

§ 731.106 Designation of public trust positions and investigative requirements.

(a) *Risk designation.* Agency heads shall designate every competitive service position within the agency at a high, moderate, or low risk level as determined by the position's potential for adverse impact to the efficiency and integrity of the service. OPM will provide an example of a risk designation system for agency use in supplemental guidance.

(b) *Public Trust positions.* Positions at the high or moderate risk levels would normally be designated as "Public Trust" positions. Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities, or other duties demanding a significant degree of public trust; and positions involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain.

(c) *Investigative requirements.* Persons receiving an appointment made subject to investigation under this part must undergo a background investigation. Minimum investigative requirements correlating to risk levels will be established in supplemental guidance provided by OPM. Investigations should be initiated before appointment or, at most, within 14 calendar days of placement in the position.

(d) *Suitability reinvestigations.* Agencies, relying on authorities such as the Computer Security Act of 1987 and OMB Circular No. A-130 Revised (issued February 8, 1996), may require incumbents of certain public trust positions to undergo periodic reinvestigations. The appropriate level of any reinvestigation will be determined by the agency, but may be based on supplemental guidance provided by OPM.

(e) *Risk level changes.* If an individual experiences a change in position risk level (moves to a higher risk level position, or the risk level of the position itself is changed) the individual may encumber or remain in the position. Any upgrade investigation required for the new risk level should be initiated within 14 calendar days after the move or the new designation is final.

(f) Any suitability investigation completed by an agency under provisions of paragraphs (d) or (e) of this section must be adjudicated by the employing agency. The subject's employment status will determine the applicable agency authority and procedures to be followed in any action taken.

Subpart B—Suitability Determinations

§ 731.201 Standard.

Subject to subpart A of this part, an applicant, appointee, or employee may be denied Federal employment or removed from a position only when the action will protect the integrity or promote the efficiency of the service.

§ 731.202 Criteria.

(a) *General.* In determining whether its action will protect the integrity or promote the efficiency of the service, OPM, or an agency to which OPM has delegated authority, shall make its determination on the basis of the specific factors in paragraph (b) of this section, with appropriate consideration given to the additional considerations outlined in paragraph (c) of this section.

(b) *Specific factors.* When making a determination under paragraph (a) of this section, the following may be considered a basis for finding an individual unsuitable:

- (1) Misconduct or negligence in employment;
- (2) Criminal or dishonest conduct;
- (3) Material, intentional false statement or deception or fraud in examination or appointment;
- (4) Refusal to furnish testimony as required by § 5.4 of this title;
- (5) Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;
- (6) Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;
- (7) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force;
- (8) Any statutory or regulatory bar which prevents the lawful employment