

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 338

RIN 3206-AL15

Qualification Requirements (General)

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to revise the regulations governing qualification requirements for appointment to a Federal position in the competitive service. The purpose of these proposed regulations is to update and clarify information regarding citizenship and age requirements, add new information concerning appealing an agency's qualification determination, retitle the *Operating Manual: Qualification Standards for General Schedule Positions* to include other pay plans or systems, and replace the *Operating Manual* with a Web site address for OPM's qualification requirements. These regulations also delete obsolete information regarding purchasing the *Operating Manual* from the Government Printing Office.

DATES: Submit comments on or before August 29, 2011.

ADDRESSES: You may submit your comments through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

You may also send, fax, or deliver written comments to Angela Bailey, Deputy Associate Director, Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6566, Washington, DC 20415-9700; by e-mail to employ@opm.gov; or by fax to (202) 606-2329.

FOR FURTHER INFORMATION CONTACT: Brenda B. Cook by telephone (202) 606-

0830, by fax (202) 606-2329, or by TTY (202) 418-3134.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is proposing to revise part 338 of title 5, Code of Federal Regulations (CFR), Qualification Requirements (General). Part 338 governs qualification requirements for appointment to a Federal position in the competitive service. These proposed regulations update and clarify information regarding citizenship and age requirements, add the Web site address for qualification requirements, add a new paragraph under subpart C of this part requiring agencies to establish an appeal procedure for applicants who want to appeal their qualification determinations, and delete obsolete information regarding the purchase of the *Operating Manual* from the Government Printing Office.

Under Executive Order 11935, only U.S. citizens or persons who owe permanent allegiance to the United States are eligible for appointment to competitive service positions. To eliminate redundancy, OPM proposes to revise section 338.101 by eliminating paragraph (c) and incorporating information from paragraph (c) concerning the applicability of citizenship and permanent allegiance requirements to all competitive service appointments, into paragraph (a) of the same section. In addition, OPM is proposing to revise paragraph (a) to include a reference to title 8, United States Code, which describes individuals who qualify as U.S. citizens and persons who owe permanent allegiance to the United States.

OPM is proposing to revise paragraph (b) of section 338.101 by citing section 213.3102(bb) as the authority for appointing non-citizens. The reference to section 316.601 as the basis for such appointments will be deleted. Section 213.3102(bb) was established to cover the appointment of non-citizens and is a more appropriate citation than section 316.601. Specifically, section 213.3102(bb) gives OPM the authority to approve an excepted service appointment of a non-citizen to a competitive service position when no qualified U.S. citizens or persons who owe permanent allegiance to the United States are available. Revised paragraph (b) of section 338.101 also clarifies restrictions against moving an

appointed non-citizen to any other position without prior OPM approval.

OPM is proposing to revise section 338.301 to change the title of the *Operating Manual: Qualification Standards for General Schedule Positions to Operating Manual for Qualification Standards for General Schedule (or Equivalent) Positions*. This title change is necessary to include white-collar positions that may be subject to the requirements of the *Operating Manual* even though these positions are not under the General Schedule (GS) pay plan or system. As of September 30, 2008, the Civilian Personnel Data File indicates approximately 353,195 white-collar employees work under non-GS pay plans, Government-wide.

Because the OPM Web site is the sole source for current information about qualification requirements and a Web address is necessary to give agencies access to the qualification standards and other requirements, OPM is proposing to add a new paragraph (a) to section 338.301 to include the Web site address for *Operating Manual for Qualification Standards for General Schedule (or Equivalent) Positions and the Job Qualification System for Trades and Labor Occupations*.

Because hard copies of the *Operating Manual* are no longer printed, OPM is proposing to remove the reference to the Government Printing Office as a source for purchasing copies of the "Operating Manual" from section 338.301.

OPM is proposing to add two new paragraphs (b) and (c) to section 338.301. Proposed paragraph (b) establishes the agency's responsibility for ensuring applicants meet all qualification requirements before appointments or placements in any position in the competitive service. Proposed paragraph (c) refers agencies to 5 CFR part 339 of this subchapter for information about physical and medical qualifications. This cross-reference will ensure that agencies are aware of all qualification requirements, including medical or physical standards, where applicable.

OPM is proposing to add section 338.302, a provision requiring agencies to prescribe a procedure for applicants who wish to appeal their qualification determination for a particular position under 5 CFR 300.104(b) if OPM has

delegated examining authority to the agency.

OPM is proposing to retitle section 338.601, from “Prohibitions of maximum age-requirement” to “Maximum Age Requirements” and include an exception to the maximum-entry-age requirement for veterans’ preference eligibles. The Government has decided to acquiesce in a decision of the Merit Systems Protection Board (MSPB) in *Isabella v. Department of State and Office of Personnel Management*, 109 MSPR, 453 (2008) (*Isabella II*); *Isabella v. Department of State*, 106 M.S.P.R. 333 (2007) (*Isabella I*). In *Isabella*, the MSPB found that an agency violated the Veteran Employment Opportunities Act of 1998 (VEOA) because there was no demonstration that a maximum entry age was essential to the performance of the duties of the position to which the preference eligible applied. Having considered this decision, OPM has determined to adopt the view that when a qualified veterans’ preference eligible applies for a position that imposes a maximum age requirement authorized by 5 U.S.C. 3307, the provisions of 5 U.S.C. 3312(a) require that the hiring authority must waive the maximum age requirement unless it has determined that such a requirement is essential to performance of the duties of the position.

There are several steps an agency must follow when accepting applicants for a position with a maximum-entry-age requirement established by the agency under 5 U.S.C. 3307. The agency must first analyze the affected position to determine whether age is essential to the performance of duties of the position. If the agency decides that age is not essential to the duties of the position, then it must waive the maximum-entry-age requirement for veterans’ preference eligible applicants. If the agency decides that age is essential to the duties of the position, the veterans’ preference eligible applicants must meet the maximum-entry-age requirement. Applicants who are not preference eligibles must meet any maximum-entry-age requirement established by the agency under 5 U.S.C. 3307, in order to be eligible for appointment.

OPM is proposing to add a new section 338.602 titled “Minimum age requirements.” This new section refers to section 551.601 of this chapter on minimum age requirements for Federal employment. This information will better inform agencies about this provision.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 338

Government employees, Veterans.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to revise title 5, Code of Federal Regulations, part 338 as follows:

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

1. The authority citation for part 338 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3304, 3307, 3312, and 5105; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, E.O. 11935, 3 CFR, 1976 Comp., p. 146.

Subpart A—Citizenship Requirements

2. Revise § 338.101 to read as follows:

§ 338.101 Citizenship.

(a)(1) Except as noted in paragraph (b) of this section, only a United States (U.S.) citizen or a person who owes permanent allegiance to the U.S. may compete for an appointment and be appointed to a position in the competitive service. U.S. citizens and persons who owe permanent allegiance to the U.S. are described in subchapters I and III of chapter 12, title 8, U.S. Code.

(2) Paragraph (a)(1) of this section applies to all appointments in the competitive service, including career; career-conditional; term and temporary appointments; reinstatements; transfers; as well as to other noncompetitive appointments; and conversions to career and career conditional appointments from other appointment types.

(b) Unless the appointment is prohibited by statute, OPM may authorize an agency to appoint an individual who neither is a citizen nor owes permanent allegiance to the U.S. in rare cases under § 213.3102(bb) of this chapter when a qualified U.S. citizen or person who owes permanent allegiance to the U.S. is not available for the position. Once such individual is appointed pursuant to § 213.3102(bb), the agency is then precluded from using any other authority to place that

individual in a different position in the competitive service, unless the agency, once again, obtains prior OPM approval.

Subpart C—Consideration for Appointment

3. Revise subpart C to read as follows:

§ 338.301 Competitive service appointments.

(a) Applicants who meet all qualification requirements for competitive service positions in accordance with the *Operating Manual for Qualification Standards for General Schedule (or Equivalent) Positions*, the *Job Qualification System for Trades and Labor Occupations*, and other applicable provisions as appropriate may be considered for competitive service appointments. These manuals are available on OPM’s Web site at <http://www.opm.gov/qualifications/>.

(b) Agencies must ensure that applicants meet all applicable eligibility and qualification requirements for consideration and appointment to a competitive service position.

(c) When applicable, applicants must meet the medical and physical requirements of the position in accordance with part 339 of this chapter.

§ 338.302 Appeal of qualification determinations.

When OPM has delegated examining authority to an agency, the agency must establish a procedure for applicants to appeal their qualification determination when they apply for a position pursuant to a job opportunity announcement as set forth in 5 CFR 300.104(b). When OPM has delegated examining authority to an agency, applicants may not appeal to OPM.

Subpart F—Age Requirements

4. Revise § 338.601 to read as follows:

§ 338.601 Maximum age requirements.

(a) Agencies may not set maximum-entry-age requirements for positions in the competitive service except as permitted by 5 U.S.C. 3307(b)–(g).

(b) All qualified applicants must meet the maximum-entry-age requirement established by the agency pursuant to 5 U.S.C. 3307(b)–(g) to be eligible for appointment to such positions.

(c) *Exception to maximum-entry-age requirements.*

(1) Preference eligibles. In order to determine whether to waive a maximum-entry-age requirement, an agency must first analyze the affected position to determine whether age is essential to the performance of the position.

(i) Non-essential—If the agency determines that a maximum-entry-age is not essential to the performance of the duties of the position, then the agency must waive the age requirement for qualified veterans' preference eligible applicants as prescribed by 5 U.S.C. 3312.

(ii) Essential—If the agency determines that a maximum-entry-age is essential to the performance of the duties of the position, the veterans' preference eligible applicant must meet the maximum-entry-age requirement established by the agency under 5 U.S.C. 3307.

5. Add § 338.602 to read as follows:

§ 338.602 Minimum-entry-age requirements.

Minimum-entry-age requirements for all Federal positions are prescribed in § 551.601 of this chapter.

[FR Doc. 2011-16272 Filed 6-29-11; 8:45 am]

BILLING CODE 6325-38-P

COMMODITY FUTURES TRADING COMMISSION

5 CFR Chapter XLI

17 CFR Chapter I

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for information.

SUMMARY: In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Commodity Futures Trading Commission ("CFTC" or "Commission") intends to review its existing regulations to evaluate their continued effectiveness in achieving the objectives for which they were adopted. In this regard, the Commission has developed a plan to identify and evaluate its regulations periodically to determine whether any such regulations should be modified, expanded, streamlined or repealed in order to make the agency's regulatory program more effective (the "Plan").

DATES: Interested parties are encouraged to submit their views on the Plan on or before August 29, 2011.

ADDRESSES: You may make your submission, identified by "Plan for Retrospective Review," by any of the following methods:

- The agency's Web site, at <http://comments.cftc.gov>. Follow the

instructions for submitting comments through the Web site.

- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as mail above.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please make your submission using only one method. All submissions must be in English, or if not, accompanied by an English translation. Your submission may be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language.

FOR FURTHER INFORMATION CONTACT:

Maria D. Godel, Assistant General Counsel, Office of General Counsel, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202-418-5120 and electronic mail: mgodel@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. The Executive Order

On January 18, 2011, President Obama issued Executive Order 13563 entitled "Improving Regulation and Regulatory Review." The Executive Order emphasizes several guiding principles, including that: agencies consider the costs and benefits of their regulations and choose the least burdensome path; the regulatory process must be transparent and include public participation; and agencies must attempt to coordinate, simplify and harmonize regulations to reduce costs and promote certainty for businesses and the public. Section 6 of the Executive Order focuses on the importance of maintaining a consistent culture of retrospective review and analysis by agencies of their regulatory programs. To that end, section 6 includes a "look-back" provision for agencies to develop a preliminary plan

¹ 17 CFR 145.9.

under which the agency will periodically review its existing significant regulations to determine whether any should be modified, streamlined, expanded or repealed in order to make the agency's regulatory program more effective and less burdensome.

In a memorandum dated February 2, 2011, the administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs ("OIRA") provided guidance to the heads of executive departments and agencies and independent regulatory agencies regarding the principles and requirements of Executive Order 13563 (the "OIRA Memorandum"). While Executive Order 13563 does not apply to independent agencies, such as the Commission, the OIRA Memorandum encourages independent agencies to give consideration to its provisions, consistent with their legal authority, and to consider undertaking voluntarily retrospective analysis of existing rules.

The OIRA Memorandum emphasizes that in formulating its plan for retrospective review, "each agency should exercise its discretion to develop a plan tailored to its specific mission, resources, organizational structure and rulemaking history and volume."

II. The Commission's Plan

As part of the implementation of the Dodd-Frank Wall Street Transparency and Accountability Act ("Dodd-Frank Act"), the Commission already has reviewed many of its existing regulations. In determining the extent to which these existing regulations have needed to be modified to conform to the Dodd-Frank Act's new requirements, the Commission already has subjected many of its rules to scrutiny.² As such, "Phase

² For example, the Commission has published notices of proposed rulemakings addressing conforming amendments to its regulations regarding the registration of intermediaries under 17 CFR part 3, 76 FR 12888, Mar. 9, 2011; to conform the requirements under 17 CFR part 4 governing the operations and activities of commodity pool operators and commodity trading advisors consistent with title VII of the Dodd-Frank Act, 76 FR 11701, Mar. 3, 2011; and to make consistent with title VII of the Dodd-Frank Act part 40's provisions common to all registered entities, 75 FR 67282, Nov. 2, 2010. Further, the Commission has published notices of proposed rulemaking to implement changes to core principles for designated contract markets ("DCMs") and derivatives clearing organizations ("DCOs") under title VII of the Dodd-Frank Act by revising part 38, applicable to DCMs, and part 39, applicable to DCOs, 75 FR 80572, Dec. 22, 2010; 75 FR 63113, Oct. 14, 2010; 75 FR 77576, Dec. 13, 2010; 75 FR 78185, Dec. 15, 2010; 76 FR 3698, Jan. 20, 2010; and 76 FR 13101, Mar. 10, 2011. The Commission also is engaged in a proposed rulemaking to adapt all applicable CFTC regulations to the Dodd-Frank Act: proposed revisions to part 1 of the Commission's regulations would amend certain fundamental