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(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

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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.

§ 732.202 Waivers and exceptions to investigative requirements.

(a) *Waivers*—(1) *General.* A waiver of the preappointment investigative requirement contained in section 3(b) of Executive Order 10450 for employment in a sensitive national security position may be made only for a limited period: (i) In case of emergency if the head of the department or agency concerned finds that such action is necessary in the national interest; and (ii) when such finding is made a part of the records of the department or agency.

(2) *Specific waiver requirements.* (i) The preappointment investigative requirement may not be waived for appointment to positions designated Special-Sensitive under this part.

(ii) For positions designated Critical-Sensitive under this part, the records of the department or agency required by § 732.202(a)(1) of this part shall show what decision was made on obtaining prewaiver checks, as follows: (A) The nature of the emergency precluded obtaining prewaiver checks; or (B) checks were initiated but not all responses were received within 5 days; or (C) checks made and favorably completed are listed.

(iii) The waiver restriction is optional for positions designated Noncritical-Sensitive under this part.

(iv) When waiver is authorized, the required investigation must be initiated within 14 days of placement of the individual in the position.

(b) *Exceptions to investigative requirements.* (1) Pursuant to section 3(a) of E.O. 10450, the following positions are exempt from the investigative requirements of E.O. 10450, providing that the employing agency conducts such checks as it deems appropriate to insure that the employment or retention of individuals in these positions is clearly consistent with the interests of the national security:

(i) Positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments; or

(ii) Positions filled by aliens employed outside the United States.

(2) Other positions that OPM, in its discretion, deems appropriate may be made exempt based on a written request to OPM by the agency head in whose department or agency the positions are located.

§ 732.203 Periodic reinvestigation requirements.

The incumbent of each position designated Special-Sensitive or Critical-Sensitive under this part shall be subject to periodic reinvestigation of a scope prescribed by OPM 5 years after placement, and at least once each succeeding 5 years. The employing agency will use the results of such periodic reinvestigation to determine whether the continued employment of the individual in a sensitive position is clearly consistent with the interests of the national security.

Subpart C—Due Process and Reporting

§ 732.301 Due process.

When an agency makes an adjudicative decision under this part based on an OPM investigation, or when an agency, as a result of information in an OPM investigation, changes a tentative favorable placement or clearance decision to an unfavorable decision, the agency must:

(a) Insure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to assure fairness to the individual in any determination.

(b) Comply with all applicable administrative due process requirements, as provided by law, rule, or regulation.

(c) At a minimum, provide the individual concerned:

(1) Notice of the specific reason(s) for the decision; and

(2) An opportunity to respond; and

(3) Notice of appeal rights, if any.

(d) Consider all available information in reaching its final decision.

(e) Keep any record of the agency action required by OPM as published in the Federal Personnel Manual and related issuances.

§ 732.302 Reporting to OPM.

(a) In accordance with section 9(a) of E.O. 10450, each agency conducting an