

Subpart F—Age Requirements**§ 338.601 Prohibition of maximum-age requirements.**

A maximum-age requirement may not be applied in either competitive or noncompetitive examinations for positions in the competitive service except as provided by:

(a) Section 3307 of title 5, United States Code; or

(b) Public Law 93-259 which authorizes OPM to establish a maximum-age requirement after determining that age is an occupational qualification necessary to the performance of the duties of the position.

[40 FR 42734, Sept. 16, 1975]

PART 339—MEDICAL QUALIFICATION DETERMINATIONS**Subpart A—General**

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AUTHORITY: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

SOURCE: 54 FR 9763, Mar. 8, 1989, unless otherwise noted.

Subpart A—General**§ 339.101 Coverage.**

This part applies to all applicants for and employees in competitive service positions; and to excepted service employees when medical issues arise in connection with an OPM regulation which governs a particular personnel decision, for example, removal of a preference eligible employee in the excepted service under part 752.

§ 339.102 Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title.

(c) Failure to meet a properly established medical standard or physical requirement under this part means that the individual is not qualified for the position unless a waiver or reasonable accommodation is indicated, as described in §§ 339.103 and 339.204. An employee's refusal to be examined in accordance with a proper agency order authorized under this part is grounds for appropriate disciplinary or adverse action.

[54 FR 9763, Mar. 8, 1989, as amended at 60 FR 3061, Jan. 13, 1995]

§ 339.103 Compliance with EEOC regulations.

Actions under this part must be consistent with 29 CFR 1613.701 *et seq.* Particularly relevant to medical qualification determinations are §1613.704 (requiring reasonable accommodation of individuals with handicaps); §1613.705 (prohibiting use of employment criteria that screen out individuals with handicaps unless shown to be related to the job in question) and §1614.706 (prohibiting pre-employment inquiries related to handicap and pre-employment medical examinations, except under specified circumstances). In addition,

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use of the term “qualified” in these regulations shall be interpreted consistently with §1613.702(f), which provides that a “qualified handicapped person” is a handicapped person “who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others.”

§ 339.104 Definitions.

For purposes of this part—

Accommodation means *reasonable accommodation* as described in 29 CFR 1613.704.

Arduous of hazardous positions means positions that are dangerous or physically demanding to such a degree that an incumbent’s medical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

Medical condition means health impairment which results from injury or disease, including psychiatric disease.

Medical documentation or documentation of a medical condition means a statement from a licensed physician or other appropriate practitioner which provides information the agency considers necessary to enable it to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a physician or, if appropriate, a practitioner of the same discipline as the one who issued the statement. An acceptable diagnosis must include the following information, or parts identified by the agency as necessary and relevant:

(a) The history of the medical conditions, including references to findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: Findings of physical examination; results of laboratory tests; X-rays; EKG’s and other special evaluations or diagnostic procedures; and, in

the case of psychiatric evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;

(c) Diagnosis, including the current clinical status;

(d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic or risk avoiding value;

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, “static or well-stabilized medical condition” means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. “Subtle incapacitation” means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. “Sudden incapacitation” means abrupt onset of loss of control of physical or mental function.

Medical evaluation program means a program of recurring medical examinations or tests established by written agency policy or directive, to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands.