

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 731

RIN 3206-AO84

#### Suitability and Fitness

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing amendments to the Federal Government personnel vetting adjudicative processes for determining suitability and taking suitability actions. The purpose of the proposed rule is to improve the efficiency, rigor and timeliness by which OPM and agencies vet individuals for risk to the integrity and efficiency of the service, and to make clear that individuals who engage in serious misconduct while employed in Federal service are subject to the same suitability procedures and actions as applicants for employment.

**DATES:** Comments must be received on or before July 3, 2025.

**ADDRESSES:** You may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN).

Where possible, please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. Comments received after the close of the comment period will be marked “late,” and OPM is not required to consider them in formulating a final decision. If you cannot submit comments electronically, please contact the individual listed in the further information section.

The general policy for comments and other submissions from members of the public is to make these submissions

available for public viewing at <https://www.regulations.gov> without change, including any personal identifiers or contact information.

As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions contact Joseph Knouff, Suitability Executive Agent Programs, by email at [SuitEA@opm.gov](mailto:SuitEA@opm.gov) or by phone at (202) 599-0090.

#### SUPPLEMENTARY INFORMATION:

##### Authority and Background

Congress has long granted the President authority to ensure that those employed in the competitive service are suitable for Federal employment. In 1871, Congress authorized the President to “prescribe such regulations for the admission of persons into the civil service . . . as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to . . . character”; appoint individuals to investigate applicants’ suitability for Federal employment; and “establish regulations for the conduct of [employees] in the civil service.” 1 Rev. Stat. 313, § 1753 (1875) (enacted Mar. 3, 1871). Today, 5 U.S.C. 3301 and 7301 provide similarly that “[t]he President may . . . prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service,” “ascertain the fitness of applicants as to . . . character,” and “prescribe regulations for the conduct of employees in the executive branch.”

Historically the President delegated to OPM and its predecessor, the Civil Service Commission, the authority to prescribe both qualification standards and suitability standards, and to conduct both examinations of applicants’ qualifications and investigations of suitability for appointment and continuing employment. See 5 U.S.C. 1104(a)(1). The President charged OPM with, among other duties: (1) “establish[ing] standards with respect to . . . suitability . . . which applicants must meet to be admitted to or rated in examinations”; (2) “[i]nvestigating. . . the suitability . . . of applicants for positions in the competitive service”; (3) “requir[ing] appointments to be made subject to investigation to enable

the [Director] to determine, after appointment, that the requirements of law or the Civil Service Rules and Regulations have been met”; and (4) instructing an agency “to remove” an employee found to be “disqualified for Federal employment.” E.O. 10577 (Nov. 22, 1954) (codified, in relevant part, as amended, at 5 CFR 2.1(a), 5.2(a), 5.3(a)(1), 5.3(b)); *see also* 5 U.S.C. 1103(a)(5) (the Director’s responsibility for “executing, administering, and enforcing” these Civil Service Rules); 5 U.S.C. 1104(a)(1) (the President’s authority to “delegate, in whole or in part, [his] personnel management functions” to OPM); 5 U.S.C. 3302 (the President’s authority to “prescribe rules governing the competitive service”).

Part 731 of title 5, Code of Federal Regulations, establishes and maintains OPM’s policies and procedures governing suitability and fitness investigations and adjudications, including the procedures for taking suitability actions and the general process for appealing a suitability action. Suitability and fitness determinations examine “character or conduct that may have an adverse impact on the integrity or efficiency of the service,” such as criminal or dishonest conduct, and deception or fraud in examination or appointment. 5 CFR 731.101, 731.201, 731.202. If the suitability determination is unfavorable, the adjudicator must then determine what “suitability action” is appropriate. See § 731.203(a). OPM’s regulations define a “suitability action” to include “[c]ancellation of eligibility,” “[r]emoval,” “[c]ancellation of reinstatement eligibility,” and “[d]ebarment.” See § 731.101(a). OPM may also be subject to these regulations in the capacity of an agency.

The objective of the suitability and fitness adjudicator is to establish a reasonable expectation that employment or continued employment of an individual either would or would not protect the integrity and promote the efficiency of the service. When there is a reasonable expectation employment would not do so, the individual should be found unsuitable or unfit. This expectation is established when an adverse nexus or connection can be shown between the character or conduct in question and the integrity of the service or the individual’s capacity and

fitness for employment or continued employment.

These interests and objectives apply equally to applicants for employment and current Federal employees, regardless of the employment status as an “appointee” or “employee” as those terms are defined in § 731.101. Current Federal employees, no less than applicants, must remain suitable for Federal employment. Employees who engage in serious misconduct while in the Federal service are equally as unsuitable for Federal employment as applicants who engaged in serious misconduct before applying for Federal employment.

The statutory authorities that allow the President and, by presidential delegation, OPM to take suitability actions apply to employees, not just job applicants. See 5 U.S.C. 7301 (“The President may prescribe regulations for the conduct of employees in the executive branch.”). Consistent with this broad grant of statutory authority, it has long been Presidential and executive branch policy to assess post-appointment conduct to determine an individual’s ongoing suitability or fitness to remain in their position.

OPM regulations have long applied suitability criteria to both Federal employees and applicants. Under part 731 and implementing guidance, OPM has required agencies to make suitability determinations based on post-appointment conduct. OPM has established in its regulations that “OPM may take a suitability action under this part against an employee” of an agency and direct that agency to remove the employee based on the suitability factors set forth in 5 CFR part 731, subpart B. These factors are as follows: material, intentional false statement, deception, or fraud, in examination or appointment; a statutory or regulatory bar that prevents the individual’s lawful employment; and/or, knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by illegal or unconstitutional means. 5 CFR 731.203(e). Another factor, refusal to furnish testimony as required by 5 CFR 5.4, was a basis for OPM to take a suitability action against an employee and was in place from 1996 until January 2025, when OPM removed this factor from the suitability factors. See 61 FR 394 (Jan. 5, 1996) and 89 FR 102675 (Dec. 18, 2024). OPM regulations have further allowed OPM to consider “[t]he nature of the position for which the person is applying or in which the person is employed” in applying the suitability criteria, making clear that suitability actions might apply to

incumbent employees, whether in an appointee or employee status as defined in 5 CFR 731.101, as well as applicants. 5 CFR 731.202(c).

Successive presidential administrations have similarly emphasized that suitability determinations apply not only to applicants and appointees to competitive service or career SES positions but also to employees in such positions, for the purpose of assessing whether incumbent employees remain suitable for Federal employment. It has accordingly long been Presidential and executive branch policy to assess employees’ post-appointment conduct to determine their ongoing suitability to remain in their positions, and OPM has, under part 731 and implementing guidance, required agencies to make suitability determinations based on post-appointment conduct. See, e.g., 76 FR 69601 (Nov. 9, 2011) and 89 FR 102675 (Dec. 18, 2024) (discussing 5 CFR 731.106(d)).

E.O. 13488, *Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust*, (74 FR 4111) issued in relevant part under 5 U.S.C. 7301, established a uniform, Government-wide requirement for public trust suitability reinvestigations to ensure persons in public trust positions remain suitable for continued employment.

In January 2017, E.O. 13764 amended the Civil Service Rules, E.O. 13488, and E.O. 13467 (82 FR 8115), and established continuous vetting for all positions subject to personnel vetting, including positions subject to OPM’s suitability regulations. Continuous vetting refers to the process of “reviewing the background of a covered individual at any time to determine whether that individual continues to meet applicable requirements.” Sec. 1.3, E.O. 13467, as amended by E.O. 13764. A “covered individual” is “a person who performs, or who seeks to perform, work for or on behalf of the executive branch.” *Id.* In the context of suitability for employment, continuous vetting is used to determine if an individual remains suitable for a position over time.

E.O. 13764 also amended the Civil Service Rules at 5 CFR 5.2(a) to permit the OPM Director to require appointments be made subject to investigation so that the OPM Director can determine, post-appointment, that Civil Service Rules and regulations have been met. E.O. 13764 clarified Civil Service Rule 5.3 to specify that the OPM Director could instruct an agency to remove an employee when the Director

finds that the employee is unsuitable. 5 CFR 5.3(a)(1).

In May 2018, the OPM Director and the Director of National Intelligence, in their respective roles as Suitability and Credentialing Executive Agent and Security Executive Agent, launched the “Trusted Workforce 2.0” initiative to transform workforce vetting by employing a modernized and more efficient process for ensuring that only trusted individuals enter and remain in the Federal workforce. A key goal of the initiative is to provide vetting processes that enable each individual’s vetting status to be continuously up to date. Since its launch, the initiative has enabled the enrollment into continuous vetting of more than 4 million individuals serving the Government in national security sensitive positions, including sensitive competitive service and career SES positions, and enrollment is underway for those serving in nonsensitive public trust positions with a targeted completion date by the end of fiscal year 2025.

OPM has established in its regulations that OPM itself may take a suitability action against an employee in the competitive service or the career Senior Executive Service and direct the employing agency to remove the employee, based on a narrow set of its suitability factors in 5 CFR part 731, subpart B. OPM regularly takes suitability actions against such employees based on material, intentional false statement or deception, or fraud, in examination or appointment. OPM has not redelegated to agencies the authority to take suitability actions against employees, even when the conduct occurred prior to employment. OPM requires agencies to refer to OPM cases where there has been evidence of such conduct and should OPM decide to take a suitability action, OPM directs the agency to remove the employee. OPM also requires agencies to refer cases involving knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force.

Although OPM has required agencies to make suitability *determinations* regarding employees based on post-appointment conduct, OPM has not permitted agencies to take suitability *actions* when the determination is unfavorable. Further, since the Merit Systems Protection Board’s (MSPB) decision in *Scott v. OPM* in 2011 (116 M.S.P.R. 356 (2011), modified by 117 M.S.P.R. 467 (2012)), which held that suitability actions cannot be taken for post-appointment conduct, OPM has not itself taken suitability actions regarding

employees, regardless of employment status as an “appointee” or “employee” per 5 CFR 731.101, for post-appointment conduct. OPM has recognized, however, in its regulations, that an agency may employ other authorities available to the agency when an employee’s post-appointment conduct renders them unsuitable for continued employment in the position, such as Chapter 75 actions. Agencies have reported frustration with not being able to take the next logical step, a suitability action, after finding an employee unsuitable for continued employment.

After *Scott*, Congress specifically legislated that agencies need not proceed through Chapter 75 procedures when taking suitability actions. OPM’s regulations have long defined a “suitability action” to include “[c]ancellation of eligibility,” “[r]emoval,” “[c]ancellation of reinstatement eligibility,” and “[d]ebarment.” 5 CFR 731.203. In 2015, Congress amended 5 U.S.C. 7512 to exclude “a suitability action taken by [OPM] under regulations prescribed by [OPM], subject to the rules prescribed by the President under this title for the administration of the competitive service” from the scope of actions subject to Chapter 75 procedures. 5 U.S.C. 7512(F); *see also* Public Law 114–92, Div. A, Title X, § 1086(f)(9), Nov. 25, 2015, 129 Stat. 1010. This legislation overruled a Federal Circuit case (*Archuleta v. Hopper*, 786 F.3d 1340 (Fed. Cir. 2015)) that held that suitability-based removals were in fact subject to Chapter 75 procedures.

In *Hopper*, OPM argued that suitability-based removals derived from a separate statutory authority than Chapter 75 removals—that is, the presidential authority to regulate employee conduct implies authority to remove employees who violate those regulations, and the President had delegated that authority to OPM. *Hopper*, 786 F.3d at 1348–49. The Federal Circuit in *Hopper* rejected OPM’s position. *Id.* But Congress, in adding 5 U.S.C. 7512(F), repudiated *Hopper* and excluded “a suitability action taken by [OPM] under regulations prescribed by [OPM], subject to the rules prescribed by the President under this title for the administration of the competitive service” from the scope of Chapter 75. Congress thus expressly recognized the validity of suitability-based removals from the Federal service, and that this authority is separate and distinct from Chapter 75 removal authority.

In addition to congressional action, presidential actions since *Scott* have

further established OPM’s authority to take suitability actions for post-appointment conduct against appointees and employees in competitive and career SES positions, although OPM has not done so. Notably, in *Scott*, a key element of the Board’s rationale for deciding OPM could not take suitability actions for post-appointment conduct was that while “it may be that the President could, pursuant to 5 U.S.C. 7301, issue an Executive Order authorizing OPM to make suitability determinations and take or direct suitability actions based on post-admission or postappointment conduct . . . , the President has not issued such an order.”

President Trump has now issued such an order, in the Presidential Memorandum *Strengthening the Suitability and Fitness of the Federal Workforce*, issued March 20, 2025 (“the Presidential Memorandum”). 90 FR 13683 (Mar. 25, 2025). President Trump further directed that the OPM Director “propose regulations, consistent with applicable law, amending Part 731 of title 5, Code of Federal Regulations, to account for the delegation” and “to implement appropriate rules and procedures regarding suitability determinations and suitability actions based on post-appointment conduct.”

Despite the clear intent from both Congress and the President—stretching over decades now—that agencies should not rely on Chapter 75 procedures to address post-appointment conduct covered by the factors described in 5 CFR 731.202(b), today agencies still largely must rely on Chapter 75 procedures to remove employees who engage in serious misconduct. This means that, illogically, the government has far greater ability to bar someone from Federal employment who has committed a serious crime or misconduct in the past than it does to remove someone who *engages in the exact same behavior as a Federal employee*. This arbitrary state of affairs seriously impairs the efficiency, effectiveness, and public perception of the Federal service.

OPM therefore is proposing to conform its regulations to meet the requirements of the Presidential Memorandum and rectify this irrational gap in the part 731 regulations. Specifically, the rule will satisfy the President’s direction in the Presidential Memorandum to “propose regulations, consistent with applicable law, amending Part 731 of title 5, Code of Federal Regulations, to account for the delegation” and “to implement appropriate rules and procedures regarding suitability determinations and

suitability actions based on post-appointment conduct.” It also ensures that implementation of continuous vetting as required by E.O. 13467, as amended, as part of the Trusted Workforce 2.0 initiative noted above, is done in an efficient and effective manner. Under this proposed rule, when continuous vetting uncovers information that results in a determination that an individual employed in the competitive service or career Senior Executive Service is no longer suitable for service, the situation can be remedied by the next logical step: a suitability action.

This rulemaking will also implement Sec. 3(d) of E.O. 14210 of February 11, 2025, *Implementing the President’s “Department of Government Efficiency” Workforce Optimization Initiative*, which specifies several additional suitability criteria. 90 FR 9669 (Feb. 11, 2025). E.O. 14210 directed the OPM Director to initiate a rulemaking that would include four additional suitability criteria: “failure to comply with generally applicable legal obligations, including timely filing of tax returns”; “failure to comply with any provision that would preclude regular Federal service, including citizenship requirements”; “refusal to certify compliance with any applicable nondisclosure obligations, consistent with 5 U.S.C. 2302(b)(13), and failure to adhere to those compliance obligations in the course of Federal employment”; and “theft or misuse of Government resources and equipment, or negligent loss of material Government resources and equipment.” When these criteria are incorporated into the factors listed at 731.202(b), OPM and agencies must still base suitability determinations on the presence or absence of one or more of the specific factors in 5 CFR 731.202(b) while considering the additional considerations in § 731.202(c) to the extent they are deemed pertinent. The application of the additional considerations ensures suitability determinations are made case-by-case based upon the nature of the conduct, and its potential impact on the individual’s ability to protect the integrity or promote the efficiency of the Federal service.

### Significant Changes Proposed by This Rule

#### *Suitability Actions on Employees for Post-Appointment Conduct*

OPM is proposing to establish in regulation its authority to take suitability actions against competitive service and career Senior Executive Service appointees and employees

based on post-appointment conduct related to any of the suitability factors in 5 CFR 731.202. This proposal reflects the President's explicit delegation of authority in the Presidential Memorandum to OPM to make final suitability determinations and take suitability actions against employees based on post-appointment conduct. As noted in the Authority and Background section above, it has been the policy of at least the last five Administrations that individuals undergo investigation, evaluation, and adjudication of whether they are, and remain over time, suitable or fit for Federal employment. To that end, the Government's vetting process includes steps to ensure that individuals continue to meet the applicable standards for the position for which they were favorably adjudicated. Consistent with the President's delegation of authority, OPM proposes to require that employing agencies make referrals to OPM in order for the Director to make final suitability determinations and take suitability actions on employees for post-appointment conduct that would merit a suitability action based on any of the factors in 5 CFR 731.202.

These proposed regulations would expand OPM's existing authority to take suitability actions against employees for conduct falling under specific suitability criteria in 5 CFR 731.203(e) so that OPM may take suitability actions against employees for any of the suitability factors in 5 CFR 731.202. Because employees who engage in serious misconduct while in the Federal service should not remain in Federal service, OPM should not limit its ability to take action to a limited subset of factors. Further, Presidential policy over the last few decades has increasingly emphasized the importance of evaluating conduct on an ongoing basis, as evidenced for example by the Presidential mandate to implement continuous vetting, and agencies now have more information and insight into the risk that current employee conduct poses to the efficiency of the service. Therefore, OPM believes that the same set of suitability factors should be evaluated when considering removal of an employee as considered when evaluating an applicant for appointment.

#### *Suitability Factors*

OPM proposes changes to amend the specific factors that must be used by OPM or an agency when making suitability determinations and taking suitability actions. These specific factors are also the minimum standards of fitness used by agencies when making

fitness determinations for excepted service appointments and ongoing employment. OPM proposes to incorporate additional criteria as directed by the President in E.O. 14210 of February 11, 2025, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative*, 90 FR 9669. Two of these criteria—theft, misuse, or negligent loss of government resources and equipment, and refusal to certify compliance with, and/or adhere to, applicable non-disclosure obligations—are examples of misconduct or negligence in employment, a current suitability factor. OPM therefore is proposing to add these criteria as examples that fall under OPM's existing factor at 5 CFR 731.202(b)(1)

OPM is also proposing to add a third example of employment misconduct under this factor, specifically, refusal to furnish testimony as required by 5 CFR 5.4. This proposed factor was a long-standing suitability factor that was removed in the 2024 final rule (89 FR 102675). OPM removed this factor in the 2024 final rule because it was rarely, if ever used; however, OPM now proposes to restore it as OPM intends to take suitability actions on appointees and employees for post-appointment conduct, consistent with the Presidential delegation. OPM proposes incorporating the other two factors specified in E.O. 14210, namely, failure to comply with legal obligations and failure to comply with provisions that would preclude Federal service, including citizenship requirements, into its list of suitability factors.

#### *Suitability Action Procedures*

OPM is proposing changes to procedures OPM follows to take a suitability action against an applicant, appointee, or employee. OPM is also proposing changes to suitability action procedures when an agency, acting under delegated authority from OPM, takes a suitability action against an applicant or appointee. OPM's purpose in proposing these changes is to provide for procedures for taking post-appointment conduct suitability actions against employees, to include establishing requirements for maintaining independence between proposing officials and final decisionmakers.

#### *Section-by-Section Analysis*

##### *Authorities*

OPM is proposing to add E.O. 14210, 90 FR 9669; and the Presidential Memorandum, 90 FR 13683 (Mar. 25,

2025) to the list of authorities for part 731.

#### **Part 731**

##### *Section 731.101 Purpose*

OPM is proposing a minor edit to remove the word "covered" from the definition of "core duty" for clarity and to align with changes to the regulatory text throughout part 731 in the final rule at 89 FR 102,675.

##### *Section 731.103 Delegation to Agencies for the Competitive Service and Career Senior Executive Service*

OPM is proposing edits to § 731.103(a) and (b) to clarify the delegation to agencies for making suitability determinations and taking suitability actions to specify that, in the case of an employee, the head of an agency is delegated authority to review whether an unfavorable suitability determination may be warranted but is not delegated authority to make a final suitability determination or take a suitability action.

OPM is proposing to edit § 731.103(f) to remove a reference to 5 CFR part 315, as E.O. 14284 directed removal of the procedures for terminating a probationer.

OPM also proposes to clarify that OPM retains sole jurisdiction for making final suitability determinations and taking suitability actions in any case involving an employee for post-appointment conduct. OPM also proposes clarifying that an agency must refer to OPM cases where a government-wide debarment of an individual by OPM may be an appropriate action, whether the individual is an applicant, appointee, or employee.

##### *Section 731.104 Investigation and Reciprocity Requirements*

OPM is proposing a minor edit to remove the word "covered" from the definition of "core duty" for clarity and to align with changes to the regulatory text throughout part 731 in the final rule at 89 FR 102,675.

##### *Section 731.105 Authority To Take Suitability Actions in Cases Involving the Competitive Service or Career Senior Executive Service*

Section 731.105 describes the authority of OPM and agencies to take suitability actions against applicants, appointees, and employees involving the competitive service or career Senior Executive Service.

Paragraph (a) of § 731.105 broadly describes the authority of OPM or an agency (acting under delegated authority) to take a suitability action with respect to an applicant or an

appointee. OPM proposes clarifying that an agency and OPM have authority to take an action against an individual in appointee status based on conduct occurring prior to the appointment or occurring post-appointment. In § 731.105(a)(1), OPM proposes a minor edit to revise “an individual appointed” to “appointee.”

Paragraph (b) addresses situations in which OPM may take a suitability action against an applicant or an appointee. OPM proposes to take suitability actions against appointees on the basis of post-appointment conduct, as appropriate, when an agency has referred the matter to OPM for action.

Paragraph (c) addresses when an agency (acting under delegated authority) may take a suitability action against an applicant or an appointee. OPM is not proposing changes to this paragraph.

Paragraph (d) addresses situations in which OPM may take a suitability action against an employee. Only OPM has this authority. Historically, OPM has not taken suitability actions against employees except for certain factors and then only on the basis of conduct that occurred prior to the individual achieving “employee” status. OPM proposes to expand the criteria for which OPM may take a suitability action on employees to include any of the criteria in 731.202. OPM also proposes to make final suitability determinations and take suitability actions against employees on the basis of post-appointment conduct, as appropriate, when an agency has referred the matter to OPM for action, consistent with the President’s direction in the Presidential Memorandum.

Paragraph (e) currently specifies that an agency may not take a suitability action against an employee. OPM proposes to add that an agency must make a referral to OPM to take a suitability action when the agency has information that an employee’s conduct warrants an unfavorable suitability determination. OPM proposes to move part of the existing paragraph (e) to a new paragraph (f) to address other actions available to agencies. OPM also proposes to replace a reference to 5 CFR part 315 with 5 CFR part 11, as directed by E.O. 14284.

#### Section 731.106 Designation of Public Trust Positions and Investigative Requirements

OPM proposes to revise paragraph § 731.106(d)(1) to specify that, when an agency determines that a suitability action against an employee in the competitive service or career Senior Executive Service may be appropriate

based on the results of continuous vetting, the agency must refer the matter to OPM, since only OPM may take a suitability action on an employee. OPM proposes to revise § 731.106(f), to clarify that determinations made as a result of completed investigations may justify actions by an agency under part 731 or under another applicable authority. OPM also proposes to remove a reference to 5 CFR part 315, as E.O. 14284 directed removal of the procedures for terminating a probationer.

#### Subpart B—Determinations of Suitability or Fitness; Suitability Actions in Cases Involving the Competitive Service or Career Senior Executive Service

OPM proposes changes to this subpart to amend the specific factors for making suitability determinations and to expand OPM’s authority to take a suitability action against an employee so that the action may be based on any of the factors. As discussed in the section “Suitability Actions on Employees for Post-Appointment Conduct,” for over 30 years across multiple administrations, it has been the express policy of each President to ensure that employees remain suitable or fit for Federal employment; however, the suitability regulations limited the ability of OPM to take suitability actions against employees by restricting the factors OPM could use to take a suitability action. These proposed changes would further align OPM’s regulations with this long-standing Executive policy.

#### Section 731.202 Criteria for Making Suitability and Fitness Determinations

OPM proposes changes to the suitability factors at § 731.202(b), as follows:

- Add examples to the factor *misconduct or negligence in employment* that may be committed by current or former employees—specifically, theft or misuse of government resources and equipment or negligent loss of government resources and equipment; refusal to certify compliance with, and/or adhere to, applicable non-disclosure obligations; and refusal to furnish testimony as required by 5 CFR 5.4.

- Add specific factors regarding failure to comply with legal obligations and failure to comply with provisions that would preclude Federal service, including citizenship requirements.

- Remove the words “applicant or appointee” from the factor on excessive use of alcohol, without evidence of rehabilitation, to clarify to agencies that this factor may be applied to all

individuals regardless of employment status.

- Renumber the factors in accordance with the proposed changes.

OPM proposes to add a new § 731.202(d) to codify existing training requirements for all persons responsible for suitability screening, review, or making suitability determinations to be trained in accordance with national training standards for suitability adjudicators.

#### Section 731.203 Suitability Actions by OPM and Other Agencies for the Competitive Service or Career Senior Executive Service

OPM proposes to amend § 731.203(e) to clarify that when OPM takes a suitability action pursuant to its authority, it may require the employing agency to execute the action.

OPM proposes to edit § 731.203(g) to replace references to 5 CFR part 315 with 5 CFR part 11 consistent with E.O. 14284.

OPM proposes to amend § 731.203(f) to clarify that OPM may cancel reinstatement eligibility based on any of the criteria of § 731.202.

#### Section 731.206 Reporting Requirements for Investigations and Suitability and Fitness Determinations

OPM proposes to amend § 731.206 to clarify that suitability actions are included in the types of personnel actions to be recorded in the Central Verification System or its successor.

#### Subpart C—OPM Suitability Action Procedures for the Competitive Service or Career Senior Executive Service

OPM proposes changes to this subpart to amend suitability action procedures when OPM takes a suitability action against an applicant, appointee, or employee. Subpart C only applies to applicants to, and appointees or employees in, the competitive service or career Senior Executive Service.

#### Section 731.301 Scope

OPM proposes changes to the text to specify that OPM may initiate suitability actions against an applicant, appointee, or employee depending on the nature and timing of the conduct, but OPM requires that the head of an appointee’s or employee’s employing agency, or designee, must make a referral to OPM in order for the Director of OPM, or designee, to take a suitability action against an appointee or employee on the basis of post-appointment conduct.

#### Section 731.304 Decision

OPM proposes to amend the process by which a final decision on a

suitability action is made by OPM. OPM proposes to clarify that the OPM Director, or designee, will make the final decision regarding a suitability action. When the OPM Director delegates such decision-making, the OPM employee authorized to make the decision would be required to be appropriately independent from the employee who made the suitability determination and proposed the action. For example, the employee adjudicating the suitability determination (*i.e.*, proposing a suitability action) may not participate in discussions with or advise the OPM official authorized to make the final suitability decision. OPM also proposes to prohibit ex parte communication with the OPM official authorized to make the final decision, applying procedural protections akin to those provided by 5 U.S.C. 554(d). Although 5 U.S.C. 554 and 557 do not apply to suitability actions, OPM believes that the type of legal protections provided by those procedures are appropriate for suitability actions, given the potential significant consequences. Section 731.304 also specifies that, if the OPM Director or designee determines to take a suitability action, OPM will direct the agency to remove the individual or to process a different suitability action. Consistent with current regulations, if a suitability action requires removal, OPM specifies that the employing agency must remove the employee within five workdays of receipt of OPM's decision.

**Subpart D—Agency Suitability Action Procedures for the Competitive Service or Senior Executive Service**

**731.404 Decision**

OPM proposes to amend the process by which a final decision on a suitability action is made by an agency, in cases where agencies are permitted to take suitability actions. OPM proposes that the agency head, or designee, will make the final decision regarding a suitability action. When the agency head delegates such decision-making, the agency's employee authorized to make the decision would be required to be appropriately independent from the employee who proposed the action. OPM also proposes to prohibit ex parte communication with the agency's official authorized to make the final decision, applying procedural protections akin to those provided by 5 U.S.C. 554(d). Although 5 U.S.C. 554 and 557 do not apply to suitability actions, OPM believes that similar legal protections are appropriate for suitability actions, given the potential significant consequences.

**Expected Impact of This Proposed Rule**

*1. Statement of Need*

This rule is needed to improve the efficiency, rigor, and timeliness by which OPM and agencies vet individuals for risk to the integrity and efficiency of the service. Permitting OPM to take suitability actions against employees for post-appointment conduct, consistent with the President's direction, will allow for faster removals by the agencies of those employees against whom OPM takes suitability actions, as the suitability actions process is more streamlined for the agencies than the Chapter 75 process. Importantly, more streamlined removals by the agencies of such employees will reduce the risk to the efficiency and integrity of the service that is currently posed when employees found to be unsuitable remain in their positions longer than necessary because Chapter 75 processes take longer than the suitability action process. Moreover, offering agencies a more streamlined process to remove employees found unsuitable will encourage agencies and managers to act, rather than choosing not to act because the Chapter 75 process is perceived as too difficult. Surveys show that only two-fifths of Federal supervisors believe they could remove an employee for serious misconduct.<sup>1</sup> Allowing employees who engage in gross—and at times criminal—misconduct to remain in their positions undermines the integrity of the Federal service.

On balance, these changes are expected to reduce time and costs while promoting an impartial and effective suitability process that produces sound decisions. The suitability factors that are being introduced by this rulemaking are needed to emphasize that individuals serving for, or on behalf of, the Government are expected to comply with legal and ethical obligations. Specifying these factors in the regulations will provide greater clarity to agencies as well as to applicants and employees as to the types of conduct by which an individual may be found unsuitable.

*2. Impact*

Applicants, appointees, and employees in the competitive service, in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and in the career Senior Executive Service would be impacted by the changes proposed in this rule permitting OPM to take suitability actions for post

appointment conduct on these positions, revising suitability action procedures, and incorporating additional suitability criteria used in making suitability determinations and taking suitability actions. Applicants, appointees, and employees in the excepted service would be impacted by changes incorporating new factors at § 731.202(b) as these factors are required to be used as the minimum standards of fitness for excepted service positions. Contractors and nonappropriated fund employees would also be impacted by the updated factors, as agencies must exercise due regard to the minimum fitness standards in 5 CFR part 731 and supplemental guidance for these populations as well.

OPM would also be impacted by the proposed changes as the rule would increase the number of suitability actions OPM would be required to conduct. OPM anticipates the impact to MSPB to be neutral. Any removal action on an employee for post-appointment conduct currently processed under Chapter 75 that results in an appeal to MSPB and might be processed instead as a suitability action will still likely result in an appeal to MSPB. OPM assumes an individual willing to appeal a Chapter 75 action to MSPB would be equally willing to appeal a suitability action to MSPB.

*3. Costs*

**One-time Implementation Cost:** This proposed rule will affect the operations of most Federal agencies in the Executive branch—ranging from cabinet-level departments to small independent agencies. To comply with the regulatory changes in this proposed rule, affected agencies will need to review the rule and update their policies and procedures. For this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2025 for GS-14, step 5, from the Washington, DC, locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$154.76 per hour. We estimate that, in the first year following publication of the final rule, the effort to update policies and procedures will require an average of 250 hours of work by employees with an average hourly cost of \$154.76. This effort would result in estimated costs in the first year of implementation of about \$38,690 per agency, and about \$3.1 million in total Government-wide.

<sup>1</sup> See, *supra*, footnote 2.

**Savings from Fewer Chapter 75 Removals:** In permitting OPM to take suitability actions for post-appointment conduct, OPM anticipates a decreased level of effort for agencies as they will refer employee cases to OPM for action procedures rather than pursue Chapter 75 removals. In fiscal years 2022 and 2023, an average of 2,452 Federal employees were removed under Chapter 75, or Chapter 75 equivalent, procedures for post-appointment misconduct.<sup>2</sup> OPM estimates that approximately 50 percent, or 1226, of these Chapter 75, or Chapter 75 equivalent, removal actions presently taken by agencies could be referred to OPM for suitability actions instead. The average number of collective hours for supervisory and HR personnel to take a Chapter 75 action is 600 hours. The cost analysis assumes an average salary rate of Federal supervisors and senior HR personnel performing this work at the 2025 rate for a GS-15, step 5, from the Washington, DC, locality pay table (\$189,950 annual locality rate and \$91.02 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$182.04. While a portion of the 600 hours would still fall to the agency to establish a fulsome referral to OPM for a suitability action, OPM anticipates that referring the matter to OPM for a suitability action would relieve the agencies of at least thirty percent of the work involved in taking a Chapter 75 action, prior to appeals. This implies total savings of \$32,767 per case and a total annual savings of \$40.2 million.

**Cost Increase to Handle Agency Post-Appointment Conduct Referrals:** OPM would likely need to increase the number of resources to handle the new workload from agencies' referrals for suitability determinations and actions on employees based on post-appointment conduct. Even if some agency referrals for determinations and actions on employees for post-appointment conduct do not result in a suitability action, OPM estimates it would likely need eighteen additional adjudicators performing the work at the 2025 rate for a GS-13, step 5, from the Pittsburgh, PA locality pay table (\$123,486 annual locality rate and \$59.17 hourly locality rate). OPM

assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$118.34 and a collective annual cost of \$4.4 million for all eighteen additional employees.

Taking into account both decreases and increases in levels of effort associated with the proposed rule, on balance OPM anticipates one-time implementation costs of approximately \$3.1 million and recurring annual net cost savings governmentwide of approximately \$35.7 million. OPM requests comment on these effects, as well as other impacts of the rule.

#### 4. Benefits

The expected benefits of the proposed rule are to further establish standards and processes by which OPM and agencies efficiently and appropriately vet individuals for risk to the integrity and efficiency of the service. More expeditious removal and debarment of individuals found to negatively impact the integrity or efficiency of the service will reduce risks posed by such individuals as well as costs to agencies, allowing them to spend resources on mission services rather than administrative processes.

#### 5. Alternatives

OPM must comply with Executive Order and the Presidential Memorandum direction, as previously described, to establish specific suitability factors and to take suitability actions on employees when warranted and referred by agencies based on post-appointment conduct. OPM could have delegated to agencies the authority to take suitability actions against employees for post-appointment conduct. Given that suitability actions against employees for post-appointment conduct is a new process, OPM believes reserving jurisdiction for these actions for itself will provide for government-wide consistency in decision-making as this new process is implemented. OPM may at a later time determine to delegate this authority to the heads of agencies.

For the proposed updates to the suitability factors, OPM could have elected to establish each new criteria from E.O. 14210 as its own separate suitability factor under 5 CFR 731.202(b). The current suitability factors employ a hierarchical approach where the factors establish broad categories of conduct or behavior where discrete examples of such conduct may then fit within the general categories. For example, the criminal conduct factor establishes a broad category under which a wide range of criminal behavior may be considered, regardless of whether the conduct resulted in an

arrest or conviction. Therefore, where appropriate, OPM believes that the inclusion of some of the new suitability criteria required by E.O. 14210 as examples of conduct that would fall under an existing factor will be more intuitive and easier for agency suitability staff to apply in making suitability determinations.

#### Severability

OPM proposes that, if any of the provisions of this proposed rule as finalized is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. For example, if a court were to invalidate any portions of this proposed rule as finalized revising the suitability factors, the other portions of the rule—including the portions providing that OPM may make suitability determinations for post-appointment conduct—would independently remain workable and valuable. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

#### Regulatory Compliance

##### 1. Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563. This proposed rule is expected to be an Executive Order 14192 deregulatory action.

##### 2. Regulatory Flexibility Act

The Acting Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

##### 3. Federalism

This regulation will not have substantial direct effects on the States,

<sup>2</sup> This data comes from OPM's Enterprise Human Resources Integration Program's (EHR) Data Warehouse and is analyzed using nature of action codes for terminations to identify Chapter 75 removals for misconduct. Certain data from EHR is available to the public in summarized form on FedScope, accessible at <https://www.fedscope.opm.gov/>. However, complete raw data from EHR is not available due to concerns about identifying employees at the individual level.

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.

#### 4. Civil Justice Reform

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

#### 5. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

#### 6. Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

Depending on the population, currently suitability and vetting information is collected through the following OMB Control Numbers.

- 3206-0261 (Standard Form 85, Questionnaire for Non-Sensitive Positions)
- 3206-0258 (Standard Form 85P, Questionnaire for Public Trust Positions and SF 85P-S, Supplemental Questionnaire for Selected Positions)
- 3206-0005 (SF 86, Questionnaire for National Security Positions)

Additional information regarding these collections of information—including all current supporting materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB

Control Number. Data gathered through the information collection falls under the following system of record notice: Personnel Vetting Records System, DUSDI 02-DoD (83 FR 52420).

In addition, OPM suitability adjudication records currently are covered by the system of record notice CENTRAL-9 (81 FR 70191). OPM is reviewing that SORN in light of the changes proposed in this rulemaking. OPM will publish any proposed changes to its SORNs in the **Federal Register**. Individual agencies should each have a SORN that covers the agency adjudication records. Agencies may need to evaluate whether the agency-specific SORNs should be updated to include sharing information with OPM as part of the appeals process.

On November 15, 2023, a new information collection, the Personnel Vetting Questionnaire (PVQ), was approved (OMB Control Number 3206-0279). The Defense Counterintelligence and Security Agency (DCSA) is working to implement the new information collection. OPM plans to discontinue the current information collections once the PVQ is operational.

OPM believes this rulemaking does not warrant any changes in any of these collections.

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

Administrative practices and procedure, Authority delegations (Government agencies), Government contracts, Government employees, Investigations.

Office of Personnel Management.

**Jerson Matias,**

*Federal Register Liaison.*

Accordingly, for the reasons stated in the preamble, OPM is proposing to amend part 731 of title 5, Code of Federal Regulations as follows:

### PART 731—SUITABILITY AND FITNESS

- 1. The authority citation for part 731 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 7301. E.O. 10577, 19 FR 7521, 3 CFR, 1954-1958 Comp., p. 218, as amended. E.O. 13467, 73 FR 38103, 3 CFR, 2009 Comp., p. 198, as amended. E.O. 13488, 74 FR 4111, 3 CFR, 2010 Comp., p. 189, as amended. E.O. 13764, 82 FR 8115, 3 CFR, 2017 Comp. p. 243. E.O. 14210, 90 FR 9669, Presidential Memorandum of January 31, 2014, 3 CFR, 2014 Comp., p. 340.

Presidential Memorandum of March 20, 2025, 90 FR 13683. 5 CFR parts 1, 2, 5, and 6.

#### Subpart A—Scope

- 2. Amend § 731.101 by:
  - a. Revising the section heading; and

- b. In paragraph (a), revising the definitions for “Competitive service or career Senior Executive Service” and “Core duty” to read as follows:

#### § 731.101 Definitions and Purpose.

- (a) \* \* \*

\* \* \* \* \*

*Competitive service or career Senior Executive Service*—For the purposes of this part, “Competitive service or career Senior Executive Service” refers to a position in the competitive service, a position in the excepted service where the incumbent can be noncompetitively converted to the competitive service, or a career appointment to a position in the Senior Executive Service.

\* \* \* \* \*

*Core duty* means a continuing responsibility that is of particular importance to the relevant position or the achievement of an agency’s mission.

\* \* \* \* \*

- 3. Amend § 731.103 by revising paragraphs (a), (b), and (f) to read as follows:

#### § 731.103 Delegation to agencies for the competitive service and career Senior Executive Service.

(a) Subject to the limitations and requirements of paragraphs (b), (d), and (f) of this section, OPM delegates to the head of an agency authority for making a suitability determination and taking a suitability action (including limited, agency-specific debarments under § 731.205) in a case involving an *applicant* or *appointee*. In a case involving an employee, the head of the employee’s employing agency must make a proper and sufficient referral to OPM, as specified in OPM issuances as described in § 731.102(b), if the employee’s conduct appears to warrant an unfavorable suitability determination.

(b) When an agency, acting under delegated authority from OPM, determines that a government-wide debarment by OPM under § 731.204(a) may be an appropriate action, whether on an applicant, appointee, or employee, it must refer the case to OPM for debarment consideration. An agency must make a referral, but only after sufficient resolution of the suitability issue(s) to determine if a government-wide debarment appears warranted.

\* \* \* \* \*

(f) OPM retains sole jurisdiction to make a final suitability determination and take an action under this part in any case where there is evidence that there has been a material, intentional false statement, or deception or fraud, in examination or appointment. OPM also

retains sole jurisdiction to make a final suitability determination and take an action under this part in any case when there is evidence that there has been knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force. OPM also retains sole jurisdiction to make a final suitability determination and take an action under this part in any case involving an employee for post-appointment conduct. An Agency must refer these cases to OPM for suitability determinations and suitability actions under this authority. Although no prior approval is needed, notification to OPM is required if the agency wants to take, or has taken, action under its own authority (such as 5 CFR part 359 or 752) in cases involving conduct fitting within any of these factors. In addition, paragraph (a) of this section notwithstanding, OPM may, in its discretion, exercise its jurisdiction under this part in any case it deems necessary regardless of whether the agency may adjudicate under another authority.

■ 4. Amend § 731.104 by revising paragraph (c)(2)(i) to read as follows:

**§ 731.104 Investigation and reciprocity requirements**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) The investigative record on file for the individual shows conduct that is incompatible with the core duties of the relevant position; or

\* \* \* \* \*

■ 5. Amend § 731.105 by revising the introductory text of paragraph (a), revising paragraphs (a)(1), (b), (d), and (e), and adding paragraph (f) to read as follows:

**§ 731.105 Authority to take suitability actions in cases involving the competitive service or career Senior Executive Service.**

(a) OPM or an agency acting under delegated authority may take a suitability action in connection with any application for, or appointment to, the competitive service or career Senior Executive Service. In the case of an appointee, OPM or an agency may consider conduct occurring prior to the appointment or occurring post-appointment to serve as the basis for the action.

(1) OPM's or an agency's authority to complete a suitability action continues when an application is withdrawn, when an offer of employment is withdrawn, or when an appointee separates from employment. OPM's authority to complete a suitability

action continues when an employee separates from employment.

\* \* \* \* \*

(b) OPM may take a suitability action under this part against an *applicant* or *appointee* based on the criteria in § 731.202. When the basis for the action is post-appointment conduct, OPM may take a suitability action against an appointee only when there is a proper and sufficient referral by the head of the appointee's employing agency.

\* \* \* \* \*

(d) Only OPM may take a suitability action under this part against an *employee* in the competitive service or career Senior Executive Service based on the criteria of § 731.202. When the basis for the action is post-appointment conduct, OPM may take a suitability action against an employee only when there is a proper and sufficient referral by the head of the employee's employing agency.

(e) An agency may not take a suitability action against an *employee* in the competitive service or career Senior Executive Service. If the agency has information that an *employee*'s conduct warrants an unfavorable suitability determination, the head of the agency, or designee, must make a proper and sufficient referral to OPM, as specified in OPM issuances as described in § 731.102(b). OPM will take a suitability action where warranted.

(f) Nothing in this part precludes an agency from taking an adverse action under the procedures and standards of part 752 of this chapter or terminating a probationer under the procedures of part 11 part 359 of this chapter or under agency specific authorities. An agency must notify OPM to the extent required in § 731.103(d) and (f) if it wants to take, or has taken, action under these authorities. OPM retains the right to take a suitability action even in those cases where the agency makes an adjudicative determination under another authority.

■ 6. Amend § 731.106 by revising paragraphs (d)(1) and (f) to read as follows:

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

\* \* \* \* \*

(d) \* \* \* (1) Individuals occupying positions of employment subject to investigation are also subject to continuous vetting through periodic checks of their background at any time in accordance with standards issued by OPM. Checks must be conducted at regular intervals, based on the type of check and with consideration of position risk and sensitivity. The nature of a continuous vetting check, and any

additional requirements and parameters, to include requirements for agencies to consider information related to the individual's conduct available from internal agency sources, are specified in supplemental issuances as described in § 731.102(b). An individual may be subjected to continuous vetting only if they have signed an authorization for release of information permitting a disclosure for continuous vetting purposes. Continuous vetting for an individual in a public trust position satisfies the requirement for a periodic reinvestigation of an individual in a public trust position as directed in E.O. 13488, as amended. An agency must ensure that each continuous vetting check is conducted and a determination made regarding continued employment. If an agency makes an unfavorable determination based on information from a continuous vetting check on an appointee, the agency may take a suitability action subject to the limitations of § 731.103(b), (d), and (f). If an agency makes an unfavorable determination from a continuous vetting check on an employee, the agency must refer the matter to OPM to take the suitability action on the employee.

\* \* \* \* \*

(f) *Completed investigations.* An investigation or continuous vetting check under paragraphs (c), (d), and (e) of this section support a determination by the employing agency of whether the findings of the investigation may require referral to OPM for a potential suitability action or would justify an action by the agency under this part or under another applicable authority, such as part 359 or 752 of this chapter. Sections 731.103 and 731.105(c) and (e) address whether an agency may take an action under this part and whether the agency must refer the matter to OPM for a suitability action including debarment consideration.

\* \* \* \* \*

**Subpart B—Determinations of Suitability or Fitness; Suitability Actions in Cases Involving the Competitive Service or Career Senior Executive Service**

■ 7. In § 731.202, revise and republish paragraph (b) and add paragraph (d) to read as follows:

**§ 731.202 Criteria for making suitability and fitness determinations.**

\* \* \* \* \*

(b) *Specific factors.* Only OPM may take a suitability action considering the factors in paragraph (b)(3) or (b)(9) of this section. Agencies may use the factor in paragraph (b)(11) in applicant and

appointee suitability cases but not employee cases; however, OPM may use this or any factor in employee cases. When making a suitability determination, OPM or an agency will consider only the following factors to determine if an individual is suitable. When making fitness determinations, an agency must consider all of the following factors as a minimum standard, but it may prescribe additional factors to protect the integrity and promote the efficiency of the service, when job-related and consistent with business necessity.

(1) Misconduct or negligence in employment. This factor includes:

(i) Theft or misuse of government resources and equipment, or negligent loss of material government resources and equipment during employment with, or on behalf of, the Federal government or a state, territorial, or local government;

(ii) Refusal to certify compliance with any applicable non-disclosure obligations consistent with 5 U.S.C. 2302(b)(13) and failure to adhere to those compliance obligations in the course of Federal employment; and

(iii) Refusal to furnish testimony as required by § 5.4 of this chapter.

(2) Criminal conduct.

(3) Material, intentional false statement, or deception or fraud, in examination or appointment.

(4) Dishonest conduct.

(5) Knowing and willful failure to comply with generally applicable legal obligations, including timely filing of tax returns.

(6) Failure to comply with any provision that would preclude Federal service, including citizenship or nationality requirements.

(7) Excessive alcohol use, without evidence of rehabilitation, of a nature and duration that suggests the individual would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of the applicant, appointee, or others.

(8) Illegal use of narcotics, drugs, or other controlled substances, without evidence of rehabilitation.

(9) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force.

(10) Violent conduct.

(11) Any statutory or regulatory bar that prevents the lawful employment of the individual in the position in question.

\* \* \* \* \*

(d) All persons responsible for suitability screening, review, or making

suitability determinations under this part must be trained in accordance with national training standards for suitability adjudicators issued in supplemental issuances, as described in § 731.102(b).

■ 8. Amend § 731.203 by revising paragraphs (e), (f), and (g) to read as follows:

**§ 731.203 Suitability actions by OPM and other agencies for the competitive service or career Senior Executive Service.**

\* \* \* \* \*

(e) In taking a suitability action against an applicant, appointee, or employee in the competitive service or career Senior Executive Service pursuant to § 731.105(a) and (d) and in accordance with 5 CFR 5.3, OPM may require an agency to execute the action.

(f) OPM may cancel any reinstatement eligibility obtained as a result of a determination based on the criteria of § 731.202.

(g) An action to remove an appointee or employee *for suitability reasons* under this part is not an action under 5 CFR part 11, 359, or 752. Where conduct covered by this part may also form the basis for an action under 5 CFR part 11, 359, or 752, an agency may take the action under 5 CFR part 11, 359, or 752, as appropriate, instead of under this part. An agency must notify OPM to the extent required in § 731.103(f) if it wants to take, or has taken, action under these authorities. OPM reserves the right to also take an action under this part.

\* \* \* \* \*

■ 9. Revise § 731.206 to read as follows:

**§ 731.206 Reporting requirements for investigations and suitability and fitness determinations.**

An agency must report to the Central Verification System or its successor the level or nature, result, and completion date of each background investigation, reinvestigation, or enrollment in Continuous Vetting; each agency decision based on such investigation, reinvestigation, or Continuous Vetting; and any personnel action, to include suitability actions, taken based on such investigation, reinvestigation, Continuous Vetting, as required in supplemental guidance. An agency must also report to the Central Verification System or its successor any suitability determination and action taken based on an internal agency investigation, such as a suitability action taken as a result of an Employee and Labor Relations investigation.

**Subpart C—OPM Suitability Action Procedures for the Competitive Service or Career Senior Executive Service**

■ 10. Revise § 731.301 to read as follows:

**§ 731.301 Scope.**

This subpart covers OPM-initiated suitability actions against an *applicant*, *appointee*, or *employee* in the competitive service or career Senior Executive Service and OPM suitability actions against an appointee or employee in the competitive service or career Senior Executive Service for post-appointment conduct when an agency has referred the matter to OPM to take a suitability action.

■ 11. Revise § 731.304 to read as follows:

**§ 731.304 Decision.**

(a) The OPM Director, or designee, will make the final decision as to whether to take a suitability action. In cases where the Director delegates decision-making authority to subordinate employees, there must be appropriate independence between the OPM employee authorized to propose the suitability action and the employee authorized to make the final decision regarding such suitability action. The OPM official authorized to make the final decision is prohibited from ex parte communications consistent with the requirements of 5 U.S.C. 557(d).

(b) If the final decision is that a suitability action shall be taken, the OPM Director or designee will instruct the agency to remove the individual or process a different suitability action. The decision regarding the final suitability action must be in writing, be dated, and inform the respondent of the reasons for the decision. If the decision requires removal, the employing agency must remove the appointee or employee from the rolls within 5 workdays of receipt of OPM's final decision.

**Subpart D—Agency Suitability Action Procedures for the Competitive Service or Career Senior Executive Service**

■ 12. Revise § 731.404 to read as follows:

**§ 731.404 Decision.**

(a) The agency head, or designee, makes the final decision as to whether to take a suitability action. In cases where the agency head delegates decision-making authority to subordinate employees, there must be appropriate independence between the employee authorized to propose the

suitability action and the employee authorized to make the final decision regarding such suitability action. The official authorized to make the final decision is prohibited from ex parte communications consistent with the requirements of 5 U.S.C. 557(d).

(b) The decision regarding the final action must be in writing, be dated, and inform the respondent of the reasons for the decision. If the decision requires removal, the employing agency must remove the appointee from the rolls within 5 workdays of the agency's decision.

[FR Doc. 2025-10067 Filed 6-2-25; 8:45 am]

BILLING CODE 6325-66-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA1180]

#### Schedules of Controlled Substances: Placement of 4-Fluoroamphetamine in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Drug Enforcement Administration proposes placing the substance 4-fluoroamphetamine (4-FA; 1-(4-fluorophenyl)propan-2-amine), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken, in part, to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle 4-fluoroamphetamine.

**DATES:** Comments must be submitted electronically or postmarked on or before July 3, 2025.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 and/or 1316.49, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing, together with a written statement of position on the matters of fact and law asserted in the hearing,

must be received or postmarked on or before July 3, 2025.

**ADDRESSES:** Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). The electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference "Docket No. DEA1180" on all electronic and written correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration (DEA) encourages commenters to submit comments electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

• *Paper comments:* Paper comments that duplicate the electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

• *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with the DEA Administrator, who will make the determination of whether a hearing will be needed to address such matters of fact and law in the rulemaking. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register

Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

#### • Paperwork Reduction Act

**Comments:** All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to Docket No. DEA1180.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

As required by 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov).

**SUPPLEMENTARY INFORMATION:** In this proposed rule, the Drug Enforcement Administration (DEA) intends to place 4-fluoroamphetamine (4-FA; 1-(4-fluorophenyl)propan-2-amine), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act (CSA).

#### Posting of Public Comments

All comments received in response to this docket are considered part of the public record. DEA will make comments available for public inspection online at <https://www.regulations.gov>. Such information includes personal or business identifying information (such as name, address, State or Federal identifiers, etc.) voluntarily submitted by the commenter. All information voluntarily submitted by the commenter, unless clearly marked as Confidential Information in the method described below, will be publicly posted. Comments may be submitted anonymously.

Commenters submitting comments which include personal identifying information (PII), confidential, or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked "CONTAINS CONFIDENTIAL INFORMATION" and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DEA will review this copy, including the claimed PII and confidential business information, in its consideration of comments. The second copy should be marked "TO BE PUBLICLY POSTED" and must have all claimed confidential or proprietary business information redacted. DEA will