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this part takes a suitability action against a person, that person may appeal the action to the Merit Systems Protection Board (hereinafter “Board”).

(b) Decisions by the Merit Systems Protection Board. (1) If the Board finds that one or more of the charges brought by OPM or an agency against the person is supported by a preponderance of the evidence, regardless of whether all specifications are sustained, it must affirm the suitability determination. The Board must consider the record as a whole and make a finding on each charge and specification in making its decision.

(2) If the Board sustains fewer than all the charges, the Board must remand the case to OPM or the agency to determine whether the suitability action taken is appropriate based on the sustained charge(s). However, the agency must hold in abeyance a decision on remand until the person has exhausted all rights to seek review of the Board’s decision, including court review.

(3) Once review is final, OPM or an agency will determine whether the action taken is appropriate based on the sustained charges and this determination will be final without any further appeal to the Board.

(c) Appeal procedures. The procedures for filing an appeal with the Board are found at part 1201 of this title.

Subpart F—Savings Provision

§ 731.601 Savings provision.

No provision of the regulations in this part is to be applied in such a way as to affect any administrative proceeding pending on June 16, 2008. An administrative proceeding is deemed to be pending from the date of the agency or OPM “notice of proposed action” described in §§ 731.302 and 731.402.

PART 732—NATIONAL SECURITY POSITIONS

Subpart A—Scope

Sec. 732.101 Purpose.

732.102 Definition and applicability.