

NASA Procedural Requirements

NPR 3713.1A
Effective Date: March 28, 2008
Expiration Date: March 28, 2013

COMPLIANCE IS MANDATORY

Subject: Procedures for Providing Reasonable Accommodation for Individuals with Disabilities

Responsible Office: Office of Diversity & Equal Opportunity

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Preface

P.1 Purpose

This NASA Procedural Requirements (NPR) provides instructions for the implementation of NASA Policy Directive (NPD) 3713.8A, "Provision of Reasonable Accommodation for Individuals with Disabilities." This NPR provides instructions to NASA management and staff that receive, coordinate, review, process, and approve requests for reasonable accommodation at NASA Headquarters and NASA Centers, including component facilities.

This NPR further provides standard procedures for timely and accurate processing of requests for reasonable accommodation. These procedures shall assist NASA in fulfilling its obligations for ensuring that qualified individuals with disabilities who request reasonable accommodation receive a proper response within the shortest time possible. Further, this NPR establishes criteria for collecting and annually reporting data on the numbers and types of reasonable accommodation requests received and processed at NASA Headquarters and NASA Centers, including component facilities.

This NPR is not intended to cover those situations where an employee has a temporary medical condition that does not rise to the level of a disability (see App. A, § A.4 for a definition of an individual with a disability) but, where the manager may, nonetheless, offer some adjustment to the work space.

P.2 Applicability

This NPR is applicable to NASA Headquarters and NASA Centers, including component facilities. Any reference to Center designations includes Headquarters.

P.3 Authority

- a. Sections 501, 504, and 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794, 794d.
- b. Exec. Order No. 13,164, 3 C.F.R. 286 (2000).
- c. NPD 3713.8A, Provision of Reasonable Accommodation for Individuals With Disabilities.

P.4 Applicable Documents

- a. Privacy Act of 1974, as amended, 5 U.S.C. § 552a.
- b. The National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. § 2473.

- c. Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4214.
- d. Exec. Order No. 12,106, 3 C.F.R. 263 (1978 Comp.).
- e. Federal Sector Equal Employment Opportunity, 29 C.F.R. Part 1614.
- f. Regulations to implement the equal employment provisions of the Americans with Disabilities Act, 29 C.F.R. Part 1630.
- g. Privacy Act-NASA Regulations, 14 C.F.R. Part 1212.
- h. Medical Qualifications Determinations, 5 C.F.R. Part 339.
- i. NPR 1840.1, Management of Workers' Compensation Injuries and Illnesses.
- j. NPR 1382.1, NASA Privacy Procedural Requirements.
- k. EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (2000).
- l. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (1999; rev. 2002).
- m. EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (2000).
- n. EEOC Management Directive (MD) 715 (2003).
- o. EEOC Office of Federal Operations, Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures Under Executive Order 13164 (2005).

P.5 Verification

P.5.1. Compliance with the requirements of this NPR will be verified through the following means:

- a. The NASA Headquarters and Center EO Officer shall prepare an annual report containing information regarding requests for reasonable accommodation, presented in the aggregate, as detailed in Chapter 6.
- b. In addition, the report shall provide a qualitative assessment of the reasonable accommodation program, including any recommendations for improvement of NASA's reasonable accommodation policies and procedures.
- c. ODEO personnel and Center EO Offices shall maintain and safeguard all records and documents following the guidance provided in NPR 1441.1D, NASA Records Retention Schedules. This includes proposing changes to current retention schedules and developing new retention schedules when necessary.

P. 6 Cancellation

NPR 3713.1, Procedures for Providing Reasonable Accommodation for Individuals with Disabilities, dated November 18, 2002.

/S/

**Thomas Luedtke
Associate Administrator for
Institutions and Management**

Chapter 1. NASA Policy on Reasonable Accommodations

1.1 NASA's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973, as amended. Under the law, Federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. NASA is committed to providing reasonable accommodations to its employees and applicants for employment to ensure that individuals with disabilities have full access to equal opportunity in employment and that NASA benefits from drawing upon and employing qualified workers. These requirements cover applicants for employment and employees in part-time and full-time positions. These requirements also apply to participants in NASA-sponsored education programs (e.g., internships, fellowships), visiting scientists, and detailees who are not in a civil servant position.

1.2 NASA shall process requests for reasonable accommodation and, where appropriate, provide effective reasonable accommodation in a prompt, fair, and efficient manner.

1.3 See Appendix A for definitions of key terms.

Chapter 2. The Interactive Process

2.1 The provision of reasonable accommodations to qualified individuals with disabilities is based on an interactive process. The interactive process begins once a request for reasonable accommodation is received to determine what, if any, accommodation should be provided. This means that the individual requesting the reasonable accommodation and the Decision Maker (DM) must discuss the request, the process for determining whether a reasonable accommodation shall be provided, and potential reasonable accommodations. The interactive process is necessary to making these determinations.

2.2 Communication is a priority throughout the entire process. The DM shall have the principal responsibility for identifying possible reasonable accommodations. He or she shall take a proactive approach in searching out and considering possible reasonable accommodations, including consulting appropriate resources for assistance (see Appendix C).

2.3 The employee requesting the reasonable accommodation shall also participate to the extent possible in helping to identify an effective reasonable accommodation.

2.4 The Headquarters, Center, or Agencywide Disabilities Program Manager (DPM) shall be available to provide assistance and help resolve any obstacles that may arise during the process, as well as a NASA or contractor physician, or other representatives from the occupational health area, Employee Assistance Program (EAP) personnel, facilities specialists, information technology specialists, compensation claims specialists, human resources specialists, and any other professionals deemed necessary.

2.5 When a request for reasonable accommodation is made by a third party, the DM should, before proceeding, confirm with the applicant or employee with a disability that, in fact, he or she wants a reasonable accommodation. It may not be possible to confirm the request if the employee has, for example, been hospitalized with an acute condition, or is otherwise unavailable. In this situation, the DM shall process the third party's request and shall consult directly with the individual needing the reasonable accommodation as soon as it is practicable.

2.6 Ongoing communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective reasonable accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for reasonable accommodation, and the type of reasonable accommodation which shall be provided are clear, extensive discussions are not necessary. Nevertheless, the DM and requesting individual should ensure a full exchange of relevant information.

2.7 The DM or any other NASA official or Agency contractor who receives information in connection with a request for reasonable accommodation may share information that is confidential and connected with that request with other Agency officials who need to know the information in order to carry out their job responsibilities, including but not

limited to, making determinations on a reasonable accommodation request or to assist the DM in making such a determination. (see also Chap. 4, Sec. 4.3.10).

Chapter 3. Initiating the Request

3.1 A qualified individual with a disability may be entitled to a reasonable accommodation to perform the essential functions of the job. NASA may choose among reasonable accommodations as long as the chosen accommodation is effective.

3.2 A request for reasonable accommodation is a statement that an individual with a disability 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 mental or physical condition. The request can be initiated orally, in writing, or in any other format or medium that is convenient and practical for the individual with the disability.

3.3 A request does not have to contain any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation at any time, even if the existence of a disability has not been previously disclosed. A family member, health professional, or other representative may also request a reasonable accommodation on behalf of a NASA employee or applicant. Any NASA employee or applicant may consult with the Agency, Headquarters, or the Center's DPM for further information or assistance with requesting or processing a request for reasonable accommodation.

3.4 The reasonable accommodation process begins immediately after management's receipt of the request. A request may be made to a supervisor or manager in the employee's organizational hierarchy, the Center Equal Opportunity (EO) Officer,¹ or in the case of an applicant for a position, any Human Resources Specialist (HRS) with whom the applicant has contact in the Office of Human Resources. When a request for reasonable accommodation is made, the requesting employee's immediate supervisor, or in the case of an applicant, the appropriate HRS receiving the request, shall immediately notify the installation's DPM who shall, in turn, notify the EO Officer. Supervisors, managers, employees, and applicants should consult with the DPM at their respective installation for further information or assistance in connection with requesting or processing a reasonable accommodation request.

3.5 For NASA to keep accurate records regarding requests for reasonable accommodation, employees seeking a reasonable accommodation shall follow up on an oral request by completing NASA Form 1699, Request for Reasonable Accommodation (see Appendix A), or submitting the request in an alternative format, as appropriate, to the immediate supervisor. If an alternative format is used, the immediate supervisor shall transfer the information to NASA Form 1699. Similarly, for applicants seeking a reasonable accommodation, the HRS shall transfer the information to NF 1699 and attach a copy of the written request.

Applicants do not need to complete a NASA Form 1699, but must follow-up with a written request.

¹ For purposes of this NPR, the term "Center EO Officer" includes the Director, HQ Equal Opportunity and Diversity Management (EODM) Division. "Center EO Office" is meant to be inclusive of the NASA EODM Division.

3.6 NASA Form 1699, or in the case of applicants, a written request, should be completed as soon as possible, but not later than five (5) business days after an initial oral request is made. In any event, NASA shall begin processing the request as soon as the request, in whatever form, is received. The requestor or the requestor's immediate supervisor shall provide the Headquarters or appropriate Center's DPM with a copy of the completed NASA Form 1699, or the written request, as soon as possible. The DPM shall inform the Center's EO Officer upon receipt of the written request. The Center's EO Officer shall be kept informed by the DPM of the progress in the processing of the request.

3.7 A NASA Form 1699 is not required when an individual needs a reasonable accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). A NASA Form 1699 is required only for the first request, although the requestor shall provide appropriate notice, either verbally or in writing to the DM of record, each time the reasonable accommodation is needed.

3.8 NASA Form 1699 shall be filed with, safeguarded, and disposed of by the Headquarters or Center Equal Opportunity Offices in accordance with guidance provided in NPR 1441.1D, NASA Records Retention Schedules, the Privacy Act, and the confidentiality requirements of the Rehabilitation Act.

3.9 The ODEO shall maintain and safeguard all records and documents in accordance with the Privacy Act and will follow the guidance provided in NPR 1441.1D, NASA Records Retention Schedules. This includes proposing changes to current retention schedules and developing new retention schedules when necessary.

Chapter 4. Processing the Request

4.1 Decision Makers

4.1.1 The person who decides whether to grant the request for reasonable accommodation is generally the employee's immediate supervisor. These individuals shall be referred to as the "Decision Maker (DM)." In the case of an applicant, the DM shall be the HRS processing the vacancy. In processing reasonable accommodation requests, the DM should work in consultation with other stakeholders such as the HR, EO, and the Agency or Center Disability Program Manager.

4.1.2 In cases where the request is submitted to someone other than the immediate supervisor or the appropriate HRS, the request shall be referred by the person receiving the initial request to the Headquarters or Center's Equal Opportunity Office not later than five (5) business days after receipt. In this case, the Headquarters or Center EO Officer shall be the DM. The Headquarters or Center EO Office shall contact the immediate supervisor or HRS, as appropriate, as soon as possible to advise of the receipt of a request for reasonable accommodation. To the extent that the immediate supervisor or HRS remains unavailable, the Headquarters or Center EO Office shall continue to process the request until a determination to grant or deny the request is made, in consultation with stakeholders, such as the next level of management and HR.

4.1.3 Where the employee is a detailee or matrixed employee (i.e., an employee who reports to more than one immediate supervisor based on specific projects and assignments) from another organization, the DM shall be the employee's immediate supervisor of record, acting in coordination and consultation with the detail or matrix supervisor.

4.1.4 An employee or applicant for Federal employment with NASA can make a request for a reasonable accommodation to any member of Headquarters or Center management, a staff member in the Headquarters or Center EO Office, or the Human Resources Office. Processing of a request for a reasonable accommodation shall begin upon receipt of the initial request.

4.2 Timeframes

4.2.1 NASA shall process requests for reasonable accommodation and provide reasonable accommodations, where they are appropriate, as soon as reasonably possible. NASA recognizes, however, that the time necessary to process a request shall depend on the nature of the reasonable accommodation requested and whether it is necessary to obtain supporting information.

4.2.2 If a request for a reasonable accommodation requires no supporting medical information and no extenuating circumstances apply, the request shall be processed and the reasonable accommodation provided in no more than 20 business days from the date that the request was first made.

4.2.3 Hypothetical examples of reasonable accommodations that may easily be provided within this 20 business day timeframe might include:

4.2.3.1 Employees with diabetes who sit in an open area ask for four breaks a day to test their blood sugar levels so that they may do these tests in private.

4.2.3.2 Employees who take antidepressants which make it hard for them to get up in time to get to the office at 9 a.m. request that core hour requirements be modified and be allowed to start work at 10 a.m. and still put in an 8-hour day.

4.2.3.3 A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read quickly and needs more time to prepare.

4.2.4 "Extenuating circumstances" to time frames. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for reasonable accommodation. "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of a reasonable accommodation. For example, NASA may not delay processing or providing a reasonable accommodation because a particular staff member is unavailable.

4.2.4.1 When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the reasonable accommodation shall be extended, as necessary, at the discretion of the DM. Extensions based on extenuating circumstances shall be limited. The reasons for such extensions must be in writing. The DM's response, regardless of whether the extension is granted, must also be documented. NASA staff is expected to act as quickly as possible, but not take longer than 20 business days to process requests and provide reasonable accommodations, absent extenuating circumstances. Even with extenuating circumstances, every effort should be made to ensure prompt processing, such that processing time does not extend beyond 50 business days.

4.2.4.2 The following are some examples of extenuating circumstances:

4.2.4.2(a) There is an outstanding initial or followup request for medical information, or the physician or other health professional chosen by NASA is evaluating medical information which has been provided.

4.2.4.2(b) The purchase of equipment may take longer than 20 business days because of requirements under the Federal Acquisition Regulations.

4.2.4.2(c) Equipment has to be back-ordered because the vendor typically used by NASA for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.

4.2.4.2(d) The employee with a disability needs to work with equipment on a trial basis to ensure that it is effective before NASA executes a final purchase.

4.2.4.2(e) New staff needs to be hired or contracted for, or a reasonable accommodation involves the removal of architectural barriers.

4.2.4.2(f) The acquisition of assistive technology from the Department of Defense Computer/Electronics Accommodations (CAPS) Program may take time to obtain.

4.2.4.2(g) A reasonable accommodation would not reduce or eliminate a direct threat posed by the individual either to himself or to others.

4.2.5 Where extenuating circumstances are present, the DM shall notify the individual in writing and apprise appropriate stakeholders (e.g., management, EO, HR) of the reason for the delay and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes shall also be communicated promptly by the DM to the individual in writing, including other extenuating circumstances that would modify or limit the Agency's ability to provide the reasonable accommodation.

4.2.6 If there is a delay in providing a reasonable accommodation which has been approved, the DM shall determine whether temporary measures can be taken to assist the employee. (Note: Generally, this section refers to employees rather than applicants.) This could include providing the requested reasonable accommodation on a temporary basis or providing a less effective form of reasonable accommodation. In addition, the DM may provide, although is not required to provide, measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (a) they do not interfere with the operations of the Agency; and (b) the employee is clearly informed that they are being provided only on a temporary, interim basis.

4.2.7 For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the DM might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it shall allow the employee to perform as much of the job as possible until the equipment arrives.

4.2.8 If a delay is attributable to the need to obtain or evaluate medical documentation and NASA has not yet determined that the individual is entitled to a reasonable accommodation, NASA may also provide temporary measures. In such a case, the DM shall notify the individual in writing that the measures are temporary, pending a decision on the reasonable accommodation request.

4.2.9 DMs who approve such temporary measures are responsible for assuring that they do not take the place of a permanent reasonable accommodation and that all necessary steps to secure the permanent reasonable accommodation are taken.

4.2.10 Expedited Processing. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a timeframe that is shorter than 20 business days. This includes situations where a reasonable accommodation is needed.

4.2.10.1. To enable an applicant to apply for a job. Due to the timetable for processing a vacancy, e.g., conducting interviews and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the DMs at all NASA Installations need to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.

4.2.10.2 To enable an employee to attend a short-notice meeting. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 business days.

4.3 Medical Information

4.3.1 NASA may seek information to help determine that an employee or applicant has a disability that requires a reasonable accommodation when the disability and/or need for reasonable accommodation are not obvious or otherwise known. In cases where the disability and need for reasonable accommodation are obvious or otherwise already known to the DM, the Agency shall not seek additional medical documentation from the requestor. However, when a disability and/or need for reasonable accommodation are not obvious or otherwise already known to the DM, NASA may require reasonable documentation from the individual regarding the disability and any functional limitations which are related to the ability to do the job.

4.3.2 NASA recognizes that the need for documentation may not become apparent until after the interactive process has begun. NASA also recognizes that in some cases the individual requesting the reasonable accommodation shall supply medical information directly to the DM without being asked. In these cases, the DM shall consider such documentation (with appropriate consultation, e.g., consultation with a NASA physician) (what does appropriate consultation mean?), and if additional information is needed, the DM shall work with the physician or other health professional chosen by NASA as set forth in this chapter.

4.3.3 If the DM determines, based on a recommendation from the NASA or contractor physician at the respective installation, and in consultation with appropriate stakeholders (e.g., HR, EO, DPM), that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the requesting individual's functional limitations, the DM shall make such request in writing to the requesting individual as soon as possible after receipt of the request for reasonable accommodation, but before the expiration of the 20 business day period. A request for medical and other information shall pertain only to the disability that requires reasonable accommodation to substantiate that the individual has a disability or needs the reasonable accommodation requested. Therefore, the DM (with appropriate consultation) shall seek information or documentation only about the disability and/or functional limitations and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. To obtain the most helpful information possible, all requests for information shall describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

4.3.4 The types of medical information or documentation. A DM may request in connection with a request for reasonable accommodation include information on:

4.3.4.1 The nature, severity, and duration of the individual's impairment.

4.3.4.2 The activity or activities that the impairment limits.

4.3.4.3 The extent to which the impairment limits the individual's ability to perform such activity or activities.

4.3.4.4 The reason(s) supporting the request for reasonable accommodation or the particular reasonable accommodation requested, specifically how the reasonable accommodation would assist the individual in the position applied for to perform the essential functions of the job, or to enjoy a benefit of the workplace.²

4.3.5 NASA also must explain to the individual requesting reasonable accommodation that the failure to provide medical information or documentation or to cooperate with NASA's efforts to obtain such documentation may result in a denial of the requested reasonable accommodation.

4.3.6 Once the medical documentation is received, the DM, in consultation with the NASA or contractor physician or other NASA chosen physician as appropriate, shall evaluate it. The evaluation shall be conducted at NASA's expense. If the information provided by the health professional (or the information volunteered by the individual requesting the reasonable accommodation) is insufficient to allow the DM (with appropriate consultation, e.g., consultation with a NASA physician) to determine whether a reasonable accommodation is appropriate, the DM may ask for reasonable supplemental documentation. The DM shall request this information in writing, explaining to the individual seeking the reasonable accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination on the reasonable accommodation request. Alternatively, the DM may ask the individual to sign a limited release authorizing NASA to contact her/his health care provider directly, and then either submit a list of specific questions to the individual's health care professional or have NASA's own physician contact the individual's health care provider.

4.3.7 If the medical documentation referred to in 4.3.6 does not result in sufficient information, NASA may require the requester to go to a health care provider of NASA's choice at NASA's expense.³ The medical examination must be limited to determining the existence of a disability and/or the functional limitations that require reasonable accommodation. (Note: NASA may only seek that documentation which is reasonably

² See EEOC Policy Guidance on Executive Order 13164, Questions 17-18.

³ See EEOC: Practical Advice, "Drafting Tips: Address how and when to obtain review by the agency's own medical expert."

necessary to establish that the requester is an individual with a disability and needs the reasonable accommodation requested.)⁴

4.3.8 If the DM requests that a physician or other health professional obtain medical information, the requirement of the 20 business day period shall stop. This shall be documented by the DM using NF 1699B. If the physician or other health professional determines that medical information is not needed, the continuation of the 20 business day time period shall resume as soon as the DM is notified by the physician or other health professional of her/his determination. The physician or other health professional shall make a determination in writing within 20 business days from the date NASA requests the determination. If the physician or other health professional determines that medical documentation is not needed, the DM shall be informed of the determination as soon as possible. The DM shall make a determination on the request for reasonable accommodation in writing as soon as possible, but not later than 10 business days from the date the DM received the relevant information from the physician or other health professional.

4.3.9 Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. Medical documents shall be maintained by the NASA Occupational Health Unit Medical Records facility. This means that all medical information, including information about functional limitations that NASA obtains in connection with a request for reasonable accommodation, must be securely kept in files separate from the individual's personnel file. It also means that any authorized NASA employee who obtains or receives such information is subject to the restrictions and requirements of the Privacy Act of 1974 (5 U.S.C. § 552a).

4.3.9 The EO Officer for each NASA installation shall maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, excluding medical documents and Agency attorney work products. Medical documents shall be maintained by the Occupational Health Unit Medical Records facility. The responsibilities of the installation's EO Officer shall include responding to all requests for disclosure of the records. After a decision has been rendered on the request, the supervisor or DM shall forward all medical information to the Occupational Health Unit Medical Records facility. All records shall be securely maintained in accordance with the Privacy Act of 1974 and the requirements of NASA regulations implementing the Privacy Act of 1974 at 14 CFR Part 1212.

4.3.10 Individuals and organizations to which information may be disclosed can include, but are not limited to:

4.3.10.1 Supervisors and managers, including the DM who requested the medical information, who need to know about necessary restrictions on the work or duties of the employee's position, or the position for which the applicant has applied, and about the reasonable accommodation(s).

⁴ See EEOC: Practical Advice For Drafting And Implementing Reasonable Accommodation Procedures Under Executive Order 13164 (July 2005), "Drafting Tips: Expressly warn against asking for medical information in support of every accommodation request." (hereafter cited as EEOC: Practical Advice).

4.3.10.2 First aid and Occupational Health and Safety personnel, if the disability may require emergency treatment or assistance with building evacuation during emergencies.

4.3.10.3 Federal Government officials who need the information to determine the Agency's compliance with the Rehabilitation Act of 1973, as amended.

4.3.10.4 NASA contractors, such as physicians working under contract for the Agency but who are not Agency officials.

4.3.10.5 Whenever medical information is disclosed, the individual disclosing the information shall inform the recipients of the information that they are strictly bound by the requirements of the Privacy Act of 1974. All Privacy Act protected documents shall have a NASA Form 1534 and contain the statement, "Privacy Act Warning Document" on the top of the document or outside the document package.

Chapter 5. Dispositioning the Request

5.1 Granting of a Reasonable Accommodation Request

5.1.1 Upon determining that a reasonable accommodation shall be provided, the DM shall immediately communicate the decision orally, or in writing, to the individual within the timeframe provided in chapter 4. If the DM initially communicates the determination orally, he or she must follow up with a written record using NASA Form Disposition of Reasonable Accommodation Request 1699A (see Appendix A). Each installation shall make a determination regarding how funding shall be provided to support the provision of reasonable accommodation.

5.1.2 Reassignments

5.1.2.1 If a reasonable accommodation that is granted turns out to be ineffective such that the employee with a disability remains unable to perform an essential function of the job, NASA shall consider whether there is an alternative reasonable accommodation that would not pose an undue hardship. This means that a reassignment shall only be considered if no reasonable accommodations are effective to enable the individual to perform the essential functions of the current job, or if the only effective reasonable accommodation would cause undue hardship. If an alternative reasonable accommodation is not available, NASA shall attempt to reassign the employee to a vacant position for which the employee is qualified, and such reassignment would not cause an undue hardship. Consideration of a reassignment is only available to employees (not job applicants).

5.1.2.2 A reassignment can be granted as a reasonable accommodation to a qualified probationary and career employee and may be made to a vacant position outside the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, NASA shall not pay for the employee's relocation costs if the position is outside the commuting area. In addition, a qualified employee with a disability requesting reasonable accommodation may be offered a reassignment as a reasonable accommodation to a position for which a vacancy announcement has been published, as long as a selection to fill the position has not been made.

5.1.2.3 In considering whether there are positions available for reassignment, the DM shall work with both the Headquarters or Center Office of Human Resources (OHR), and the individual requesting the reasonable accommodation to identify: (1) all vacant positions within the Center (and, if the employee wishes, Agency-wide) for which the employee is qualified, with or without reasonable accommodation; and (2) all positions that OHR has reason to believe shall become vacant over the next 60 business days and for which the employee is qualified. NASA shall initially focus on positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, NASA shall consider vacant lower-level positions for which the individual is qualified.

5.2 Denial of a Reasonable Accommodation Request

5.2.1 As soon as the DM determines that a request for reasonable accommodation shall be denied, and after consultation with the Center's EO Officer, the DM shall fill out a NASA Form 1699A (Disposition of Reasonable Accommodation Request) and give it to the individual who requested the reasonable accommodation. The DM shall also complete NASA Form 1699B (Denial of Reasonable Accommodation Request). In cases where an alternate format is appropriate, the information in NASA Form 1699A shall be provided in the relevant format. The explanation for the denial shall be written in plain language, clearly stating the specific reasons for the denial. Where the DM has denied a specific requested reasonable accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, item #14 (Comments) of NASA Form 1699A shall contain an explanation of both the reasons for the denial of the requested reasonable accommodation and the reasons that the DM believes that the chosen reasonable accommodation shall be effective. (The actual notice to the individual must include, but is not limited to, specific reasons for the denial; for example, why the reasonable accommodation would not be effective or why it would result in undue hardship). Reasons for the denial of a request for reasonable accommodation may include, but not limited to the following:

5.2.1.2 It is determined, based on the interactive process and in consultation with relevant resources; the requested reasonable accommodation would not be effective.⁵

5.2.1.3 Providing the requested reasonable accommodation would result in undue hardship. Before reaching this determination, the DM (with appropriate consultation), shall determine whether other effective reasonable accommodations exist which would not impose undue hardship and therefore, can be provided. When evaluating budgetary or administrative concerns to determine if undue hardship exists, NASA shall follow the regulatory standards in 29 C.F.R. §1630.2(p)(2).

5.2.1.4 Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.

5.2.1.5 The requested reasonable accommodation would require the elimination of an essential function of the position.

5.2.1.6 The requested reasonable accommodation would require the lowering of a performance standard (e.g., safety, quality, reliability, etc.).

5.2.2 With notification of denial, the DM shall also inform the individual of the right to request the services of an EEO counselor and to engage in informal dispute resolution. (Since you are giving them notice of this right with notification of denial as you state in beginning, I don't think you need to say it again. If an employee or applicant for employment believes that he or she has been discriminated against because of disability by the Agency's denial of a request for reasonable accommodation, the employee or applicant may consult an Equal Employment Opportunity (EEO) Counselor at the

⁵ EEOC Policy Guidance on Executive Order 13164, § B (Processing Requests for Reasonable Accommodation), Questions 10-11.

respective NASA installation within 45 days of receipt of the written notice of denial, in accordance with 29 C.F.R. § 1614.105(a)(1). (See also Chapter 8, § 8.1).

5.2.3 Informal dispute resolution may include a request for reconsideration of the decision. In this regard, the individual shall be informed that he or she may request reconsideration by the original DM and for a second level of reconsideration by an Agency official who was not involved in the original decision. If an individual wishes to request reconsideration of this decision, he or she may take the following steps:

5.2.3.1 Request the DM to reconsider the denial within 30 days of receipt of denial (Form 1699B). Additional information may be presented to support this request.

5.2.3.2 If the DM does not reverse the denial, the individual may ask for an independent review by the organizational head, if the DM was the individual's immediate supervisor, or by the DPM, if the DM was the organizational head. This request must be made within 30 days of receipt of non-reversal by the DM.

Chapter 6. Information Tracking and Reporting

6.1 The NASA Center's EO Officer, as appropriate, shall maintain the reasonable accommodation request records for either the length of the employee's tenure with NASA or five years, whichever is longer. The files shall be safeguarded to protect the individual's privacy in accordance with the Privacy Act of 1974. The Center EO Officer shall prepare an annual report containing the following information, presented in the aggregate:

6.1.1 The number of reasonable accommodations, by job type, that have been requested in the application process and whether those requests have been granted or denied.

6.1.2 The number of reasonable accommodations, by job type, requested by employees.

6.1.3 The number of reasonable accommodations approved, by job type, and the number of reasonable accommodations, by job type, that have been denied.

6.1.4 The number of requests that required further medical information.

6.1.5 Reasons for denial.

6.1.6 Number and type of reasonable accommodations requested related to privileges of employment.

6.1.7 Amount of time (in days) taken to process requests.

6.1.8 Sources of technical assistance consulted.

6.2 In addition, the report shall provide a qualitative assessment of the reasonable accommodation program, including any recommendations for improvement of NASA's reasonable accommodation policies and procedures.

6.3 ODEO personnel and Center EO Offices shall maintain and safeguard all records and documents following the guidance provided in NPR 1441.1D, NASA Records Retention Schedules. This includes proposing changes to current retention schedules and developing new retention schedules when necessary.

Chapter 7. Statutory and Collective Bargaining Claims

7.1 This policy is in addition to statutory and collective bargaining protections for qualified persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims including time frames for filing such claims, remain unchanged.

7.2 Individuals who choose to pursue statutory anti-discrimination remedies for denial of reasonable accommodation shall contact an EEO counselor at their respective installation within 45 days from the date of receipt of the written notice of denial. They must do so within 45 days of the denial, regardless of whether they are participating in the informal dispute resolution process.

7.3 Individuals, including NASA EO Office representatives (e.g. EO Officer or person designated by the EO Officer to process complaints in connection with reasonable accommodation requests) who have served as a DM shall excuse themselves from engaging in EEO counseling or complaint processing in connection with the specific request.

Chapter 8. Inquiries

Any person wanting further information concerning these procedures may contact the Center DPM. They may also contact the Agencywide DPM at NASA Headquarters in Washington, DC, at (202) 358-2167, TTY (202) 358-3748.

Chapter 9. Dissemination

These procedures shall be available to all employees upon issuance by electronic posting in the NASA Online Directive Information System (NODIS). They shall also be posted on the installation's Equal Opportunity Web page and/or included in employee handbooks. Copies also shall be made available in an installation's library, Equal Opportunity Office, and the Office of Human Resources. They shall also be distributed to all new employees as part of their orientation on their first day of work. These procedures shall be provided in alternative formats, including simplified format, when requested by or on behalf of, any NASA employee. Additional information regarding reasonable accommodation matters can be obtained by accessing the U.S. EEOC's Web site, www.eeoc.gov.

Appendix A. Definitions

A.1 Decision Maker (DM)

The DM is the person who determines whether a request for reasonable accommodation is granted. In the case of an employee, the DM, in most cases, shall be the employee's immediate supervisor. In the case of an applicant, it shall be the human resources specialist (HRS) who has been assigned to process the vacancy, in conjunction with the selecting official. In cases where the employee's immediate supervisor or the HRS processing the vacancy is not available to receive and process a request for reasonable accommodation, the Headquarters or Center's Equal Opportunity (EO) Officer shall be the DM. In the case of an applicant for whom the HRS and Selecting Official are not available, the EO Officer shall be the DM.

A.2 Direct Threat

Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include: (1) The duration of the risk; (2) The nature and severity of the potential harm; (3) The likelihood that the potential harm will occur; and (4) The imminence of the potential harm.⁶

A.3 Disability Program Manager (DPM)

Normally, the DPM is a member of the Agency's Office of Diversity and Equal Opportunity (ODEO) or Center EO Office staff whose responsibilities include administering the Special Emphasis Program (SEP) for individuals with disabilities. In some cases, the duties of a DPM may be performed on a collateral duty basis by a person permanently assigned to an operational component other than the Headquarters or Center EO Offices.

A.4 Essential Functions

Essential functions are those job duties that are so fundamental to the position that the individual holding or desiring the position 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 if it were assigned to them, or if the function is specialized and the individual

⁶ 29 C.F.R. § 1630.2(r).

is hired based on the individual's ability to perform it.⁷ Determination of the essential functions of a position must be made on a case-by-case basis so that the current duties of the position reflect the job as actually performed, and not simply the components of a generic position description. The determination shall be made based on NASA's judgment as to which functions are essential, a written job description prepared before the job was advertised or interviews conducted, and other considerations as appropriate, to include: the actual work experience of present or past employees in the job, the time spent performing a function, the consequences of not requiring that an employee perform a function, and the terms of a collective bargaining agreement.

A.5 Individual with Disability

An individual with a disability is one who: (1) has a physical or mental impairment which substantially limits one or more of the person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

A.6 Major Life Activities

Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.⁸

A.7 Physical or Mental Impairment

A physical impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. A mental impairment is any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.⁹

A.8 Qualified Individual with a Disability

Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who can perform the essential functions of such position, with or without reasonable accommodation.¹⁰

⁷ EEOC Policy Guidance, § I(A).

⁸ 29 C.F.R. § 1630.2(i).

⁹ 29 C.F.R. § 1630.2(h).

¹⁰ 29 C.F.R. § 1630.2(m).

A.9 Reasonable Accommodation

A.9.1 Reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.¹¹ There are three categories of reasonable accommodations:

A.9.1.1 Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille).

A.9.1.2 Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job (such as providing sign language interpreters).

A.9.1.3 Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as removing physical barriers in an office cafeteria).¹²

A.9.2 Reasonable accommodations that can be requested include, but are not limited to, the following:

A.9.2.1 Making existing facilities accessible.

A.9.2.2 Restructuring the job.

A.9.2.3 Utilizing part-time or modified work schedules.

A.9.2.4 Adjusting or modifying tests, training materials, or policies.

A.9.2.5 Providing qualified readers and interpreters.

A.9.2.6 Acquiring or modifying equipment.

A.9.2.7 Reassigning an individual to a vacant position for which the employee must be qualified (Note: Reassignment is an option of last resort).

A.10 Reassignment

Reassignment is the placement of an employee in a vacant position without competition at the same grade and potential currently held for which the employee is qualified. If a

¹¹ U.S. EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Oct. 17, 2002), "General Principles: Reasonable Accommodation," citing 29 C.F.R. pt. 1630 app. § 1630.2(o), accessible at http://www.eeoc.gov/policy/docs/accommodation.html#N_17 (hereafter cited as EEOC Enforcement Guidance).

¹² EEOC Enforcement Guidance, "General Principles: Reasonable Accommodation;" see also U.S. Office of Personnel Management, Federal Employment of People with Disabilities, HR Professionals and Reasonable Accommodation, accessible at http://www.opm.gov/disability/hrpro_6-01-B.asp (hereafter cited as OPM Guidance)

position of an equal grade is not available, an employee may voluntarily accept a change to a lower grade and to a vacant position for which the employee is qualified. Before considering reassignment as a reasonable accommodation, the Agency shall first consider those reasonable accommodations that would enable employees to remain in the current position. Reassignment is required only after it has been determined that: (1) there are no effective reasonable accommodations that shall enable employees to perform the essential functions of their current position or (2) all other reasonable accommodations would impose an undue hardship. However, if both the Agency and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee.¹³

A.11 Undue Hardship

A significant difficulty or expense focused on the resources and circumstances of the Agency in relationship to the cost or difficulty of providing a specific reasonable 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 or operation of the business. The Agency must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.¹⁴ In making the determination as to "significant difficulty or expense" the Agency shall consider:

A.11.1 Overall size of the Agency's program with respect to the number of employees, number and type of facilities, and size of budget.

A.11.2 Type of operation, including the composition and structure of the Agency's workforce.

A.11.3 Nature and cost of the reasonable accommodation.¹⁵

¹³ EEOC Enforcement Guidance: "Types of Reasonable Accommodation Related to Job Performance: Reassignment."

¹⁴ EEOC Enforcement Guidance, "General Principles: Undue Hardship."

¹⁵ OPM Guidance, "What is an Undue Hardship?"

APPENDIX B. Forms 1699, 1699A, and Form 1699B

[Click here to retrieve NASA Form 1699](#)

[Click here to retrieve NASA Form 1699A](#)

[Click here to retrieve NASA Form 1699B](#)

Appendix C. Resources

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>

A service of the U.S. Department of Labor, Office of Disability Employment Policy (ODEP) formerly the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

Americans with Disabilities Act (ADA) Disability and Business Technical Assistance Centers (DBTACs)

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

The DBTACs consist of ten federally funded regional centers that provide information, training, and technical assistance on the Americans with Disabilities Act of 1990. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(703) 838-0030 (Voice/TT)

The registry offers information on locating and using interpreters and transliteration services.

Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) Technical Assistance Project

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

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

RESNA can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include: 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.

Selected Equal Employment Opportunity Commission Resources on Disability Issues

Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation

http://www.eeoc.gov/policy/docs/accommodation_procedures.html

Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA (as revised, 10/17/02)

<http://www.eeoc.gov/policy/docs/accommodation.html>

Enforcement Guidance: Disability-Related Inquiries & Medical Examinations of Employees Under the ADA

<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

Policy Guidance on Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information

<http://www.eeoc.gov/policy/docs/guidance-genetic.html>

Instructions for EEOC Field Offices: Analyzing ADA Charges After Supreme Court Decisions Addressing "Disability" and "Qualified"

<http://www.eeoc.gov/policy/docs/field-ada.html>

Enforcement Guidance on Application of the ADA to the Contingent Workers Placed By Temporary Agencies & Other Staffing Firms

<http://www.eeoc.gov/policy/docs/guidance-contingent.html>

Enforcement Guidance on the ADA and Psychiatric Disabilities

<http://www.eeoc.gov/policy/docs/psych.html>

Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability" Under the ADA

<http://www.eeoc.gov/policy/docs/qidreps.html>

Enforcement Guidance: Workers' Compensation & the ADA

<http://www.eeoc.gov/policy/docs/workcomp.html>

Enforcement Guidance: Preemployment Disability-Related Questions & Medical Examinations

<http://www.eeoc.gov/policy/docs/preemp.html>

Compliance Manual Section 902: Definition of the Term Disability

<http://www.eeoc.gov/policy/docs/902cm.html>

Interim Enforcement Guidance on the Application of the ADA to Disability-Based Distinctions in Employer Provided Health Insurance

<http://www.eeoc.gov/policy/docs/health.html>

FMLA, ADA, and Title VII

<http://www.eeoc.gov/policy/docs/fmlaada.html>

Q&A: Intellectual Disabilities in the Workplace & the ADA

http://www.eeoc.gov/facts/intellectual_disabilities.html

Q&A: Epilepsy in the Workplace & the ADA

<http://www.eeoc.gov/facts/epilepsy.html>

Q&A: Diabetes in the Workplace & the ADA

<http://www.eeoc.gov/facts/diabetes.html>

Job Applicants and the ADA

<http://www.eeoc.gov/facts/jobapplicant.html>

Telework as a Reasonable Accommodation

<http://www.eeoc.gov/facts/telework.html>

The ADA: A Primer for Small Business

<http://www.eeoc.gov/ada/adahandbook.html>

Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures

<http://www.eeoc.gov/facts/evacuation.html>

Interim Report on Best Practices for the Employment of People with Disabilities in State Government

http://www.eeoc.gov/initiatives/nfi/int_states_best_practices_report.html

How to Comply with the ADA: A Guide for Restaurants & Other Food Service Employers

http://www.eeoc.gov/facts/restaurant_guide.html

Q & A for Mediation Providers: Mediation and the ADA

http://www.eeoc.gov/mediate/ada/ada_mediators.html

Q & A for Parties to Mediation: Mediation and the ADA

http://www.eeoc.gov/mediate/ada/ada_parties.html

