

## PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

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AUTHORITY: 5 U.S.C. 3301, 3302, 3304; E.O. 10577, 3 CFR, 1954-1958 comp., p. 218.

### Subpart A—Citizenship Requirements

#### § 338.101 Citizenship.

(a) A person may be admitted to competitive examination only if he is a citizen of or owes permanent allegiance to the United States.

(b) A person may be given an appointment in the competitive service only if he or she is a citizen of or owes permanent allegiance to the United States. However, a noncitizen may be given an appointment in rare cases under §316.601 of this chapter, unless the appointment is prohibited by statute.

(c) Paragraph (b) of this section applies to reinstatement and transfer as well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.

[33 FR 12429, Sept. 4, 1968, as amended at 57 FR 10124, Mar. 24, 1992]

### Subpart B [Reserved]

### Subpart C—Consideration for Appointment

#### § 338.301 Competitive service appointment.

Agencies must ensure that employees who are given competitive service appointments meet the requirements included in the Office of Personnel Management's Operating Manual: Quali-

fication Standards for General Schedule Positions. The Operating Manual is available to the public for review at agency personnel offices and Federal depository libraries, and for purchase from the Government Printing Office.

[62 FR 44535, Aug. 22, 1997]

### Subparts D–E [Reserved]

### 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

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339.306 Processing medical eligibility determinations on certificates of eligibles.

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 cri-

teria 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, 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;