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for answer as well as the address to which such answer should be made.

(b) OPM shall send a copy of this notice to the agency, if any, that is involved. The notice shall be served upon the respondent by being mailed to the respondent's last known residence or duty station no less than 30 days prior to the effective date of the proposed adverse 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 pay status during the notice period.

§ 731.403 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish affidavits in support of the response. A respondent who is an employee may answer orally. The respondent may be represented by a representative of the respondent's choice, and such representative shall be designated in writing to OPM. To be timely, a written answer shall be made to OPM no more than 30 days after the date of the notice of proposed action. In the event that an employee requests to make an oral answer, OPM shall determine the time and place thereof. OPM shall consider any answer that the respondent makes in reaching a decision.

(b) *Agency's answer.* In actions proposed by OPM under 5 CFR 5.3, the 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 that the agency makes in reaching a decision.

§ 731.404 Decision.

OPM shall notify the respondent and the agency of the decision. The decision shall be in writing, be dated, and inform the respondent of the reasons for the decision. Removal of appointees or employees will be effective 30 days following the date of the decision. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart E of this part.

5 CFR Ch. I (1–1–01 Edition)

Subpart E—Appeal to the Merit Systems Protection Board

§ 731.501 Appeal to the Merit Systems Protection Board.

(a) An individual who has been found unsuitable for employment may appeal the decision to the Merit Systems Protection Board (the Board). An employee or appointee who appeals a removal directed by OPM shall notify the employing agency of the appeal at the time it is filed.

(b) Appeal Procedures. The procedures for filing an appeal with the Board are found at part 1201 of Title 5, Code of Federal Regulations.

(c) Pay Status Pending Appeal. When an employee or appointee whom OPM has determined to be unsuitable files an appeal to the Board, the employing agency may either suspend the employee or appointee on the day following the date on which the removal was to have been effected pending adjudication of the appeal, or retain the employee or appointee in an active duty status for the period, in which event the agency shall so notify the employee or appointee. Part 752 of this chapter does not apply to the suspension.

[59 FR 47527, Sept. 16, 1994]

Subpart F—Reemployment Eligibility

§ 731.601 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request OPM to determine his or her suitability for further employment in the competitive service. OPM shall consider the request only if the former employee:

- (1) Has completed any required probationary period;
- (2) Has basic eligibility for reinstatement; and
- (3) Includes a sworn statement with the request which sets forth fully and

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in detail the facts surrounding the removal or resignation.

(b) *Action by OPM.* (1) OPM, after appropriate consideration, including any investigation OPM deems necessary, shall inform the former employee of his or her current suitability for employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportunity to comment on the reasons for this finding, or has furnished comments to OPM, then OPM may cancel his or her reinstatement eligibility if that eligibility was obtained through fraud. In addition, OPM may prescribe a period of debarment from the competitive service not to exceed 3 years from the date of determination of unsuitability.

Subpart G—Savings Provision

§ 731.701 Savings provision.

No provision of these regulations shall be applied in such a way as to affect any administrative proceeding pending at the effective date of such provision. An administrative proceeding is deemed to be pending from the date of the “notice of proposed action” described in § 731.303 of this part.

EFFECTIVE DATE NOTE: At 65 FR 82243, Dec. 28, 2000, part 731 was revised, effective Jan. 29, 2001. For the convenience of the user, the revised text is set forth as follows:

PART 731—SUITABILITY

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Subpart B—Suitability Determinations

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- 731.203 Actions by OPM and other agencies.
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Subpart D—Agency Suitability Action Procedures

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Subpart E—Appeal to the Merit Systems Protection Board

- 731.501 Appeal to the Merit Systems Protection Board.

Subpart F—Savings Provision

- 731.601 Savings provision.

AUTHORITY: 5 U.S.C. 1302, 3301, 7301, 7701; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; E.O. 12731, 3 CFR, 1990 Comp., p. 306., 5 CFR, part 5.

Subpart A—Scope

§ 731.101 Purpose.

(a) The purpose of this part is to establish criteria and procedures for making determinations of suitability for employment in positions in the competitive service and for career appointment in the Senior Executive Service (hereinafter in this part, “competitive service”) pursuant to 5 U.S.C. 3301 and Executive Order 10577 (3 CFR, 1954-1958 Comp., p. 218). Section 3301 of title 5, United States Code, directs consideration of “age, health, character, knowledge, and ability for the employment sought.” Executive Order 10577 directs OPM to examine “suitability” for competitive Federal employment. This part concerns only determinations of “suitability” based on an individual’s character or conduct that may have an impact on the integrity or efficiency of the service. Determinations made under this part are distinct from determinations of eligibility for assignment to, or retention in, sensitive national security positions made under Executive Order 10450 (3 CFR, 1949-1953 Comp., p. 936), Executive Order 12968, or similar authorities.

(b) *Definitions.* In this part:

Applicant. A person being considered for employment.

Appointee. A person who has entered on duty and is in the first year of a subject to investigation appointment (as defined in § 731.104).

Employee. A person who has completed the first year of a subject to investigation appointment.

Material. A “material” statement is one that is capable of influencing, or has a natural tendency to affect, an official decision.

§ 731.102 Implementation.

(a) An investigation conducted for the purpose of determining suitability under this part may not be used for any other purpose except as provided in a Privacy Act system