



# U.S. Chemical Safety and Hazard Investigation Board

**SUBJECT:** Reasonable Accommodation Procedures

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1. **PURPOSE.** This Order establishes and defines written procedures of the U.S. Chemical Safety and Hazard Investigation Board (CSB) for providing reasonable accommodations under the Rehabilitation Act of 1973, as amended. It also establishes the required documentation for this process.
2. **EFFECTIVE DATE.** This Order is effective upon adoption by the Board.
3. **REFERENCES.** This Order implements the provisions of 29 U.S.C. 701 *et seq.*, 29 C.F.R. Parts 1614 and 1630, Executive Order 13164, and EEOC Directives Transmittal Number 915.003 (October 20, 2000).
4. **POLICY.** The CSB shall, to the extent required by law under the Rehabilitation Act, provide reasonable accommodation(s) for the known physical and mental limitations of qualified applicants and employees with disabilities, unless a particular accommodation would impose an undue hardship on the operations of CSB's programs or would pose a direct threat to the safety of the employee or others in the workplace.
5. **SCOPE.** This Order applies to qualified individuals with disabilities who are employees of, or applicants for employment with, the CSB.
6. **DEFINITIONS.** The following definitions will apply to this Order, except to the extent that the law imposes a different definition.
  - a. **Reasonable accommodation** – (1) a means to assist a qualified disabled employee in performing the essential functions of his or her job and/or in enjoying the benefits and privileges of employment equal to those enjoyed by other employees, or (2) a means to assist a qualified disabled applicant in fully participating in the recruitment and selection process. A reasonable accommodation should not pose an undue hardship to the operations of the CSB's programs and should not cause a direct threat to the safety of the employee or others in the workplace.
  - b. **Reassignment** – the transfer of an employee who is unable to perform the essential functions of his/her position, with or without an accommodation, to another funded, vacant position within the CSB that is within the same commuting area and at the same grade level and in which the employee could perform the essential functions of the position (with or without an accommodation), unless such a reassignment would pose an undue hardship to the CSB in the operation of its programs.
  - c. **Direct threat** – a significant risk to the health or safety of an employee or others in the workplace that cannot be eliminated by a reasonable accommodation. In determining that there would be a direct threat, the CSB must identify the specific risk imposed by the employee or applicant seeking an accommodation. In so

doing, the CSB must identify either the aspect of the disability or the specific behavior on the part of the employee or applicant that would pose a direct threat. The CSB must base this determination on objective, factual evidence and not on subjective perceptions, irrational fears or stereotypes regarding the particular disability. In evaluating whether there would be a direct threat, the CSB should consider the duration of the risk, the nature and severity of the potential harm, the likelihood that potential harm would occur, the imminence of potential harm and whether an accommodation would lessen the risk of such harm.

- d. **Qualified individual with a disability** – an individual who: (1) has a physical or mental impairment which substantially limits one or more major life activities, or has a record of such impairment, or is regarded as having such an impairment; and (2) can perform the essential functions of the position he/she holds or wishes to apply for with or without reasonable accommodation (e.g., one who otherwise meets the skill, experience, education, and other job-related requirements associated with the position).
- e. **Major life activities** – include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning, among other things.
- f. **Substantially limits** – being significantly restricted in one’s ability to perform an activity on a regular and ongoing basis as compared to the manner in which a normal person could perform an activity.
- g. **Essential functions of a job** – duties so fundamental to the position that an employee could not perform the position without doing the functions. Thus, if a position exists so that a function is performed, if there are a limited number of employees who could perform the duty, or if the function is specialized and the incumbent was hired based on his/her ability to perform the duty, then that duty is an essential function of a job.
- h. **Undue hardship** – a significant difficulty or expense in providing an accommodation, as determined on a case-by-case basis through consideration of, but not limited to the following factors: the nature and cost of the requested accommodation; the impact of the cost to the CSB on its overall resources; the impact of the accommodation on the operations of the CSB; the overall financial resources of the CSB; the overall size of the CSB in terms of the number of employees; the type of operations (functions) of the CSB; and the number and locations of the CSB’s facilities.

## 7. **PROCEDURES.**

### a. **Requests for Accommodation.**

- (1) An employee or job applicant may request an accommodation orally or in writing. The CSB does not require a form for requesting an accommodation. However, the CSB does have a form, which an employee or job applicant may use to make or confirm a request for accommodation (see Appendix A). The request need not use any special words, such as “accommodation” or “disability,” to be sufficient, but should sufficiently identify the employee/applicant’s need to have an adjustment or change in the workplace, or in the application process because of a medical condition. A representative of an employee/applicant, including but not limited to a family member, medical provider, or other individual, may also request an accommodation on behalf of him/her (although the deciding official will confirm such a request with the employee/applicant). The request for an accommodation shall be made to one of the following individuals: the employee’s supervisor, or the management official in charge of human resources. An employee/applicant should not assume that because he/she has disclosed his/her disability on a form or to others that a request for accommodation has been made.
- (2) A request may be made at any time, regardless of the onset of the disabling condition. A request does not need to be re-filed for the same or similar accommodation needed on an ongoing or repetitive basis, but need only inform the supervisor of the need to repeat the accommodation. Additional requests may be made at any time, as needed, due to a change in the employee’s/applicant’s disabling condition and/or because of a need for a new or different accommodation. Additional requests must be made when an accommodation is needed that is significantly different from one which has previously been granted. An employee/applicant may consult with the CSB’s management official in charge of human resources or the EEO office for general information concerning an accommodation request.
- (3) The employee or job applicant, upon request by the CSB and when the disability and/or need for accommodation is not obvious, shall provide appropriate medical information evidencing the functional impairment at issue as well as the need for the requested accommodation. The CSB has the right to request additional reasonable medical information for one of the following reasons: (1) the submitted medical information does not make clear the nature of the disability; (2) the submitted medical information does not make clear the need for an accommodation; or (3) the submitted medical information does not make clear how the requested accommodation will assist the employee in performing the essential functions of his/her job, or in enjoying the benefits and privileges of the workplace, or does not make clear how the accommodation would assist the applicant in fully participating in the

recruitment and selection process. Furthermore, the CSB has the right to have medical information reviewed by a medical expert of the CSB's own choosing and at the CSB's expense, as well as to request that the employee/applicant submit to a medical exam by a medical professional chosen by the CSB.

**b. Processing of Accommodation Requests.**

- (1) All CSB employees involved in a request for reasonable accommodation must ensure that the process is as flexible and expeditious as possible, and that it imposes no unnecessary burdens on the employee/applicant.
- (2) If a decision by the CSB regarding the accommodation request can be made immediately (e.g. within 24 hours of the request), the CSB will provide a final decision in writing (see Appendix B) through the individual to whom the request was made. The CSB shall strive to provide for expeditious processing of any requests that are needed on a timely basis, such as accommodations necessary for an employee to attend functions that will occur shortly, or for an applicant to apply for a job with an approaching deadline.
- (3) If the CSB cannot provide a decision regarding the accommodation request within 24 hours of the request, the CSB will provide a decision in writing as soon as is reasonably practical but within thirty (30) days of the initial request, so long as the employee/applicant has provided all necessary medical information. If, because of extenuating circumstances, the CSB is unable to provide a final decision with regard to an accommodation request within the thirty (30) day time frame, the CSB shall instead provide a written notice to the employee/applicant explaining why an accommodation has not been provided or a decision has not been reached and stating when the CSB expects to reach a decision or provide the accommodation. If the employee/applicant has not provided all necessary medical information within the initial thirty (30) day time frame, the CSB will make a decision on the accommodation request within twenty (20) days of receipt of the information (if received). All time limits run from the time a request is first made, even if the same request is made subsequently. If an employee/applicant fails to provide to the CSB the necessary requested medical information within a reasonable period of time, the CSB shall deny the accommodation request for failure to provide the medical information.
- (4) For every denial of an accommodation request, the CSB shall make its denial in writing and shall state with specificity all reasons for the denial as well as advise the employee/applicant of his/her rights: (1) to file a request for reconsideration by the Chief Operating Officer with the management official in charge of human resources; (2) to file an EEO complaint; or (3) in certain circumstances to file an appeal with the Merit Systems Protection Board.

- (5) Any employee not listed as one to whom an accommodation request shall be made but who receives a request for accommodation must forward such request as soon as practical (but within three calendar days) to the management official in charge of human resources for action.
- (6) The deciding official for all accommodation requests shall be the individual to whom the request properly was made in accordance with part “a.” of this section; specifically, the employee’s supervisor, or the management official in charge of human resources. The deciding official must discuss any request for accommodation with the employee/applicant as soon as possible to ascertain any information that is not clear or obvious, to discuss possible accommodations, and to confirm, if the request was made by a third party, that an accommodation is being sought.
- (7) The deciding official’s responsibility shall include first determining if the individual requesting the accommodation is a qualified individual with a disability as defined by the Rehabilitation Act. Such a determination may be based simply on a visual conclusion that the individual is substantially limited in a major life activity, or may require the deciding official to request and review medical documentation when the disability and/or need for accommodation is not apparent.
- (8) The deciding official shall request any necessary medical documentation as soon as possible, and in writing. This request shall seek only necessary information needed to make a decision regarding the accommodation request, including the following: (1) the nature, duration and severity of the impairment; (2) the activity(ies) that the impairment limits; (3) the extent to which the impairment limits the activity(ies); (4) the individual’s ability to perform the activity(ies) as compared to the average person; and (5) how the accommodation would assist the employee in performing the essential function his/her job or in enjoying a benefit of the workplace, or how the accommodation would assist an applicant in applying for a job.
- (9) The deciding official may require that supporting medical documentation be provided from an appropriate health professional. The deciding official shall attach to any request for medical documentation, and provide to any health professional, information regarding the essential job functions an employee is expected to perform so that the health professional may provide useful information regarding the employee’s abilities and need for an accommodation.
- (10) The deciding official may request that a health professional hired by the CSB review the medical documentation to assist the deciding official in making his/her determination. The deciding official also may request that an

employee/applicant submit to a medical exam, arranged and paid for by the CSB, when: (1) he/she determines that the submitted medical documentation is insufficient to determine whether the employee/applicant is a qualified individual with disability or whether a requested accommodation would assist the employee in performing the essential functions of his/her job or enjoying a benefit of employment (or would assist an applicant in participating in the application process); (2) he/she has given the employee/applicant an opportunity to provide supplemental medical information after being informed that the submitted medical information is insufficient, how it is insufficient and what information is required; and (3) he/she obtains a limited medical release from the employee/applicant that allows the CSB to submit a list of questions to be answered by the health professional or allows the CSB's health professional to contact the employee's/applicant's health professional directly. The deciding official must explain to the employee/applicant that his/her failure to provide supportive medical documentation could result in a delay in or the denial of providing a reasonable accommodation.

- (11) The deciding official then must identify what specific accommodation is being requested and what type(s) of accommodations would be appropriate under the circumstances. In so doing, the deciding official must communicate with the individual seeking the accommodation, and may search out possible accommodations, as well as consult with and/or retain appropriate individuals and resources regarding possible accommodations.
- (12) Finally, the deciding official must make an objective and thoughtful determination as to whether he/she should grant an accommodation and, if so, what the accommodation will be. A deciding official may offer an accommodation different from the one requested or agreed to by the employee/applicant if the deciding official believes that the requested accommodation would impose an undue hardship or direct threat or would otherwise be unreasonable.
- (13) A deciding official may deny a request for accommodation for one of the following reasons:
  - (a) The employee/applicant is not a qualified individual with a disability;
  - (b) The medical documentation is inadequate to establish whether the employee/applicant is a qualified individual with a disability and the employee/applicant has not responded to the CSB's requests for sufficient information;

- (c) The accommodation would not be effective in allowing the employee to perform the essential functions of his/her job and/or in enjoying the benefits and privileges of employment equal to those enjoyed by other employees;
  - (d) The requested accommodation would not be effective in assisting a qualified disabled applicant in fully participating in the recruitment and selection process;
  - (e) The requested accommodation would require the removal of an essential function of the employee's position;
  - (f) The requested accommodation would require lowering the employee's performance or production standards;
  - (g) Providing the accommodation would result in an undue hardship to the CSB and no other effective accommodation exists;
  - (h) Providing the accommodation would result in a direct threat to the employee or others in the workplace and no other effective accommodation exists; or
  - (i) Any other reason permitted by law.
- (14) The deciding official must issue a written decision notifying the employee/applicant of his/her decision as well as the reasons for it. This written decision must be made within the time frames set forth above and in all cases such decisions should be communicated to the employee/applicant as soon as reasonably possible. At all times, the deciding official must ensure that the CSB is engaged in the interactive process required by the Rehabilitation Act, which means continued discussion with the employee/applicant and continued processing of an accommodation request. Employees and applicants are encouraged to consult with the official who received the accommodation request throughout the process.

**c. Options for Accommodations.**

- (1) Reasonable accommodations may include but are not limited to: (1) making facilities accessible to, and usable by, individuals with disabilities; (2) job restructuring; (3) part-time or modified work schedules; (4) acquiring or modifying equipment or devices; (5) adjusting or modifying examinations and/or training materials; and (6) providing readers, interpreters and/or other auxiliary aids. The CSB will make available resources for the use of



management and employees/applicants to provide guidance to accommodations both on its intranet and in its EEO office.

(2) Reassignment will be considered as a reasonable accommodation as a “last resort” if the CSB determines that no other reasonable accommodation will permit an employee to perform the essential functions of his/her job, or if all other accommodations would pose an undue hardship on the CSB. The CSB’s management official in charge of human resources will be responsible for searching for a position within the CSB to which the employee could be reassigned, which must be vacant and of the same grade level (unless the employee requests a reassignment to a position at a lower grade level). The law does not require that the CSB create a new position or move other employees in order to make a position available for a reassignment. The employee must be qualified for the position to which he/she would be reassigned. The CSB’s management official in charge of human resources shall determine whether an employee is qualified by analyzing: (1) whether the employee satisfies the requisite skill, experience, education and other job-related requirements of the position; and (2) whether the employee can perform the essential functions of the position with or without reasonable accommodation. If such a position is available, the CSB should offer the employee the position and any reasonable accommodations he/she would need to perform the essential functions of the position, and shall not be required to apply or compete for the position. Reassignments are not available for applicants.

d. **Informal Dispute Resolution.** The CSB encourages the use of an informal dispute resolution process to resolve any issues with regard to requests for reasonable accommodations. Thus, the CSB has a reconsideration process in which denials of accommodation requests may be appealed to the Chief Operating Officer. Reconsideration requests must be delivered to the management official in charge of human resources. The COO shall reply to any such reconsideration request promptly, but no later than 15 days after receipt of a request. The CSB shall also allow the employee/applicant to meet with CSB officials involved in the reconsideration process and/or provide additional information in support of the denied request for accommodation. Pursuing this informal dispute resolution process does not satisfy the time limits for filing an EEO complaint or MSPB appeal. If you wish to pursue an EEO complaint or MSPB appeal, you must file your EEO complaint within 45 days or your MSPB appeal within 30 days of this denial, even if you have filed a request for reconsideration with the COO.

## 8. **CONFIDENTIALITY OF MEDICAL INFORMATION.**

a. Pursuant to the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. Therefore, all medical information, including information about functional limitations and

reasonable accommodation needs, that the CSB obtains in connection with a request for reasonable accommodation will be kept in files separate from the requesting individual's personnel file. Specifically, the following records will be maintained in a Reasonable Accommodation Medical File:

- Written request (or written confirmation of an oral request) for reasonable accommodation;
  - Medical documentation (including documentation of functional limitations) obtained in connection with a reasonable accommodation request; and
  - Official record of the agency's action on a reasonable accommodation request.
- b. The Reasonable Accommodation Medical File (RAMF) will be maintained by the CSB's management official in charge of human resources. The RAMF is covered by the Privacy Act under the government-wide system of records, OPM/GOVT-10, "Employee Medical File System Records." The RAMF, and the information contained therein, shall be maintained and handled in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a); the systems notice for OPM/GOVT-10 (65 F.R. 24750, 4/27/2000); the CSB Privacy Act regulations (40 C.F.R. 1602); and 5 C.F.R. 293, Subpart E.
- c. Consistent with the Privacy Act, information from the RAMF should generally be disclosed only to:
- The CSB official to whom a request for accommodation has been made;
  - CSB personnel who are involved in the process of determining whether or not a reasonable accommodation should be granted;
  - Supervisors or managers who need to know about necessary work restrictions or accommodations;
  - Personnel under contract with the CSB to review medical information or requests for accommodation, or to furnish equipment or assistance needed to provide an accommodation;
  - CSB EEO officials for the purpose of reviewing records and evaluating and reporting on the agency's performance in processing reasonable accommodation requests;
  - Occupational health, safety, or first aid personnel, if a disability might require emergency treatment or special planning in emergency situations;

- Federal government officials who are authorized to monitor/investigate the CSB's compliance with the Rehabilitation Act; and
- Workers' compensation offices or insurance carriers, under certain circumstances.

Individuals to whom reasonable accommodation information is disclosed shall be informed of the confidential nature of the information and of their duty to safeguard such information.

9. **RECORD RETENTION AND INFORMATION TRACKING.**

- a. The CSB shall retain all documentation contained in an employee's Reasonable Accommodation Medical File until one year after the date on which the employee transferred or separated from the CSB.
- b. The CSB must track specific information regarding requests for reasonable accommodation. The EEO Director shall be responsible for tracking and issuing a report to the Board at the end of every fiscal year that contains the following information:
  - The number and types of reasonable accommodations requested and whether those requests have been granted or denied;
  - The specific jobs (including occupational series, grade level, and CSB component) for which reasonable accommodations have been requested;
  - The types of reasonable accommodations that have been requested for each of those jobs;
  - The number and types of reasonable accommodations for each job and by each CSB component that have been approved;
  - The number and types of reasonable accommodations for each job and by each CSB component that have been denied;
  - The number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
  - The reasons for the denials of requests for reasonable accommodations;
  - The amount of time taken to process each request for reasonable accommodation; and

- The source(s) of technical assistance consulted in identifying reasonable accommodations.
- c. General information regarding reasonable accommodation requests, including tracking information and reports on the number of requests made and granted, shall be retained by the CSB for three years.

**U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**

January 28, 2003

**CSB CONFIRMATION OF REQUEST FOR ACCOMMODATION**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

1. Identify your employment status by circling the appropriate answer and providing the additional information requested. Continue on separate sheets, as necessary.

I am a CSB applicant (Yes)(No)

I am a CSB employee (Yes)(No)

I am making a request for accommodation on behalf of a CSB  
(applicant)(employee)

*If making the request on behalf of another individual, please provide your relationship to the applicant/employee:*

2. What type of accommodation do you request?

3. What is the reason for your request? (Identify your reason(s) for making a request for accommodation, and explain how the requested accommodation will help you.)

4. In the event the CSB cannot accommodate you in the manner requested, are there any alternative accommodations that you want to request at this time?

5. Have you already made an oral request for accommodation to someone employed by the CSB? To whom did you make the request? When?

6. Do you wish to submit medical information in support of your accommodation request? If so, please attach any relevant documentation you would like considered. (Any documentation or other information provided will remain strictly confidential.)

7. If your accommodation request is time sensitive, please explain the circumstances.

**PRIVACY ACT STATEMENT.** This form, and any responses, are subject to the provisions of the Privacy Act. Copies will be retained by the CSB and provided for review and retention as required by appropriate management officials and authorized agents of the CSB having a need to know. Reasonable accommodation documentation gathers and records information on how the CSB meets its obligations under the Rehabilitation Act of 1973 and other federal personnel laws. This information will be used solely to process requests for accommodation. The authority to collect this information is Title 29 United States Code sections 701 et seq. The information will not be disclosed outside the CSB without prior consent, except as required or permitted by law.

**CSB APPROVAL/DENIAL OF ACCOMMODATION REQUEST**

1. Name of individual requesting an accommodation:
  
2. Type(s) of accommodation requested:
  
3. The request for accommodation was (granted)(denied). *If denied, go to Question 4.*
  
4. If denied, your request for accommodation was denied because (check all that apply):
  - Accommodation Ineffective
  - Accommodation Would Cause Undue Hardship
  - Medical Documentation Inadequate
  - Accommodation Would Remove or Interfere With an Essential Function
  - Accommodation Would Lower Performance or Production Standards
  - Other (please specify): \_\_\_\_\_
  
5. Detailed reason(s) for the denial of accommodation. Reason(s) must be specific; e.g., explain why the requested accommodation would cause an undue hardship. Continue on a separate page, as needed.

**NOTICE:** A request for reconsideration of this decision may be filed with the CSB's Chief Operating Officer, as described in CSB Order 032 within 15 days of the date of this

denial. In addition to requesting reconsideration of this denial, you may file an EEO complaint pursuant to 29 C.F.R. Part 1614 within 45 days of the date of the notice of denial, or may initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1210.3. If you wish to pursue an EEO complaint or MSPB appeal, you must file your EEO complaint within 45 days or your MSPB appeal within 30 days of this denial, even if you have filed a request for reconsideration with the COO.

\_\_\_\_\_  
Name of Deciding Official

\_\_\_\_\_  
Signature of Deciding Official

Date: \_\_\_\_\_

**PRIVACY ACT STATEMENT.** This form, and any responses, are subject to the provisions of the Privacy Act. Copies will be retained by the CSB and provided for review and retention as required by appropriate management officials and authorized agents of the CSB having a need to know. Reasonable accommodation documentation gathers and records information on how the CSB meets its obligations under the Rehabilitation Act of 1973 and other federal personnel laws. This information will be used solely to process requests for accommodation. The authority to collect this information is Title 29 United States Code sections 701 et seq. The information will not be disclosed outside the CSB without prior consent, except as required or permitted by law.