable to the reasonable accommodation process, the DRC does not provide legal advice. Legal advice must be obtained through the Department's Office of the General Counsel and/or the applicable OA's legal office.

The DRC provides reasonable accommodations that include, but not limited to, assistive technology, computer equipment, and accessible office furniture, as well as, sign language interpreting services. Additionally, the DRC arranges for training on accommodations delivered by the center. For example, an employee using voice recognition software purchased by the DRC will need extensive training on how to best utilize this program.

The DRC does not fund reasonable accommodations that require facility modification.

f. **Disability Program Managers (DPMs).** DPMs provide advice and assistance to supervisors, managers, and employees regarding reasonable accommodation and other disability matters; maintain and submit timely and complete reports, as required; and facilitate management training.

g. **Supervisors/Decision Makers.** Supervisors/decision makers are responsible for accepting, processing, and determining whether to grant or deny requests for reasonable accommodation from DOT employees and job applicants with disabilities, as set forth in this Order. An employee's direct supervisor is generally presumed to be the decision-maker unless the employee's OA has designated another individual to be the decision-maker, as further discussed in Chapter 3, below. The senior HR manager responsible for servicing a vacancy is presumed to be the decision maker for accommodation requests made by job applicants unless the OA has designated another individual to be the decision maker. The supervisor/decision maker is responsible for conducting the entire reasonable accommodation process, as set forth in Chapter 4, below, with assistance from the appropriate HR, legal, or civil rights offices, DPM, and/or the DRC.

h. **Employees/Applicants.** To be eligible for reasonable accommodation, in general, a person with a disability must be qualified to perform the essential functions of the position, with or without reasonable accommodation, and the accommodation request must not cause undue hardship to the Department. An employee with a disability who needs a reasonable accommodation must make his or her needs known to his or her immediate supervisor, another supervisor in the employee's chain of command, the applicable DPM, a representative of the applicable HR office, or the DRC. Applicants may direct requests for accommodation in the hiring process to any DOT employee the applicant has contact with in an official connection with the application process. An individual with a disability may be required to demonstrate, through medical or other documentation, that he or she has a disability and how the disability impacts essential job functions, the ability to participate in the job application process, or the ability to enjoy the benefits and privileges of employment.

1-5. DISTRIBUTION: All current DOT employees shall be provided with notice of this Order and any substantive revisions thereafter. Such notice shall include information as to where copies of the Order may be found or obtained. All new DOT employees will be provided with a brief written summary of this Order and any related procedures that have been developed by the applicable OA, as part of the orientation process for new employees. Complete copies of this Order will be posted on DOT's intranet and internet sites and will be available, upon request, from the DRC and each HR and civil rights offices. Copies shall be made available in alternate formats upon request.

CHAPTER 2. INITIATING THE REASONABLE ACCOMMODATION REQUEST

2-1. INTRODUCTION: A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a physical or mental impairment. There is no requirement that a request include special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.”

2-2. INITIATING A REQUEST: An employee or job applicant may initiate a request for reasonable accommodation orally or in writing. For purposes of this Order, oral communication includes communication through a sign language interpreter, via telephone, or via TTY (including relay services); written communication includes communication via email. An employee or job applicant may also request a reasonable accommodation through a family member, health professional, or other designated representative.

2-3. WHERE TO DIRECT REQUESTS: In order to minimize delays, employees should direct requests for reasonable accommodations to the decision maker designated to process and decide requests for reasonable accommodation by the employee's OA pursuant to Section 3-2, below, or to the employee's immediate supervisor, if no decision maker has been designated. In addition to the designated decision maker and the employee's immediate supervisor, requests may be made to another supervisor in the employee's chain of command, the applicable DPM, a representative of the applicable HR office, the DRC, or other designated DOT official. Requests made to anyone other than the designated decision maker or the employee's direct supervisor must be referred to the decision maker for that OA and, therefore, may result in some delay.

Applicants may direct requests for accommodation in the hiring process to any DOT employee the applicant has contact with in official connection with the application process. If requests are made to DOT employees who are not part of the HR staff that is handling the vacancy, the request will be forwarded to the designated decision maker.

2-4. TIMING OF REQUESTS: An individual with a disability may request reasonable accommodation whenever he or she chooses, even if he or she has not previously disclosed the existence of a disability.

2-5. WRITTEN REQUEST POLICY: To enable DOT to keep accurate records of requests, employees and applicants seeking reasonable accommodation must follow up an oral request by confirming that request in writing. Unless otherwise instructed, employees should direct written confirmation to the designated decision maker, the employee's immediate supervisor, or the DRC. Applicants will be told where to direct a written confirmation by the HR Specialist responsible for the vacancy. Parties responsible for processing requests may not wait for written confirmation before considering a request. If an individual with a disability requires assistance with the written request requirement, the staff member receiving the request will provide or arrange for assistance. If a reasonable accommodation is required on a repeated basis (for example, sign language interpreters), a written request is generally only required the first time services are requested.

2-6. THE REQUEST BEGINS THE PROCESS: The reasonable accommodation process and all time limitations established in this Order begin as soon as a request for accommodation is received by the appropriate individual, as set forth in Section 2-3, above, whether in writing or orally, and may not be delayed pending written confirmation. Oral requests shall be deemed received when made. Written requests shall be deemed received when actually received by the appropriate individual or his or her designee. If a request is made to someone other than the individuals designated in Section 2-3, the time limits begin to run as soon as a designated individual receives the request.

CHAPTER 3. U.S. DEPARTMENT OF TRANSPORTATION OFFICIALS AUTHORIZED TO HANDLE REQUESTS FOR REASONABLE ACCOMMODATION

3-1. DECISION MAKERS: The individual who is responsible for making the decision regarding a request for reasonable accommodation will be referred to as the “decision maker.” Decisions on requests for reasonable accommodation will always be made in the OA where the requesting employee works, by the individual or individuals designated to do so by the head of that OA. Decisions should generally be made at the lowest possible organizational level within the OA. If the OA has not designated a decision maker, the employee’s immediate supervisor or the lowest-level supervisor in the employee’s chain of command with the authority to approve the accommodation shall be the decision maker. Decisions regarding reasonable accommodations for job applicants shall be made by the individual or individuals designated to do so by the head of that OA. If the OA has not designated a decision maker, the senior HR Manager responsible for servicing the vacancy shall be the decision maker.

3-2. RESPONSIBILITY FOR DESIGNATING SURROGATES: When a decision maker will be unavailable to handle requests for reasonable accommodation within applicable time frames, he or she is responsible for ensuring that an appropriate surrogate has been designated to handle accommodation requests in his or her absence. Established time frames will not be suspended due to the unavailability of a principal decision maker.

3-3. REFERRING INITIAL REQUESTS: To ensure that requests are processed in a timely manner, any individual who receives a request for a reasonable accommodation, including the individuals designated to receive requests pursuant to Section 2-3, above, shall refer the request to the appropriate decision maker as quickly as possible, but usually within three (3) business days from the date that the individual receives the request. Every effort should be made prevent any delay during this part of the process. The DRC, DPMs, and OA HR offices will provide assistance in identifying the appropriate decision-maker.

3-4. CONSIDERATION OF LABOR RELATIONS OBLIGATIONS: If an employee who requests an accommodation is in a bargaining unit represented by a union, the decision-maker must contact his or her labor relations office to determine what, if any, labor relations obligations must be met.

CHAPTER 4. PROCESSING ACCOMMODATION REQUESTS

4-1. GENERAL: The reasonable accommodation process must be a cooperative, interactive process that involves the individual requesting the accommodation, the person who is responsible for making decisions concerning accommodations, and other appropriate personnel. Decisions on requests for accommodation must be made on a case-by-case basis, and must not be based on stereotypes regarding various disabilities.

4-2. RESPONSIBILITY FOR DECISIONS: Each OA, through its designated decision-maker(s), is responsible for accepting, processing, and determining whether to grant or deny requests for reasonable accommodations from its employees and from individuals applying for jobs in that OA. The Secretary of Transportation or his or her designee must approve any decision to deny an accommodation when the basis of the denial is undue hardship. See Section 7-2, below.

Decision-makers are ultimately responsible for all aspects of the accommodation process. This includes, but is not limited to, determining and documenting that the requesting employee or job applicant is a qualified individual with a disability, identifying and documenting the essential functions of that individual's job, determining whether a reasonable accommodation is necessary to enable the requesting employee to perform essential functions of the job or to enjoy equal benefits and privileges of employment, identifying, locating, and purchasing appropriate accommodations, arranging for installation, training, and follow up, as needed, requesting and maintaining necessary documentation, and fulfilling all reporting requirements.

Given the importance of these determinations and the fact that a correct decision may require the application of complex legal concepts, all decision-makers are strongly encouraged to consult with their respective HR, legal, and civil rights offices, DPMs, and/or the DRC, in order to ensure that the process used and decisions made are in compliance with this Order and all applicable statutes, regulations, agency guidance documents, and case law.

4-3. SERVICES AVAILABLE FROM THE DISABILITY RESOURCE CENTER: In order to assist the OAs' with the obligation to provide reasonable accommodations to employees and job applicants with disabilities and to ensure equitable outcomes throughout the Department, the Disability Resource Center was established, under the sponsorship of the Departmental Office of Civil Rights.

The DRC will provide the following information and/or services upon request: information and resources on the requirements for job accommodations; assistance in conducting job needs assessments; advice on selecting the equipment or obtaining the services needed for accommodations; and assistance in locating training resources. In many instances, the DRC will also fund the purchase of reasonable accommodations and related costs. See Section 4-4, below.

Although DRC staff will provide technical assistance regarding laws applicable to the reasonable accommodation process, the DRC does not provide legal advice. Legal advice must be obtained through the Department's Office of the General Counsel and/or the applicable OA's legal office. Further, while the DRC may provide advice and/or recommendations, final responsibility for decisions regarding requests for accommodations rest with the applicable OA.

4.4. PROCESSING ACCOMMODATION REQUESTS WITH ASSISTANCE FROM

THE DRC: A decision-maker may request that the DRC assist with or independently perform some or all aspects of the accommodation process on his or her behalf. In such cases, the DRC will maintain ongoing consultation with the decision-maker, as well as with other appropriate offices. However, regardless of the degree to which the DRC is involved in the accommodation process, the decision-maker will retain responsibility for all final determinations and decisions. If the decision-maker disagrees with a DRC recommendation, he or she should make an independent determination.

In most cases involving products and/or services, the DRC will purchase the accommodation and will fund associated training, if necessary, and other related costs. However, the DRC is only able to fund accommodations that meet all applicable legal requirements and, therefore, must concur with the outcome of the accommodation process when DRC funding is sought. If the decision-maker decides to grant a request when the DRC recommends that the request be denied, or if the decision-maker approves accommodations in addition to those the DRC believes are required by applicable law, payment for any such accommodation(s) and all related costs will be the responsibility of the OA. Therefore, it is strongly recommended that OAs involve the DRC in the accommodation process as early in the process as possible.

The DRC does not fund (1) reasonable accommodations that require modifications to buildings or facilities, and (2) the provision of services or equipment needed to generally provide or improve access to the Department's programs and/or activities, rather than to provide reasonable accommodations for individual employees or job applicants (e.g., public use TTY's).

4.5. REQUIRED NOTIFICATIONS: Upon receipt of a request for reasonable accommodation, either directly or through a third party, the decision-maker shall contact the requesting party as soon as possible, but usually within (3) business days from the date he or she receives the request, to inform the requesting party that he or she is the decision maker, to explain how the request will be handled, and to begin the interactive process described in Section 4-6 below. Every effort should be made to prevent any delay during this part of the process. The decision-maker may consult with the DRC at any time during the process. However, if the decision maker anticipates that the DRC will be asked to provide equipment and/or services or to otherwise play a significant role in the accommodation process, the DRC should be contacted as soon as possible, preferably within two (2) business days from the date the request was received.

If the DRC receives a request directly from a DOT employee, job applicant, or a designated representative, the DRC, after contacting the requesting party, will notify the appropriate decision-maker (or the employee's supervisor, if the decision maker is not known) that a request for accommodation has been received. As soon as possible, but no later than two (2) business days from the date the request is received, the DRC shall forward a copy of the request to the decision maker (or to the employee's supervisor, as applicable). The decision-maker will decide how much assistance he or she wishes to receive from the DRC and, as soon as possible after making that determination, but no later two (2) business days from the date he or she receives the request from the DRC, shall inform the requesting party that he or she is the decision-maker, explain how the request will be handled, and begin the interactive process.

4-6. DISCUSSION OF THE REQUEST: The individual requesting the accommodation and the decision-maker (and the requesting party's supervisor, if the supervisor is not the decision-maker) shall engage in an interactive process to determine what, if any, accommodation is required. Decision-makers are encouraged to include representatives of the appropriate HR, legal, and civil rights offices and/or the DRC in this process. The interactive process should include a discussion of all relevant issues, including, but not limited to, whether the employee requesting a reasonable accommodation is a qualified person with a disability, the identification of the essential functions of the employee's job, and, if an accommodation is necessary to enable a qualified employee to perform the essential functions of his or her job, which accommodation or accommodations are appropriate and do not pose undue hardship. The goal of this process is to ensure that all parties understand how the request will be processed, to ensure that there is an opportunity for all relevant information to be exchanged, and to provide the requesting party with an opportunity to propose and discuss potential accommodations.

4-7. THIRD PARTY REQUESTS: When a request for accommodation is made by a third party on behalf of an applicant or employee, the decision maker should, if possible, confirm the request with the applicant or employee before proceeding. In circumstances (such as hospitalization for an acute illness) that make it impossible for the request to be confirmed, the decision maker should begin processing the third party's request before obtaining such confirmation. However, as soon as reasonably possible and prior to the actual delivery of an accommodation, the decision maker shall obtain confirmation from the employee or job applicant that he or she wants a reasonable accommodation. In general, when dealing with third party requests, decision makers shall ensure that the privacy rights of DOT employees and job applicants are not violated. See Section 6-4, below.

4-8. REASSIGNMENT: When responding to a request for reassignment, the following considerations apply:

a. Reassignment should normally be considered as a last resort. It will only be considered when an employee cannot perform the essential functions of his or her current position and no accommodation is possible in that position, or if the only effective accommodation would cause undue hardship to the Department. Reassignment is not available as an accommodation to job applicants. It cannot be required when the Department can demonstrate that it poses an undue hardship. As with other forms of reasonable accommodation, an employee is entitled to an effective accommodation, which may or may not be his or her accommodation of choice. In the case of multiple vacancies, while nothing prevents the Department from offering several reassignment opportunities, the Department is only obligated to offer one reassignment opportunity as a form of accommodation. An employee must be qualified for the new position, with or without reasonable accommodation.

b. In considering whether there are positions available for reassignment, the decision maker shall work with both the employee and with personnel in the appropriate HR office to identify all vacant positions within the employee's OA for which he or she may be qualified, with or without reasonable accommodation. For this purpose, the term "vacant positions" shall include positions that are actually vacant and that the OA intends to fill, as well as positions that the decision maker or HR knows will become vacant over the next sixty (60) calendar days.

- c. The initial search should focus on positions within the employee's current OA that are equivalent to the employee's current job in terms of pay, grade, promotion potential, status, benefits, geographical location, and other relevant factors. If an equivalent position is found, the employee must be offered that position. He or she cannot be required to compete for that position.
- d. If there is no equivalent level position vacant (or anticipated to be vacant) within the same commuting area as the employee's current position, the decision maker shall consult with the employee to determine whether the employee is willing to accept a vacant position outside of the employee's current commuting area. If so, the search shall be expanded to other geographic regions where the employee's OA may have vacant positions. In general, as with other transfers not required by management, the Department is not required to pay relocation expenses.
- e. If the search for an equivalent position within the employee's OA is unsuccessful and the employee is unwilling to consider an equivalent position outside of his or her local commuting area (or such a position cannot be located), the decision maker shall consult with the employee to determine whether the employee is willing to accept a position in other parts of the Department. If so, the search shall be expanded to seek an equivalent position within the entire Department, unless to do so would pose an undue hardship, in which case the search shall be expanded to the extent possible without causing undue hardship. The heads of the Department's Human Resources (HR) Council and Civil Rights Directors Leadership Council (CR Council) will appoint an ad hoc committee that will develop recommended procedures for conducting Department-wide position searches and reassignments. The committee must be established and functioning no later than thirty (30) days from the date of this order. The committee will submit the procedures for a Department-wide search to the HR Council and the CR Council no later than thirty (30) days from the start of its work. Such procedures shall provide that OA's may provide broader reassignment opportunities (e.g. relocation at the OA's expense) but may not provide narrower opportunities.
- f. If the expanded search for an equivalent position is unsuccessful, the OA must consider vacant lower level positions for which the individual is qualified. Prior to assigning a lower-level (non-equivalent) position to an employee, the decision-maker should consult with the employee to determine which factors are most significant to the employee.

CHAPTER 5. TIME FRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATIONS

5-1. TIME PERIOD FOR PROCESSING REQUESTS: Requests for accommodations shall be processed, and accommodations, if appropriate, provided, in as short a timeframe as reasonably possible. The timeframe necessary to process a request will vary depending upon the nature of the accommodation requested, the need for supporting information, and other factors. However, absent the need for supporting medical information and/or the existence of other extenuating circumstances, a request for reasonable accommodation shall be processed and the accommodation, if granted, provided, within twenty-five (25) business days from the date the request is received by the decision maker or by a party designated to receive such requests in

Section 2-3, above. Each party involved in processing a request shall document the time used to complete each step of the process.

5-2. EXPEDITED PROCESSING: Circumstances may warrant expedited decision-making in certain cases. Examples of situations that require reasonable accommodations to be provided in a shorter time period include:

- a. **Job Applicants.** Based on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. The applicable HR office, the selecting official and/or the DRC must act promptly to make a determination and, if appropriate, provide reasonable accommodation.
- b. **Employees.** Based on the nature of the request, an employee may require a reasonable accommodation for a job-related activity that will occur within a short time frame. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five (5) days. (The employee should, however, provide as much notice as possible for a regularly occurring activity.) In addition, an employee's accommodation request may include both simple, easy to obtain, items and more complex accommodations. For example, an employee with limited dexterity may need both a simple trackball and complex, computer-related accommodations, such as a speech-recognition software. Easily obtained accommodations that are necessary to enhance the employee's productivity and effectiveness should be provided to the employee as soon as reasonably possible, and should not be delayed pending completion of the entire request.

5-3. MEDICAL DOCUMENTATION AND EXTENUATING CIRCUMSTANCES: If circumstances preclude a decision-maker from making a decision or implementing the accommodation within the required timeframe, the total processing time may be extended. Processing time may only be extended when strictly necessary due to circumstances beyond the decision-maker's control. The following are examples of extenuating circumstances:

- a. There is an outstanding initial or follow-up request for medical information.
- b. The purchase of equipment may take longer because of requirements under the Federal Acquisition Regulation.
- c. Equipment must be back ordered or there are other vendor-related delays that are not within the control of the Department.
- d. The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before it is purchased.
- e. The need for the Secretary or his/her designee to approve an undue hardship claim raised by the decision-maker.

5-4. NOTIFICATION TO INDIVIDUAL FOR DELAY IN PROCESSING REQUEST: Where extenuating circumstances exist, the decision-maker must notify the individual in writing

of the reason for the delay, and the approximate date on which a decision or the provision of the reasonable accommodation, is expected. Additional developments should also be communicated promptly to the individual in writing.

5-5. TEMPORARY MEASURES: If there is a delay in providing an approved accommodation, the decision-maker must consider whether temporary measures can be taken to assist the employee. Any accommodation offered on a temporary basis must be presented to the employee in writing, and must clearly state the temporary nature of the solution and the anticipated implementation date of the permanent accommodation.

CHAPTER 6. MEDICAL INFORMATION

6-1. REQUESTING INFORMATION/DOCUMENTATION: If an employee or applicant requests a reasonable accommodation, the decision maker is entitled to sufficient information/documentation to determine that the individual has a disability, as defined in the Rehabilitation Act, and that he or she requires a reasonable accommodation. When the disability and/or the need for accommodation is not obvious and is not otherwise known, the decision-maker may require that the person requesting an accommodation provide reasonable information/documentation about the functional impairment at issue and the requested accommodation. When appropriate, medical information and documentation may also be requested by the DRC.

If the medical information submitted is insufficient, the decision-maker may request supplemental information/documentation. When requesting additional information, decision-makers are encouraged to explain to the requesting party why the documentation is insufficient and to identify the information still needed. Failure to submit properly requested information/documentation may result in denial of the request for reasonable accommodation.

6-2. SPECIFIC TYPES OF MEDICAL INFORMATION/DOCUMENTATION: When the conditions described in Section 6-1, above exist, the decision maker or the DRC may request information/documentation such as the following, that is relevant to the reasonable accommodation decision:

- a. the nature, severity, and duration of the impairment;
- b. one or more of the activities that the impairment limits;
- c. the extent or degree to which the impairment limits an activity;
- d. the reason an individual requires reasonable accommodation or the particular reasonable accommodation requested; and/or
- e. how the reasonable accommodation will assist the individual to apply for a job, to perform the essential functions of a job, or to enjoy a benefit of employment.

The decision-maker may obtain information regarding the nature and extent of an individual's disability and the functional limitations it imposes directly from the individual. Alternatively,

the decision-maker may require that information/documentation come from an appropriate professional, such as a physician, a vocational counselor, a physical therapist, or another individual with recognized expertise regarding the individual's condition. When appropriate, the decision-maker should provide the professional with information describing the nature of the job, the essential functions the individual must perform, and other relevant information. An OA may have medical information reviewed by a medical expert of the OA's choice at its sole expense.

6-3. INSUFFICIENT MEDICAL DOCUMENTATION: If an individual fails to provide the decision-maker with sufficient information/documentation to determine that an employee or applicant has a disability that requires a reasonable accommodation, and the decision-maker has explained the insufficiency, has identified the information/documentation needed, has allowed the individual the opportunity to provide the identified information/documentation, and has placed the individual on notice that failure to provide the identified documentation may result in denial of the accommodation request, then the decision-maker may deny the accommodation request.

Alternatively, the decision maker may ask the individual to sign a limited medical release permitting the decision-maker to submit a list of specific questions addressing the insufficiency to the individual's physician or health care professional and/or permitting the decision-maker or a physician or health care professional of the Department's choice to make the contact and inquiries. The decision-maker may also offer, and in certain circumstances require, the individual an opportunity to submit to an independent examination by a health care practitioner of the OA's choosing. In this option, the OA is responsible for paying for the examination.

6-4. CONFIDENTIALITY AND DISCLOSURE: The law requires that medical information/documentation related to the reasonable accommodation process be kept confidential. For these purposes, confidentiality means that this information/documentation must be kept in files separate and apart from an individual's personnel file(s). In general, persons entitled to and having access to such information/documentation in order to make an accommodation decision (including appropriate HR, legal, Civil Rights, Disability Program Managers, DRC staff, and medical personnel) must not disclose it, except as follows:

- a. Information about necessary accommodations and/or work restrictions may be provided to supervisors or managers who need to know;
- b. Information about emergency treatment that could be required may be disclosed to first aid and safety personnel;
- c. Investigatory information may be disclosed to government officials conducting compliance activities under the Rehabilitation Act;
- d. Under limited circumstances, information may be disclosed to worker's compensation offices or insurance carriers, See 29 C.F.R. Part 1630 Appendix sections 1630.14(b), 1630.16(f);

e. HR, DRC, civil rights, or other personnel dealing with equal employment opportunity matters may be given information to maintain records, and to evaluate and report on how DOT processes requests for reasonable accommodation; and

f. Information about assistance needed during an emergency evacuation may be required and can be provided to safety personnel.

Any properly made disclosures must also include information about the confidentiality requirements that attach to the information.

6-5. RECORDS RETAINED: During the time the request for reasonable accommodation is pending and, for requests that have been denied, during the time period for reconsideration established in Chapter 8, below, the decision maker shall maintain all records related to the reasonable accommodation determination, including medical records obtained pursuant to this Chapter. Following an uncontested determination or the resolution of a contested determination the records shall be forwarded to the office that has been designated by the applicable OA to maintain such files, to be kept separate and apart from the individual's personnel file(s). These records should be maintained for the duration of the individual's tenure with the Department.

6-6. OTHER RELEVANT SOURCES:

All actions taken pursuant to Chapter 6 shall be consistent with the standards contained in the following sources, as appropriate.

a. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, found at 8 FEP Manual (BNA) 405: 7191 (1995) or <http://www.eeoc.gov>

b. EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act, found at 8 FEP Manual (BNA) 405: 7701 (2000) or <http://www.eeoc.gov>

c. 5 U.S.C. Sections 3301, 3302; and 5 C.F.R. Part 339 (Office of Personnel Management's Medical Qualification Determinations)

d. The Privacy Act of 1974, 5 U.S.C. Section 552a, and 49 C.F.R. Part 10

CHAPTER 7. DECISIONS REGARDING REASONABLE ACCOMMODATION REQUESTS

7-1. GRANTING A REASONABLE ACCOMMODATION REQUEST: A determination that a reasonable accommodation will be granted should be communicated to the individual, in writing, as soon as practicable. Absent extenuating circumstances, the decision maker shall give the requesting party his or her decision within twenty-five (25) business days. Such notice should include the projected timeframe for providing the accommodation.

7-2. DENIAL OF A REASONABLE ACCOMMODATION REQUEST: When a decision maker denies a request for reasonable accommodation, the decision must: (1) be in writing, and (2) specify the reason(s) for denying the request. Absent extenuating circumstances, the decision-maker shall give the requesting party his or her decision within twenty-five (25) business days. Reasons for denying a request for reasonable accommodation may include, but are not limited to, the following:

- a. The employee or applicant does not meet the definition of a qualified individual with a disability under the Rehabilitation Act.
- b. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- c. The requested accommodation would not be effective.
- d. The requested accommodation would require the removal of an essential job function.
- e. The requested accommodation would require the lowering of a performance or production standard.
- f. The requested accommodation would be in violation of the terms and conditions of a collective bargaining agreement.
- g. The requested accommodation would result in an undue hardship to the Department. Before reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship. In making an undue hardship determination, the decision maker shall consult with appropriate Civil Rights, Human Resource, budget, and legal offices. The Secretary of Transportation or his or her designee must approve all decisions that an accommodation would result in an undue hardship¹.

7-3. NOTICE OF APPEAL RIGHTS: The written notice of denial must also inform the requesting party that he or she has the right to file an EEO complaint and may also have rights under administrative and union grievance procedures. The written notice should also explain the Department's procedures for informal dispute resolution.

CHAPTER 8. RESOLUTION OF DISPUTES CONCERNING A DENIED REQUEST FOR REASONABLE ACCOMMODATION

8-1. GENERAL: OA's shall seek to resolve disputes arising from a denial of a request for reasonable accommodation at the lowest possible level. It is recognized that some disputes will escalate into formal administrative and legal forums; however, utilization of Alternative Dispute Resolution (ADR) or other appropriate mechanisms has the potential to resolve many of these disputes. Therefore, DOT supervisors and employees are encouraged to resolve disagreements and disputes regarding reasonable accommodation issues on an informal basis, whenever possible.

8-2. FORMAL DISPUTE RESOLUTION PROCEDURES: DOT components policies shall identify their dispute resolution mechanisms for use when informal resolution of reasonable accommodation disputes is not possible. This does not require the development of new procedures.

CHAPTER 9. INFORMATION AND REPORTING

9-1. GENERAL: For reporting purposes and in order to evaluate the Department's effectiveness in responding to reasonable accommodations requests, each OA and the DRC shall collect and compile the information set forth in Section 9-3, below. DOCR, with the assistance of the DRC, may provide further guidance concerning the content of the information collected and the methodology for data collection and reporting.

9-2. REPORTING: Each decision-maker shall submit the required information to the appropriate DPM (unless another office has been designated to maintain such information by the applicable OA) within eight (8) business days of the decision. The DRC shall maintain the records for all requests for which it has primary responsibility. DPMs and the DRC shall maintain all records required to be kept pursuant to this Chapter in an aggregate format capable of being transmitted electronically to third parties. Such records shall be retained for a minimum of three (3) years. If DOCR requires such records for reporting or evaluation purposes, the aggregated information will be transmitted to DOCR upon request.

9-3. REASONABLE ACCOMMODATION DATA: The data to be maintained by the OAs, DPMs, and the DRC will include the following:

- a. the number of reasonable accommodations, by type, that have been requested in the application process, and whether those requests have been granted or denied;
- b. the jobs (occupational series, grade level, and Agency component) for which reasonable accommodations have been requested;
- c. the types of reasonable accommodations that have been requested for each of those jobs;
- d. the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
- e. the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
- f. the reasons for denial of requests for reasonable accommodation;
- g. the amount of time taken to process each request for reasonable accommodation; and
- h. the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

9-4. INFORMATION TO THE EEOC: In accordance with Executive Order 13164, each Agency and component that adopts reasonable accommodation procedures must submit the procedures to the EEOC. Agencies and components must also submit any modifications to reasonable accommodation procedures at the time they are adopted. , Prior to transmittal to the EEOC, any OA planning to develop procedures to supplement this Order shall work in close consultation with DOCR on the development of such documents and or any subsequent modifications.

CHAPTER 10. ADDITIONAL INFORMATION

Any person interested in receiving further information regarding these procedures may contact:

U.S. Department of Transportation
Disability Resource Center
Disability Policy Analyst
400 Seventh Street, SW
Room 2110, SVC-104
Washington, DC 20590

In addition, DOT employees and job applicants may:

Contact the Disability Resource Center for information on accommodation services for any DOT employee or applicant at 202-493-0625, TTY 202-366-5273, email drc@tasc.dot.gov, or may visit the DRC website at <http://www.drc.dot.gov>.

Contact the Departmental Office of Civil Rights (DOCR) at (202) 366-4648 or refer to the DOCR page on the Department's web site at <http://www.dot.gov/ost/doctr/>.

CHAPTER 11. REFERENCES

Statutes

- 29 U.S.C. Section 701, et seq.: The Rehabilitation Act of 1973, as amended (providing for reasonable accommodation and prohibiting disability-based discrimination against federal employees and applicants for federal employment)
- 29 U.S.C. Section 791(g): Rehabilitation Act Amendments of 1992 (incorporating the employment standards of title I of the Americans with Disabilities Act (ADA) into the Rehabilitation Act)

Regulations

- 29 C.F.R. Part 1630 (EEOC: Regulations to implement the equal employment opportunity provisions of the ADA)
- 29 C.F.R. Part 1614 (EEOC: Federal Sector Equal Employment Opportunity)

- 29 C.F.R. Part 1614.203 (EEOC: Federal Sector EEO - Disability)
- 5 C.F.R. Part 339.301, et seq. (OPM: Medical Qualification Determinations)

Executive Orders

- Executive Order 13164, “Establishing Procedures to Facilitate the Provision of Reasonable Accommodation” (July 26, 2000)
- Executive Order 13163, “Increasing Opportunity for Individuals with Disabilities to be Employed in the Federal Sector” (July 26, 2000)

Policy and Enforcement Guidance

- EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (found at www.eeoc.gov)
- Questions and Answers: Policy Guidance on Executive Order 13164 (found at www.eeoc.gov)
- EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (found at www.eeoc.gov)
- EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (found at www.eeoc.gov)
- Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (found at www.eeoc.gov)
- EEOC Instructions for Field Offices Analyzing ADA Charges After Supreme Court Decisions Addressing “Disability” and “Qualified” (found at www.eeoc.gov)
- For the Secretary of Transportation: Jeremy S. Wu Director, Departmental Office of Civil Rightsⁱⁱ

ⁱ For several operating administrations or parts of the Department, special statutory provisions apply. See 49 U.S.C. section 106(f) (2002) (Federal Aviation Administration); 5 U.S.C. Appendix 8G (g)(2) (2002) (Office of the Inspector General); 49 U.S.C. sections 114(m)(1), 44935 (2002) (Transportation Security Administration).