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**Certification & Training Assessment Group** — National Partnerships for Safe & Effective Pesticide Management through Education, Training & Competency Assessment

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## **ADA Considerations in Applicator Certification**

**November 2013**

### **Purpose**

The purpose of this paper is to provide information about the Americans with Disabilities Act (ADA) in the context of the applicator certification exam process. This paper does not deal specifically with applicator training or recertification programs, although the ADA may apply in those situations as well.

### **Background**

The Americans with Disabilities Act (ADA)<sup>1</sup> protects people from discrimination based on a disability. Although many people consider the ADA a law related to discrimination in employment, it also applies to government-administered programs accessible to the public. The law has a specific section related to public services, which include state and local governments. States must ensure that the process for developing and administering applicator certification programs is consistent with the ADA and maintains a consistent level of protection for human health and the environment.

### **Who is covered?**

The ADA prohibits discrimination based on a disability by public entities. The ADA definition of public entities includes “any State or local government [and] any department, agency, special purpose district, or other instrumentality of a State or local government.” The ADA specifically covers licensing programs administered by state and local governments. This means that pesticide applicator certification/licensing programs are covered by the ADA. Disabilities covered by the ADA may be mental/cognitive or physical.

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<sup>1</sup> For the purposes of this paper, ADA refers to the requirements of both the original Americans with Disabilities Act and the 2008 law, the Americans with Disabilities Act Amendments Act.

## **What does the ADA require?**

The ADA prohibits discrimination on the basis of disability of qualified individuals in licensing, certification, or regulatory activities. A “qualified individual with a disability” is a person “with or without reasonable modifications to rules, policies, or practices, ... or the provision of auxiliary aids and services, meets the essential eligibility requirements.”<sup>2</sup>

The ADA does not require states to grant a certification to anyone with a disability. Rather, states must make reasonable accommodations to the exam administration process in certain circumstances. A reasonable accommodation is one that would not “fundamentally alter” the licensing program. For example, assuming that the ability to read the pesticide label is a necessary job element, giving someone more time to read an exam would not fundamentally alter the certification program. However, accommodating someone unable to read at all (e.g., having someone read the exam and answers for the applicant) would fundamentally alter the licensing program.

The ADA only requires a state to open the certification process to people that could meet the essential eligibility requirements if given reasonable accommodations (qualified individuals with disabilities). Essential eligibility requirements are the knowledge, skills, and abilities that certified applicators must have. For example, an applicator must be able to read the pesticide label, operate application equipment, and explain the job to someone working under his or her supervision. If a person cannot perform these tasks, regardless of disability, he or she is not qualified to be a certified pesticide applicator.

## **What Should State Programs Do?**

### **Develop Essential Eligibility Requirements**

States should document the knowledge, skills, and abilities (KSAs) that certified applicators must have in order to perform their jobs. A job analysis is a systematic means of collecting and organizing information about what jobholders (in this case, pesticide applicators) do and which KSAs are necessary to perform a job safely and successfully. A comprehensive job analysis is one way to document an applicator's eligibility. Engaging in a process that outlines what any applicator needs to know and be able to do, rather than denying people the opportunity to become certified applicators

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<sup>2</sup> 28 CFR 35.104

on a case by case basis, can help the state defend the decision that an accommodation can or cannot be granted to an examinee.

### **Be Consistent in Requesting Information and Evaluating Accommodation Requests**

States must make reasonable accommodations. This does not mean that the state has to accommodate a request for an accommodation, e.g., extra exam time, immediately before the exam begins. All communications with prospective applicators (brochures, exam preparation materials, etc.) should have a statement such as: *“If you require accommodations under the Americans with Disabilities Act, you must document your request in writing and submit it to [Pesticide Certification Agency] no later than X day before the exam. [Pesticide Certification Agency] will notify you whether the request for accommodation has been approved before the exam date.”*

Sometimes, a disability is readily apparent, such as a person who uses a wheelchair, and the accommodation is clear – hold the certification session in a wheelchair-accessible location. In these instances, documentation of the disability is not necessary. Other times, a disability may not be readily apparent. In these instances, the state can and should request proof of the disability. States are likely to receive requests to accommodate medical or cognitive disabilities. Requests to accommodate learning disabilities are very common. Typically, a candidate requests additional time to take the exam due to a cognitive disability. Although less common, states may be asked to make accommodations for medical disabilities. For example, someone suffering from Crohn’s disease may require additional bathroom breaks. To avoid the appearance of impropriety or arbitrariness, states should use a standard form when requesting additional information (<http://askjan.org/media/medical.htm>). See Appendix A for a sample form. The documentation should be completed by a qualified professional and should include the diagnosis, the likely impact, and a suggestion for accommodation. The state should also ask the applicant what he or she considers a reasonable accommodation.

In addition to offering reasonable accommodations, the state must have a process for evaluating requests for accommodation and requesting further information. The process should be based on an internal policy or rule that lays out when documentation would be required, what documentation would be sufficient, and how the state would use the information when deciding whether to grant an accommodation. Most if not all states have an ADA policy that can either be adopted or adapted for use by the pesticide applicator certification program. Sample policies can be used to develop a

program-specific policy if necessary (<http://askjan.org/links/adapolicies.html>). See Appendix B for a sample policy.

### **Consider Web Accessibility**

If an online program is required for licensing or maintenance of a license, it must be accessible. If there are other methods/options for licensing, the web-based component does not necessarily need to be ADA compliant or accessible. Websites can be developed to allow “text to voice” reading programs to be used. States should check with the office that deals with ADA compliance as well as the technical services office to determine what level of accessibility is necessary for any web-based certification program components.

### **Additional Resources**

<http://askjan.org/> - JAN provides free consulting services for state and local government employers, including one-on-one consultation about all aspects of job accommodations, ADA compliance assistance, and referral to helpful resources.

<http://www.ada.gov> – U.S. Department of Justice website that provides information and technical assistance on the ADA.

<http://adata.org/> - The ADA National Network consists of ten Regional ADA National Network Centers located throughout the United States that provide local assistance to ensure that the ADA is implemented wherever possible.

<http://www.bdadyslexia.org.uk/about-dyslexia/further-information/dyslexia-style-guide.html> - The British Dyslexia Association’s style guide with suggestions for dyslexia-friendly text and accessible formatting.

## Appendix A – SAMPLE MEDICAL INQUIRY FORM IN RESPONSE TO AN ACCOMMODATION REQUEST

<b>A. Questions to help determine whether an employee has a disability.</b>																											
For reasonable accommodation under the ADA, an employee has a disability if he or she has an impairment that substantially limits one or more major life activities or a record of such an impairment. The following questions may help determine whether an employee has a disability:																											
Does the employee have a physical or mental impairment?	Yes <input type="checkbox"/>	No <input type="checkbox"/>																									
If yes, what is the impairment?																											
Answer the following question based on what limitations the employee has when his or her condition is in an active state and what limitations the employee would have if no mitigating measures were used. Mitigating measures include things such as medication, medical supplies, equipment, hearing aids, mobility devices, the use of assistive technology, reasonable accommodations or auxiliary aids or services, prosthetics, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy. Mitigating measures do not include ordinary eyeglasses or contact lenses.																											
Does the impairment substantially limit a major life activity as compared to most people in the general population? <i>Note: Does not need to significantly or severely restrict to meet this standard. It may be useful in appropriate cases to consider the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>																									
If yes, what major life activity(s) (includes major bodily functions) is/are affected?																											
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**B. Questions to help determine whether an accommodation is needed.**

An employee with a disability is entitled to an accommodation only when the accommodation is needed because of the disability. The following questions may help determine whether the requested accommodation is needed because of the disability:

What limitation(s) is interfering with job performance or accessing a benefit of employment?

What job function(s) or benefits of employment is the employee having trouble performing or accessing because of the limitation(s)?

How does the employee's limitation(s) interfere with his/her ability to perform the job function(s) or access a benefit of employment?

**C. Questions to help determine effective accommodation options.**

If an employee has a disability and needs an accommodation because of the disability, the employer must provide a reasonable accommodation, unless the accommodation poses an undue hardship. The following questions may help determine effective accommodations:

Do you have any suggestions regarding possible accommodations to improve job performance?

If so, what are they?

How would your suggestions improve the employee's job performance?

**D. Other questions or comments.**

Medical Professional's Signature

Date

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

## **Appendix B – Sample Reasonable Accommodation Policy from Minnesota<sup>3</sup>**

### **ADA- Reasonable Accommodation Policy**

The following template is provided to assist agency/institution staff to respond to requests for accommodations. Each agency/institution has a reasonable accommodation policy which is outlined in their Affirmative Action Plan.

### **Policy**

The (agency name) is committed to the fair and equal employment of people with disabilities. Reasonable accommodation is the key to this non-discrimination policy. While many individuals with disabilities can work without accommodation, other qualified applicants and employees face barriers to employment without the accommodation process. It is the policy of the (agency name) to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship. In accordance with the Minnesota Human Rights Act and the Americans with Disabilities Act, accommodations will be provided to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. This policy applies to all applicants, employees, and employees seeking promotional opportunities.

### **Definition**

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

### **Reasonable accommodation**

A reasonable accommodation is a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity.

Examples of accommodations may include acquiring or modifying equipment or devices; modifying training materials; making facilities readily accessible; modifying work schedules; and reassignment to a vacant position.

Reasonable accommodation applies to three aspects of employment:

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<sup>3</sup> Taken from: <http://www.mmb.state.mn.us/policy>

1. To assure equal opportunity in the employment process;
2. To enable a qualified individual with a disability to perform the essential functions of a job; and
3. To enable an employee with a disability to enjoy equal benefits and privileges of employment.

#### Procedure - Current employees and employees seeking promotion

1. The (agency name) will inform all employees that this accommodation policy can be made available in accessible formats.
2. The employee shall inform their supervisor or the ADA Coordinator designee of the need for an accommodation.
3. The ADA Coordinator designee may request documentation of the individual's functional limitations to support the request. Any medical documentation must be collected and maintained on separate forms and in separate, locked files. No one will be told or have access to medical information unless the disability might require emergency treatment.
4. When a qualified individual with a disability has requested an accommodation, the employer shall, in consultation with the individual:
  - Discuss the purpose and essential functions of the particular job involved. Completion of a step-by-step job analysis may be necessary.
  - Determine the precise job-related limitation.
  - Identify the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job.
  - Select and implement the accommodation that is the most appropriate for both the individual and the employer. While an individual's preference will be given consideration, the (agency name) is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide.
  - The ADA Coordinator designee will work with the employee to obtain technical assistance, as needed.
  - The ADA Coordinator will provide a decision to the employee within a reasonable amount of time.
  - If an accommodation cannot overcome the existing barriers or if the accommodation would cause an undue hardship on the operation of the business, the employee and the ADA Coordinator designee shall work together to determine whether reassignment may be an appropriate accommodation.

### **Procedure - Job applicants**

1. The job applicant shall inform the ADA Coordinator designee of the need for an accommodation. The ADA Coordinator designee will discuss the needed accommodation and possible alternatives with the applicant.
2. The ADA Coordinator designee will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

### **Policy for funding accommodations**

Funding must be approved by the (agency name) for accommodations that do not cause an undue hardship (M.S. 43A.191(c)).

### **Definition**

Undue hardship. An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the (agency name).

### **Procedure for determining undue hardship**

1. The employee will meet with the ADA Coordinator designee to discuss the requested accommodation.
2. The ADA Coordinator designee will review undue hardships by considering:
  - The nature and cost of the accommodation in relation to the size, the financial resources, and the nature and structure of the operation; and
  - The impact of the accommodation on the nature or operation of the (agency name).
  - The ADA Coordinator designee will provide a decision to the employee.

### **Appeals**

Employees or applicants who are dissatisfied with the decision(s) pertaining to his/her accommodation request may file an appeal with the agency head, within a reasonable period of time, for a final decision.

If the individual believes the decision is based on discriminatory reasons, then they may file a complaint internally through the agency's complaint procedure as outlined in this plan.

### **Supported work**

The (agency name) will review vacant positions and assess the current workload and needs of the office, to determine if job tasks might be performed by a supported employment worker(s). If appropriate, a list of supported worker candidates will be

requested from Minnesota Management & Budget. The (agency name) will work with the State ADA/Disability Coordinator to recruit and hire individuals for supported employment if such a position is created.