

**Office of Personnel Management**

**§ 338.301**

related knowledge, skills, abilities, or competencies.

**§ 337.303 Agency responsibilities.**

To use a category rating system, agencies must:

(a) Establish a system for evaluating applicants that provides for two or more quality categories;

(b) Define each quality category through job analysis conducted in accordance with the “Uniform Guidelines on Employee Selection Procedures” at 29 CFR part 1607 and part 300 of this chapter. Each category must have a clear definition that distinguishes it from other categories;

(c) Describe each quality category in the job announcement and apply the provisions of part 330, subparts B, F and G of this chapter;

(d) Place applicants into categories based upon their job-related knowledge, skills, abilities or competencies; and

(e) Establish documentation and record-keeping procedures for reconstruction purposes.

**§ 337.304 Veterans’ preference.**

In this subpart:

(a) Veterans’ preference must be applied as prescribed in section 1312(a)(2) of Public Law 107-296, the Homeland Security Act, and codified at 5 U.S.C. 3319; and

(b) Veterans’ preference points as prescribed in § 337.101 are not applied in category rating.

**§ 337.305 Reporting requirements.**

Any agency that uses category rating must forward to OPM a copy of the annual report that it must submit to Congress pursuant to 5 U.S.C. 3319.

**§ 337.306 Sunset.**

The authority to use category rating terminates June 14, 2004.

**PART 338—QUALIFICATION REQUIREMENTS (GENERAL)**

**Subpart A—Citizenship Requirements**

Sec.

338.101 Citizenship.

**Subpart B [Reserved]**

**Subpart C—Consideration for Appointment**

338.301 Competitive service appointment.

**Subparts D–E [Reserved]**

**Subpart F—Age Requirements**

338.601 Prohibition of maximum-age requirements.

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: Qualification 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 A—General**

**Subpart F—Age Requirements**

**§ 339.101 Coverage.**

**§ 338.601 Prohibition of maximum-age requirements.**

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.

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.

**§ 339.102 Purpose and effect.**

[40 FR 42734, Sept. 16, 1975]

(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.

**PART 339—MEDICAL QUALIFICATION DETERMINATIONS**

(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.

**Subpart A—General**

(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.

Sec.

- 339.101 Coverage.
- 339.102 Purpose and effect.
- 339.103 Compliance with EEOC regulations.
- 339.104 Definitions.

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

**Subpart B—Physical and Medical Qualifications**

**§ 339.103 Compliance with EEOC regulations.**

- 339.201 Disqualification by OPM.
- 339.202 Medical standards.
- 339.203 Physical requirements.
- 339.204 Waiver of standards and requirements.
- 339.205 Medical evaluation programs.
- 339.206 Disqualification on the basis of medical history.

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,

**Subpart C—Medical Examinations**

- 339.301 Authority to require an examination.
- 339.302 Authority to offer examinations.
- 339.303 Examination procedures.
- 339.304 Payment for examination.
- 339.305 Records and reports.
- 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.