

parts 752 or 315 of this title. Where behavior covered by this part may also form the basis for a part 752 or 315 action, agencies may use part 315 or 752, as appropriate, instead of this part.

(e) Agencies are required to report to OPM all unfavorable adjudicative actions taken under this part, and all actions based on an OPM investigation.

§ 731.204 Debarment by OPM.

(a) When OPM finds a person unsuitable for any reason listed in § 731.202, OPM, in its discretion, may deny that person examination for, and appointment to, a competitive service position for a period of not more than 3 years from the date of determination of unsuitability.

(b) On expiration of a period of debarment, OPM or an agency may redetermine a person's suitability for appointment in accordance with the procedures of this part.

(c) OPM, in its sole discretion, determines the duration of any period of debarment imposed under this section.

§ 731.205 Debarment by agencies.

(a) Subject to the provisions of § 731.103, when an agency finds an applicant or appointee unsuitable for reasons listed in § 731.202, the agency may deny that person examination for, and appointment to, all, or specific, positions within the agency for a period of not more than 1 year from the date of determination of unsuitability.

(b) On expiration of a period of agency debarment, the agency may redetermine a person's suitability for appointment by the agency, in accordance with the procedures of this part.

(c) The agency is responsible for enforcing the period of debarment and taking appropriate action should the individual apply or be inappropriately appointed during the debarment period. This does not limit OPM's ability to exercise jurisdiction and take an action if it deems appropriate.

(d) The agency, in its sole discretion, determines the duration of any period of debarment imposed under this section.

Subpart C—OPM Suitability Action Procedures

§ 731.301 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when OPM proposes to take, or instructs an agency to take, a final suitability action against an applicant, appointee or employee.

(b) *Definition.* In this subpart, *days* mean calendar days.

[65 FR 82243, Dec. 28, 2000; 66 FR 11100, Feb. 21, 2001]

§ 731.302 Notice of proposed action.

(a) OPM shall notify the applicant, appointee, or employee (hereinafter, the "respondent") in writing of the proposed action and of the charges against the respondent (including the availability for review, upon request, of the materials relied upon). The notice shall state the specific reasons for the proposed action and that the respondent has the right to answer the notice in writing. If the respondent is an employee, the notice shall further state that the employee may also make an oral answer, as specified in § 731.303(a). The notice shall further inform the respondent of the time limits for response as well as the address to which such response should be made.

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

(c) OPM shall send a copy of this notice to any employing agency that is involved.

§ 731.303 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the response. A respondent who is an employee may also answer orally. The respondent may be represented by a representative of the

§ 731.304

respondent's choice, and such representative shall be designated in writing. To be timely, a written answer shall be made no more than 30 days after the date of the notice of proposed action. In the event an employee requests to make an oral answer, the request must be made within this 30 day time frame, and OPM shall determine the time and place thereof, and shall consider any answer the respondent makes in reaching a decision.

(b) *Agency's answer.* An employing agency may also answer the notice of proposed action. The time limit for filing an answer is 30 days from the date of the notice. OPM shall consider any answer the agency makes in reaching a decision.

§ 731.304 Decision.

The decision shall be in writing, dated, and inform the respondent of the reasons for the decision. The employing agency shall remove the appointee or employee from the rolls within 5 work days of receipt of OPM's final decision. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart E of this part. OPM shall also notify the respondent's employing agency of its decision.

[65 FR 82243, Dec. 28, 2000; 66 FR 11100, Feb. 21, 2001]

Subpart D—Agency Suitability Action Procedures

§ 731.401 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when an agency proposes to take a final suitability action against an applicant or appointee.

(b) *Definition.* In this subpart, *days* mean calendar days.

§ 731.402 Notice of proposed action.

The agency shall provide the applicant or appointee (hereinafter, the "respondent") reasonable notice in writing of the proposed action and of the charges against the respondent (including the availability for review, upon request, of the materials relied upon). The notice shall state the spe-

5 CFR Ch. I (1–1–03 Edition)

cific reasons for the proposed action, and that the respondent has the right to answer the notice in writing. The notice shall inform the respondent of the time limits for response as well as the address to which such response should be made. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in a pay status during the notice period.

§ 731.403 Answer.

A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the response.

§ 731.404 Decision.

The decision shall be in writing, dated, and inform the respondent of the reasons for the decision. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart E of this part. The employing agency shall remove an appointee from the rolls within 5 work days of their final decision.

Subpart E—Appeal to the Merit Systems Protection Board

§ 731.501 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* An individual who has been found unsuitable for employment may appeal the determination to the Merit Systems Protection Board. If the Board finds that one or more charges are supported by a preponderance of the evidence, it shall affirm the determination. If the Board sustains fewer than all the charges, the Board shall remand the case to OPM or the agency to determine whether the action taken is still appropriate based on the sustained charge(s). This determination of whether the action taken is appropriate shall be final without any further appeal to the Board.

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