

Subject: PROCEDURES FOR PROCESSING REASONABLE ACCOMMODATION REQUESTS FROM JOB APPLICANTS AND DOT EMPLOYEES WITH DISABILITIES

1. PURPOSE. This Order describes the roles and responsibilities of those involved in the reasonable accommodation process at the Department of Transportation (DOT or Department), and identifies resources available within the Department to assist with providing reasonable accommodations.

2. CANCELLATIONS. DOT Order 1011.1A, Procedures for Processing Reasonable Accommodation Requests from Job Applicants and DOT Employees with Disabilities

3. BACKGROUND. This Order implements the changes to 29 CFR Part 1614.203, the U.S. Equal Employment Opportunity Commission (EEOC) regulation implementing Section 501 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), which prohibits Federal agencies from discriminating on the basis of disability in employment. Implementation of this Order also assists DOT's compliance with Executive Order 13164, requiring each Federal agency to establish written procedures for processing reasonable accommodation requests for its employees and job applicants with disabilities. These written procedures apply to all DOT organizations, including Operating Administrations, the Office of the Secretary, and the Office of Inspector General (collectively, the OAs). OAs must submit their procedures for processing reasonable accommodation requests to the Departmental Office of Civil Rights (DOCR) within 90 days of the effective date of this Order for review and evaluation prior to implementation. Each OA's procedures must be consistent with the requirements in this Order and comply with guidance from the EEOC.

Reasonable accommodation applies to all aspects of employment, including the job/internship application process, recruitment, training, promotion, reassignment, rotational assignments, developmental assignments, as well as participation in DOT-conducted programs and activities and enjoyment of the benefits and privileges of employment. This Order covers all requests for reasonable accommodations made by, or on behalf of, job applicants with disabilities and DOT employees with disabilities. The EEOC provides guidance on how to determine the responsible decision maker for contingent workers (contractor employees), which is available here: <http://www.eeoc.gov/policy/docs/guidance-contingent.html>.

4. REFERENCES

- a. 5 U.S.C. § 552a, and 49 CFR Part 10, The Privacy Act of 1974.
- b. 5 U.S.C. §§ 3301, 3302; and 5 CFR Part 339, Office of Personnel Management's Medical Qualification Determinations.
- c. 5 U.S.C. § 3102, "Employment of Personal Assistants for Handicapped Employees, Including Blind and Deaf Employees."
- d. 42 U.S.C. § 12101, *et seq.*, The Americans with Disabilities Act (ADA), as amended, which prohibits private employers, State and local governments, employment agencies, and labor

unions from discriminating against qualified individuals with disabilities in, among other things, job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and the right to enjoy any benefits or privileges of employment. The ADA nondiscrimination standards apply to Federal sector employees through § 501 of the Rehabilitation Act.

- e. Sections 501, 503, and 504 of the Rehabilitation Act prohibit discrimination in Federal employment and in programs conducted by Federal agencies, in the employment practices of Federal contractors, and in programs receiving Federal financial assistance.
- f. 29 U.S.C. § 794(d), 36 CFR Part 1194. Section 508 of the Rehabilitation Act requires DOT to ensure information and communication technology (ICT) procured, purchased, developed, maintained, or used by DOT meets the provisions of Section 508, unless an undue burden would be imposed on DOT. Examples include computers, telecommunications equipment, multifunction office machines such as copiers that also operate as printers, software, websites, information kiosks and transaction machines, and electronic documents.
- g. 29 U.S.C. § 791(g): The Rehabilitation Act, which incorporates the employment standards of Title I of the Americans with Disabilities Act (ADA) into the Rehabilitation Act.
- h. 42 U.S.C. § 2000ff: The Genetic Information Nondiscrimination Act of 2008.
- i. 5 CFR § 339.301, *et seq.* (OPM: Medical Qualification Determinations).
- j. 29 CFR Part 1630, the EEOC's regulations to implement the equal employment opportunity provisions of the ADA.
- k. 29 CFR Part 1614, which outlines the roles and responsibilities for agencies, employees, and applicants in the equal employment opportunity (EEO) complaint process.
- l. 29 CFR §§ 1635.8 and 1635.9 (EEOC: Regulations Implementing Title II of GINA).
- m. 41 CFR §§ 301-13 (GSA: Travel of an Employee with Special Needs).
- n. Executive Order 13548, "Increasing Federal Employment of Individuals with Disabilities" (July 26, 2010).
- o. Executive Order 13163, "Increasing Opportunity for Individuals with Disabilities to be Employed in the Federal Sector" (July 26, 2000).
- p. Executive Order 13164, "Establishing Procedures to Facilitate the Provision of Reasonable Accommodation" (July 26, 2000).

5. DEFINITIONS.

a. Disability: In general, disability means:

- 1) A physical or mental impairment that substantially limits one or more major life activities;
- 2) A record of such an impairment; or
- 3) Being regarded as having such an impairment. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”

Although pregnancy itself is not a disability, pregnant job applicants and employees are not excluded from the protections of the ADA. Please see the EEOC’s “Enforcement Guidance: Pregnancy Discrimination and Related Issues.”

b. Targeted Disability: A disability that is designated as a “targeted disability or health condition” on the Office of Personnel Management's Standard Form 256 or that falls under one of the first 12 categories of disability listed in Part A of question 5 of the EEOC’s Demographic Information on Applicants form.

c. Major Life Activities: These activities include, but are not limited to:

- 1) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; and
- 2) The operation of major bodily functions, including functions of the immune system, special sense organs, and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

d. Physical or Mental Impairment:

- 1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- 2) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

e. Substantially Limits: Broadly means the impairment substantially limits a major life activity in comparison to most people in the general population. It does not require scientific, medical, or statistical analysis in most cases. The focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. “Substantially limits” has a lower threshold than “prevents” or “severely or significantly restricts.”

f. Disability Discrimination: Occurs when:

- 1) An employer, or other entity covered by the ADA or the Rehabilitation Act, treats an individual with a disability, who is an applicant or employee, unfavorably because he or she has a disability;
- 2) A covered employer or other entity treats an applicant or employee less favorably because he or she has a history of a disability or because he or she is perceived to have a physical or mental impairment that is not transitory and minor (even if he or she does not have such an impairment); or
- 3) An effective accommodation is available, no legally permissible reason for denying the accommodation (such as those listed in 7(l)) applies, and a covered employer or other entity fails to make a reasonable accommodation and cannot demonstrate that the request is an undue hardship on the employer.

g. Reasonable Accommodation Management System (RAMS): DOT's system for tracking reasonable accommodation requests from the initial request through the final decision. This system allows DOT to identify trends in reasonable accommodation requests and responses, and to report on our reasonable accommodation request processing to EEOC. While the system does capture information about reasonable accommodation requests, it does not capture or store medical documentation.

h. Reasonable Accommodation: Any change to the work environment or to the way things are usually done that results in equal employment opportunity for a qualified individual with a disability. Reasonable accommodations can include the removal of physical barriers or modifications to how an employee does his or her job. This includes, but is not limited to:

- 1) Modifications or adjustments to a job application process that enable an applicant with a disability to be considered for the position he or she desires, provided he or she is qualified for the position;
- 2) Modifications or adjustments to the work environment, or the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified for a given position to perform the essential functions of that position; and
- 3) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy benefits and privileges of employment equal to those available to an employee without a disability.

Only applicants and employees with disabilities are entitled to reasonable accommodations. Reasonable accommodations are not available to individuals who are "regarded as" having a disability, but do not have a physical or mental impairment that substantially limits one or more major life activities, or a record of such impairment.

i. Interim Accommodation: An action designed to fill a gap during the reasonable accommodation process until sufficient documentation has been received, an effective accommodation can be identified, or the selected accommodation can be obtained and provided.

- j. Temporary Accommodation: An action provided when there is an anticipated ending time for an accommodation, such as when a temporary change in the environment prevents an individual from using their currently provided accommodation or an individual has a condition that is known to be temporary, but currently has limitations that limit his/her ability to perform a task.
- k. Qualified Individual: Someone who:
 - 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.
- l. Essential Functions: The fundamental job duties of the position. The job's essential functions are generally found in the existing position description or the employee's performance plan. However, a determination of the essential functions of a position is made on a case-by-case basis and reflects the job as actually performed. Factors to consider in determining whether a function is essential include:
 - 1) Whether the reason the position exists is to perform that function;
 - 2) The number of other employees available to perform the function or among whom the performance of the function can be distributed; and
 - 3) The degree of expertise or skill required to perform the function.
- m. Undue Hardship: Occurs when a specific accommodation would require significant difficulty or expense for DOT. Determinations of undue hardship must always be made on a case-by-case basis, considering factors that include the nature and cost of the accommodation and the impact of the accommodation on the operations of the DOT. Specifically, undue hardship means that the entirety of DOT cannot absorb the costs or impact on operations of the proposed accommodation. The Secretary or a designee must make the final determination that an undue hardship exists.
- n. Vacant Position: A position is vacant for purposes of reassignment as an accommodation of last resort where a position is fully funded, with no current occupant, and the organization intends to fill, or will fill it within 60 calendar days of the job search initiated by the decision to consider reassignment.

6. RESPONSIBILITIES

- a. The Secretary of Transportation, or a designee, must approve any decision to deny an accommodation request when the basis of the denial is undue hardship.
- b. DOT's Departmental Office of Civil Rights (DOCR) provides policy guidance and oversees compliance with this Order and relevant Federal laws and regulations. DOCR provides expert advice and consultant services on matters related to reasonable accommodations and conducts briefings and training sessions for the OAs. DOCR will outline the required

learning objectives for reasonable accommodation training to be delivered to DOT managers and employees by DOCR and the OA offices. DOCR is responsible for reviewing and approving all OA reasonable accommodation procedures and for drafting reasonable accommodation procedures for OST.

- c. The head of each OA must determine who will serve as its decision maker(s) regarding reasonable accommodations. The head of each OA must also determine who will serve as the designated disability advisor(s) (Disability Program Manager (DPM), HR Specialist, or other expert) for requesting and maintaining medical information in accordance with this Order. Each OA must ensure that employees and managers are aware of this Order and all other applicable policies and procedures, and understand the obligations as indicated. OAs must submit procedures to DOCR for review and evaluation prior to implementation. Procedures should identify the designated decision maker(s) and a process for handling medical documentation requests and review.
- d. The OA Civil Rights (CR) offices provide policy guidance, expert advice, training and consultation to OA staff, supervisors, employees, and employment applicants. The OA CR Director will ensure that its OA staff members are well informed on the policy and other DOT-issued publications or guidance on reasonable accommodation, specifically in connection with how to recognize and respond to reasonable accommodation requests and the timeframes set forth in this Order. CR offices may be designated the responsibility for inputting into DOT's tracking system requests for reasonable accommodation within their respective OAs. CR offices should coordinate with their OA's HR office as appropriate.
- e. The designated disability advisor(s) is (are) responsible for requesting and maintaining medical information in accordance with this Order. The advisor(s) may be the DPM, HR Specialist, or other expert or team of experts as determined by the head of each OA.
- f. The Departmental Office of Human Resource Management (DOHRM) and the Human Resource (HR) offices within each OA provide advice and guidance to supervisors, managers, and employees about HR policies and procedures related to reasonable accommodation, such as leave, telework, and performance management. HR offices may also conduct training and briefings, in coordination with the CR office, on the reasonable accommodation process and be designated the responsibility for requesting medical information and inputting into DOT's tracking system requests for reasonable accommodation within their respective OAs. HR offices should coordinate with the OA's CR office, and DOCR, on any training or briefing on the reasonable accommodation process. Each OA's HR office assists decision makers when reassignment is being considered as an accommodation of last resort.
- g. The DOT Office of the General Counsel and the Chief Counsel Offices within each OA provide advice and guidance to supervisors, managers, and entities within each OA on legal aspects of the accommodation process.
- h. The Disability Resource Center (DRC), operated by DOHRM, is comprised of disability employment subject matter experts who assist DOT job applicants, employees, supervisors, and managers throughout the employment life cycle, including recruitment, hiring,

advancement, and retention of individuals with technical issues related to disabilities. DRC also helps facilitate reasonable accommodation requests and provides technical assistance related to Section 501. The DRC does not make decisions about whether to provide a reasonable accommodation but offers advice and recommendations on the available types of reasonable accommodations. The DRC must maintain the records for all reasonable accommodation interactions it has with employees and supervisors receiving these services. It also must provide the collected records and data to the OA that provided the accommodation.

- i. The Disability Program Managers (DPMs) provide expert advice, training and assistance to supervisors, managers, and others on disability employment matters; stay current on the newest developments in the field; assess trends in connection with recruitment and employment of persons with disabilities; maintain and submit completed reports in a timely manner; facilitate management training in consultation with the respective CRs or DOCR, as appropriate; and ensure that reasonable accommodation request information is entered into RAMS. OAs may also designate DPMs to act as decision makers in the reasonable accommodation process.
- j. Decision makers are the individuals responsible for making decisions regarding reasonable accommodation requests in accordance with OA reasonable accommodation procedures. A contractor employee requesting a reasonable accommodation should initially refer to their employer's reasonable accommodation process. <http://www.eeoc.gov/policy/docs/guidance-contingent.html>.
 - 1) Decisions regarding reasonable accommodations for job applicants must be made by the individual or individuals designated to do so by the head of that OA. If the OA has not designated a decision maker, the senior HR Manager, in particular, the HR Specialist responsible for filling the vacancy must be the decision maker.
 - 2) The OAs must identify the decision maker(s) for employees in the reasonable accommodation procedures. OAs may choose to identify the employee's first-level supervisor as the decision maker. Where no designation has been made, the immediate supervisor or the lowest-level supervisor in the chain of command with the authority to approve the accommodation is the decision maker. When a decision maker is unavailable to process reasonable accommodation requests within the applicable timeframes, an appropriate replacement must be designated by the decision maker (or the decision maker's supervisor if the decision maker is unavailable) and communicated to the requesting applicant or employee. Established timeframes are not suspended due to the unavailability of a principal decision maker.

Decision makers have the ultimate responsibility for accepting, processing, and determining whether to grant or deny requests for reasonable accommodations from employees and job applicants. Upon receiving a request for an accommodation where the disability and need for an accommodation is not obvious or otherwise already known to the decision maker and there is not sufficient medical information on record that demonstrates that need, the decision maker should contact the OA's designated disability advisor(s). The decision maker should not make direct inquiries to the employee for

medical records and information. The designated disability advisor is responsible for obtaining the necessary medical documentation, making the disability determination, and maintaining the medical documentation in accordance with the confidentiality requirements of this Order.

The designated disability advisor(s) should not share actual medical records with the decision maker. However, the functional limitations as described in the medical records should be shared with the decision maker to the extent necessary for the decision maker to carry out the responsibilities listed below. Upon receipt and review of requested medical documentation, the designated disability advisor(s) should coordinate and consult with the decision maker, whose responsibilities include, but are not limited to:

- i. Engaging in the interactive process.
- ii. Identifying and documenting the essential functions of the job.
- iii. Determining and documenting whether the employee is qualified for the position he or she holds.
- iv. Determining whether an accommodation is necessary to enable the employee to perform the essential functions of the job.
- v. Ensuring that an employee can enjoy equal benefits and privileges of employment.
- vi. Identifying, locating, and purchasing effective accommodations in collaboration with the OA DPM, and the DRC when necessary.
- vii. Arranging for installation, training, and follow up, in collaboration with the OA DPM and the DRC, as needed.
- viii. Confirming that the accommodation is effective and resuming the interactive process if the accommodation is not effective.
- ix. Seeking guidance from the OA HR, CR, and Counsel Offices, as appropriate.
- x. Completing the reasonable accommodation process, providing a written decision, and, if granted, providing an accommodation to the requesting individual within 25 business days, absent extenuating circumstances; and
- xi. Treating the request, disability, and entire process as a confidential matter.

All decision makers are strongly encouraged to consult their CR, HR, Counsel Offices, and DPMs during the reasonable accommodation process. DRC may also provide technical assistance and facilitate the reasonable accommodation communication and decision-making process. In addition, decision makers may consult and review EEOC current and updated resource materials, including EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000), and EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002).

- k. A supervisor must participate in the interactive process to provide information on the essential functions of requesting employee's position and discuss potential effective reasonable accommodations. This participation is required even if an OA has designated a decision maker other than the first-line supervisor.

1. DOT applicants and current employees with disabilities are responsible for making their accommodation needs known. A job applicant with a disability must notify the servicing HR Specialist or other point of contact listed in the job vacancy announcement, servicing HR Specialist, or hiring manager of any accommodation need. An employee with a disability must notify the decision maker of the accommodation request in accordance with this Order.

Persons who request a reasonable accommodation are responsible for:

- i. Communicating fully to identify functional limitations at work and potential effective reasonable accommodations;
- ii. Providing appropriate medical information related to the functional impairment and the requested accommodation where the disability or need for an accommodation is not obvious or already known;
- iii. Participating in good faith in the interactive process. Failure to do so may be deemed as abandoning the interactive process, which is intrinsic to the reasonable accommodation request; and,
- iv. If necessary, demonstrating through medical or other documentation that there is a disability and how that disability affects essential job functions for the purpose of reasonable accommodation decision-making.

7. POLICY

- a. Reasonable Accommodation Process Overview: The reasonable accommodation process generally begins with a request for an accommodation, followed by a conversation between the decision maker and the individual requesting the accommodation about the request, the employee's functional limitations, and potential effective accommodations, a decision regarding the reasonable accommodation request, and the implementation of an effective accommodation. This process is interactive, and requires both the decision maker and the individual requesting the accommodation to participate. Where appropriate, the process may also include requests for and submission of medical documentation. All reasonable accommodation requests are considered on a case-by-case basis.
- b. Decision Making: Decisions on reasonable accommodation requests must always be made in the OA (including OST and OIG) where the requesting employee works and by the individual or individuals designated in the OA reasonable accommodation procedures. OAs may, within their reasonable accommodation procedures, elect to centralize the reasonable accommodation process, and identify a single staff person, or group of staff members, responsible for making decisions on reasonable accommodation requests. Alternatively, OAs may state that an employee's first-level supervisor functions as the decision maker for reasonable accommodation requests. If the OA has not designated a decision maker, the immediate supervisor or the lowest-level supervisor in the chain of command with the authority to approve the accommodation must be the decision maker. Consistent with 7(j) below, OA procedures may designate an alternative decision maker in appropriate cases. Where an employee's supervisor is the decision maker, the supervisor is strongly encouraged to seek assistance from the OA CR, HR, or Counsel offices. The manner in which an OA handles reasonable accommodations should be reflected in the OA procedures submitted to

DOCR for approval.

- c. **Training:** Instruction on reasonable accommodations is recommended for all staff. At a minimum, all decision makers and managers must participate in DOT reasonable accommodation policy training every two years, provided by DOCR, OA CR, or OA HR office. New supervisors and managers should receive training on this Order within 6 months of starting in their new positions. The OAs are strongly encouraged to use online training management systems to track completion of this required training. The OAs are responsible for educating managers, supervisors, hiring specialists, and others who may receive a reasonable accommodation request to ensure that they are able to recognize and respond to these requests in accordance with the requirements contained in this Order.
- d. **The Interactive Process:** Communication is a key competency in the reasonable accommodation process. The individual requesting the accommodation, the decision maker, and the supervisor (if the supervisor is not the decision maker) must communicate in good faith to determine what limitations or barriers are experienced by the requestor and what accommodation, if any, is necessary. Decision makers are responsible for participating and communicating, early and periodically, throughout the process. The interactive process may also include appropriate representatives from CR, HR, and Counsel. To have these conversations effectively and identify potential accommodations, individuals and agency decision makers can consult EEOC guidance and technical assistance documents. An individual is entitled to track requests by requesting via email updates on the processing of a reasonable accommodation, and decision makers are required to respond as soon as possible, but not later than 2 business days after the request is made.
- e. **Initiating a Request:** A reasonable accommodation request is initiated by a statement, oral or written, made by an individual who requests an adjustment or change at work, in the application process, or in any benefit or privilege of employment, because of an impairment. The request does not need to include special words or use the term “reasonable accommodation,” and no such requirement can be imposed by the decision maker. The individual does not need to have a particular accommodation in mind when making a request. An individual with a disability can request a reasonable accommodation at any time during the application process or during employment. To enable DOT to keep accurate records of requests, employees and job applicants seeking a reasonable accommodation should promptly follow an oral request with a written request to the supervisor/decision maker. The time limit for processing reasonable accommodations begins as soon as the initial request, whether oral or written, is made. DOT does not require the completion of a specific form to initiate the reasonable accommodation request.
- f. **Third-Party Requests:** Individuals other than the employee or applicant with a disability may make a reasonable accommodation request on an employee or applicant’s behalf. This includes a family member, health professional, or any other representative acting on the employee or applicant’s behalf. When a request for accommodation is made by a third party on behalf of a job applicant or employee, the decision maker should confirm the request with the job applicant or employee before proceeding. If the employee or job applicant cannot be reached to confirm, the decision maker should begin processing the third-party request before

obtaining confirmation (for example, if leave is requested to accommodate emergency treatment for an employee). However, as soon as reasonably possible, the decision maker must obtain confirmation from the job applicant or employee.

- g. **Reassignment as a Reasonable Accommodation:** When an individual with a disability is no longer able to perform the essential functions of the job and all reasonable accommodation options have been exhausted, the employee may be considered for reassignment to a vacant, funded, equivalent position for which the employee is qualified. Reassignment will only be considered when no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. Reassignment is, therefore, the accommodation of last resort. All reasonable accommodation vacant position job searches within an OA will be coordinated by the OA's designed staffing HR Specialist, including notifying the employee and supervisor/decision maker of the outcome of the vacant position search. Searches for vacant positions within the Department must be made by the OA HR Specialist, through OST's Selective Placement Coordinator, in accordance with the guidelines in DOCR's Reasonable Accommodation Manual. All previously provided accommodations should be documented along with a description of how or why they were not successful. Neither DOT nor the OAs are required to create jobs for any individual.
- h. **Ongoing or Repeated Services as an Accommodation:** DOT provides ongoing services, such as services provided through the DRC that an employee may need on a repeated basis, as accommodations, such as sign language interpreting, captioning, readers, sighted guide services, Personal Assistance Services (PAS), and other services as appropriate. Individuals with disabilities will not be required to submit a new request each time they need an approved accommodation on a repeated basis; rather, once the initial request is made and granted, the individual can continue to access that service until the accommodation is no longer effective the accommodation ends (if it was temporarily granted), or it becomes an undue hardship. To continue to access ongoing or repeated services, the individual will need to contact the office that provides the service, rather than the decision maker. It is important for the employee needing these services, their supervisor, or the decision maker to contact the DRC with the request, and to refer to the DRC website, <https://www.transportation.gov/drc>, and the DRC handbook, available at <https://www.transportation.gov/drc/handbook>, for more details.
- i. **PAS at Work and on Official Travel:** In accordance with 29 CFR § 1614.203(d)(5)(i), DOT must provide PAS for an employee with a targeted disability, or services that assist employees with the activities of daily living, during work hours and job-related travel if and when the provision of such services, coupled with any reasonable accommodation, would enable the employee to perform the essential functions of his or her position, and the PAS would not impose an undue hardship.
- j. **Directing and Acknowledging Requests:** To minimize delays, employees should direct their reasonable accommodation requests to OA decision makers in the following order:
 - The designated OA decision maker;
 - Immediate supervisor, if no decision maker has been designated;

- Another supervisor in the chain of command of the requesting employee, if no decision maker has been designated; or
- Another designated OA official, such as the DPM, HR, or CR, if no decision maker has been designated.

The decision maker or supervisor must contact the requesting party within a reasonable period of time, normally within 3 business days after the reasonable accommodation request is made to confirm and acknowledge the request and initiate the interactive process. Please note that once a request is submitted to the decision maker or supervisor, the timeframe for processing the accommodation begins. If a decision maker or supervisor is on leave or unavailable, an alternate should be identified to begin the process and contact the requesting party within a reasonable period of time, normally 3 business days. The acknowledgement must identify the date the initial request was made.

- k. Granting Requests: The decision maker should communicate a decision to grant a reasonable accommodation to the individual, in writing, as soon as practicable and within timeframes contained in this Order.

Requests that are simple and easy to obtain should be processed quickly. If the request contains both a simple item and a complex item, the easy part of the request may be fulfilled prior to fulfilling the more complicated part. For example, an employee with limited dexterity may need both a simple trackball and complex computer-related accommodations, such as speech-recognition software. Easily obtained items and services that are necessary (such as a trackball) to enhance productivity and effectiveness should be provided to the employee as soon as reasonably possible outside of the reasonable accommodation process and should not be delayed. Those requests should still be thoroughly documented, including documenting that: a request for an item was made, no medical documentation was requested, no disability determination was made, and the item requested was provided.

If an accommodation is granted, but cannot be provided immediately, the decision maker must provide a projected timeframe for providing the accommodation and may use the interactive process to determine what, if any, interim accommodations may be put in place. Absent extenuating circumstances, the decision maker must provide the requesting party a decision and accommodation within 25 business days. The 25-business day period may be extended if such extension is necessary to facilitate receipt of medical information, including examinations, medical reviews, and other medical opinions. If there is a delay or anticipation of a delay in the processing of a request for reasonable accommodation, or the provision of a reasonable accommodation, a written notice must be provided to the employee giving the reasons for the delay. Such notice should include the projected timeframe for providing the accommodation.

Over time, the effectiveness of a granted accommodation may decrease due to circumstances such as software updates or the progressive nature of the individual's disability. Employees may request that their accommodation(s) be reviewed and updated. A request for review and update must be treated as a new request for reasonable accommodation, adhering to the 25-business day timeframe and reporting requirements.

1. Denying Requests: When a decision maker denies a request for reasonable accommodation, the decision must be in writing and specify the reason(s) for denying the request. This decision must be provided in an accessible format when needed. Reasons for denying a request can include, but are not limited to:
 - Medical documentation provided by job applicant or employee is inadequate and the individual failed to provide additional medical evidence to establish that the individual meets the definition of having a disability under the Rehabilitation Act, as amended, and needs a reasonable accommodation.
 - Individual making the request fails to participate in the interactive process, including failing to provide requested medical documentation to establish that the individual has a disability and needs a reasonable accommodation.
 - Requested accommodation would require the removal of an essential job function.
 - Requested accommodation would require the lowering of a performance or production standard.
 - Requested accommodation would be in violation of the terms and conditions of a collective bargaining agreement.

The written notice of denial must also inform the requesting party that he or she has the right to request reconsideration of the decision, to file an EEO complaint, and may have rights under administrative or union grievance procedures. The written notice should provide instructions on how to request reconsideration and to whom the request should be submitted. The written notice should also provide instructions on how to file an EEO complaint and explain that, pursuant to 29 CFR § 1614.105, the right to file a complaint will be forfeited unless the requesting party initiates contact with an EEO Counselor within 45 days of the denial. The written notice should also explain the OA procedures for alternative dispute resolution. The written notice should make clear, however, that a request for reconsideration or participation in an alternative dispute resolution process may not affect the time limits for initiating statutory and collective bargaining claims nor satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures. Absent extenuating circumstances, the decision maker must give the requesting party the written denial decision within 25 business days of the date the request was made.

Reasonable accommodation requests may also be denied for undue hardship. Before reaching an undue hardship determination, the decision maker must have explored whether other effective reasonable accommodations exist that would not impose an undue hardship. In making an undue hardship determination, the decision maker must consult with appropriate OA CR, HR, Budget (if the hardship is based on a financial issue), and Counsel Offices. The Secretary of Transportation, or a designee, must approve all decisions that an accommodation would result in an undue hardship. In addition, the Department must provide an effective accommodation, and it may deny a request when there is no alternative or the requestor will not accept any equivalent accommodation, other than the one requested.

- m. Granting an Alternative Accommodation: If an alternative accommodation is granted instead of the requested accommodation, the decision should be communicated in writing as soon as practicable and within the timeframes contained in this Order. When an alternative

accommodation is provided, the requestor has the same appeal rights as if the request had been denied. The written notice of the decision to provide an alternative accommodation should specify the reason(s) why the specifically requested accommodation was not provided, and why the decision maker believes that the alternative accommodation granted is an effective reasonable accommodation. The notice must also provide the same information detailed in the “Denying Requests” section above. Absent extenuating circumstances, the decision maker must give the requesting party the written decision of the alternative accommodation within 25 business days of the date the request was made. This decision must be provided in an accessible format when needed.

- n. **Requests for Reconsideration:** Applicants and employees have the right to request reconsideration of a decision made on their request for accommodation. A request for reconsideration must be made in writing within 10 business days from receipt of the initial decision and typically will be made to the next person in the chain of command or other designated management official who will seek assistance from CR, HR, and Counsel offices, and DPMs when responding to a request for reconsideration. A decision on a request for reconsideration must be in writing and normally made within 15 calendar days of receipt of the request.
- o. **Alternative Dispute Resolution:** While some disputes arising out of a denial of a request can escalate into formal administrative and legal forums, DOT supervisors and employees are encouraged to use Alternative Dispute Resolution (ADR) or other appropriate mechanisms to resolve the disputes at the lowest possible level. Decision makers, DOT supervisors, and employees are encouraged to resolve disagreements and disputes informally whenever possible and regardless of whether the person has filed an EEO complaint. A DOT employee must be able to access the informal dispute resolution process without having to contact an EEO Counselor or file an EEO complaint. The informal dispute resolution process must be in addition to, and must not modify or replace, the EEO complaint process.
- p. **Other Appeal Options:** Individuals may choose to pursue statutory or collective bargaining remedies for denial of reasonable accommodations.
 - For an EEO complaint: Individuals must contact an EEO counselor within the respective OA CR office within 45 calendar days from the date of the date of the initial decision on the accommodation request, or in the case of a personnel action, 45 calendar days of the effective date of the action.
 - For a collective bargaining claim: Individuals must file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.
 - For adverse actions over which the Merit Systems Protection Board has jurisdiction: Individuals must initiate an appeal to the MSPB within 30 days of the appealable adverse action as defined in 5 CFR § 1201.3. If the individual and the agency mutually agree in writing to submit the dispute to an ADR process, the 30-day filing time limit is automatically extended to 60 days.
- q. **Timeframes:** Requests for accommodations must be entered into RAMS, processed, and accommodation(s) provided in as short a timeframe as reasonably possible. Absent the need

for supporting medical information or the existence of other extenuating circumstances, a request for reasonable accommodation must be processed and the accommodation, if granted, provided within 25 business days from the date the request is made. The time limit begins to run when the accommodation is first requested. 29 CFR § 1614.203(d)(3)(i)(M). When a particular accommodation can be provided in less than the maximum amount of time, or 25 business days, the accommodation must be provided as soon as possible. Failure to provide an accommodation promptly may violate the Rehabilitation Act. 29 CFR § 1614.203(d)(3)(i)(O). Where an accommodation is needed sooner than the maximum allowable time frame, individuals may request expedited processing. This may be necessary where the accommodation is needed to enable an individual to apply for a job or for a specific agency activity scheduled to occur shortly.

The total processing time (25 business days) can be tolled or extended because a decision maker is precluded from making a decision or implementing the accommodation due to an extenuating circumstance. Extenuating circumstances are situations that could not reasonably have been anticipated or avoided, or are beyond DOT's ability to control. Processing time can only be extended for as long as required to deal with the extenuating circumstance. When tolling or an extension is required, the decision maker must notify the requesting individual in writing of the reason for the delay and the approximate date on which a decision or the provision of the reasonable accommodation is expected. Additional developments should also be communicated promptly to the individual in writing.

The following are examples of extenuating circumstances:

- Outstanding initial or follow-up request(s) for medical information (e.g., if an individual's health professional fails to provide needed documentation in a timely manner).
 - Longer timeframe to purchase equipment because of Federal Acquisition Regulation requirements.
 - Backordered equipment or other vendor-related delays that are not within the control of DOT.
 - An employee with a disability needs to work with equipment on a trial basis to ensure that it is effective before it is purchased.
 - Union negotiation is required.
- r. **Interim Accommodations:** In situations where there is a delay in providing an approved reasonable accommodation, the decision maker must consider whether an interim accommodation can be provided while waiting for the approved accommodation to be implemented. Any accommodation offered on this basis must be presented to the employee with an explanation, in writing, of the provisional nature of the solution and the anticipated date of the more permanent accommodation. DOT will provide an interim accommodation that allows the individual to perform successfully some or all of the essential job functions, as long as an undue hardship is not imposed.
- s. **Accommodations During DOT-Conducted Programs and Activities:** When announcing an event or meeting, program offices are required to include an accessibility statement explaining how individuals with disabilities may request a reasonable accommodation or

program modification. Please refer to the DRC handbook at <https://www.transportation.gov/drc/handbook> for appropriate statements that may be used in event announcements and for events or programs where invitees are required to register.

- t. Medical Information Requests: When the medical impairment(s) or disability necessitating a reasonable accommodation is not obvious, or when the decision maker needs more information to determine what would be an effective reasonable accommodation, the decision maker should contact the disability advisor(s) designated by OA reasonable accommodation procedures to initiate a medical documentation request. Decision makers should not request medical information from the requestor directly. The designated disability advisor may request information such as:
- i. Nature, severity, and duration of the impairment relevant to the request.
 - ii. One or more of the major life activities that the impairment limits.
 - iii. Extent or degree to which the impairment limits a major life activity.
 - iv. Explanation of how the impairment affects the performance of a skill or a function.
 - v. Explanation as to how an accommodation will help an individual apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.

In formulating the request for medical information, the designated disability advisor(s) should consult with the decision maker regarding the information needed to identify an effective reasonable accommodation. In summary, the medical information request should be focused on determining whether the individual has a disability, how the impairment affects the individual's ability to participate in the application and interview process or ability to perform the essential functions of the job, and what types of accommodations may be effective. Once the medical information is received, the designated disability advisor(s) should determine whether there is a disability and, if so, consult with the decision maker to review the employee's functional limitations for purposes of determining an effective reasonable accommodation. If applicable due to medical complexity, the decision maker can work with HR, CR, and Counsel Offices to have the medical information provided reviewed by a medical expert. 29 CFR § 1614.203(d)(3)(i)(K).

If the medical information submitted is insufficient to establish whether the individual has a disability as defined in the Rehabilitation Act, or what accommodation(s) is necessary and would be effective, the designated disability advisor has the right to request relevant supplemental medical information. 29 CFR §§ 1614.203(d)(3)(i)(J) and (e)(3)(J). The designated disability advisor is required to seek guidance from the offices of CR, HR, and Counsel when requesting supplemental medical information, and should consult with the decision maker regarding the information needed to identify an effective reasonable accommodation. When requesting more information, the request must:

- i. Explain the insufficiency;
- ii. Identify the information and documentation needed;
- iii. Place the individual on notice that failure to provide the identified documentation can result in denial of the accommodation request; and

- iv. Allow the individual the opportunity to provide the identified information and documentation.

Additional information and best practices for requesting medical information, including specific language to be used in such requests, can be found in the DOCR reasonable accommodation manual. Once the decision maker has issued the written decision granting or denying an accommodation, the medical information must be maintained by the designated disability advisor in accordance with 8(a).

- u. Labor Relations Obligations: If an employee is a member of a bargaining unit, the decision maker must contact the appropriate OA Labor Relations Office or specialist to determine what, if any, labor relations obligations must be met prior to implementing a reasonable accommodation agreed upon by the decision maker and the requesting applicant or employee. The requesting applicant's or employee's confidential medical information must not be disclosed to the OA Labor Relations Office or specialist unless an agreed upon reasonable accommodation will impact the working conditions of other bargaining unit employees and such disclosure is necessary to satisfy any labor relations obligations, or there is otherwise a need to know. In addition, to the extent that an OA's Labor and Employee Relations Office are the same, disclosure of the medical information for legitimate business reasons will be necessary if that office is designated to request and maintain medical information.
- v. Confidentiality: In general, all aspects of the reasonable accommodation process must be kept confidential. This includes the initial request, the decision, disability, and any medical information that is obtained during the process. Supervisors should be particularly careful not to inadvertently disclose any information about the request or the requesting individual's medical information. There are a few exceptions to the confidentiality of the reasonable accommodation process:
 - Information about necessary accommodations and work restrictions can be provided to decision makers, including supervisors, managers or other disability or medical advisors who need to know. Information about a person's medical disability can be disclosed to first aid and safety personnel if it is relevant during an emergency.
 - Investigatory information can be disclosed to government officials conducting compliance activities under the Rehabilitation Act, as amended.
 - Under limited circumstances, information can be disclosed to Workers Compensation Offices or insurance carriers. *See* 29 CFR Part 1630 Appendix Section 1630.16(f).
 - HR, CR, or other personnel dealing with EEO matters can be given information to maintain records, and to evaluate and report on how DOT processes requests for reasonable accommodation.
 - Information about assistance needed during an emergency evacuation may be required and can be provided to safety personnel.
 - The requester has given permission or a waiver to provide the information, such as to another party (e.g., Federal Occupational Health for assistance with medical reviews).
 - Information may be provided as necessary to investigate, defend, or resolve a challenge to the reasonable accommodation decision, to those involved in the counseling, investigation, litigation, or adjudication process.

- w. Conflicts of Interest: To avoid conflicts of interest, any staff member who is involved in processing a reasonable accommodation request must not be involved in conducting an investigation or rendering a decision in a complaint challenging the agency's handling of the accommodation request.

8. INFORMATION AND REPORTS. To enable the reporting on and evaluation of DOT's effectiveness in responding to reasonable accommodation requests, each OA and the DRC must collect, compile, and report the information set forth below.

- a. Records: All records related to the reasonable accommodation determination, especially medical records, must be maintained separate and apart from the personnel files of the employee. The OAs are strongly encouraged to designate an office to maintain such files. These records should be maintained for the duration of the DOT employee's tenure. Once a DOT employee leaves the agency, their medical documentation should be remitted to the DOT employee or destroyed 3 years after employee separation or all appeals are concluded, whichever is later (per General Records Schedules, Schedule 1, item 24; available at: <https://www.archives.gov/files/records-mgmt/grs/grs-transmittal-24.pdf>.)

For this reason, it is important that each OA maintain records in a locked and secure manner that allows medical documentation to be readily available and retrievable by appropriate personnel. The DRC must maintain the records for all interactions it has with employees involving reasonable accommodation requests.

- b. Submission of Information and Reports: Each OA CR Office must ensure that the required information regarding the provision of reasonable accommodations is entered into RAMS within 8 business days of a decision, unless another office has been designated to maintain such information by the applicable OA.
- c. Accommodations Tracking and Data Reporting: The EEOC's Management Directive 715 requires DOT to report on the timeliness of reasonable accommodation request processing in the Annual EEO Program Status Report and Plan. The OAs, including OST and OIG, must maintain the data listed below in an aggregate format, and must be able to transmit the aggregate information electronically to third parties, through RAMS:
- The number of reasonable accommodations, by type, that have been requested in the application process.
 - A description of the reasonable accommodation requested, if any, and the date the request was made.
 - Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment.
 - The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested.
 - The names of the requestor and the decision maker, as well as the contact information for the decision maker.
 - Whether medical documentation was requested and, if so, dates specifying when it was requested and when it was received.

- The amount of time taken to process each request for reasonable accommodation.
 - Whether the reasonable accommodation request was approved and, if not, a brief justification of the denial.
 - Sources of technical assistance consulted by the decision maker during the process.
- d. Submitting DOT Policies and Procedures to the EEOC: Pursuant to Executive Order 13164, each Agency that adopts reasonable accommodation procedures must submit the procedures to the EEOC. DOCR is responsible for submitting the Department's reasonable accommodation Order and procedures to the EEOC for review at the time that any modifications to the Order or procedures are adopted.
9. NOTICE OF THIS ORDER: All current DOT employees must be given notice of this Order and any substantive revisions. The notice must indicate where copies of the Order can be found or obtained. Each OA must develop procedures related to the reasonable accommodation process. These procedures must be submitted to DOCR within 90 days of the date of this Order. The OA must provide a brief written summary of the Order and related procedures that have been developed by the OA to all designated decision makers for the OAs or Departmental Offices and to new OA employees as part of the orientation process.

Complete copies of this Order must be posted on the DOT and OA intranet and internet sites, and must be available upon request from DOCR, DRC, and each OA CR and HR office. DOCR must also make copies available in alternate formats upon request.

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

U.S. Department of Transportation
Office of the Secretary
Departmental Office of Civil Rights
Disability Program Manager
1200 New Jersey Avenue, S.E.
Room W78-307
Washington, D.C. 20590

DOT employees and job applicants may contact the Departmental Office of Civil Rights (DOCR) at (202) 366-4648 or refer to the DOCR page on the Department's Web site at <https://www.civilrights.dot.gov>.

A list of all DOT Disability Program Managers can be found here: <https://www.civilrights.dot.gov/civil-rights-awareness-enforcement/employment-related/affirmative-employment/special-emphasis>.



Steven G. Bradbury
Acting Secretary of Transportation