§ 731.105 Authority to take suitability actions.

(a) Neither OPM nor an agency acting under delegated authority may take a suitability action in connection with any application for, or appointment to, a position that is not subject to investigation or check under § 731.104.

(b) OPM may take a suitability action under this part against an applicant or appointee based on any of the criteria of § 731.202;

(c) Except as limited by § 731.103(g), an agency, exercising delegated authority, may take a suitability action under this part against an applicant or appointee based on the criteria of § 731.202;

(d) OPM may take a suitability action under this part against an employee based on the criteria of § 731.202(b)(3), (4), or (8).

(e) An agency may not take a suitability action against an employee. Nothing in this part precludes an agency from taking an adverse action against an employee under the procedures and standards of part 752 of this chapter or terminating a probationary employee under the procedures of part 315 or part 359 of this chapter. An agency must notify OPM to the extent required in § 731.103(g) if it wants to take, or has taken, action under these authorities.

§ 731.106 Designation of public trust positions and investigative requirements.

(a) Risk designation. Agency heads must designate every covered position within the agency at a high, moderate, or low risk level as determined by the position’s potential for adverse impact to the efficiency or integrity of the service. OPM will provide an example under this regulation. A decision by OPM, or by an agency applying guidance from OPM, that a prior fitness determination was not based on criteria equivalent to the factors provided at 5 CFR 731.202, and that a new investigation or adjudication is necessary is not subject to review under section 731.501 of this part.

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