

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 337

RIN 3206-AK35

Examining System

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation to designate two sections of the Alternative Ranking and Selection Procedures from the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act) as veterans' preference requirements for purposes of a prohibited personnel practice violation, thereby aligning these sections with other statutory provisions covering veterans' preference.

DATES: Comments will be considered if received by May 9, 2005.

ADDRESSES: Send, deliver or fax comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail at employ@opm.gov; or fax at (202) 606-2329.

Comments may also be sent 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.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at linda.watson@opm.gov.

SUPPLEMENTARY INFORMATION: On June 15, 2004, OPM published final regulations at 69 FR 33271, to implement provisions of the Chief Human Capital Officers Act of 2002

(Act), Public Law 107-296. This Act provides Federal agencies with a number of human resources flexibilities to enhance their recruitment and hiring programs. These flexibilities include the alternative (category) rating and selection procedures.

The alternative ranking and selection procedures were codified in section 3319 of title 5, United States Code (U.S.C.). This section provides agencies with the authority to develop a category-based rating method to assess and rate job applicants for positions filled through the competitive examining process. Traditionally, applicants for Federal jobs are assigned numerical scores, including veterans' preference points, if appropriate, and are considered for selection based on the "rule of three" (5 U.S.C. 3318(a)).

Section 3319(b) protects the rights of veterans by placing them ahead of non-preference eligibles within each category in lieu of adding veterans' preference points or applying the "rule of three." For all positions other than scientific and professional positions at GS-9 (equivalent or higher), qualified preference eligibles that have a compensable service-connected disability of at least 10 percent must be listed in the highest quality category.

Section 3319(c)(2) prohibits appointing officials from passing over a preference eligible in the same quality category from which a selection is made to select a non-preference eligible unless the requirements of section 3317(b) or 3318(b) are satisfied.

OPM is issuing a proposed regulation designating sections 3319(b) and (c)(2) as veterans' preference requirements for purposes of section 2302(b)(11). OPM's authority to designate in regulation a provision of law as a "veterans' preference requirement" is prescribed in section 2302(e)(1)(G).

Section 2302(b) defines actions that constitute prohibited personnel practices. Section 2302(b)(11)(A) provides that an employee shall not, "knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement". Section 2302(b)(11)(B) provides that an employee shall not "knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement". As a result of

this designation, failure to comply with section 3319(b) or (c)(2) constitutes a prohibited personnel practice under section 2302(b)(11).

The purpose of this designation is to align sections 3319(b) and (c)(2) with the other statutory provisions covering veterans' preference that are listed in section 2302(e)(1) as constituting veterans' preference requirements.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR part 337 as follows:

PART 337—EXAMINING SYSTEM

1. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; and Section 1413 of Pub. L. 108-136.

Subpart C—Alternative Rating and Selection Procedures

2. Add new paragraph (c) to § 337.304 to read as follows:

§ 337.304 Veterans' preference.

* * * * *

(c) Sections 3319(b) and 3319(c)(2) of title 5 U.S.C. constitute veterans' preference requirements for purposes of 5 U.S.C. 2302(b)(11)(A) and (B).

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