



Defense Threat Reduction Agency

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DTRA 5505.3

DEC 10 2007
DIR-EO

DTRA INSTRUCTION 5505.3

SUBJECT: Defense Threat Reduction Agency (DTRA) Reasonable Accommodation

Reference: (a) Rehabilitation Act of 1973 (Section 501 and 505)
(b) 29 Code of Federal Regulations (CFR) Part 1630
(c) Executive Orders (E.O.) 13163 and 13164, July 26, 2000
(d) Equal Employment Opportunity Commission (EEOC) Policy Guidance on E.O. 13164, October 23, 2000
(e) DTRA Instruction 5505.3, Reasonable Accommodation, March 9, 2004 (hereby cancelled)

1. PURPOSE

This Instruction supersedes reference (e) and prescribes policy and procedures for processing requests for Reasonable Accommodation.

2. APPLICABILITY

This Instruction applies to all civilian employees, all supervisors of civilian employees and applicants for employment with the DTRA at any of its duty locations.

3. DEFINITIONS

The definitions for this Instruction are in Enclosure 1.

4. POLICY

4.1. It is DTRA policy to provide reasonable accommodation(s) for known physical and mental impairments of qualified individuals with disabilities who are applicants and/or employees of the DTRA. A reasonable accommodation will be made to ensure equal opportunity for all employees to utilize their skills, knowledge, abilities, and capacity for safe and productive job performance while meeting the essential functions of the position.

4.2. Managers and supervisors have the primary responsibility for exploring and taking the necessary actions required in order to accommodate employees with disabilities. This policy supports the DTRA hiring plan for employment of people with disabilities established in accordance with Executive Order 13163.

5. RESPONSIBILITIES

5.1. The Equal Opportunity Office (DIR-EO) shall have oversight of the Reasonable Accommodation program and serves as the Chair of the Reasonable Accommodation Review Board (RARB).

5.2. The Chief, EO shall:

5.2.1. Establish guidelines and an administrative process for requesting reasonable accommodation(s),

5.2.2. Provide oversight, monitor, evaluate, track and maintain information,

5.2.3. Provide training to supervisors/managers and employees, and

5.2.4. Submit report(s) to the EEOC, as appropriate.

5.3. The Chief, Human Capital Office (BE-BH) or a designee shall serve as a permanent member of the RARB. The Policy and Program Development Division (BE-BHP) shall process requests for accommodation(s) when they concern application, hiring or reassignment issues. BE-BHP is responsible for training staff members involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.

5.4. The General Counsel Office (DIR-GC) shall serve as the legal advisor to the RARB. DIR-GC staff attorneys will render legal advice, guidance on legal sufficiency, and other legal opinions as necessary.

5.5. The Command Surgeon (BE-BPH) shall serve as the medical advisor for all issues covered by this Instruction. The Command Surgeon will receive, review, and retain all medical documentation submitted in connection with a request for accommodation under this Instruction.

5.6. The Reasonable Accommodation Review Board (RARB) shall consist of three permanent members; the Chief, EO, Chief, BE-BH, and a designated staff attorney. The Chief, EO serves as the board chair and determines additional ad hoc membership as required. Ad hoc members may include representatives from various Enterprises and Staff Offices, as appropriate. The RARB will convene to reconsider denial(s) by first-line supervisors, managers, or decision-makers of requests for reasonable accommodation(s), review requests for reassignment as a reasonable accommodation(s), offer alternatives to requested accommodations, and make final decisions on contested denials and reassignments. The RARB will not decide any matter challenged through the EEO complaint process, Alternative Dispute Resolution (ADR), Merit Systems Protection Board (MSPB), Inspector General (IG) complaint process, Administrative Grievance System or the Negotiated Grievance Procedure (if any).

5.7. The Disability Program Manager (DPM) shall serve as the principal advisor to the Chief, EO and the Chief, BE-BH on all matters affecting the employment, advancement, and treatment of individuals with disabilities within DTRA. For the purposes of this Instruction, the DPM may receive verbal or written requests for reasonable accommodation from employees or applicants. The DPM will ensure that such requests are referred to the appropriate agency official.

5.8. The Employees shall:

5.8.1. Be responsible for notifying the supervisor of any disability or medical condition that may interfere with the performance of the essential duties of his/her position and making the request for reasonable accommodation. The initial request may be made verbally. However, for record keeping purposes, such verbal request must be documented using DTRA Form 123 (Enclosure 4) and submitted to the first-line supervisor, another supervisor or manager in the requesting employee's chain of command, the DPM, the Human Capital Office or the EO Office.

5.8.2. Suggest reasonable accommodation possibilities and working interactively with supervisors and other DTRA officials to identify and effect accommodations and/or alternate placement, if necessary.

5.8.3. Provide current and specific medical documentation to support a request for reasonable accommodation, as appropriate.

5.9. Applicants. Any applicant who requires a reasonable accommodation should make a request, orally or in writing, to the designated point of contact (POC) identified on the vacancy announcement or to the DTRA DPM.

NOTE: A family member, health professional or other representative may request an accommodation on behalf of a DTRA employee or applicant using the same process described in 5.7 and 5.8 above.

5.10. The Supervisors, managers or other designated decision makers shall carefully evaluate each request and make appropriate decisions or refer the request to the EO or Human Capital Office, as appropriate. If the supervisor or manager denies the request for reasonable accommodation, s/he must notify the individual, in writing, of the denial giving specific reasons for such denial. The supervisor or manager must also advise the individual of the right to request reconsideration by the RARB, the right to file an EEO complaint or pursue other avenues of redress through the appropriate forum i.e., the IG, administrative or negotiated grievance procedures.

6. PROCEDURES

Basic policy and procedures for requesting and processing requests for reasonable accommodation are provided at Enclosure 2.

7. EFFECTIVE DATE.

This Instruction is effective immediately.

FOR THE DIRECTOR:


JOHN P. CONNELL
Colonel, USA
Chief of Staff

Enclosures - 5

- E1. Definitions
- E2. EEOC Policy Guidance on Reasonable Accommodation (Part I and II)
- E3. Selected Reasonable Accommodation Resources
- E4. DTRA Form 123 – Reasonable Accommodation Request
- E5. Flow Chart of Reasonable Accommodation Process

E1. ENCLOSURE 1

DEFINITIONS

E1.1. Disability. For purposes of determining eligibility for a reasonable accommodation, a person with a disability is one who has a physical or mental impairment that materially or substantially limits one or more major life activities.

E1.2. Essential Functions. The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things: (a) the position exists specifically to perform that function, (b) there are a limited number of other employees who could perform the function if it were assigned to them or (c) the function is specialized and the incumbent is hired based on his/her ability to perform it.

E1.3. Individual with a Disability. An individual with a disability is a person who (a) has a physical or mental impairment that substantially limits one or more of major life activities; (b) has a record of such impairment, or (c) is regarded as having such impairment.

E1.4. Qualified Individual with a Disability. A qualified individual with a disability is a person who (a) satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or desires and (b) can perform the essential functions of the position, with or without reasonable accommodation.

E1.5. Reasonable Accommodation. Reasonable accommodation is a modification or adjustment to a position, the work environment, or the application process that enables a qualified individual with a disability to attain the same level of performance of the essential duties of the job or to enjoy equal benefits and privileges of employment as are available to a similarly situated employee without a disability.

E1.6. Reassignment. Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of the job, with or without reasonable accommodation. Reassignments are made only to vacant positions and for employees who are qualified for the new position, when no other reasonable accommodation exists.

E1.7. Undue Hardship. Undue hardship generally refers to a specific accommodation that requires the DTRA to incur significant difficulty or expense. Determinations are made on a case-by-case basis, considering the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the DTRA.

E2. ENCLOSURE 2

EEOC POLICY GUIDANCE ON REASONABLE ACCOMMODATION – PART I

E2. GENERAL GUIDANCE:

This policy covers all civilian employees and applicants for employment with DTRA worldwide. It is an important part of the government's national policy to create additional employment opportunities for people with disabilities. In addition, the Rehabilitation Act of 1973 prohibits federal agencies from discriminating against individuals with disabilities in the federal sector.

Reasonable accommodation serves two purposes: (1) it removes barriers that prevent people with disabilities from applying for or performing jobs for which they are qualified and (2) it enables agencies to expand the pool of qualified workers, thereby benefiting from the talents of people who might otherwise be barred arbitrarily from employment.

Accommodations may include, but are not limited to, the following:

- (a) ensuring that existing facilities used by employees and applicants for employment are readily accessible and usable by individuals with disabilities;
- (b) restructuring jobs and/or modifying work schedules;
- (c) reassigning current employees to vacant positions;
- (d) acquiring or modifying equipment or devices;
- (e) making appropriate adjustments or modifications to examinations, training materials, or policies; and
- (f) providing qualified readers or interpreters and/or other similar assistance.

Procedures for processing requests for reasonable accommodation are included in this Instruction. Brochures detailing the process are available in the Equal Opportunity Office (EO) and the Business Enterprise, Human Capital Office (BE-BH). Additional information is available on the DTRAnet.

A training module, developed by DIR-EO, will be included in the mandatory EO training requirement for all DTRA civilian employees (permanent, full-time/part-time and term) and military supervisors of civilian employees. The training session will familiarize employees with the types of accommodation DTRA supervisors and management officials may be required to make to qualified individuals with disabilities. It will include ways in which individuals may request reasonable accommodations, discuss the "interactive process" between the DTRA and the individual submitting a request for reasonable accommodation, and address factors in considering and evaluating undue hardship. The Reasonable Accommodation training module will include an in-depth discussion of the rights and responsibilities of DTRA employees and individuals with disabilities under the Rehabilitation Act.

E.2.1. REASONABLE ACCOMMODATION PROCEDURES

A. **Initiating the Reasonable Accommodation Process**

An employee or job applicant may initiate a request for reasonable accommodation orally or in writing. An applicant or employee will complete a reasonable accommodation request form for record-keeping purposes only. The form is provided at *Appendix C*.

1. *May an agency require that individuals with disabilities use particular words to request a reasonable accommodation?*

No. A request for accommodation is a statement that an individual needs an adjustment or a change at work or in the application process for a reason related to a medical condition. DTRA does not require that individuals mention the Rehabilitation Act or use the phrase "reasonable accommodation."

2. *May an agency wait to begin processing a request for reasonable accommodation until after an individual has submitted a written request?*

No. Although for record-keeping purposes, DTRA will require an applicant or employee to fill out a form, an individual's oral request will start the reasonable accommodation process. Accordingly, the time limits set by DTRA's procedures (*See Section C*) will run from the date of the oral request. A request for reasonable accommodation also can be initiated in writing. Any DTRA employee who requires assistance to complete the written request for an accommodation should contact the first line supervisor who will provide the assistance or refer the employee to the appropriate DTRA personnel. Applicants should request assistance from the designated POC identified on the vacancy announcement or the DTRA DPM.

3. *When an employee requires a reasonable accommodation on a recurring basis, may an agency require the individual to submit a written request for record-keeping purposes each time the accommodation is needed?*

No. Where an employee has requested a type of reasonable accommodation that s/he is likely to need on a repeated basis -- for example, the assistance of a sign language interpreter or reader, DTRA does not require that the individual submit a written request each time the accommodation is needed. Once the reasonable accommodation is approved the first time, the employee may obtain the accommodation by notice to an appropriate individual or office (e.g., his/her supervisor or the EO Office.)

4. *May an agency require that a request for reasonable accommodation be made at a certain time?*

No. Under the Rehabilitation Act, the duty to provide reasonable accommodation is ongoing. Thus, an individual with a disability will be permitted to request a reasonable accommodation whenever s/he chooses and as the occasion arises. The request will trigger DTRA's obligation to start the process as outlined in **Section B**.

5. May an agency require that a request for reasonable accommodation be made to a certain agency official?

No. DTRA's obligation to consider an employee's request begins when the individual makes that request to any of the following: his/her first-line supervisor, a supervisor or manager in his/her immediate supervisory chain, or the EO Office. The DTRA EO Office oversees the reasonable accommodation process. This agency provides reasonable accommodations to applicants with disabilities on a case-by-case basis. When an applicant needs an accommodation in the hiring or application process, s/he should contact the designated POC at the telephone number identified on the vacancy announcement or the DPM.

DTRA official who receives the request for accommodation will notify any other agency official, as necessary, in order to facilitate the accommodation.

6. Must an agency consider requests made by others on behalf of an individual with a disability?

Yes. A family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. Subsequently, the DTRA Command Surgeon/Medical Officer will confirm the existence of a disability and the need for an accommodation.

B. Processing Requests for Reasonable Accommodation

DTRA will process all requests for reasonable accommodations expeditiously. Most requests will be processed and provided within **30 calendar days**. Those involving extenuating circumstances may require additional processing time up to a maximum of **60 calendar days** (See Section C). Requests for reassignment will be considered and decided by the RARB.

Individuals requesting an accommodation are encouraged to make an initial request to their first-line supervisor. However, requests may be made verbally or in writing to any agency official in their chain of command, the EO or the DPM. All requests will be reviewed and granted or denied on a case-by-case basis.

7. Should agency procedures be flexible?

Yes. DTRA will be flexible in processing requests for reasonable accommodation. Individuals making the decision to expedite a request shall process the request in a manner that imposes the fewest burdens on an individual with a disability. This will permit the most expeditious consideration and delivery of the accommodation.

8. May first-line supervisors be authorized to approve requests for reasonable accommodations?

Yes. DTRA first-line supervisors, managers, and other decision makers have the authority to approve or disapprove requests for reasonable accommodations. If the first-line supervisor or any other decision maker denies the requested accommodation, s/he must provide a written statement, in plain language, explaining fully the reason(s) why the accommodation was denied.

The written denial must be provided to the requestor promptly, but no more than **7 calendar days** after the decision. The individual with the disability can then submit a request for reconsideration to the RARB, which will make the final decision. In either case, the reason(s) for such denial must be in writing. The notice of denial must also inform the individual of the right to request reconsideration by the RARB, the right to file an EEO complaint or to pursue redress through other appropriate forums, i.e., the dispute resolution process, the IG, Administrative or Negotiated grievance procedures.

9. May an agency designate a particular office, or offices, to be involved in processing a request for reasonable accommodation?

Yes. The EO Director will chair the RARB and designate members of the RARB. The RARB members will familiarize themselves with the requirements of the Rehabilitation Act, potential/optional accommodations, and available resources. The RARB also may serve as a resource for individuals with disabilities and agency decision makers. The EO Office will designate specific offices to handle specialized requests as required.

10. Should agency procedures encourage discussions between the individual requesting the accommodation and the agency decision maker?

Yes. DTRA is committed to an interactive process and expects the individual requesting an accommodation and the DTRA decision maker to discuss (1) the request (the specific limitation, situation or barrier), (2) the process for determining whether a requested accommodation will be provided, and (3) potential or alternative accommodations.

11. Should agency procedures specify resources those individuals with disabilities and agency decision makers may consult to identify and evaluate possible accommodations?

Yes. Enclosure 3 to DTRA's Guidance provides a list of relevant resources. Managers and supervisors are reminded that additional resource materials are available on the EEOC website at www.eeoc.gov.

12. How should agencies fund requested reasonable accommodations?

Funding mechanisms will be implemented so as to avoid charging individual offices for the cost of accommodations. The EO Office will coordinate all actions necessary to secure the services of readers, interpreters, and other assistants.

C. Time Limits

DTRA will process requests for reasonable accommodation and provide accommodations, where they are feasible, in as short a time frame as reasonably possible. DTRA 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 additional information or medical documentation to support the request for reasonable accommodation.

Where the requested accommodation can be effected by the employee's first-line supervisor or decision maker, when no supporting medical documentation is required because the disability

is clearly obvious, and when there are no extenuating circumstances, the accommodation will be processed and provided no later than **30 calendar days** from the date of the request. If a delay in processing a request for an accommodation occurs, temporary measures will be taken to assist the individual with the disability. The process will be interactive and ensure that the employee has an opportunity to offer ideas and suggestions about possible accommodations. The goal is to obtain all of the information necessary to effect a reasonable accommodation.

Where the requested accommodation involves the need for supporting medical documentation or when other extenuating circumstances exist, the accommodation will be processed no later than **60 calendar days** from the date of the request. If the request for accommodation is submitted to an agency official other than the first-line supervisor, the individual receiving the request has three (3) work days to provide the request to the appropriate supervisor, decision maker or the EO Office. Our goal is to ensure an interactive and expeditious process.

13. How should agencies set applicable time limits?

Time limits are set to ensure reasonable accommodations are provided promptly. The time necessary to respond to any particular request for accommodation will depend largely on the nature of the requested accommodation. For example, a reassignment is likely to take longer to review and implement than a request that a desk be put on blocks. Where the requested accommodation is simple and straightforward, DTRA will provide it immediately, absent undue hardship. Further, the time frame will be reduced considerably in situations where the first-line supervisor approves the request.

Special circumstances may influence the timing of the reasonable accommodation process. Some reasonable accommodation requests may be expedited in appropriate cases. Expedited processing might be necessary where, for instance:

- a reasonable accommodation is needed to enable an individual to apply for a job; or
- the reasonable accommodation is needed for a specific agency activity that is scheduled to occur on short notice.

DTRA's **maximum** time limit for processing reasonable accommodation requests is **60 calendar days**. However, the time limit may be extended as a result of or by the medical situation or other extenuating circumstance(s) of the employee. If additional information is needed, or more time is required to implement the request, the file will be duly noted while every effort is made to effect the accommodation.

14. What are "extenuating circumstances" that would justify an agency not processing a request for reasonable accommodation during the designated time period?

"Extenuating circumstances" are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. These can include situations in which equipment must be back-ordered or the vendor typically used by an agency has unexpectedly gone out of business. In addition, DTRA will not be expected to adhere to its usual time frames

if an individual's health professional fails to provide sufficient medical documentation, in a timely manner, or when there is third party involvement (**See Section D**).

Where there is a delay in processing a request for or delivering a reasonable accommodation, DTRA will notify the individual of the reason for the delay. To the extent possible, DTRA will keep the individual informed of the date on which they expect to complete the process. If there is a delay, DTRA will investigate whether there are temporary measures that could be taken to assist the individual with a disability.

15. Are there steps an agency can take prior to receiving a request for reasonable accommodation that will avoid unnecessary delays in responding if a request is made?

Yes. To anticipate and limit impediments that may cause unnecessary delay in providing reasonable accommodation, DTRA will review and/or modify, in advance of a specific request, policies that might affect its ability to respond promptly to requests for reasonable accommodation. Policies and procedures to be reviewed are:

- purchasing or leasing equipment;
- hiring of, or contracting for, readers, interpreters, or other assistants; and
- flexibility to approve leave, restructure work schedules or consider telework.

DTRA will ensure, to the extent possible, that all contracts for the use of external facilities - such as contracts to use hotels for conferences or training programs - reflect the obligation that such facilities be accessible to people with disabilities. Of course, DTRA's own facilities conform to the laws on accessibility of federal buildings.

D. Medical Information

An employee or applicant is obligated to provide appropriate medical information as it relates to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious. If the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee in performing the essential functions of the job or enjoying the benefits and privileges of the workplace, DTRA has the authority to request relevant supplemental medical information.

In accordance with Section 1(b)(4-6) of Executive Order 13164, DTRA has the right to have medical information reviewed by a medical expert of its own choosing at agency expense.

The Office of Personnel Management (OPM) also regulates when an agency may request medical examinations of applicants and employees. See 5 U.S.C. Section 3301 and 3302; 5 C.F.R. Part 339 (Medical Qualification Determination). In making such requests, DTRA will comply with Rehabilitation Act requirements. The EEOC has issued detailed guidance that applies to the provisions of the Rehabilitation Act that addresses permissible medical inquiries. These documents can be found on the EEOC's website at www.eeoc.gov

16. When may DTRA request medical information in connection with a request for reasonable accommodation?

DTRA is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. Thus, when a disability and need for accommodation is not obvious, DTRA may require that the individual provide medical documentation about the disability and his/her functional limitations. Additionally, DTRA may request supplemental documentation when the information already submitted is insufficient to document the disability and/or the functional limitations it causes. Failure to provide necessary documentation where it has been properly requested could result in a denial of reasonable accommodation.

DTRA request(s) for additional medical information will conform to the requirements of the Rehabilitation Act. Under the Act, DTRA may not request medical information where (a) both the disability and the need for reasonable accommodation are obvious; or (b) the individual has already provided DTRA with sufficient information to document the existence of the disability and his/her functional limitations.

17. What types of medical information or documentation may DTRA request in connection with a request for reasonable accommodation?

When the criteria set forth in the answer to **Question 16** are met, DTRA may request information or documents regarding:

- the nature, severity, and duration of the individual's impairment;
- the activity or activities that the impairment limits;
- the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
- why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

DTRA requires that documentation about the disability or functional limitations come from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. However, DTRA will request only the information that is relevant to making a decision about reasonable accommodation. In most situations, this means that DTRA will not request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue or the need for accommodation.

Where necessary to enable an individual's health-care professional to provide information regarding that individual's ability to perform a job, the DTRA will provide information to the health-care professional that describes the nature of the job, the essential functions the individual will be expected to perform, and any other information that is relevant to evaluating the request.

Consistent with the principle that information requested in connection with an employment

decision may be disclosed to those making the decision, DTRA may share the medical information it obtains, as necessary, only with the individuals involved in determining whether to grant a reasonable accommodation. The persons involved in making such a decision will be informed of the limits on further disclosure of information. (See Question 20)

Medical documentation may contain sensitive information about a person's medical condition. This may cause some employees to be uncomfortable about sharing information with supervisors. In order to avoid this problem, DTRA has designated the Command Surgeon/Medical Officer to receive and review the medical documentation. The Command Surgeon/Medical Officer may tell those making a decision on the reasonable accommodation request that the employee has a disability rather than sharing all of the details about the medical condition.

18. May DTRA have medical information reviewed by its own medical expert?

Yes. Where DTRA is entitled to request medical information under the standards set forth above, DTRA may have that information reviewed by its own medical expert at its own expense.

19. May DTRA request that its own physician examine an individual who has asked for reasonable accommodation?

Yes, but only in certain circumstances. DTRA may request that an individual be examined by its own physician *only* if the individual has provided insufficient documentation from his/her own health care or other appropriate medical professional to confirm the existence of a disability and the need for reasonable accommodation. If, in response to DTRA's initial request, an individual submits insufficient documentation to demonstrate that s/he has a disability and needs accommodation, the DTRA Command Surgeon will explain why the submitted documentation is insufficient, identify the information that is needed and allow the individual an opportunity to provide the information before requesting a medical examination. In such circumstances, DTRA may ask the individual to sign a limited release. DTRA will submit a list of specific questions, through the individual to the individual's health care professional.

If the individual requesting an accommodation is still unable to provide sufficient information in support of the request, DTRA may request that the individual be examined by a health care professional of DTRA's choice at DTRA's expense. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require a reasonable accommodation. Where a medical examination is warranted, DTRA must explain to the individual requestor that failure to agree to the examination could result in a denial of reasonable accommodation.

20. Are there restrictions on handling medical information after it is obtained by DTRA?

Yes. The Rehabilitation Act requires that all medical information be kept confidential. This means that all medical information that DTRA obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. Moreover, individuals who have access to confidential medical information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except as follows:

- supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
- first aid and safety personnel may be told if the disability might require emergency treatment;
- government officials may be given information necessary to investigate DTRA's compliance with the Rehabilitation Act;
- the information may in certain circumstance be disclosed to workers' compensation offices, the Office of Personnel Management, or insurance carriers;
- DTRA EO officials may be given the information to maintain records and conduct evaluations and report on the Agency's performance in processing reasonable accommodation requests. (See Section G)

Where medical information is disclosed to any of the foregoing officials, the DTRA Command Surgeon/Medical Officer will inform those individuals about the confidentiality requirements that apply to the medical information.

E. Reassignment

Reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his/her current position.

21. When is reassignment required under the Rehabilitation Act?

Reassignments within DTRA will be the last resort for individuals requesting this type of reasonable accommodation. This may 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 an undue hardship. The employee would be reassigned only to an appropriate vacant position.

22. Must the employee with a disability be qualified for the new position?

Yes. A DTRA employee will be qualified if s/he (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position with or without reasonable accommodation. If the employee is qualified for the position, he/she should be reassigned to the job as a reasonable accommodation and will not have to compete for it.

23. What should an agency's reasonable accommodation procedures provide with regard to reassignment?

In circumstances in which a reassignment is the only available option, a search will be conducted for any available vacancies for which the individual is qualified and would meet the need of a reasonable accommodation in order to perform the essential functions of a new

position. Every effort will be made to accommodate the employee in a comparable position. However, in some cases, a reassignment may involve a change to lower grade or duty location.

F. Denial of Request for Reasonable Accommodation

In accordance with Section 1(b)(8) of Executive Order 13164, the decision maker (either the supervisor on an initial denial or the RARB) must provide a written denial specifically explaining the reason(s) the request was denied. A notice of denial, signed by a supervisor or other decision maker must also include information regarding the individual's right to reconsideration by the RARB. If the individual believes that the denial was the result of other factors, he/she may seek redress through the appropriate forum, i.e., EEO, IG, the informal ADR process or applicable grievance procedures. The agency official that makes the decision will sign the notice of denial. A decision by the RARB will be signed by the Chair and include the above stated rights. However, a final decision by the RARB is not subject to further reconsideration by the RARB.

If an alternative to the requested accommodation is offered, the decision-maker will explain how and why the alternative accommodation is deemed more effective. All agency denials will include written notification that the individual has the right to file a complaint in the equal employment opportunity process, use the agency informal ADR process or other statutory processes, as appropriate, if their request for reasonable accommodation is denied.

G. Information Tracking

A system for tracking Reasonable Accommodation requests and disposition will be monitored and maintained by the EO office.

In accordance with Section 1(b)(9) of Executive Order 13164, the DTRA Command Surgeon/Medical Officer, Environment, Safety and Occupational Health Office (BE-BPH) will maintain the confidentiality of medical information received in accordance with applicable laws and regulations.

24. <i>What information must an agency be able to track?</i>
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For record keeping purposes only, the DTRA EO Office will track and maintain the following information:

- The number and type of reasonable accommodation requested in the application process and whether those requests were granted or denied;
- The job (occupational series, grade level and agency component) for which a reasonable accommodation was requested;
- The types of reasonable accommodations requested for each of those jobs;
- The number of reasonable accommodations, by type, for each job approved, and the number of accommodations, by type, that were denied;

- The number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment and whether they were granted or denied;
- The reasons for denial of requests for reasonable accommodation;
- The number of reasonable accommodation requests granted or denied;
- The amount of time (in **calendar** days) taken to process each reasonable accommodation request; and
- The sources of technical assistance that were consulted in trying to identify possible reasonable accommodations.

25. How long must agencies maintain tracking information?

Records related to a particular individual who requests a reasonable accommodation will be maintained by DIR-EO for the duration of the employee's employment. When the employee leaves the DTRA, records gathered and maintained under this Instruction will be destroyed in accordance with DTRA Records' Management guidelines.

Cumulative records used to track Agency performance with regard to Reasonable Accommodation will be kept for three years. In accordance with **Section D**, safeguards are in place to ensure that records that contain medical information about any employee or applicant with a disability are maintained in accordance with the DTRA's strict confidentiality restrictions.

26. Are individual medical records subject to the confidentiality restrictions of the Rehabilitation Act?

Yes. Medical records are subject to confidentiality restrictions and will be kept separate from official personnel files. Medical information and files will be disclosed on a need-to-know basis only. Aggregate information that does not, and cannot be used to, identify a particular individual with a disability, is not subject to the confidentiality restrictions of the Rehabilitation Act.

27. How should agencies use their tracking information?

At appropriate intervals, the EO Office will evaluate its performance in responding to requests for Reasonable Accommodation.

28. Are there any reporting requirements under Executive Order 13164?

Yes. DTRA is required to submit its policy and procedures to the Equal Employment Opportunity Commission annually.

H. Informal Alternative Dispute Resolution (ADR) and Equal Employment Opportunity (EEO) Complaints

Any individual with a disability who requests reconsideration of a denial of their request for

reasonable accommodation has the right to file a complaint under 29 C.F.R. 1614.105 within **45 calendar days** of receipt of the denial or other statutory processes, as appropriate, if their request is denied.

The DTRA ADR program may be used to request reconsideration of an agency denial of reasonable accommodation, even if the individual has initiated the EEO complaint process. The ADR process will not affect the time limits governing the EEO complaint process, nor does participation in the ADR process satisfy the requirements for bringing a claim under EEOC, MSPB or Union procedures.

29. What is an informal dispute resolution process for purposes of the Executive Order?

An informal dispute resolution process is any voluntary mechanism, such as the DTRA's ADR program, that the parties agree to use to resolve workplace disputes. The emphasis is to seek a mutually acceptable resolution of issues.

30. What is the relationship between an informal dispute resolution process and the EEO or other federal sector complaint processes?

Three basic principles govern the relationship between an informal process for addressing reasonable accommodation disputes and the EEO and other federal sector complaint processes. For example, the process is (1) available in addition to and does not modify or replace the federal EEO complaint process (29 CFR 1614) or Administrative Grievance System (DTRA Instruction 1400.25-M Subchapter 771); (2) informal, voluntary, quick and fair; and (3) does not affect statutory time limits set forth by EEOC, MSPB or Union rules.

When a request for reasonable accommodation is denied, the DTRA will provide written notice to the requestor advising of the right to pursue the EEO complaint process within **45 calendar days** of receipt of the denial.

31. What is the procedure for alleging a violation of Section 501 of the Rehabilitation Act?

Procedures for alleging a violation of Section 501 of the Rehabilitation Act are set forth in 29 C.F.R. 1614. The entire process, including procedures to appeal a denial, is included in this guidance.

EEOC POLICY GUIDANCE ON REASONABLE ACCOMMODATION – PART II

FREQUENTLY ASKED QUESTIONS

A. INITIATING THE REASONABLE ACCOMMODATION PROCESS

May an agency require that individuals with disabilities use particular words to request a reasonable accommodation? (See pg. 8)

May an agency wait to begin processing a request for reasonable accommodation until after an individual has submitted a written request? (See pg. 8)

When an employee requires a reasonable accommodation on a recurring basis, may an agency require the individual to submit a written request for record-keeping purposes each time the accommodation is needed? (See pg. 8)

May an agency require that a request for reasonable accommodation be made at a certain time? (See pg. 9)

May an agency require that a request for reasonable accommodation be made to a certain agency official? (See pg. 9)

Must an agency consider requests made by others on behalf of an individual with a disability? (See pg. 9)

B. PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION

Should agency procedures be flexible? (See pg. 10)

May first-line supervisors be authorized to approve requests for reasonable accommodations? (See pg. 10)

May an agency designate a particular office, or offices, to be involved in processing a request for reasonable accommodation? (See pg. 10)

Should agency procedures encourage discussions between the individual requesting the accommodation and the agency decision maker? (See pg. 11)

Should agency procedures specify resources that individuals with disabilities and agency decision makers may consult to identify and evaluate possible accommodations? (See pg. 11)

How should agencies fund requested reasonable accommodations? (See pg. 11)

C. TIME LIMITS

How should agencies set applicable time limits? (See pg. 12)

What are “extenuating circumstances” that would justify an agency **not** processing a request for reasonable accommodation during the designated time period? (See pg. 12)

Are there steps an agency can take prior to receiving a request for reasonable accommodation that will avoid unnecessary delays in responding, if a request is made? (See pg. 13)

D. MEDICAL INFORMATION

When may DTRA request medical information in connection with a request for reasonable accommodation? (See pg. 14)

What types of medical information or documentation may DTRA request in connection with a request for reasonable accommodation? (See pg. 14)

May DTRA have medical information reviewed by its own medical expert? (See pg. 15)

May DTRA request that its own physician examine an individual who has requested a reasonable accommodation? (See pg. 16)

Are there restrictions on handling medical information after it is obtained by DTRA? (See pg. 16)

Are individual medical records subject to confidentiality restrictions of the Rehabilitation Act? (See pg. 19)

E. REASSIGNMENT

When is reassignment required under the Rehabilitation Act? (See pg. 17)

Must the employee with a disability be qualified for the new position? (See pg. 17)

What should an agency’s reasonable accommodation procedures provide with regard to reassignment? (See pg. 17)

F. DENIAL OF REQUEST FOR REASONABLE ACCOMMODATION (See pg. 18)

G. INFORMATION TRACKING

What information must an agency be able to track? (See pg. 18)

How long must agencies maintain tracking information? (See pg. 19)

How should agencies use their tracking information? (See pg. 20)

Are there any reporting requirements under Executive Order 13164? (See pg. 20)

H. INFORMAL ALTERNATIVE DISPUTE RESOLUTION (ADR) AND EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINTS

What is an informal dispute resolution process for purposes of the Executive Order?
(See pg. 20)

What is the relationship between an informal dispute resolution process and the EEO or other federal sector complaint processes? (See pg. 20)

What is the procedure for alleging a violation of 501 of the Rehabilitation Act? (See pg. 21)

E3. ENCLOSURE 3SELECTED REASONABLE ACCOMMODATION RESOURCES

E3.1. Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, 8 FEP Manual 405:7601 (1999)

E3.2. Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, 8 FEP Manual (BNA) 405:6981, 6988-7018 (1992)

E3.3. Enforcement Guidance, on Pre-employment Disability-Related Questions and Medical Examinations, 5, 6-8 20-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995)

E3.4. Enforcement Guidance: Workers' Compensation and the ADA, 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996)

E3.5. Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities, 19-28, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996)

6. Fact Sheet on the Family Medical Leave Act, the ADA and Title VII of the Civil Rights Act of 1964 (as amended), 6-9, 8 FEP Manual (BNA) 405:7371 7374-76 (1996)

E3.7. Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the American with Disabilities Act, 20, 22, 23, 24-25, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000)

E3.8. Poster (meets ADA posting requirement)

Items 1-8 above are available on the EEOC website at www.eeoc.gov

E3.9. Job Accommodation Network (JAN): 1-800-232-9675 (Voice/TT) or website: <http://janweb.icdi.wvu.edu>

E3.10. ADA Disability and Business Technical Assistance Centers: 1.800.949.4232

E3.11. Registry of Interpreters for the Deaf: 301.608.0050 (Voice/TTY)

E3.12. RESNA Technical Assistance Project: 703.524.6686 (Voice) or website: <http://www.resna.org>

E3.13. The Computer-Electronic Accommodations Program (CAP) of the Department of Defense: www.tricare.osd.mil/cap/

E5. ENCLOSURE 5

REASONABLE ACCOMMODATION

Reasonable Accommodation

