

## Subpart C - Reasonable Accommodations

### 401.30 Purpose

This subpart transmits the procedures to implement Departmental Regulations (DR) 4300-8, Reasonable Accommodations for Employees and Applicants with Disabilities, as specified in Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation; and the Rehabilitation Act of 1973, as amended. This document specifically establishes written procedures to use when implementing DR 4300-8. These procedures provide a simple, efficient way to request and obtain reasonable accommodation.

### 401.31 Policy

A. It is the policy of NRCS to make reasonable accommodations to the known physical or mental limitations of qualified applicants or employees with disabilities except when such accommodation would cause an undue hardship to the Agency. The employee, family member, immediate supervisor, medical provider, or other representative may make a written or oral request for reasonable accommodation.

B. The procedures mentioned in this subpart provide a way for qualified employees and applicants with disabilities to request accommodations that enable them to perform the essential functions of the position occupied or being applied for and that afford equal employment opportunity. All requests are evaluated to determine if providing the accommodation would be effective in removing the workplace barrier without causing an undue hardship on NRCS activities or programs. Reasonable accommodation requests will be handled promptly and fairly within 30 business days from receipt of an oral or written request unless extenuating circumstances require an extension of this time period.

C. NRCS will not discriminate on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place it owns, leases, operates, or contracts.

### 401.32 Definitions

A. Disability – Targeted disabilities as defined by the Rehabilitation Act with respect to an individual, means:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of the individual;

(2) A record of such an impairment; and

(3) Being regarded as having such impairment.

(i) An example of "a record of such impairment" includes having a history of, or having been classified as having mental or physical impairment that substantially limits one or more major life activities.

(ii) An example of "being regarded as having such impairment" includes having an impairment that does not substantially limit a major life activity but is treated by USDA as constituting such limitation; having an impairment that substantially limits a major life activity only as a result of the attitudes of others toward such impairment; or having none of the impairments described in this section, but being treated by USDA as having a substantially limiting impairment.

B. Disability Does Not Include:

(1) Homosexuality and bisexuality;

(2) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(3) Compulsive gambling, kleptomania, or pyromania; and

(4) Current illegal use of drugs resulting in psychoactive substance abuse disorders.

C. Essential Functions – The fundamental duties of the employment position the individual with a disability holds or desires. The reasons a function may be considered essential could include, but is not limited to:

(1) The reason the position exists is to perform that function;

(2) The number of other employees who could perform that function; and

(3) The fundamental duties of the employment position may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

D. Major Life Activities – Includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, sitting, standing, reaching, interacting with others, concentrating, lifting, sleeping, reproduction, running, and working.

E. Mental Impairment – Any psychological or mental disorder, e.g., mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

F. Physical Impairment – Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine.

G. Qualified Individual with a Disability – An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires to hold, and who can perform the essential functions of such positions with or without reasonable accommodation.

H. Reasonable Accommodation – A change in the work environment or the application process that would enable a person with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations:

(1) Changes to a job-application process to permit people with disabilities to be considered for jobs;

(2) Changes to enable people with disabilities to perform the essential functions of a job; and

(3) Changes to give people with disabilities equal access to the benefits and privileges of employment.

I. Substantially Limited – The inability to perform a major life activity that the average person in the general population can perform, or significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

J. USDA TARGET Center – The Department's resource center that provides onsite workplace assessments and demonstrations of assistive technology as well as ergonomic solutions to ensure appropriate implementation of reasonable accommodations for the NRCS workforce.

K. Undue Hardship – A specific accommodation that would require significant difficulty or expense. This determination is made on a case-by-case basis and considers the nature, cost of the accommodation, the financial resources of USDA as a whole, and/or impact of the accommodation on the operations of the particular office or facility involved.

### 401.33 Administration

A. An employee is anyone who wishes to be considered for an accommodation under these procedures. The employee may contact his or her first-line supervisor, Human Resources Manager, State Disability Employment Program Manager (DEPM), Civil Rights Division, or other managers in the employee's chain of command. The accommodation would modify or adjust the work environment, the manner or circumstances under which the position held or desired is customarily performed so that the employee would be able to perform the essential functions of the position, and/or allow the employee to enjoy equal benefits and privileges of employment. The employee must participate in the communications process or designate someone to do so, and must provide reasonable documentation in accordance with these procedures when necessary. Requests for reasonable accommodation may also be made to any Agency official proposing to take a performance or conduct action; e.g., first-line supervisor, human resources manager, or State administrative officer. The request should outline the type of accommodation being, if known.

B. The Supervisor/Manager receives, processes, and documents the reasonable accommodation request, and forwards the request to the appropriate official; provides a copy to the NRCS DEPM; participates in the communications process; responds expeditiously; maintains confidentiality; and consults with the Employee Relations staff when accommodation is requested in conjunction with an anticipated or pending performance-based and/or conduct-based action.

C. The NRCS DEPM has overall responsibility for the reasonable accommodation policy and procedures. He or she guides, assists, and oversees the disability emphasis program and serves as consultant, when appropriate, regarding any aspect of these procedures; and tracks and maintains all reasonable accommodation requests in the Agency.

D. The USDA Medical Officer serves as a consultant and reviews and interprets medical documentation, when necessary, to help the Agency determine if the person requesting the accommodation's medical condition rises to the level of a disability as defined by the Rehabilitation Act of 1973 as amended.

E. The USDA TARGET Center is the USDA resource that can provide onsite workplace assessments, demonstrate assistive technology; recommend ergonomic workplace facilities and recommend specific reasonable accommodations. The USDA TARGET Center can be reached at 202-720-2600 (Voice/TTY), or visit their Web site at <http://www.usda.gov/oo/target/>.

#### 401.34 Confidentiality

A. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information, including information about functional limitations and reasonable accommodation needs that NRCS obtains in connection with a request for reasonable accommodation must be kept in files separate from the employee's personnel file. Any NRCS employee who obtains or receives such information is strictly bound by these confidentiality requirements. Confidentiality applies to all aspects of the reasonable accommodation process.

B. The NRCS DEPM will maintain custody of all records including medical information obtained or created while processing a request for reasonable accommodation and will respond to all requests for disclosure of records. All records will be maintained in accordance with the Privacy Act, and information regarding these records, or any aspect of the process, may be disclosed only as follows:

- (1) Supervisors and managers who need to know may be told about the determination of eligibility of an individual with a disability, the necessary restrictions on the work or duties of the employee, and any recommended accommodations. Medical information should be disclosed only if strictly necessary;
- (2) First aid and safety personnel may be given specific medical information, when appropriate, if the disability might require emergency treatment;
- (3) Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act;
- (4) In certain circumstances, the information may be disclosed to workers' compensation offices or insurance carriers, in accordance with EEOC regulations; and
- (5) The USDA medical officer may talk to the employee regarding the interpretation of any medical documentation.

C. State or collateral-duty DEPMs may receive requests for reasonable accommodations and help local NRCS officials provide the requested accommodations, send copies of reasonable accommodation requests to the NRCS DEPM, and serve as a resource between managers, employees, and accommodation providers such as the USDA TARGET Center and the Job Accommodation Network (JAN).

#### 401.35 Time Frames

A. Reasonable accommodation provides an opportunity for the employee to perform the essential functions of the job or access a benefit or privilege of employment and allows an applicant access to the application process. The accommodation shall be provided within 30 business days or as soon as reasonably possible; however, special circumstances may influence this process. The timelines indicated below shall be followed:

- (1) The process to consider a reasonable accommodation request should begin immediately when the appropriate official receives the oral or written request from the individual asking for the accommodation or from the requestor's representative. However, the process shall begin in more than five business days from the date of oral or written request.
- (2) In situations where the individual has an obvious disability or previously documented medical condition that qualifies him or her as an individual with a disability and the accommodation requested is related to limitations caused by that medical condition, the first-line supervisor must determine if the accommodation is effective and, if so, provide the accommodation in no more than 30 business days from the date of the written or oral request.

(3) In situations where the individual does not have an obvious or previously documented medical condition that qualifies him or her as an individual with a disability, the individual to whom the request is made shall forward the request to the NRCS DEPM within three business days from the date of the written or oral request.

(4) With permission of the employee, the NRCS DEPM shall request any needed additional documentation from the appropriate source within five business days.

(5) Upon receipt of the documentation, the NRCS DEPM shall within five business days:

- (i) Consult the USDA Medical Officer, as necessary;
- (ii) Determine whether the employee is or is not an individual with a disability; and
- (iii) Inform the requestor's first-line supervisor or appropriate Agency official of the decision.

(6) In situations where medical documentation is necessary, the 30 business day period for the first-line supervisor to determine if the accommodation is effective and to provide the accommodation begins on the date the NRCS DEPM issues a decision identified in Section 401.25(5)(ii).

B. When extenuating circumstances that could not reasonably have been anticipated or avoided before the accommodation was requested, the above-mentioned timeframes may be extended. The time for processing a request and providing the accommodation will be extended as necessary. All NRCS decision makers are expected to act as quickly as possible to determine eligibility and provide needed accommodation. Below are a few examples of extenuating circumstances:

- (1) The purchase of equipment may take longer than 30 business days;
- (2) The employee with a disability needs to try out equipment before purchase can be made;
- (3) New staff needs to be hired or contracted for; or
- (4) An accommodation involves the removal of architectural barriers.

C. In the event of an extenuating circumstance, the employee's supervisor shall notify the employee of the reason for the delay and the approximate date on which a decision and/or provision of the reasonable accommodation is expected. The supervisor shall investigate whether temporary measures can be taken to assist the employee. A temporary measure may be taken even when the delay is caused by the need to obtain or evaluate medical documentation to determine if the employee has a covered disability. This in no way obligates USDA to continue or offer further accommodations if the determination is made that the employee does not have a covered disability.

#### 401.36 Procedures

A. Requests by an employee, or on the employee's behalf, for reasonable accommodation under this regulation may be made orally or in writing to his or her immediate or first-line supervisor. The request should outline the kind of accommodation requested, if known.

B. If the employee has an obvious or previously documented medical condition that qualifies him or her as an individual with a disability, the accommodation request shall be considered immediately. If the employee does not have an obvious or previously documented medical condition that qualifies him or her as an individual with a disability, he or she may be required to provide sufficient documentation of his or her medical condition to the NRCS Disability Emphasis Program Manager, who will determine, in consultation with the Department's Medical Officer, whether the medical impairment rises to the level of disability. That determination and a recommendation on the requested accommodation will be provided to the appropriate NRCS official/decision makers. To enable NRCS to keep accurate records regarding reasonable accommodation, the employee seeking a reasonable accommodation or the receiver of the request must follow-up an oral request by one of the following:

- (1) Completing Form AD-1163, Confirmation of Request for Reasonable Accommodation. See General Manual (GM), Title 230, Part 401, Subpart E, Exhibits, Section 401.51.
- (2) Confirming the request in writing, including by e-mail. Although either the employee or the receiver of the request may document the request, the receiver is responsible for completing written documentation and sending a copy to the NRCS DEPM.

- (i) An employee gives an applicant seeking a reasonable accommodation the Form AD-

1163, Confirmation of Request for Reasonable Accommodation, from the personnel office where the applicant is submitting the application.

(ii) Although a written document is required for record-keeping purposes, Form AD-1163 shall be processed in accordance with timeframes outlined in these procedures. Accommodations needed repeatedly (e.g., sign language interpreter, reader, or personal assistant) do not require written confirmation. The initial or subsequent request should contain language describing the accommodation as "recurring and continuing" and appropriate notice must be given each time the accommodation is needed.

(iii) If a written or oral request is made to an NRCS employee who does not have the authority to provide the accommodation, the request shall be forwarded as soon as possible, but in no more than five days, to the appropriate NRCS official.

C. When the employee is determined to be a qualified individual with a disability and the requested accommodation does not cause undue hardship to the Agency, the accommodation shall be provided.

D. Because a reasonable accommodation allows the employee to perform the essential functions of the job satisfactorily, it is expected that the accommodation shall be provided within 30 business days of the request, unless documented extenuating circumstances prevent accommodation within this time period.

E. The process of providing reasonable accommodation must begin as soon as possible after the request for an accommodation is received. The communications process is crucial, and management shall consult all necessary parties, including, but not limited to:

- (1) Employee
- (2) Members of the family of the employee
- (3) The employee's attending physician
- (4) Rehabilitation counselor
- (5) TARGET Center
- (6) Department's Medical Officer
- (7) Department's Disability Employment Program Manager
- (8) NRCS Disability Emphasis Program Manager
- (9) Job Accommodation Network (JAN)

F. JAN, a service of the President's Committee on Employment of People with Disabilities, can provide information, free-of-charge, about many types of reasonable accommodations. JAN can be reached at 1-800-526-7234 (Voice/TTY) or visit their Web site at <http://www.jan.wvu.edu/>.

G. The determination of whether an accommodation would cause an undue hardship shall be made in consultation with the NRCS DEPM. If the immediate supervisor determines the accommodation to cause an undue hardship, the supervisor shall immediately consult the Agency's DEPM before issuing the decision.

Documentation is required when granting or denying the accommodation. This documentation shall be provided to the employee requesting an accommodation and the NRCS DEPM. If denying the accommodation, Denial of Reasonable Accommodation Request Form and supporting documentation must state specifically how the requested accommodation causes an undue hardship and provide written notification to the employee of his or her rights to file a complaint. A copy of the decision goes to the employee, the individual's immediate supervisor and the NRCS DEPM.

H. A first-line or immediate supervisor may request consideration for reasonable accommodation on behalf of an employee with a disability.

I. The supervisor may initiate the request, when he or she anticipates or suspects that an employee with a disability needs to be considered for a reasonable accommodation to perform the essential functions of the job he or she is in or desires. The communications process is crucial to determine if accommodations are needed. The supervisor shall speak with the employee and others as necessary to decide what, if any, accommodations are indicated.

J. When a reasonable accommodation is identified, the supervisor is authorized to initiate the process and/or provide the identified accommodation. The accommodation shall be provided as soon

as possible, but within 30 business days after the accommodation has been identified unless documented extenuating circumstances affect this time period.

K. An applicant for reasonable accommodation under these procedures may make the request orally or in writing to the personnel office to which he or she is applying. This request should identify the accommodation, if known. Although an applicant with a disability may request a reasonable accommodation at any time during the application process, the applicant should, to the greatest extent possible, make the request as soon as he or she is aware of a barrier to the application process. Applicants with a disability contacted for an interview shall be asked, "Is an accommodation needed for the interview?" If the answer is "yes," the applicant shall be asked, "What type of accommodation?" Providing the accommodation for the interview shall be the responsibility of the interviewing official.

L. To determine eligibility, the applicant may be required to submit appropriate documentation to the personnel office. The representative in the personnel office may consult the NRCS DEPM regarding the eligibility of the individual. When a favorable determination is made regarding eligibility, the requested accommodation shall be provided unless to do so would cause undue hardship.

M. Reassignment is a form of reasonable accommodation. However, employees may be reassigned only to vacant positions that they are qualified to hold. If no undue hardship exists, reassignment, "the accommodation of last resort" can be considered after all other accommodations have been eliminated. It may be necessary to reassign an employee, because of a disability; the essential functions of the position held can no longer be performed, with or without a reasonable accommodation. When reassignment is made as a reasonable accommodation, the employee will not have to compete for it.

N. The employee must be at least minimally qualified for the position (i.e., must satisfy the requisite skill, experience, education, and other job-related requirements of the position) and be able to perform the essential functions of the position, with or without a reasonable accommodation. If the employee is qualified for the position, he or she should be non-competitively reassigned to the job.

O. In considering whether there are positions available for reassignment, the employee shall give the Human Resources Office a current copy of his or her qualification (Form OF-612, (resume), or Form SF-171) within two business days. The Human Resources Office will determine if there is a vacant position to which the employee may be reassigned. If no such position exists, the Human Resources Office shall forward the application to the Departmental Human Resources Office for reassignment department-wide. This action shall occur within two business days of receipt of the information from the Agency.

P. At any stage in the above process, the employee may be reassigned to a position for which he or she qualifies and for which he or she can perform the essential functions of the job, with or without a reasonable accommodation.

Q. The employee and the NRCS DEPM shall be notified in writing by the NRCS Human Resources Office of the outcome of the reassignment process within 10 business days of the decision.

R. Reasonable accommodations are designed to be effective and allow the individual with a disability to perform the essential functions of the job he or she occupies or desires. The communications process with the employee is essential in providing effective accommodation. Most accommodations are simple and inexpensive. Management shall provide written documentation when a reasonable accommodation has been provided and send a copy to the NRCS DEPM.

S. If an accommodation is denied that decision shall be immediately communicated to the requestor using Form AD-1165, Denial of Reasonable Accommodation Request Form. (See GM, Title 230, Part 401, Subpart E, Exhibits) A copy of the completed form shall be given to the individual who made the request, the individual's immediate supervisor, and the NRCS DEPM. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. Where a specific requested accommodation was denied but a different accommodation was offered, the denial notice must explain why the request was denied and why the decision maker believes that the offered accommodation will be effective. Reasons for the denial must be specific; for example, why the accommodation would not be effective or why it would cause undue hardship.

T. The written notice of denial also informs the requestor that he or she has the right to file an equal employment opportunity complaint and may have rights to pursue a grievance or Merit Systems Protection Board appeal. The notice also explains procedures available for alternative dispute resolution along with appropriate encouragement to use this process to resolve issues associated with the denial to accommodate.

#### 401.37 Requesting Accommodation for Assistive Technologies

A. On August 30, 2002, the United States Department of Agriculture (USDA) and the U.S. Department of Defense (DOD), signed a memorandum of understanding (MOU) allowing all assistive technology accommodations to be provided to USDA agencies by the DOD Computer/Electronic Accommodations Program (CAP) through the USDA TARGET Center at no cost.

B. Examples of assistive technologies are listed on the TARGET Web site at <http://www.usda.gov/oo/target/pops/assistive.html>.

C. The USDA TARGET Center is the point of contact for the USDA-CAP Partnership Program. Please submit your request for assistive technology to the TARGET Center. If you are unsure of what technology you need, the TARGET Center can help determine the appropriate accommodation.