AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

the respondent by being mailed to the respondent's last known residence or duty station no less than 30 days prior to the effective date of the proposed adverse action. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in pay status during the notice period.

§ 731.403 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish affidavits in support of the response. A respondent who is an employee may answer orally. The respondent may be represented by a representative of the respondent's choice, and such representative shall be designated in writing to OPM. To be timely, a written answer shall be made to OPM no more than 30 days after the date of the notice of proposed action. In the event that an employee requests to make an oral answer, OPM shall determine the time and place thereof. OPM shall consider any answer that the respondent makes in reaching a decision.

(b) *Agency's answer.* In actions proposed by OPM under 5 CFR 5.3, the agency may also answer the notice of proposed action. The time limit for filing an answer is 30 days from the date of the notice. OPM shall consider any answer that the agency makes in reaching a decision.

§ 731.404 Decision.

OPM shall notify the respondent and the agency of the decision. The decision shall be in writing, be dated, and inform the respondent of the reasons for the decision. Removal of appointees or employees will be effective 30 days following the date of the decision. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart E of this part.

Subpart E—Appeal to the Merit Systems Protection Board

§ 731.501 Appeal to the Merit Systems Protection Board.

(a) An individual who has been found unsuitable for employment may appeal the decision to the Merit Systems Protection Board (the Board). An employee or appointee who appeals a removal directed by OPM shall notify the employing agency of the appeal at the time it is filed.

(b) Appeal Procedures. The procedures for filing an appeal with the Board are found at part 1201 of Title 5, Code of Federal Regulations.

(c) Pay Status Pending Appeal. When an employee or appointee whom OPM has determined to be unsuitable files an appeal to the Board, the employing agency may either suspend the employee or appointee on the day following the date on which the removal was to have been effected pending adjudication of the appeal, or retain the employee or appointee in an active duty status for the period, in which event the agency shall so notify the employee or appointee. Part 752 of this chapter does not apply to the suspension.

[59 FR 47527, Sept. 16, 1994]

Subpart F—Reemployment Eligibility

§ 731.601 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request OPM to determine his or her suitability for further employment in the competitive service. OPM shall consider the request only if the former employee:

(1) Has completed any required probationary period;

(2) Has basic eligibility for reinstatement; and

(3) Includes a sworn statement with the request which sets forth fully and in detail the facts surrounding the removal or resignation.

(b) *Action by OPM.* (1) OPM, after appropriate consideration, including any investigation OPM deems necessary, shall inform the former employee of his or her current suitability for employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportunity to comment on the reasons for this finding, or has furnished comments to OPM, then OPM may cancel his or her reinstatement eligibility if that eligibility was obtained through fraud. In addition, OPM may prescribe a period of debarment from the competitive service not to exceed 3 years from the date of determination of unsuitability.

Subpart G—Savings Provision

§ 731.701 Savings provision.

No provision of these regulations shall be applied in such a way as to affect any administrative proceeding pending at the effective date of such provision. An administrative proceeding is deemed to be pending from the date of the ''notice of proposed action'' described in § 731.303 of this part.

PART 732—NATIONAL SECURITY POSITIONS

Subpart A—Scope

Sec.
732.101 Purpose.
732.102 Definition and applicability.

Subpart B—Designation and Investigative Requirements

732.201 Sensitivity level designations and investigative requirements.
732.202 Waivers and exceptions to investigative requirements.
732.203 Periodic reinvestigation requirements.

Subpart C—Due Process and Reporting

732.301 Due process.
732.302 Reporting to OPM.

Subpart D—Security and Related Determinations

732.401 Reemployment eligibility of certain former Federal employees.

AUTHORITY: 5 U.S.C. 3301, 3302, 7312; 50 U.S.C. 403; E.O. 10450, 3 CFR, 1949–1953 Comp., p. 936.

SOURCE: 56 FR 18654, Apr. 23, 1991, unless otherwise noted.

Subpart A—Scope

§ 732.101 Purpose.

This part sets forth certain requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450—Security Requirements for Government Employment (April 27, 1953), 18 FR 2489, 3 CFR 1949–1953 Comp., p. 936, as amended.

§ 732.102 Definition and applicability.

(a) For purposes of this part, the term ''national security position'' includes: (1) Those positions that involve activities of the Government that are concerned with the protection of the nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States; and (2) positions that require regular use of, or access to, classified information. Procedures and guidance provided in FPM chapter 732 and related issuances apply.

(b) The requirements of this part apply to competitive service positions, and to Senior Executive Service positions filled by career appointment, within the Executive Branch, and agencies may apply them to excepted service positions within the Executive Branch.

Subpart B—Designation and Investigative Requirements

§ 732.201 Sensitivity level designations and investigative requirements.

(a) For purposes of this part, the head of each agency shall designate, or cause to be designated, any position within the department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position at one of three sensitivity levels: Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive.

(b) Investigative requirements for each sensitivity level are provided in FPM chapter 732.