

§ 302.303

5 CFR Ch. I (1-1-06 Edition)

The agency must, however, adopt procedures to insure the consideration of preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. An agency shall furnish a notice of the rating assigned to an applicant on his/her request.

(c) *Nonpreference applicants for certain positions.* An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a non-preference eligible as long as at least three qualified preference eligibles are available for the position.

(d) *Evaluating experience.* When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the military service of the United States if the position for which he/she is applying is similar to the position which he/she held immediately before his/her entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.

(a) *Establishment—(1) Agency's obligation.* An agency must establish a priority reemployment list whenever any applicants rated eligible under § 302.302 meet the conditions set out in paragraphs (b)(1) through (b)(3) of this section and must consider candidates from that list in accordance with § 302.304(a). All applicants not included on the priority reemployment list will be listed on the regular employment list unless the agency elects to establish a reemployment list as provided in paragraph (c) of this section.

(2) *Agency discretion.* In establishing its lists, an agency may, but is not required to: Afford priority consideration to non-preference eligibles who meet the conditions set out in paragraph (b)(4) of this section; afford priority consideration under paragraph (b) of this section for a longer time and/or in a broader geographic area than the minimum requirement; and/or provide reemployment consideration after the priority list is exhausted to additional

current and former employees in accordance with paragraph (c) of this section. An agency may limit consideration granted at its discretion to applicants for specific positions or applicants who meet specific conditions, but must make those conditions a matter of record and must apply its policy uniformly to all eligible employees. Generally, full-time employees may be considered only for full-time positions and other-than-full-time employees only for other-than-full-time positions. However, full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the appropriate priority or reemployment list; and other-than-full time employees may be considered for full-time positions if there are no full-time employees on the appropriate list.

(b) *Priority reemployment list.* Candidates are entered on the priority reemployment list in the geographic areas specified in paragraph (b)(1) of this section and remain on the list for 2 years unless the agency elects to provide a longer period of eligibility. The priority reemployment list includes:

(1) The name of each former employee of the agency who is a preference eligible, has been furloughed or separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered for positions in the commuting area where they were separated unless the agency elects to provide broader consideration.

(2) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under part 752 of this chapter, is found by the Merit Systems Protection Board to have been unjustifiably dismissed from the agency, but who is not entitled to immediate restoration under the Board's decision. Candidates in this category are considered in the commuting area from which separated unless the Board's decision specifies a broader or different area or the agency elects to afford broader geographic consideration.

(3) The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, who is not entitled to immediate restoration, and who is eligible for priority consideration under this part. Candidates in this category are considered in the commuting area where they last served and, if the agency determines that an appropriate vacancy is unlikely to occur in that area during the candidates' period of reemployment priority, in other locations for which they are available.

(4) At the agency's discretion, the name of each former employee of the agency who is not a preference eligible, has been furloughed or involuntarily separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered in the geographic area specified by the agency.

(c) *Reemployment list.* A reemployment list may be established at the agency's discretion to include the names of current employees of the agency and of former employees of the agency who are to be considered for future employment and who are not eligible for inclusion on the priority reemployment list. Employees may be entered on the reemployment list only for positions in which tenure and/or work schedule is no greater than that of the position previously held.

(d) *Order of entry.* An agency shall enter the names of all applicants rated eligible under §302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

(1) *When candidates have been rated only for basic eligibility under §302.302(a).*

(i) Preference eligibles having a compensable, service-connected disability of 10 percent or more (designated as "CP") unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;

(ii) All other candidates eligible for 10-point veteran preference;

(iii) All candidates eligible for 5-point veteran preference; and

(iv) Qualified candidates not eligible for veteran preference.

(2) *When qualified candidates have been assigned numerical scores under §302.302(b).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more, in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference or those not eligible for veteran preference, and those eligible for 5-point preference will be entered ahead of those not eligible for preference.

§ 302.304 Order of consideration.

(a) *Consideration of priority reemployment candidates.* An agency must consider all qualified candidates on its priority reemployment list before it may refer candidates from its reemployment list, if any, or regular employment list. When a qualified candidate is available on the priority list, the agency may appoint an individual who is not on the priority list or who has lower standing than others on that list *only* when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is entitled to reemployment priority or has higher standing on the priority reemployment list than the one appointed. The agency must notify each individual on the priority reemployment list who is adversely affected by an appointment under this paragraph of the reasons for the exception and must further notify each such individual who is a preference eligible of his or her right of appeal to the Merit Systems Protection Board.

(b) *Consideration of other candidates.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, an agency shall consider applicants on the reemployment and/or regular employment list who have been assigned eligible ratings for a given position in Order A, Order B, or Order C, as described in paragraphs (b)(1) through (b)(3) of this section. Order A must be used when the