



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION**

DIRECTIVES SYSTEM

**ORDER NO.
0980.3
August 31, 2004**

EQUAL EMPLOYMENT OPPORTUNITY

PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION

1. **PURPOSE.** To establish policies and procedures for the processing of requests for reasonable accommodation at the U.S. Consumer Product Safety Commission (CPSC).
2. **SCOPE.** The provisions of this Order apply to all CPSC employees and applicants with disabilities.
3. **CANCELLATION.** This Order cancels Order 0980.3, dated December 18, 2002.
4. **AUTHORITY.**
 - a. Executive Order 13164, July 26, 2000.
 - b. Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101-12117.
 - c. Rehabilitation Act of 1973, 29, U.S.C. 791.
 - d. Equal Employment Opportunity Commission (EEOC) Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, October 20, 2000.
 - e. Federal Sector Equal Employment Opportunity, 29 C.F.R. § 1614, November 9, 1999.
5. **DEFINITIONS.**
 - a. **Disability.** An "individual with a disability" is defined as someone who: (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. See 29

C.F.R. § 1614.203. Major life activities are activities that an average person can perform with little or no difficulty, such as walking, breathing, seeing, hearing, speaking, learning and working. When the phrase "individual with a disability" is used in this reasonable accommodation procedure, it is intended to refer to both employees and applicants for employment.

- b. Qualified Individual with a Disability.** Is an employee or applicant with a disability who, (1) satisfies the requisite skill, experience, education and other job-related requirements of the position held or desired; and (2) who can perform the essential functions of the position, with or without reasonable accommodation.
- c. Reasonable Accommodation.** An accommodation is a change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations: (1) modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job; (2) modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential function(s) of the job; and (3) modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment. For example, types of reasonable accommodation include access to equipment and computer technology, changing tests and training materials, job restructuring, leave, modifying, eliminating or substituting the marginal functions of a job, modifying work schedule, modifying the method of performing a job function, modifying workplace policies, readers, reassignment to a vacant position, sign language interpreters, changing supervisory methods, and working at home.
- d. Undue Hardship.** An under hardship means an action requiring significant difficulty or expense. The factors to be considered include: (1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility making the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility; (3) the overall financial resources, size, number of employees, and type and location of facilities of the employer; (4) the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employee; and (5) the impact of the accommodation on the operation of the facility.
- e. Essential Functions.** Those job duties that are so fundamental to the position that the individual 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 the ability to perform such function. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic job description.

- f. Benefits and Privileges of Employment.** These include, but are not limited to, employer-sponsored training, services and parties/social functions.
 - g. Extenuating Circumstances.** Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. When there is a delay in processing a request for, or delivering, a reasonable accommodation, the agency must investigate whether there are temporary measures that could be taken to assist the individual with a disability.
 - h. Decision-maker:** The individual charged with making the initial determination on a request for reasonable accommodation. For applicants for employment, the decision-maker is the Human Resources Operations Manager, Human Resources Management (EXRM). If the request for reasonable accommodation is denied, the applicant may request reconsideration from the Director, EXRM. For current CPSC employees, the decision-maker is the employee's first-line supervisor. If the request for reasonable accommodation is denied, the employee may request reconsideration from the employee's second-line supervisor. If the employee's second line supervisor was the decision-maker on a request for reasonable accommodation due to the level of the employee, then the next level supervisor will provide the reconsideration.
- 6. POLICY.** It is the policy of the CPSC to ensure requests for reasonable accommodation are handled in an effective and expeditious manner. It is the obligation of CPSC to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause undue hardship on the operations of CPSC. Within this framework, CPSC has the following objectives:
- a.** To enable the individual employee to perform the essential function(s) of the position, or to gain access to the workplace.
 - b.** To enable an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job.
 - c.** To allow an employee with a disability an opportunity to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

7. ASSIGNMENT OF RESPONSIBILITIES.

- a. The Chairman.** The Chairman, or designated official, shall:
- (1) Ensure a continuing affirmative application of the policy and procedures contained in this order.
 - (2) Provide sufficient resources for program implementation to ensure efficient and prompt processing of requests for reasonable accommodation;
 - (3) Recognize and reward individuals who have demonstrated superior efforts in supporting the spirit of the law.
- b. Director of Equal Employment Opportunity & Minority Enterprise (EO).** The EO shall:
- (1) Oversee the reasonable accommodation process.
 - (2) Advise the Chairman on the agency-wide policies and procedures.
 - (3) Provide technical guidance to the processing of reasonable accommodation requests. Process requests for reasonable accommodation and where appropriate, determine which management officials will handle the request. Assist the decision-maker in providing reasonable accommodations in a prompt, fair and efficient manner.
 - (4) Maintain the records related to an employee's request for accommodation for the duration of the employee's tenure with the agency. Ensure that medical records are kept confidential and maintained in files separate from the individual's official personnel file.
 - (5) Prepare annually a summary statistical report to evaluate whether improvements of the existing procedures are needed.
 - (6) Ensure that necessary training is provided to managers and supervisors and others regarding the implementation of the policies and procedures in this order.
- c. The Occupational Safety and Health Administrator (OSHA).** The OSHA shall coordinate and provide assistance on specific requests such as adaptive equipment, removal of architectural barriers (e.g., reconfigured workspaces), facility accessibility, and materials in alternative formats (e.g., Braille, large print).

- d. Director of Human Resources Management (EXRM).** The EXRM shall:
- (1) Process requests for reasonable accommodation from applicants during the recruitment and application process, as requested.
 - (2) Make vacancy announcements available to applicants/employees with disabilities.
 - (3) Ensure that a statement of reasonable accommodation will be included on all job announcements informing applicants that they may request reasonable accommodations that will allow them to be considered for the position and how to make such requests.
 - (4) Assist supervisors and EO, upon request, when the reasonable accommodation involves issues such as leave, job restructuring, modified or part-time work schedules, modifying workplace policies, reassignment, or work at home.
- e. Supervisors and Managers.** Supervisors and managers shall:
- (1) Foster an environment that supports the reasonable accommodation procedures contained in this order and ensures that their actions are consistent with the objectives of reasonable accommodations.
 - (2) Acknowledge receipt of requests for reasonable accommodation, initiate inquiries and dialogue with requestors, and describe what will happen during the processing of the requests.
 - (3) Make decisions on individual requests for reasonable accommodation, in accordance with the procedures established in this Directive.
 - (4) Request relevant supplemental medical information if documentation submitted does not clearly explain the nature of the disability, reason for reasonable accommodation, or does not clarify how the requested accommodation will assist the employee to perform the essential function(s) of the job.
 - (5) Ensure that requests for accommodation are processed in a prompt and expeditious manner.
 - (6) Seek coordination and consultation with EO and EXRM (as appropriate) in making final decision and implementing such decisions.

- (7) Ensure that individuals with disabilities are made aware of the policies and procedures in this order, and have opportunities to seek reasonable accommodation to enable them to enjoy the same benefits and privileges of employment as employees without disabilities.

f. Employees and Applicants. An employee or applicant shall:

- (1) Initiate a request for reasonable accommodation in accordance with procedures listed below.
- (2) Provide sufficient information and documentation, such as a description of the accommodation requested, and an explanation of how it would enable an employee to perform the job or assist an applicant in the selection process.
- (3) When required, provide relevant medical information related to the functional impairment and the requested accommodation when the disability and/or need for accommodation is not obvious.

8. PROCEDURES.

- a. An employee or applicant with a disability, or a family member, health professional or other representative who is acting on behalf of the employee/applicant may initiate a request for reasonable accommodation orally or in writing. An individual's oral request will start the reasonable accommodation process that begins as soon as the request is made. However, for record-keeping purposes, the requestor shall complete the form at Appendix A. A copy of the written request will be submitted to the Disability Program Manager, EO.
- b. An employee may make a request for a reasonable accommodation to his or her supervisor, another supervisor or manager in his or her immediate office, or the EO. If a request from an employee is made to someone other than the decision-maker, the recipient will immediately forward the request to the decision-maker, if known, or seek guidance from the EO on routing the request. An applicant may make a request for a reasonable accommodation to any agency employee with whom the applicant has contact in connection with the application process. A family member, health profession, or other representative may make a request for a reasonable accommodation on behalf of an employee or applicant to one of the same persons to whom the employee or applicant would make the request.
- c. A request for reasonable accommodation does not have to use any special words such as "reasonable accommodation", "disability" or "Rehabilitation Act".

- d.** CPSC will process requests for reasonable accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. CPSC recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information.
- e.** Once the decision-maker receives a request, the parties should begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the decision-maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and any potential accommodation. Communication is a priority throughout the entire process. The decision-maker will have the primary responsibility for identifying possible accommodations. He or she will take a proactive approach in researching and considering possible accommodations, including consulting with the EO and EXRM and other appropriate resources for assistance. Selective resources are listed at Appendix D. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation.
- f.** When a decision-maker believes that a request for reasonable accommodation should be approved and is able to comply with the request promptly within his/her control and budget, he/she may grant the reasonable accommodation. The decision-maker may choose among reasonable accommodations as long as the chosen accommodation is effective. When there are two or more effective accommodations, the decision-maker may choose the one that is most economical to provide. If a request for an accommodation does not require medical documentation and there are no extenuating circumstances, the decision-maker shall process the accommodation request and provide a decision within 20 business days from the date the request is received, or sooner, if possible. The decision-maker must file the "Reasonable Accommodation Information Report" with the EO and immediately communicate the decision to the individual with a written confirmation. If the accommodation cannot be provided immediately, the decision-maker must inform the individual of the projected time frame for providing the accommodation.
- g.** If there is a delay in providing an approved accommodation (i.e., delay in receiving adaptive equipment, etc.), the decision-maker must investigate whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. If a delay is attributable to the need to obtain or evaluate medical documentation and CPSC has not yet determined that the individual is entitled to an accommodation, CPSC may also provide an accommodation on a temporary basis. In such a case, the decision-maker will notify the

individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

- h.** Where the disability, the need for accommodation, and the type of accommodation are obvious, the CPSC will seek further medical information only when necessary.
- i.** If a decision-maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, he or she will request medical documentation from the employee or applicant. If a determination is made to seek medical information, the decision-maker will only request information sufficient to substantiate that the individual has a disability as defined under the Rehabilitation Act and needs the reasonable accommodation requested, and will not ask for unrelated documentation. The decision-maker will provide to the employee or applicant a written request for additional medical documentation, if necessary, and will provide information pertaining to the nature of the job, the essential functions the individual is expected to perform and any other relevant information. The EO and EXRM Office will assist the decision-maker in preparing the request.
 - (1)** The decision-maker has a right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.
 - (2)** Where medical documentation provided by an employee requesting accommodation is insufficient, the decision-maker will explain to the employee why the documentation is insufficient and to identify the information still needed. The agency's request for medical information will follow the requirements set forth in the EEOC's Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (available on EEOC's internet).
 - (3)** If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the decision-maker may request that a physician selected by the agency examine the individual requesting accommodation. The examination shall be limited to determining the existence of a disability and the functional limitations that require reasonable accommodation. CPSC will pay all costs associated with the visits.
 - (4)** The failure to provide appropriate documentation or to cooperate with CPSC's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

- (5) If an employee needs a reasonable accommodation to perform an essential function, or to eliminate a direct threat, and refuses to accept an effective accommodation, he/she may not be qualified to remain in the job.
- j. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information, including information about functional limitations and reasonable accommodation needs that CPSC obtains in connection with a request for reasonable accommodation, must be kept in files separate from the individual's personnel file. It also means that any CPSC employee who obtains or receives such information is strictly bound by these confidentiality requirements. Medical information required for making job-related decisions will be provided to only those management officials with a demonstrated "need to know" in accordance with the Rehabilitation Act and its amendments.
- k. If a request for reasonable accommodation is denied, the decision-maker will inform the requestor in writing (Appendix C), and explain the reasons for denial and procedures for reconsideration. The denial notice will clearly specify reasons for the denial; for example, why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation; why the requested accommodation would not be effective; or why the accommodation would pose an undue hardship to the agency. If the decision-maker determines that an accommodation other than the one requested is appropriate, the denial of the request should explain the alternative accommodation that is being offered. The decision-maker will notify the requestor that he/she has a right to file an EO complaint, and may have rights to pursue an Merit Systems Protection Board (MSPB) appeal or a union grievance.

 - (1) For an EEO complaint, pursuant to 29 CFR § 1614, contact an EEO counselor through EO within 45 days from the date of the notice of denial of reasonable accommodation; or
 - (2) For a collective bargaining claim, file a written grievance in accordance with the provisions of the applicable collective bargaining agreement; or
 - (3) Initiate an appeal to the MSPB within 30 days of an appealable adverse action, as defined in 5 CFR § 1201.3.
- l. Within five business days upon receipt of the denial notice, the requestor can request prompt reconsideration of the denial of reasonable accommodation by taking the following steps:

- (1) First, ask the decision-maker to reconsider his/her denial. Additional information may be presented to support the request. The requestor may present new evidence and additional information in support of his/her request for reconsideration. The decision-maker that handles the request for reconsideration will respond to the requestor within ten business days.
 - (2) If the decision-maker does not reverse the denial, and the decision-maker was the individual's first line supervisor, the requestor can ask the second line supervisor to do so. The second-line supervisor decision is the final decision on the reconsideration request and will be issued within ten business days of receipt of the request.
- m. Seeking reconsideration from the decision-maker and appealing to the next person in the decision-maker's chain of command does not affect (or toll) the time limits for initiating statutory and collective bargaining claims. An individual's participation in any other informal dispute resolution process does not satisfy the requirements for bringing a timely claim under EEO, MSPB, or union grievance procedures. The deadline for filing any statutory appeal (EEO or MSPB) or any union grievance procedure is determined by the date the employee's request was first denied in writing as described in paragraph k above.

9. ADDITIONAL GUIDELINES.

a. Reassignment.

- (1) Reassignment is a form of reasonable accommodation that must be provided, absent undue hardship, to an employee (not applicants) who, because of a disability, can no longer perform the essential function(s) of the position he/she holds, with or without reasonable accommodation. Reassignment is a "last resort" accommodation that must be considered if there are no effective accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other possible accommodations would impose undue hardship. However, reassignment may be made only to a vacant position. The law does not require that agencies create a new position or move employees from their jobs in order to create a vacancy.
- (2) In considering whether there are positions available for reassignment, the EO will work with both the EXRM and the employee requesting the accommodation to identify possible vacant positions. The EXRM is responsible for conducting the search for a reassignment, and will focus on positions, which are equivalent to the employee's current job in terms of pay, status, grade level, and other relevant factors. An employee must be

qualified for the new position and be able to perform the essential functions of the new position, with or without reasonable accommodation. If there is no vacant equivalent position, the agency will consider vacant lower level positions for which the employee with a disability is qualified.

- (3) Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, CPSC will not pay for the employee's relocation costs.

b. Information Tracking.

- (1) The decision-maker will ensure that the "Reasonable Accommodation Information Report" (Appendix D) is completed and signed and submitted to the EO.
- (2) The EO will ensure that medical records are kept confidential, meaning maintained in files separate from the employee's official personnel file, and will decide to whom and under what circumstances medical information may be disclosed, subject to the exceptions listed in the EO regulations.
- (3) The EO will maintain the records related to an employee who has requested accommodation for the duration of the employee's tenure with the agency. The agency will also retain for at least three years, and be able to provide to the EO, information or any cumulative records used to track the agency's performance with regard to reasonable accommodation.

10. **EFFECTIVE DATE.** This order will be effective upon issuance and be reviewed annually by the EO for future applicability.

_____/s/_____
Hal Stratton, Chairman

8-31-04
Date

- APPENDIX A** - Request for Reasonable Accommodation
- APPENDIX B** - Reasonable Accommodation Information Report
- APPENDIX C** - Denial of Reasonable Accommodation Request
- APPENDIX D** - Selected Resources for Locating Reasonable Accommodations