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(1) Misconduct or negligence in prior employment which would have a bearing on efficient service in the position in question, or would interfere with or prevent effective accomplishment by the employing agency of its duties and responsibilities;

(2) Criminal or dishonest conduct related to the duties to be assigned to the applicant or appointee, or to that person's service in the position or the service of other employees;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by §5.4 of this chapter;

(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 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 factors to the extent that they deem these factors pertinent to the individual case:

(1) The kind of position for which the person is applying or in which the person is employed, including the degree of public trust or risk in the position;

(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;

(7) The absence or presence of rehabilitation or efforts toward rehabilitation.

Subpart C—Suitability Rating Actions

§ 731.301 Jurisdiction.

(a) *Appointments subject to investigation.* (1) In order to establish an appointee's suitability for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by OPM, except:

(i) Promotion;

(ii) Demotion;

(iii) Reassignment;

(iv) Conversion from career-conditional to career tenure;

(v) Appointment, or conversion to an appointment, made by an agency of an employee of that agency who has been serving continuously with that agency for at least one year in one or more positions under an appointment subject to investigation; and

(vi) Transfer, provided the one-year, subject-to-investigation period applied to the previous appointment has expired.

(2) Appointments are subject to investigation to continue OPM's jurisdiction to investigate the suitability of an applicant after appointment and to authorize OPM to require removal when it finds the appointee is unsuitable for Federal employment. The subject-to-investigation condition may not be construed as requiring an employee to serve a new probationary or trial period or as extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition expires automatically at the end of one year after the effective date of appointment, except in a case involving intentional false statement or deception or fraud in examination or appointment, or refusal to furnish testimony.

§ 731.302 Risk designation and investigative requirements.

(a) *Risk designation.* Agency heads shall designate every competitive service position within the agency at either a High, Moderate, or Low risk level as determined by the position's potential for adverse impact to the efficiency of the service.

(b) *Investigative requirements.* Persons receiving an appointment made subject

to investigation shall undergo a background investigation, the scope and coverage of which shall be determined by OPM in accordance with the level of risk determined by the agency.

(c) *Suitability reinvestigations.* (1) Every incumbent of a competitive service position:

(i) Designated High Risk under paragraph (a) of this section, or

(ii) That is a law enforcement or public safety position designated Moderate Risk under paragraph (a) of this section, shall be subject to a periodic reinvestigation of a scope established by OPM 5 years after placement, and at least once each succeeding 5 years.

(2) Periodic reinvestigations required by paragraph (c)(1) of this section may be adjudicated by the employing agency according to the procedures in this part, if applicable.

§ 731.303 Actions by OPM and other agencies.

(a) For a period of one year after the effective date of an appointment subject to investigation under § 731.301, OPM may instruct an agency to remove an appointee when it finds that the appointee is unsuitable for any of the reasons cited in § 731.202.

(b) Thereafter, OPM may require the removal of an employee on the basis of either intentional false statement or deception or fraud in examination or appointment; or refusal to furnish testimony; or statutory or regulatory bar.

(c) An action to remove an appointee or employee taken pursuant to an instruction by OPM is not an action under part 752, or §§ 315.804 through 315.806 of part 315, of this chapter.

(d) When OPM instructs an agency to remove an appointee or employee under this part it shall notify the agency and the appointee or employee of its decision in writing.

(e) Before OPM, or any agency having delegated authority from OPM under this part, shall take a final suitability action against an applicant, eligible, appointee, or employee under this part, the person against whom the action is proposed shall be given notice of the proposed action (including the availability for review, upon request, of the materials relied upon), an opportunity to answer, notice of the final decision on the action, and notice of rights of appeal, if any, all in accordance with this part.

§ 731.304 Debarment.

(a) When OPM finds a person unsuitable for any reason named in § 731.202, OPM, in its discretion, may deny that person examination for and appointment to a competitive 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, a person who has been debarred may not be appointed to any position in the competitive service until OPM has redetermined that person's suitability for appointment.

Subpart D—Suitability Actions

§ 731.401 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when OPM, acting under authority of this part, proposes to take or to instruct an agency to take, a final suitability ineligibility action, including removal, against an applicant or eligible for appointment in, or an appointee or employee in, the competitive service. This subpart does not apply to an action taken by an agency to which OPM has delegated authority under § 731.103.

(b) *Definition.* In this subpart, *days* means calendar days.

§ 731.402 Notice of proposed action.

(a) OPM shall notify the applicant, eligible, appointee, or employee (hereinafter, the ''respondent'') in writing of the proposed action and of the charges against the respondent. The notice shall state the reasons, specifically and in detail, for the proposed action. The notice shall also state that the respondent has the right to answer this notice in writing. If the respondent is an employee the notice shall further state that the employee may also make an oral answer, as specified in § 731.403(a). The notice shall further inform the respondent of the time limits for answer as well as the address to which such answer should be made.

(b) OPM shall send a copy of this notice to the agency, if any, that is involved. The notice shall be served upon