

Treasury of the United States. In the case of testimony by former OPM employees, you must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) Certification (authentication) of copies of records. The U.S. Office of Personnel Management may certify that records are true copies in order to facilitate their use as evidence. If you seek certification, you must request certified copies from OPM at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of \$15.00 for each document certified.

(f) Waiver or reduction of fees. The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) De minimis fees. Fees will not be assessed if the total charge would be \$10.00 or less.

## Subpart D—Penalties

### § 295.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by OPM or as ordered by a Federal court after OPM has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OPM employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OPM employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 731

RIN 3206–AL38

### Suitability

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is one of a number of initiatives the U.S. Office of Personnel Management (OPM) has undertaken to simplify and streamline the system of Federal Government investigative and adjudicative processes

to make them more efficient and as equitable as possible. A key objective of these initiatives is to limit duplication of efforts by applying reciprocity where appropriate to those processes. This proposed rule would establish the requirements for applying reciprocity to Federal employment suitability determinations and investigations.

**DATES:** Comments must be received on or before August 22, 2008.

**ADDRESSES:** Send or deliver written comments to Ana A. Mazzi, Deputy Associate Director for Workforce Relations and Accountability Policy, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415; by FAX at (202) 606–2613; or by e-mail at [CWRAP@opm.gov](mailto:CWRAP@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or by e-mail at [CWRAP@opm.gov](mailto:CWRAP@opm.gov).

### SUPPLEMENTARY INFORMATION:

#### Authorities

Under statutory authorities, 5 U.S.C. 1302, 3301, and 7301; Executive Order 10577, 3 CFR, 1945–1958 Comp., p. 218, as amended; 5 CFR, parts 1, 2 and 5; and related authorities, OPM is assigned the responsibility for ensuring that employees in the competitive service and members of the career Senior Executive Service (and such other employees as may be designated by the President) are suitable for Federal employment. OPM's regulations at 5 CFR part 731 describe the policies and procedures for ensuring these responsibilities are met, including the delegation of suitability authority to departments and agencies. Thus, any proposed changes to these regulations apply only to persons who are in, or in the process of moving into, the competitive service or career Senior Executive Service.

#### Reciprocity of Background Investigations

Under OPM's current regulations at 5 CFR 731.104, a new background investigation to determine suitability of a current Federal employee in a covered position (e.g., competitive service or career SES position) is not required, except when there has been a change in the employee's public trust risk level or there is a need for reinvestigation under law, rule, or regulation. Specifically, no new investigation is required when a person has been promoted, demoted, reassigned, converted from career-conditional to career tenure, or appointed or converted to an appointment if the person has been

servicing continuously with the department or agency for at least 1 year in one or more positions subject to investigation. An investigation is also not required when a person is transferred from another department or agency, provided the person has served continuously for at least 1 year in a position subject to investigation. While the current regulation does not require a new investigation in these circumstances, departments and agencies may choose to conduct an investigation and determine a person's suitability where it is not required.

Additional suitability investigations not required by law, rule, or regulation are unnecessary and contribute to inefficiencies in the Federal Government's hiring process. Therefore, OPM is proposing to amend 5 CFR 731.104 to prohibit additional or duplicative investigations on a person, with some limited exceptions.

Under the changes contemplated, the operative rule would be that, in any case where the person previously was investigated at a level that meets or exceeds that required for the new position, was determined suitable under 5 CFR 731 or fit based on character or conduct criteria equivalent to the suitability factors of 5 CFR 731.202, and meets continuous service requirements described in the regulations, reciprocity would be required. The proposed changes would require the application of reciprocity of investigations in many cases where a person is appointed or converted to a covered position, or transfers to a covered position, after serving in another covered position. It also would require reciprocity in many cases where a person moves to a covered position from a position in the excepted service that is not a covered position under this part, or from a position as a Federal Government contract employee. In cases where an investigation of the level described had been conducted, the gaining department or agency could not, with the narrow exceptions discussed below, conduct a new investigation on that person.

A new investigation is required, however, if the reciprocity requirements described above are not met. Other circumstances when an investigation might be required occur when a department or agency obtains new information during the hiring process when a person is transferred to a covered position from another department or agency, or appointed to a covered position from Federal Government contractor employment. In those cases where the new information calls into question the person's suitability under section 731.202, an

investigation would be required. New information might be obtained, for example, from a newly-executed Declaration for Federal Employment, Optional Form 306.

Criteria based on character or conduct that are equivalent to the suitability factors under 5 CFR 731.202 would include the disqualification factors provided at 5 CFR 302.203 or similar authority regarding excepted service employees, the additional credentialing standards provided in OPM's January 18, 2008, memorandum entitled, "Interim Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12," and subsequent iterations of these factors or standards issued by OPM from time to time.

#### **Investigation Requirements for Position Risk Level Changes**

OPM proposes to remove from section 731.104, "Appointments subject to investigation," personnel actions, such as promotion, demotion and reassignments, that are not appointments. Concurrently, proposed modifications to section 731.106 would identify the investigative requirements when an employee experiences a change to higher position risk level due to promotion, demotion, or reassignment (actions that were previously described in section 731.104). In such cases, any required investigative upgrade would be initiated within 14 calendar days after an action such as a promotion is final. Section 731.106 also would be modified to reflect the relationship of position risk determinations under this part with position sensitivity determinations under 5 CFR part 732 when identifying the appropriate level of investigation needed for a particular position. As stated in section 731.106, guidance is provided in OPM issuances for agencies to use in exercising their delegated suitability authority under the regulations. Finally, a new paragraph (d) would be added to section 731.104 to provide that the investigation and reinvestigation requirements for public trust positions under section 731.106 are unaffected.

#### **Reciprocity of Suitability Determinations**

Under 5 CFR part 731, subpart B, departments and agencies are authorized to make determinations about whether a person is suitable for Federal employment. The regulation, however, does not address circumstances when a person has already been determined suitable by OPM or an agency. Like redundant investigations, unnecessary or

duplicative suitability determinations contribute to inefficiencies in the Federal Government's hiring process. Therefore, consistent with our efforts to eliminate additional and duplicative investigations, OPM is proposing to amend 5 CFR 731.202 to eliminate authority to make a new suitability determination, with some exceptions, on a person already found suitable or fit for employment based on character or conduct.

The general rule would be that if a new investigation for a person is not required under 5 CFR 731.104 or 5 CFR 731.106, as modified, an agency would not be able to make a new suitability determination for a person who has already been the subject of such a determination, with limited exceptions. An example of when reinvestigation might be required, and thus when a new suitability determination could be made, occurs when the person is promoted to a position with a higher risk level.

Another example of when a new suitability determination would be required occurs when there is information in a person's investigative record on file that shows he or she engaged in conduct that is incompatible with the core duties of the relevant covered position to which the person is applying or transferring. The information may not have established a basis to determine the person was unsuitable for the former position but would be an appropriate basis for an agency to make a new suitability determination. For example, the new position in question may be in law enforcement where conduct of a criminal nature is incompatible with core duties of the new position. In such a circumstance, even though the person had previously been determined suitable for a non-law enforcement position, the proposed reciprocity rules would not apply and the department or agency would make a new suitability determination based on the existing investigative record.

When an investigation and new suitability determination are required, the person also could be subject to a suitability action if the agency or OPM were to find him or her unsuitable. This could occur when an appointment to a covered position requiring an investigation involves a person transferring from a covered position with another agency, transferring from a non-covered excepted service position, or being appointed following service to the Federal Government as an employee of a Federal contractor. In each case, the person may meet the definition of an "applicant" or "appointee" as defined

at 5 CFR 731.101 and thus potentially subject to a suitability action. A suitability action could be taken only if the agency or OPM followed the procedures of this part and found that person unsuitable. These circumstances are described in the proposed changes to this part at section 731.104(a)(2), (3), and (4).

None of the proposed changes to this part would affect OPM's discretion to exercise its independent authority as it deems appropriate to make suitability determinations or take suitability actions.

#### **Reporting of Suitability Determinations**

In order for departments and agencies to decide whether a new investigation or suitability determination is required for a person or whether the proposed reciprocity policy applies, a repository for suitability information is needed. The Clearance Verification System (CVS) was developed by OPM and is currently maintained by OPM to provide information about investigations and security clearances for individuals. OPM is expanding the scope of CVS to include information about suitability determinations. To ensure that CVS contains the necessary information to support reciprocity of suitability determinations in the Federal Government, OPM is proposing at 5 CFR 731.206 that departments and agencies report to OPM the level and result of each investigation conducted, the suitability determination made, and any suitability action taken for any person for whom a suitability determination is required. The reporting requirements would be described in OPM issuances.

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

#### **E.O. 12866, Regulatory Review**

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### **E.O. 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**E.O. 12988—Civil Justice Reform**

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Congressional Review Act**

This action pertains to agency management, personnel and organization and does not substantially affect the rights of obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 5 CFR Part 731**

Administrative practices and procedures, Government employees. U.S. Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

Accordingly, OPM proposes to amend part 731, title 5, Code of Federal Regulations, as follows:

**PART 731—SUITABILITY**

**Subpart A—Scope**

1. The authority citation for part 731 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended, 5 CFR, parts 1, 2 and 5.

2. In § 731.104, revise paragraphs (a) introductory text and (a)(1) through (a) (4) and (b)(2) and add paragraphs (d) and (e) to read as follows:

**§ 731.104 Appointments subject to investigation.**

(a) To establish a person’s suitability for employment, appointments to covered positions identified in § 731.101 require the person to undergo an investigation by OPM or by an agency with delegated authority from OPM to conduct investigations. However, except as provided in paragraph (b)(2), an appointment will not be subject to investigation when the

person being appointed has undergone a background investigation and the appointment involves:

(1) Appointment or conversion to an appointment in a covered position if the person has been serving continuously with the agency for at least 1 year in one or more covered positions subject to investigation and has received a favorably adjudicated background investigation;

(2) Transfer to a covered position, provided the person has been serving continuously for at least 1 year in a covered position subject to investigation and has received a favorably adjudicated background investigation;

(3) Transfer or appointment from an excepted service position that is not a covered position to a covered position, provided the person has been serving continuously for at least 1 year in a position where the person has been determined fit for appointment based on criteria equivalent to the factors provided at 5 CFR 731.202; or

(4) Appointment to a covered position from a position as an employee working as a Federal Government contract employee, provided the person has been serving continuously for at least 1 year in a job where a Federal agency determined the contract employee was fit to perform work on the contract based on criteria equivalent to the factors provided at 5 CFR 731.202.

\* \* \* \* \*

(b) \* \* \*  
(2) An appointment to a covered position also will be subject to investigation when:

(i) The covered position requires a higher level of investigation than previously conducted for the person being appointed; or

(ii) An agency obtains new information in connection with the person’s appointment that calls into question the person’s suitability under § 731.202;

\* \* \* \* \*

(d) Investigation and reinvestigation requirements under § 731.106 for public trust positions are not affected by this section.

(e) For purposes of this section, “criteria equivalent to the factors provided at 5 CFR 731.202” are criteria that provide adequate assurance that the person to be appointed, converted to an appointment, or transferred is suitable to be employed in a covered position, as determined by OPM, in issuances under this regulation. A decision by OPM, or by an agency applying guidance from OPM, that a prior fitness determination was not based on criteria equivalent to the factors provided at 5 CFR 731.202,

and that a new investigation or adjudication is necessary is not subject to review under section 731.501 of this part.

3. In § 731.106, revise paragraphs (c)(2) and (e) to read as follows:

**§ 731.106 Designation of public trust positions and investigative requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(2) All positions subject to investigation under this part must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, when appropriate. This designation is complementary to the risk designation, and may have an effect on the position’s investigative requirement. Sections 732.201 and 732.202 of this chapter detail the various sensitivity levels and investigation types. Procedures for determining investigative requirements for all positions based upon risk and sensitivity will be published in OPM issuances, as described in §§ 731.102(c) and 732.201(b).

\* \* \* \* \*

(e) *Risk level changes.* If an employee experiences a change to a higher position risk level due to promotion, demotion, or reassignment, or the risk level of the employee’s position is changed to a higher level, the employee may remain in or encumber the position. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the promotion, demotion, reassignment or new designation of risk level is final.

\* \* \* \* \*

**Subpart B—Suitability Determinations**

4. In § 731.202, add a new paragraph (d) to read as follows:

**§ 731.202 Criteria.**

\* \* \* \* \*

(d) *Reciprocity.* An agency cannot make a new determination under this section for a person who has already been determined suitable or fit based on character or conduct unless a new investigation is required under § 731.104 or § 731.106, or no new investigation is required but the investigative record on file for the person shows conduct that is incompatible with the core duties of the relevant covered position.

5. Add a new § 731.206 to read as follows:

**§ 731.206 Reporting requirements.**

Agencies must report to OPM the level and result of each background

investigation, suitability determination, and suitability action taken under this part, as required in OPM issuances.

[FR Doc. E8-13990 Filed 6-20-08; 8:45 am]

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## FARM CREDIT ADMINISTRATION

### 12 CFR Chapter VI

RIN 3052-AC39

#### Statement on Regulatory Burden

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of intent; request for comment.

**SUMMARY:** The Farm Credit Administration (FCA, our, or we) is issuing a notice of regulatory review and request for comment. The FCA will review its regulations to consider whether existing regulations are inefficient or burdensome. The FCA is seeking public comment on the appropriateness of the requirements it imposes on the Farm Credit System (System). We ask for comments on our regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. We are taking this action to improve the regulatory framework within which System institutions operate.

**DATES:** Please send your comments to the FCA by August 22, 2008.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site or the Federal eRulemaking Web site. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- *FCA Web Site:* <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.
- *Fax:* (703) 883-4477. Posting and processing of faxes may be delayed.

Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:** Jacqui Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4268, TTY (703) 883-4434, or Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

#### SUPPLEMENTARY INFORMATION:

##### I. Objective

The objective of this notice is to continue our comprehensive review of regulations governing the System and to eliminate, consistent with law, safety, and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on the law. We are requesting public comment to identify FCA regulations that:

- May duplicate other requirements;
- Are ineffective; or
- Impose burdens that are greater than the benefits received.

To accomplish our objective, we are targeting particular regulations for a more focused and in-depth review.

##### II. Background

The FCA is the independent Federal agency in the executive branch of the Government responsible for examining and regulating System institutions. As a Government-sponsored enterprise, the System primarily provides loans to farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities.

##### III. Regulations Under Review

The regulations of FCA that are subject to regulatory review described in this notice are codified in title 12, chapter VI, of the Code of Federal Regulations. In our previous notices, we asked the public to comment on all of our regulations, and we were able to

accomplish our objective of reducing regulatory burden. In this notice, we would like the public to comment specifically on these targeted regulations:

- (1) Part 607—Assessment and Apportionment of Administrative Expenses;
- (2) Part 614—Loan Policies and Operations;
- (3) Part 616—Leasing;
- (4) Part 617—Borrower Rights;
- (5) Part 618—General Provisions; and
- (6) Part 626—Nondiscrimination in Lending.

#### IV. Requesting Comments

Your comments are appreciated and will assist us in our continuing efforts to identify and reduce regulatory burden on System institutions. We will also continue our efforts to maintain and adopt regulations and policies that are necessary to implement the Farm Credit Act of 1971, as amended, and ensure the safety and soundness of the System. These actions will enable the System to better serve America's farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities in changing agricultural credit markets.

Dated: June 17, 2008.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E8-14101 Filed 6-20-08; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0685; Directorate Identifier 2008-CE-037-AD]

RIN 2120-AA64

#### Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 42 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: