

§ 724.403

§ 724.403 Advisory guidelines.

OPM will issue advisory guidelines to Federal agencies incorporating the best practices identified under § 724.402 that agencies may follow to take appropriate disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Laws.

§ 724.404 Agency obligations.

(a) Within 30 working days of issuance of the advisory guidelines required by § 724.403, each agency must prepare a written statement describing in detail:

- (1) Whether it has adopted the guidelines and if it will fully follow the guidelines;
- (2) If such agency has not adopted the guidelines, the reasons for non-adoption; and
- (3) If such agency will not fully follow the guidelines, the reasons for the decision not to do so and an explanation of the extent to which the agency will not follow the guidelines.

(b) Each agency’s written statement must be provided within the time limit stated in paragraph (a) of this section to the following:

- (1) Speaker of the U.S. House of Representatives;
- (2) President Pro Tempore of the U.S. Senate;
- (3) Chair, Equal Employment Opportunity Commission;
- (4) Attorney General; and
- (5) Director, U.S. Office of Personnel Management.

PART 730—NOTIFICATION OF POST-EMPLOYMENT RESTRICTIONS

Sec.
730.101 Purpose.
730.102 Definitions.
730.103 Coverage.
730.104 Notification.
730.105 Savings provision.

AUTHORITY: 5 U.S.C. 7302 and sec. 1125(b) of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1392.

SOURCE: 69 FR 61144, Oct. 15, 2004, unless otherwise noted.

§ 730.101 Purpose.

This part implements 5 U.S.C. 7302, which requires agencies to provide

written notice to senior executives and other individuals covered by 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to certain post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c).

§ 730.102 Definitions.

Agency means an Executive agency as defined in 5 U.S.C. 105, but does not include the General Accounting Office.

Senior executive means a member of the Senior Executive Service (SES).

§ 730.103 Coverage.

(a) The following individuals are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c), as amended by section 1125(b)(1) of the National Defense Authorization Act for FY 2004:

(1) Any individual, including a senior executive, who is paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule; and

(2) Any individual, including a senior executive, who as of November 23, 2003, was paid at a rate of basic pay, exclusive of any locality-based comparability payments under 5 U.S.C. 5304, equal to or greater than the rate of basic pay for level 5 of the Senior Executive Service on that date (*i.e.*, \$134,000). These employees are subject to the post-employment restrictions through November 24, 2005, without regard to any subsequent changes in position or pay.

(b) Nothing in this part affects individuals serving in positions described in 18 U.S.C. 207(c)(2)(A)(i), (iii), (iv), or (v).

§ 730.104 Notification.

(a) Agencies must provide written notification to senior executives and other individuals covered by the amendment to 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207, before, or as part of, any personnel action that affects the employee’s coverage under 18 U.S.C. 207(c)(1), including when employment or service in a covered position is terminated. A copy of the written notice must be provided simultaneously to the Designated Agency Ethics Official (or his or her delegate). The

Office of Personnel Management

§ 731.101

written notice must include information on the applicable penalties or injunctions that may be imposed under 18 U.S.C. 216(a), (b), and (c) for violations of the post-employment restrictions in 18 U.S.C. 207(c). The notice also must indicate that employees covered by 18 U.S.C. 207(c) are subject to 18 U.S.C. 207(f), which imposes additional post-employment restrictions on representing, aiding, or advising certain foreign entities.

(b) Notwithstanding paragraph (a) of this section, the post-employment restrictions in 18 U.S.C. 207(c) apply to covered employees without regard to whether they receive written notice from their employing agency.

§ 730.105 Savings provision.

Any post-employment restrictions established under 18 U.S.C. 207 and applicable prior to the first day of the first pay period beginning on or after January 1, 2004, remain in effect.

PART 731—SUITABILITY

Subpart A—Scope

- Sec.
- 731.101 Purpose.
- 731.102 Implementation.
- 731.103 Delegation to agencies.
- 731.104 Appointments subject to investigation.
- 731.105 Authority to take suitability actions.
- 731.106 Designation of public trust positions and investigative requirements.

Subpart B—Suitability Determinations

- 731.201 Standard.
- 731.202 Criteria.
- 731.203 Actions by OPM and other agencies.
- 731.204 Debarment by OPM.
- 731.205 Debarment by agencies.

Subpart C—OPM Suitability Action Procedures

- 731.301 Scope.
- 731.302 Notice of proposed action.
- 731.303 Answer.
- 731.304 Decision.

Subpart D—Agency Suitability Action Procedures

- 731.401 Scope.
- 731.402 Notice of proposed action.
- 731.403 Answer.
- 731.404 Decision.

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.

SOURCE: 65 FR 82243, Dec. 28, 2000, unless otherwise noted.

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