



Federal Maritime Commission

Reasonable Accommodation & Personal Assistance Services Policy and Procedures

Commission Order 58

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Section 1. Purpose

(a) This Order implements the provisions of Section 501 of the Rehabilitation Act, Executive Order 13164, 29 C.F.R. 1614.203, and pertinent Equal Employment Opportunity Commission (EEOC) regulations and policy guidelines establishing procedures to facilitate the provision of reasonable accommodations for persons with disabilities in all aspects of employment, including but not limited to recruitment, hiring, training, promotion, reassignment, and developmental assignments. This Order additionally implements pertinent EEOC regulations under Section 501 of the Rehabilitation Act of 1973 (Section 501) obligating agencies to provide personal assistance services (PAS), for employees with targeted disabilities. This policy and outlined procedures can be made in accessible formats by emailing EEO@FMC.gov.

(b) The Federal Maritime Commission (Commission or FMC) shall provide reasonable accommodation to qualified employees and applicants with disabilities, provided that these actions do not cause undue hardship on the Commission. The Commission is committed to providing reasonable accommodation to both its employees and applicants for employment to ensure individuals with disabilities have full access to equal employment opportunity (EEO) at the Commission. The Commission will provide reasonable accommodation when:

(1) An applicant with a disability needs an accommodation in order to be considered for a job;

(2) An employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and

(3) An employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

(c) The Commission will provide personal assistance services when:

(1) An employee of the Commission, with a targeted disability, needs such services because of his or her targeted disability;

(2) The individual will be able to perform the essential functions of the job, without posing a direct threat to safety, once any required reasonable accommodations have been provided;

(3) Providing the reasonable accommodation will not impose undue hardship on the Commission; and

(4) The Commission will process requests for reasonable accommodation, and if appropriate, provide reasonable accommodation in a prompt, fair, and efficient manner.

Section 2. Authority

(a) The Rehabilitation Act of 1973 (Section 501) and Title I of the Americans with Disabilities Act of 1990 (ADA) require agencies to provide reasonable accommodation to qualified employees and applicants with disabilities.

(b) EEOC regulations under Section 501, additionally, require agencies to provide personal assistance services, as needed, for employees with certain targeted disabilities.

(c) This Order sets forth the Commission's policies and procedures to fulfill the purpose and requirements of Section 501 of the Rehabilitation Act of 1973 and the ADA, in accordance with Executive Order 13164, and EEOC regulations and guidelines.

Section 3. Definitions

(a) **Agency Official** means a Commission employee in a management position authorized to receive, process, and/or document reasonable accommodation requests and forward the requests to the appropriate office for disposition and determination.

(b) **Deciding Official**, for employees requesting reasonable accommodation, means the employee's immediate supervisor or supervisor's designee. For applicants requesting reasonable accommodation, the Director of the Office of Human Resources.

(c) **Disabled Individual** means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

(d) **Essential Functions** means job duties that are so fundamental to the position that the individual holds or desires that they cannot do the job without performing them. A function may be categorized as essential if, among other things: the position exists specifically to perform that function; there are a limited number of Commission employees who can perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position will be done on a case-by-case basis so each function will reflect the specific job as actually performed, and not simply reflect components of a general position description.

(e) **Interactive Process** means a dialogue between an employee with disabilities who request accommodations and their supervisor, human resource representative, or the Reasonable

Accommodation Coordinator (RAC). The dialogue includes whether there are reasonable accommodations that can be implemented by the agency.

(f) **Major life activities** mean activities that include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(g) **Personal Assistance Services (PAS)** means services that aid with performing activities of daily living that an individual would typically perform if they did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

(h) **Personal Assistance Services Provider (PAS Provider)** means an independent contractor or Agency employee whose primary job is to provide PAS to an employee of the Commission with a targeted disability.

(i) **Qualified Individual with a Disability** means an individual with a disability is qualified if:

(1) They satisfy the requisite skill, experience, education, and other job-related requirements of the position; and

(2) They can perform the essential functions of the position, with or without reasonable accommodation.

(j) **Reassignment** means a form of reasonable accommodation that, absent undue hardship on the Commission, is provided to employees (not applicants) who, because of a disability, are no longer able to perform the essential function(s) of their jobs, with or without reasonable accommodation. Reassignments are made only to vacant positions for which employees are qualified and that have no greater promotion potential than the positions to which currently assigned. Permission to compete for a vacant position is not a reasonable accommodation.

Commission personnel can find a list of current vacancies by visiting <https://www.fmc.gov/about-the-fmc/employment-opportunities/>. The Office of Human Resources provides vacancy announcements to all FMC employees.

(k) **Reasonable Accommodation** means any change in the work environment or in the way things are customarily done, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hard-of-hearing. These changes result in equal employment opportunity in all activities of the Commission, including off-site functions for an individual with a disability. There are three categories of reasonable accommodation:

(1) Modifications or adjustments to the job application process that will enable a qualified applicant with a disability to be considered for the position the applicant desires;

(2) Modifications or adjustments to the work environment, and/or to the manner or circumstances under which the position held or desired is customarily performed, that will enable a qualified individual with a disability to perform the essential functions of that position; and

(3) Modifications or adjustments that enable a Commission employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated Commission employees without disabilities.

(l) **Targeted Disability** means a subset of the larger disability category under the Rehabilitation Act of 1973. Targeted disabilities are:

(1) Developmental disabilities, for example, cerebral palsy or autism spectrum disorder;

(2) Traumatic brain injuries;

(3) Deafness or serious difficulty hearing, benefiting from, for example, American Sign Language;

(4) Blindness or serious difficulty seeing, even when wearing glasses;

(5) Missing extremities (arm, leg, hand and/or foot);

(6) Significant mobility impairments, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports;

(7) Partial or complete paralysis (any cause);

(8) Epilepsy and other seizure disorders;

(9) Intellectual disabilities (formerly described as mental retardation);

(10) Significant psychiatric disorders, for example, bipolar disorder, schizophrenia, PTSD, or major depression;

(11) Dwarfism; and

(12) Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders.

(m) **Undue Hardship** means if a specific type of reasonable accommodation causes significant difficulty or financial expense to the Commission or is unduly expensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the Commission, then the Commission is not obligated to provide the accommodation. Determination of undue hardship will 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 Commission. For a comprehensive definition of “Undue Hardship”, see 29 C.F.R. 1630.2.

Section 4. Responsibilities

(a) The **individual** (applicant or Commission employee) with a disability makes an oral or written request to any agency official, stating the need for an adjustment or change in the job application process, work, or in a benefit or privilege of employment for a reason related to the disability.

(1) Applicants and employees may refer to the EEOC Guidance:

- [Questions and Answers: Policy Guidance On Executive Order 13164: Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation;](#)
- [Questions And Answers: Policy Guidance On Executive Order 13164: Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation;](#)
- [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA; or](#)
- [Enforcement Guidance: Disability-Related Inquiries and Medical Examinations Of Employees Under the Americans With Disabilities Act \(ADA\)](#) for additional information on the rights and responsibilities of applicants and employees requesting reasonable accommodation.

(b) **The Director, Office of Equal Employment Opportunity (OEEEO)**, receives and forwards to the Reasonable Accommodation Coordinator (RAC) requests for reasonable accommodation from employees in accordance with these implementation procedures and prepares an annual report on

the number and types of reasonable accommodation requests, as well as a qualitative assessment of the program, including any recommendations for improvement. The EEO Director generally will not have substantive involvement in individual's request for reasonable accommodation, but may:

(1) Provide input regarding procedures and controls necessary to implement this policy after consultation with the RAC and the Office of General Counsel; and/or

(2) Arrange for mediation, if appropriate, to resolve a dispute over a reasonable accommodation request.

(c) The **Director, Office of Human Resources (OHR)**, is responsible for providing advice and guidance to supervisors, managers, and employees about HR policies and procedures related to reasonable accommodation, such as leave, telework, and performance management. The OHR assists Deciding Officials in locating appropriate vacant positions for employees with disabilities for possible reassignment and recruiting PAS provider positions, if necessary. The OHR also addresses reasonable accommodation requests related to recruitment actions and is responsible for determining whether an applicant for employment is a qualified individual with a disability and deciding whether to grant or deny the request(s) for reasonable accommodation by the applicant.

(d) The **Reasonable Accommodation Coordinator (RAC)**, is a collateral duty and maintains direct administrative responsibilities for the program, such as referring requests for reasonable accommodation to the appropriate Deciding Official and collecting and tracking information on such requests. The RAC will also provide medical documentation request forms to individuals seeking reasonable accommodation unless the disability and the need for reasonable accommodation are obvious or the individual has already provided the Commission with sufficient information to document the existence of the disability and his/her functional limitations.

The RAC will receive completed medical documentation from healthcare providers and determine if the information meets the disability requirement for purposes of a reasonable accommodation request and relay the disability determination to the decision-maker.

(e) The **Deciding Official** is the immediate supervisor of the employee requesting a reasonable accommodation and is responsible for determining whether the Commission employee is a qualified individual with a disability, and whether to grant or deny the request(s) for reasonable accommodation by the employee.

(1) Supervisors may refer to the EEOC Guidance:

- [Questions and Answers: Policy Guidance On Executive Order 13164: Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation;](#)

- [Questions And Answers: Policy Guidance On Executive Order 13164: Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation;](#)
- [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA; or](#)
- [Enforcement Guidance: Disability-Related Inquiries and Medical Examinations Of Employees Under the Americans With Disabilities Act \(ADA\)](#) for additional information about the responsibilities of Commission personnel in charge of responding to reasonable accommodation requests.

(f) The **Office of the General Counsel (OGC)** is responsible for providing legal advice during the reasonable accommodation process.

(g) The **Office of the Managing Director (OMD)** is responsible for reviewing and advising if a reasonable accommodation request will impose undue hardship and seek the concurrence of the General Counsel on any denial of a reasonable accommodation request based on undue hardship prior to a final decision being made.

Section 5. Reasonable Accommodation Procedures

(a) The reasonable accommodation interactive process begins when the applicant or employee with a disability makes an oral or written request to an agency official stating the need for an adjustment or change in the application process, at work, or in a benefit or privilege of employment for a reason related to a medical condition or disability.

(1) The agency official receiving the request will forward it to the Director of OHR, in cases where a job applicant makes the request. A final decision will be made by the Director, OHR who can be reached at OHRMaritime@fmc.gov.

(2) In cases where the requester is a Commission employee, the agency official receiving the request will forward it to the employee's immediate supervisor, or designee. A final decision will be made by the immediate supervisor. Commission employees may contact their supervisor directly for status updates.

(3) A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act," nor must the individual have a particular accommodation in mind before making a request. The request may be a statement in "plain English" that an individual needs an adjustment or change in the application process or at work for a reason related to a medical condition.

(4) For example, in a conversation about his tardy attendance, an employee tells his manager he is having difficulty arriving to work because his sleep apnea interferes with his rest and prevents him from waking up on time. He adds that he is being evaluated for medications that could potentially help him. This type of comment may potentially be an accommodation request. Supervisors and managers are to immediately refer any such circumstance to RAC in order to handle the interactive process.

(5) Another example, a doctor's note outlining medical restrictions for an employee may constitute a request for reasonable accommodation.

(6) An individual with a disability may request a reasonable accommodation whenever they choose, even if the existence of a disability has not been previously disclosed.

(i) An employee may make a reasonable accommodation request to his/her first-line supervisor; another supervisor or manager in his or her immediate chain of supervision; his or her Office Director; the EEO Director; the RAC; or the OHR.

(ii) An applicant may request a reasonable accommodation verbally or in writing from any Commission employee with whom the applicant has contact about the application process.

(iii) A family member, health professional, or other representative may request an accommodation on behalf of a Commission employee or applicant. The request should go to one of the same persons to whom the employee or applicant would make the request. Where possible, the Commission will confirm with the employee or applicant that they, in fact, consents to the request for reasonable accommodation.

(iv) Any Commission employee or job applicant may consult the RAC at rac@fmc.gov for further information or assistance in connection with requesting or processing a request for reasonable accommodation.

(7) The Deciding Official will explain to the employee or job applicant the process as soon as possible and, barring extenuating circumstances, this will occur no later than five (5) days following receipt of the request.

(8) To enable the Commission to keep accurate records regarding requests for accommodation, employees seeking a reasonable accommodation must follow up their request by completing Form FMC-195, *Confirmation of Request for Reasonable Accommodation* (available on the FMC Intranet).

(i) The OHR will provide and request the individual to complete the *Confirmation of Request*, FMC-195 form. The form is also available in a machine readable/accessible format for people with visual disabilities.

(9) Although the written confirmation should be made as soon as possible following the request, it is not a requirement for the reasonable accommodation process to begin. The Commission will begin processing a request as soon as it is made orally or in writing. When a reasonable accommodation is needed on a reoccurring basis, e.g., obtaining assistance of sign language interpreters or readers, completing *Confirmation of Request*, FMC-195 form during the initial request is sufficient. In these circumstances, completing the form is not necessary for succeeding requests of the same accommodation; however, advance notice must be given each time the same accommodation is needed.

Following a request, the requesting individual or third party, will engage in an interactive process to discuss the request, the process for determining whether an accommodation will be provided, and the potential accommodation(s) or with the Deciding Official. Communication is a priority during the interactive process.

(10) The Deciding Official will have the principal responsibility for identifying possible accommodation(s) and will take a proactive approach in seeking out and considering possible accommodation(s), which includes consulting appropriate resources for assistance. The individual requesting the accommodation should also participate, to the extent it is possible, in helping to identify an effective accommodation.

(11) When a request for accommodation is made by a third party the Deciding Official will, when possible, confer with the individual with a disability or targeted disability to determine that they are requesting a reasonable accommodation. It may not be possible to confirm the request if the employee has, for example, been hospitalized for an acute condition. In this situation, the Deciding Official will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.

(12) Ongoing interactive communication is particularly important when the specific limitation, problem, or barrier is unclear; when an effective accommodation is not obvious; or when the parties are considering different possible reasonable accommodations. In those cases when the disability, the need for accommodation, and the type of accommodation to be provided are clear, extensive discussions are not necessary. However, even when extensive discussion is not necessary, the Deciding Official and the requesting individual will always ensure that there is a full exchange and understanding of relevant information.

(i) The Deciding Official who receives information in connection with a request for reasonable accommodation may share information connected with that request with other Commission officials, only when the information is necessary, to make a determination on a reasonable accommodation request or to facilitate necessary administrative functions of the Commission. Working in consultation with the Deciding Official, the OMD will review and advise whether a reasonable accommodation will impose an undue hardship upon the Commission. When considering budgetary limitations, Deciding Officials must consider all resources available to the Commission as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation.

(ii) When a request does not impose an undue hardship upon the Commission, the Deciding Official, together with the OMD, will coordinate with other offices to facilitate the provision of reasonable accommodation, procurement of adaptive equipment for computers, or identifying position vacancies available for reassignment of an employee as a reasonable accommodation.

(4) There are specific considerations in the interactive process when responding to a specific request from Commission employees for reassignment as a reasonable accommodation:

(i) Reassignment will be considered only if no other accommodations are available to enable the individual to perform the essential functions of his or her current position.

(ii) In considering whether there are positions available for reassignment, the employee's immediate supervisor/designee, will consult with the OMD and the Director, OHR, to identify: (1) vacant positions within the Commission for which the employee may be qualified, with or without reasonable accommodation; and (2) positions which OHR has reason to believe will become vacant during the next 60 business days and for which the employee may be qualified. Supervisors and employees can search for vacant positions using www.usajobs.gov, FMC's employment page, or speaking directly to the Commission's Staffing Specialist. Initial focus will be placed on positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there are no vacant equivalent positions to which the individual may be reassigned, vacant lower level positions for which the individual is qualified will be considered.

(5) Individuals with disabilities, applicants, the RAC, and Deciding Officials may utilize the resources found in Appendix A to identify and evaluate possible reasonable accommodations.

Section 6. Personal Assistance Services

FMC is required to provide an employee with PAS, provided by a PAS provider, during work hours and job-related travel if:

(1) The employee requires such services because of a targeted disability;

(2) The employee will be able to perform the essential functions of the job once PAS and any required reasonable accommodations have been provided; and

(3) Provision of such services would not impose undue hardship on the Commission. The Commission is not required to provide PAS to help employees commute to work. The Commission is required to provide PAS only when an employee is working or is on work-related travel.

(a) PAS do not help employees with disabilities perform their specific job functions, such as reviewing documents or answering questions that come through a call-in center. PAS differ from services that help an employee to perform job-related tasks, such as sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. Those services are required as reasonable accommodation if the individual needs them because of a disability and providing them does not impose undue hardship on the agency. The Commission's obligation to provide reasonable accommodations is independent of this order and the regulation it implements.

(1) PAS differ from medical services and services that are typically performed by someone who often has the job title of "personal assistant." PAS are non-medical services such as helping an individual take off and put on a coat, eat, and use the restroom.

(b) **Selection and Use of PAS Providers**

(1) **Finding PAS Providers:** Applicants for PAS provider positions may be found in the same way that applicants for other positions are located -- by advertising the opening on USAJOBS and other job posting boards. Additional resources include local vocational rehabilitation offices, American Job Centers, centers for independent living, home care agencies, and the individual who requested PAS. Additionally, some contractors are available through GSA Advantage.

(2) **Employee's Choice of PAS Provider:** If the Commission hires a PAS provider who will be assigned to a single employee, and if that employee prefers a provider (for example, because the provider has worked with him or her in the past), the Commission must give primary consideration to that choice, to the extent permitted by law. However, it may not be possible to honor the employee's preferences in all cases. The Commission may choose a different provider if, for example, the employee's preferred provider is not qualified or less qualified than another applicant; if the Commission decides to utilize a pool of shared providers instead of dedicated providers; for reasons of cost or convenience; or if FMC decides to have appropriate existing employees provide PAS.

(i) An employee may request permission to bring his or her own PAS provider to work as a reasonable accommodation (not as a PAS) if the employee does not request that the Commission assume the cost of providing the services. However, if the employee wants the Commission to assume the cost of providing the services, the Commission may have reasons to choose a different provider, as discussed above.

(4) Terms of PAS Provider Employment: FMC may require PAS providers to provide PAS to more than one employee, as long as each employee entitled to PAS receives PAS in a timely manner. The Commission may assign non-PAS job functions to PAS providers, as long as these other duties do not interfere with provision of PAS and all employees who are entitled to PAS continue to receive them in a timely manner. These other duties could include work-related tasks that are required as a reasonable accommodation or work-related tasks that any assistant would provide.

(i) The Commission may not require a non-PAS provider employee to provide PAS to another employee.

(c) **Requesting PAS**

(1) PAS is provided on a case-by-case basis to qualified employees with targeted disabilities.

(2) PAS as a reasonable accommodation may be requested by informing any supervisor in the employee's chain of command that they need assistance with daily life activities because of a targeted disability. PAS requests will be processed in accordance with the procedures in this Commission Order.

(d) **Denial of PAS Request**

(1) The Commission is required to provide PAS only if the requesting employee is entitled to them under the regulations. Therefore, FMC may deny a request for PAS if:

- (i) The requester is not an FMC employee;
- (ii) The requester does not have a targeted disability;
- (iii) The targeted disability does not create a need for PAS;

(iv) The requester is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;

(v) The requester would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or

(vi) Providing PAS would impose undue hardship on the Commission.

(2) The process for denying a PAS request is the same as that set forth in Section 10 of this Commission Order, except that "reasonable accommodation" is replaced with PAS, and FMC Form 196, Denial of Reasonable Accommodation/Personal Assistance Services Request will be used.

(e) **Request for Reconsideration**

(1) The reconsideration process for denials of requests for PAS is the same as that set forth in Section 11 of Commission Order, except that "reasonable accommodation" is replaced with PAS and the time frames in that section do not apply.

(f) **Special Considerations under PAS**

(1) **Telework:** An employee may be entitled to PAS while teleworking if the individual is eligible for PAS and telework under the agency's telework policy or as a reasonable accommodation, unless it causes undue hardship to the agency.

(2) **FMC-Sponsored Events:** The FMC will provide PAS for employees to participate in employer-sponsored events, to the same extent as we provide reasonable accommodations. The Rehabilitation Act requires reasonable accommodations that enable employees with disabilities to enjoy "benefits and privileges of employment," equal to those enjoyed by similarly situated employees without disabilities. Benefits and privileges of employment include physical access to spaces available to all employees (such as cafeterias or break rooms), employer-sponsored training, and employer-sponsored social events.

(3) **Procuring Services:** The FMC may use federal employees, independent contractors, or a combination of employees and contractors. The FMC may also utilize a pool of PAS providers, rather than assign one provider to each employee who needs one.

(4) **FMC Employees:** The FMC will not require an employee who does not provide PAS or similar services as part of his or her job to assist another employee with tasks such as eating and using the restroom. However, the regulations do not prohibit agencies from assigning the responsibility to

perform a personal assistance service to an existing employee who already performs a similar service as part of his or her regular job.

(5) **Employee's Own Provider:** An employee may bring his or her own PAS provider to work instead of having the agency provide one if the employee does not request that the agency assume the cost of providing the services. However, if the employee wants the FMC to assume the cost of providing the services, the agency may have reasons (e.g. cost) to choose a different provider.

(6) **Classified or Controlled Unclassified Information:** If an individual's PAS provider would have access to personally identifiable information (PII), commercially sensitive information/data, law enforcement information, or classified information, the Commission will find a provider who has, or can timely obtain the appropriate security clearance or background investigation. The EEOC acknowledges that, under some circumstances, finding such a provider may be sufficiently difficult as to constitute an undue hardship. If an individual with a targeted disability is unable to perform essential job functions because an appropriate provider cannot be found, the agency may consider the individual to be unqualified for the position.

Section 7. Time Frames for Processing Reasonable Accommodation Requests

(a) The Commission will process requests for reasonable accommodation and provide any necessary accommodations in an expeditious manner. However, the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information.

(b) If a request for an accommodation can be processed by the Deciding Official without supporting medical information, and no extenuating circumstances apply, the request shall be processed. The accommodation shall be provided, to the extent administratively feasible, no more than twenty (20) business days from the date the request was received. Where an accommodation can be provided in less than the maximum time frame, failure to provide an accommodation in a prompt manner may result in a violation of the Rehabilitation Act. Failure to meet this time frame solely because an immediate supervisor delayed processing the request is not an extenuating circumstance. (See Sections 7(d) and 7(e) for information on "extenuating circumstances.")

(1) If the Deciding Official determines that supporting information needs to be submitted with the request, the 20-day period is suspended on the date the request is made and resumes when the supporting documentation is received. For example, on day 10, the Commission requests medical information from the requestor; two weeks later, the requestor submits the documentation which then begins day 11.

(2) After the supporting documentation is received and the process resumes, the decision shall be made and the accommodation, if granted, will be provided within 20 business days. For example, on day 10, the Commission requests medical information from the requestor. Day 11 would begin when the requestor submits the information.

(c) Expedited Processing: A request for reasonable accommodation may require an expedited review and decision in less than the 20 business days prescribed in Sections 7(1)(a) and 7(1)(b). These are some examples when an expedited process shall occur when a reasonable accommodation is needed; other situations may also arise in which expedited processing is necessary:

(1) To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job.

(2) To enable an employee to attend a meeting scheduled to occur sooner than the 20 business days allotted. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in a short time.

(d) Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances exist, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the Commission's policy that extensions based on extenuating circumstances should be limited to situations where they are strictly necessary. All Commission staff are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:

(1) There is an outstanding initial or follow-up request for information;

(2) The purchase of assistive devices or other accommodative equipment may take longer than 20 business days because of contract or procurement requirements;

(3) Assistive devices or other accommodative equipment is out of stock, the vendor typically used by the Commission for these goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available;

(4) Contracting for a PAS provider meeting the specific needs of the employee, and who has, or can timely obtain, the appropriate security clearance or background investigation required due

to access to PII, other controlled unclassified information, or classified information may require extended efforts or prove unavailing in some circumstances; and

(5) The employee with a disability needs to work with the equipment on a trial basis to ensure that it is effective before the Commission buys the equipment.

(e) Extenuating circumstances cover limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. The Commission may not delay processing or providing an accommodation because a particular staff member is unavailable. When extenuating circumstances are present, as described in Section 7(3), the Deciding Official must notify the individual in writing of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes will be communicated promptly to the individual.

(1) If there is a delay in providing an accommodation, the Deciding Official must notify the individual of the reason for the delay, including any extenuating circumstances that justify the delay and the date which the Commission expects to complete the process. The Deciding Official shall provide temporary interim accommodation(s) to assist the employee. This may include providing the requested accommodation on a temporary basis. In addition, the Deciding Official may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if doing so does not interfere with the operations of the Commission, and the applicant or employee is informed that they are being provided only on a temporary, interim basis. For example, there may be a delay in receiving adaptive equipment for an employee with a vision impairment. During the delay, the Deciding Official might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

(2) If a delay is attributable to the need to obtain or evaluate documentation and the Commission has not yet determined that the individual is entitled to an accommodation, the Commission may also provide an accommodation on a temporary basis. In such a case, the Deciding Official will notify the individual in writing that the accommodation is being provided on a temporary basis, pending a decision on the request.

(f) The Deciding Official providing the temporary measures is responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

Section 8. Request for Documentation

(a) The Commission is entitled to verify that an employee or applicant requesting a reasonable accommodation has a covered disability. In cases when the disability and need for accommodation are obvious or when the employee or applicant has already provided the Commission with sufficient information to document the existence of the disability and his/her functional limitations, the Commission will not seek any supporting documentation or information. Otherwise, the Commission will request reasonable supporting information regarding the disability and associated functional limitations. Reasonable documentation is documentation needed to determine that a person has a disability or targeted disability and what, if any, reasonable accommodation would be most effective.

(b) When requesting medical information to substantiate that the individual has a disability as defined by the Rehabilitation Act, as amended, or ADA and needs a reasonable accommodation, only necessary information will be requested. The Commission's requests for further information will follow the standards set forth in the Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation.

(c) The Deciding Official, with the assistance of the RAC, will make a determination if further information is necessary. If it is unnecessary, the request for accommodation will be processed.

(1) The Deciding Official, with guidance from the RAC and the HR Director, will require information about the disability and/or its functional limitations except when the disability and need for accommodation are obvious or when the employee or applicant has already provided the Commission with sufficient information to document the existence of the disability and his/her functional limitations. The information may be obtained from the individual, and/or the appropriate professional, such as a doctor, social worker, or rehabilitation counselor. All requests for information will describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The medical information request will only pertain to the nature of the requested reasonable accommodation. Supporting documentation will be provided directly to the RAC.

(2) The Commission may request information regarding:

- (i) The nature, severity, and duration of the individual's impairment;
- (ii) The activity or activities that the impairment limits;

(iii) The extent to which the impairment limits the individual's ability to perform the activity or activities; and/or

(iv) Why the individual requires reasonable accommodation, 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.

(3) If necessary, the RAC may evaluate the information in consultation with a physician chosen by the Commission at the agency's expense.

(4) If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the Commission to determine whether an accommodation is appropriate, the Deciding Official, will request additional information.

(i) A specific explanation will be provided to the individual seeking the accommodation clarifying why the information is insufficient and what additional information is necessary for the Commission to make a determination.

(ii) The individual will ask the health care provider or other appropriate professional to provide the missing information or will sign a limited release for the Commission to obtain necessary information from health care professionals or the individual's personal physician.

(d) The Deciding Official and the RAC, may request that the individual be examined by a physician chosen by the Commission, if necessary, to make a determination, at the agency's expense, but only if the individual has provided insufficient information from his/her own health care provider or other appropriate professional to substantiate the existence of a disability and the need for reasonable accommodation.

(1) The Commission is prohibited from requesting or requiring genetic information, except as specifically authorized by law.

(e) With the permission of the individual requesting a reasonable accommodation, the Deciding Official will provide, if necessary, any additional relevant information about the individual's functional limitations to the health care provider.

(f) Failure to provide the requested or appropriate information, or failure to cooperate in the Commission's efforts to obtain such information, may result in a denial of the reasonable accommodation.

Section 9. Granting a Reasonable Accommodation

(a) Following a determination that a reasonable accommodation will be provided; the decision will immediately be communicated to the individual either verbally or by written notice. If the accommodation cannot be provided immediately, the individual will be advised of the projected time frame for providing the accommodation.

(b) Deciding Officials must ensure that requests for accommodation are not denied for reasons of cost, and that individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, if the resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship.

(c) Resources for reasonable accommodations can be found in Appendix A of this Commission Order.

(d) If the individual requested a specific accommodation and an alternative accommodation is granted, the Deciding Official should inform the individual of the reasons why the alternative accommodation granted is the most appropriate and effective accommodation.

(e) If the effectiveness of a granted accommodation decreases due to circumstances such as the progressive nature of the disability or technological advances, the individual may request that the previously granted accommodation be reviewed and updated.

Section 10. Denial of Reasonable Accommodation

(a) When a determination is made to deny a request for reasonable accommodation, or if an alternative or modified accommodation has been granted, the Deciding Official will provide a completed FMC-196, *Denial of Reasonable Accommodation/Personal Assistance Services (PAS) Request* (available on FMC Intranet), to the individual who requested the accommodation at the time the request for reasonable accommodation is denied. The *Denial of Reasonable Accommodation/Personal Assistance Services (PAS) Request* can be made in accessible formats, if requested. The explanation for the denial will be written in plain language, clearly stating the specific reasons for the denial. Where a specific requested accommodation is denied, but a different accommodation is offered in its place which was not agreed to during the review process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the Deciding Official believes that the chosen accommodation will be effective.

(b) Reasons for the denial of a request for reasonable accommodation will include the following information, as applicable:

(1) A statement that the requested accommodation would not be effective and why;

(2) The reason(s) why providing the requested accommodation would result in undue hardship for the Commission;

(3) The reason(s) why the submitted information is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation;

(4) The fact that the requested accommodation would require the removal of an essential function; or

(5) The requested accommodation would require the lowering of a performance or production standard.

(c) The written notice of denial will include information about the individual's right to request a reconsideration of the decision, to file an EEO complaint, or to invoke other statutory processes, as appropriate, as well as the availability of the Alternative Dispute Resolution (ADR) process.

Section 11. Requests for Reconsideration

(a) An individual may request reconsideration of a denial of reasonable accommodation within 15 business days of receiving a decision. The individual may use the EEO ADR process to obtain prompt reconsideration of a denial of reasonable accommodation.

(b) If an individual wishes reconsideration, they should first ask the Deciding Official to reconsider the decision. The individual may present additional information in support of his/her request. The Deciding Official will respond to the request for reconsideration within ten business days. If the denying official does not reverse the decision, the individual may request reconsideration from the Managing Director who will respond to the request for reconsideration within ten business days. Employees directly under the supervision of the Managing Director may request reconsideration from the Chairman of the Commission who will respond to the request within 15 business days.

(c) Pursuing ADR procedures, including seeking reconsideration from the Deciding Official, will not affect the time limits for initiating statutory claims. An individual's participation in any or all

reconsideration processes does not satisfy the requirements for bringing a claim under EEO, MSPB or other statutory procedures.

Section 12. Tracking and Reporting

(a) The Deciding Official will complete Form FMC-197, Reasonable Accommodation or PAS Information Reporting Form (available on the FMC Intranet) and submit it to the RAC within ten business days of the decision with all information, including medical information received, as part of processing the request attached.

(b) The RAC will maintain a system of tracking the following:

(1) The number and types of reasonable accommodations by type that have been requested in the application process and whether those requests have been granted or denied;

(2) Whether the accommodation was needed to apply for a job;

(3) The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;

(4) The types of reasonable accommodations that have been requested for each of those jobs;

(5) Whether the accommodation was needed to perform the essential functions of a job;

(6) The number and types of reasonable accommodations for each job, by FMC component, that have been approved, and the number and types that have been denied;

(7) 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;

(8) The reasons for denial of requests for reasonable accommodation;

(9) The identity of the deciding official;

(10) The amount of time taken to process each request for reasonable accommodation; and

(11) The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

(c) The RAC will maintain these records for the remainder of the disabled individual's tenure with the Commission or three years, whichever is longer. Cumulative tracking information and records will be retained for three years.

(d) Any Commission employee or job applicant may consult the RAC at rac@fmc.gov to request an update on his/her request for reasonable accommodation request.

Section 13. Records Management

(a) Medical and related information obtained in connection with the reasonable accommodation process will be kept in a separate confidential file and will not be placed in the individual's Official Personnel Folder. All information obtained will be treated in a confidential manner and will be available only to those individuals identified below.

(1) The RAC will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records. All records will be maintained in accordance with the ADA.

(2) This information may be disclosed only to the following:

(i) Managers and agency personnel who need to know may be told about necessary restrictions on the work or duties of the individual and about the necessary accommodation(s), but medical information will only be disclosed if strictly necessary;

(ii) First aid and safety personnel may be informed, when appropriate, should the disability ever require emergency treatment;

(iii) Government officials may be given necessary information in order to investigate the Commission's compliance with the Rehabilitation Act and the ADA; and

(iv) Workers' compensation offices or insurance carriers.

(b) Whenever information concerning reasonable accommodation is disclosed, the individual disclosing the information will advise the recipients of the confidentiality requirements of this section.

Section 14. Statutory Claims

(a) This policy is in addition to statutory protection for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory claims, including time frames for filing such claims, remain unchanged.

(1) An individual who chooses to pursue statutory remedies for denial of reasonable accommodation may file an EEO complaint within 45 days from the date of receipt of the written notice of denial, regardless of whether the applicant or employee participates in an informal dispute resolution process, or

(2) Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 CFR. 1201.3.

(b) If a member of the OEEO staff has had any involvement in the processing of the request for reasonable accommodation, that staff member will recuse him or herself from any involvement in the processing of an EEO counseling contact or complaint in connection with that request.

Section 15. Applicability of Other Laws and Directives

Provisions of this Order are subject to modification by changes in pertinent statutes, regulations and controlling issuances by authority outside the Commission. In such cases, and until the Order is modified, applicable provisions of the Order will be considered automatically amended or superseded, effective on the date specified in such controlling issuance.

Section 16. No Right or Benefit

This Commission Order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, the Commission, its officers or employees, or any person.

Michael A. Khouri
Chairman

Appendix A. Reasonable Accommodation Forms and Letters

CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION/ PERSONAL ASSISTANCE SERVICES (PAS) FMC-195	
<p>1. _____ Applicant's or Employee's Name</p> <p>_____</p> <p>Applicant's or Employee's Telephone No.</p> <p>_____</p> <p>Name of Individual Completing Form (if other than Applicant or Employee)</p> <p>Today's Date: _____</p> <p>Date of Request: _____</p> <p>Supporting Documentation: <input type="radio"/> yes <input type="radio"/> no</p>	<p>_____</p> <p>Employee's Office or Applicant's Address</p> <p>_____</p>
<p>2. ACCOMMODATION/PAS REQUESTED <i>(Be as specific as possible, e.g., adaptive equipment, reader, interpreter, etc. Please note, PAS are not available to applicants, per 29 C.F.R. § 203 (5)(i).)</i></p> <p>_____</p>	
<p>3. REASON FOR REQUEST</p> <p>_____</p> <p>If accommodation/PAS is time sensitive, please explain:</p> <p>_____</p> <p style="text-align: center;">Return Form to Reasonable Accommodation Coordinator</p>	
<p>(Reasonable Accommodation Coordinator will assign number)</p> <p>4. Request No. : _____</p>	

Please attach supporting documentation regarding your disability and need for accommodation. The Commission may also seek additional information if necessary. The Commission does not require any supporting documentation or information when the disability and need for accommodation are obvious or when the employee or applicant has already provided the Commission with sufficient information to document the existence of the disability and his/her functional limitations.

**DENIAL OF REQUEST FOR REASONABLE ACCOMMODATION/
PERSONAL ASSISTANCE SERVICES (PAS)**

FMC-196

1. Applicant/Employee's Information Name: _____ Phone: _____ Address: _____ Email: _____ Duty Station: _____	2. Request Information Request Number: _____ Type of Request: <input checked="" type="radio"/> RA or <input checked="" type="radio"/> PAS
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3. TYPE OF ACCOMMODATION/PAS REQUESTED *(Be as specific as possible, e.g., adaptive equipment, reader, interpreter, etc. Please note, PAS are not available to applicants, per 29 C.F.R. § 203 (5)(i).)*

4. REQUEST FOR REASONABLE ACCOMMODATION/PAS DENIED BECAUSE: (check all that apply)

- Accommodation/PAS ineffective
- Accommodation/PAS would cause undue hardship
- Medical documentation inadequate
- Accommodation/PAS would require removal of an essential function
- Accommodation/PAS would require lowering of performance or production standard
- Other (please identify)

Return Form to Reasonable Accommodation Coordinator

5. DETAILED REASON(S) FOR THE DENIAL OF REASONABLE ACCOMMODATION/PAS (e.g., why accommodation/PAS is ineffective or causes undue hardship; was an alternative accommodation offered, etc.)

If an individual wishes to request for reconsideration of this decision, s/he may take the following steps:

- The request for reconsideration must be filed within 15days of receiving the decision. The appeal must be in writing and state the specific reason(s) the decision is being appealed and the relief requested.
- Appeals should be sent to the RAC. Specific contact information for where, and to whom, appeals should be sent will be detailed in the decision.
- Appeals will be handled by a panel of three FMC Office Directors, designated by the Chairman, and not involved in the initial decision.

For denials of reasonable accommodation requests, if an individual wishes to file an EEO complaint, or pursue Merit Systems Protection Board procedures, s/he must take the following steps:

- For an EEO complaint pursuant to 29 C.F.R. part 1614, contact an EEO counselor in the Office of Equal Employment Opportunity within 45 days from the date of this notice of denial of reasonable accommodation, regardless if s/he participated in informal mediation; or
- Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3

_____ **Deciding Office Name (Print)**

_____ **Deciding Official Name (Signature)**

Date reasonable accommodation/PAS denied: _____

REASONABLE ACCOMMODATION/PERSONAL ASSISTANCE SERVICES (PAS) INFORMATION REPORTING FORM

Name of individual requesting reasonable accommodation/PAS:

Employee's Office or Applicant's Home Address:

1. Reasonable accommodation/PAS: (check one) Approved

Denied (if denied, attach copy of the written denial letter/memo.)



2. Date reasonable accommodation/PAS requested: _____

Request received by: _____

If an employee, name of immediate supervisor: _____

3. Date reasonable accommodation/PAS approved or denied: _____

4. Date reasonable accommodation/PAS provided (if different from date approved): _____

5. If time frames outlined in the Reasonable Accommodation/PAS Procedures were not met, please explain why:

6. Job held or desired by individual requesting reasonable accommodation/PAS (include occupational series, grade level, and office):

7. Reasonable accommodation/PAS needed for: (check one)

Application process

Performing job functions or accessing the work environment

Accessing a benefit or privilege of employment (e.g., attending a training program)

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8. Type(s) of reasonable accommodation/PAS requested (e.g., adaptive equipment, removal of architectural barrier):

9. Type(s) of reasonable accommodation/PAS provided (if different from what was requested):

10. Was medical information required to process this request? If yes, explain why:

11. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations/PAS (e.g., Job Accommodation Network, disability organization, DOD Computer/Electronic Accommodations Program (CAP), or RAC):

12. Comments:

Submitted by:

Phone: _____

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Appendix B. Reasonable Accommodation Resources

Reasonable Accommodation Resources pursuant to 29 C.F.R. § 1614.203(d)(3)(i)(W)

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

EEOC has published many ADA and Rehabilitation Act-related documents that may assist both individuals requesting accommodations as well as those involved in the decision-making process. Most of these documents are available at www.eeoc.gov.

EEOC Resources include, but not limited to:

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

Questions and Answers: Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA,

Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (ADA)

Job Accommodation Network (JAN)

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

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

A service of the Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations and provide referrals to other organizations that may have particular information about accommodations for persons with different disabilities.

ADA Disability and Business Technical Assistance Centers (DBTACs)

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

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can provide information on reasonable accommodation and make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

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

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RESNA Technical Assistance Project

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

<http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- Information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- Centers where individuals can try out devices and equipment;
- Assistance in obtaining funding for and repairing devices; and
- Equipment exchange and recycling programs.

Computer/Electronic Accommodations Program (CAP)

<http://www.tricare.osd.mil/cap>

The Computer/Electronic Accommodations Program (CAP) provides assistive technology, devices, and services free of charge to Federal agencies, such as FMC, that have a partnership agreement with CAP, to enable the agencies to provide reasonable accommodation to employees with disabilities. CAP's mission is to ensure that people with disabilities have equal access to the information environment and opportunities throughout the Federal government.

[Form 479](#) should be completed to request assistive technology and services.