

§ 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

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of the person involved in the position in question.

(c) *Additional considerations.* In making a determination under paragraphs (a) and (b) of this section, OPM and agencies shall consider the following additional considerations to the extent they deem them pertinent to the individual case:

- (1) The nature of the position for which the person is applying or in which the person is employed;
- (2) The nature and seriousness of the conduct;
- (3) The circumstances surrounding the conduct;
- (4) The recency of the conduct;
- (5) The age of the person involved at the time of the conduct;
- (6) Contributing societal conditions; and
- (7) The absence or presence of rehabilitation or efforts toward rehabilitation.

§ 731.203 Actions by OPM and other agencies.

(a) *List of actions.* For purposes of this part, an action is one or more of the following:

- (1) Cancellation of eligibility;
- (2) Denial of appointment;
- (3) Removal;
- (4) Cancellation of reinstatement eligibility;
- (5) Debarment.

(b) An applicant's eligibility may be cancelled, an applicant may be denied employment, or an appointee may be removed when OPM or an agency exercising delegated authority under this part finds that the applicant or appointee is unsuitable for the reasons cited in § 731.202 subject to the agency limitations of § 731.103(a).

(c) OPM may require that an employee be removed on the basis of a material, intentional false statement, or deception or fraud in examination or appointment; or refusal to furnish testimony; or a statutory or regulatory bar. OPM may also cancel any reinstatement eligibility obtained as a result of false statement, deception or fraud in the examination or appointment process.

(d) An action to remove an appointee or employee for suitability reasons under this part is not an action under

parts 752 or 315 of this title. Where behavior covered by this part may also form the basis for a part 752 or 315 action, agencies may use part 315 or 752, as appropriate, instead of this part.

(e) Agencies are required to report to OPM all unfavorable adjudicative actions taken under this part, and all actions based on an OPM investigation.

§ 731.204 Debarment by OPM.

(a) When OPM finds a person unsuitable for any reason listed in § 731.202, OPM, in its discretion, may deny that person examination for, and appointment to, a competitive service position for a period of not more than 3 years from the date of determination of unsuitability.

(b) On expiration of a period of debarment, OPM or an agency may redetermine a person's suitability for appointment in accordance with the procedures of this part.

(c) OPM, in its sole discretion, determines the duration of any period of debarment imposed under this section.

§ 731.205 Debarment by agencies.

(a) Subject to the provisions of § 731.103, when an agency finds an applicant or appointee unsuitable for reasons listed in § 731.202, the agency may deny that person examination for, and appointment to, all, or specific, positions within the agency for a period of not more than 1 year from the date of determination of unsuitability.

(b) On expiration of a period of agency debarment, the agency may redetermine a person's suitability for appointment by the agency, in accordance with the procedures of this part.

(c) The agency is responsible for enforcing the period of debarment and taking appropriate action should the individual apply or be inappropriately appointed during the debarment period. This does not limit OPM's ability to exercise jurisdiction and take an action if it deems appropriate.

(d) The agency, in its sole discretion, determines the duration of any period of debarment imposed under this section.