

**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,

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 or 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