

Approved: 12-19-2022

SUBJECT: SUITABILITY AND FITNESS DETERMINATIONS

1. PURPOSE. To establish criteria and procedures for managing suitability adjudications within the Department of Energy in accordance with Title 5 Code of Federal Regulations (C.F.R.). This order also provides procedures for conducting fitness determinations for certain Federal excepted service positions and provides guidance for addressing unfavorable suitability determinations.

2. CANCELS/SUPERSEDES. DOE O 3731.1 Chg 1, *Suitability, Position Sensitivity, and Related Personnel Matters*, dated 12-19-1989. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive.

3. APPLICABILITY.

a. Departmental Applicability. Except for the equivalencies/exemptions listed in paragraph 3.c., this Order applies to all Departmental elements.

The Administrator of the National Nuclear Security Administration (NNSA) must ensure NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies.

b. DOE Contractors. This Order does not apply to contractors.

c. Equivalencies/Exemptions for DOE O 326.2. Requests for equivalencies and exemptions to the requirements of this Order are processed in accordance with DOE O 251.1, *Departmental Directives Program*, current version.

Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

4. REQUIREMENTS.

a. Position Sensitivity and Risk Designation.

(1) Suitability determinations under this directive are separate from pre-appointment investigation requirements that apply to sensitive positions.

- (2) All covered positions must be reviewed and evaluated for position sensitivity and risk designation corresponding with the responsibilities and duties of the position related to the potential for adverse impact to the integrity or efficiency of the service.
- (3) All covered positions will be assessed when being established, vacated, reclassified, or otherwise restructured.
- (4) The Office of Personnel Management's (OPM) Position Designation Tool (PDT) must be used to designate the sensitivity and risk level of each covered position. The tool is accessible online at <https://pdt.nbis.mil/>.
- (5) Risk levels must be categorized as high-, moderate-, or low-risk, as determined by the potential for adverse impact to the efficiency or integrity of the service. Each position must be assigned a sensitivity designation of Special-Sensitive, Critical-Sensitive, Noncritical-Sensitive, or Non-Sensitive when appropriate.
- (6) If the sensitivity or risk level designation of a position is changed and requires a higher level of investigation than previously required, a new investigation will be initiated no later than 14 working days after the change in designation.

b. Suitability Investigation Requirements for Applicants and Appointees.

- (1) The investigation requirements shall be consistent with the guidance provided by the Office of Personnel Management (OPM). Background investigations conducted for suitability purposes constitute the first step in ensuring the highest standards of honesty, integrity, security, and overall fitness among DOE Federal employees. Thus, suitability reflects the standards required for employment with the Federal Government, with reference to a person's character, conduct, reputation, and overall fitness for employment at DOE.
- (2) The Office of the Chief Human Capital Officer (HC) must ensure the appropriate level and type of background investigation is requested based on the position sensitivity and risk level designation. Suitability Adjudicators will initiate the review of the individual to determine suitability for Federal employment in covered positions.
- (3) Pursuant to 5 C.F.R. 330.1300, *Timing of Suitability Inquiries in Competitive Hiring*, DOE may not make specific inquiries concerning an applicant's criminal or credit background (i.e., inquiries into an applicant's criminal or adverse credit history) based on the Optional Form (OF) 306 or other forms used to conduct suitability investigations for Federal employment until after the Servicing Human Resources Office/Human Resources Shared Service Center (SHRO/SSC) has made a tentative (or

conditional) offer of employment to the selectee and the selectee has accepted the offer.

- (4) While suitability investigations should be initiated before the appointment, suitability adjudicators are required to initiate investigations no later than 14 calendar days after official placement in the position (i.e., the effective date of appointment, conversion, reassignment, or promotion), as described in 5 C.F.R. 731.106(c), *Designation of Public Trust Positions and Investigative Requirements*.
- (5) Background Investigations and favorable suitability adjudications conducted by other Federal agencies must be reciprocally accepted without requiring a new investigation, provided the following conditions are met:
 - (a) Applicant has a valid background investigation at the appropriate or higher level;
 - (b) Applicant does not have a break in service of 24 months or more;
 - (c) Applicant's favorable adjudication was based on the criteria of, or criteria considered equivalent to, 5 C.F.R. 731.202, *Criteria for Making Suitability Determinations*;
 - (d) Applicant has served continuously for at least one year in a position where they were favorably adjudicated;
 - (e) No new information is obtained in connection with the applicant's appointment calling into question his/her suitability under 5 C.F.R. 731.202; and
 - (f) Issues in the prior investigation do not show conduct that is incompatible with the core duties of the new position.
- (6) If the subject of an investigation separates or is no longer being considered for an appointment, any pending investigation and suitability review must be discontinued.

c. Suitability Investigative Requirements for Intermittent or Temporary Appointees.

- (1) Positions that are intermittent or temporary, such as summer internship positions, not to exceed an aggregate of 180 days per year in either a single continuous appointment or series of appointments, do not require a background investigation. Applicants for the positions, however, will be fingerprinted and the results of a Special Agreement Check (SAC) will be adjudicated as part of the pre-appointment suitability review.

- (2) Positions that are intermittent or temporary serving a series of appointments exceeding one year, such as internship positions hired throughout graduate and/or post-graduate studies, will be subject to a background investigation.

d. Pre-Appointment Suitability Review.

- (1) A pre-appointment suitability determination (or fitness determination) is required for all applicants selected for covered Federal positions prior to employment with DOE. After a tentative offer of employment has been made, an applicant must complete the Declaration for Federal Employment, Optional Form 306 (OF-306), and a fingerprint SAC.
- (2) The OF-306 and other pertinent documents, such as the applicant's resume, college transcripts, military paperwork, position description, and investigative questionnaire (e.g., SF-85, SF-85P or SF-86) will be reviewed for any possible disqualifying information as described in 5 C.F.R. 731.202. This pre-determination does not take the place of the required adjudicative decision for the background investigation and it does not represent a final suitability determination.
- (3) If the pre-appointment suitability determination is favorable, the applicant may be issued a job offer contingent on a favorable suitability adjudication (or determination).
- (4) Unfavorable suitability determinations and actions taken against applicants must follow the procedures outlined in 5 C.F.R. 731, *Suitability*, affording the applicant the ability to appeal to the Merit Systems Protection Board if a suitability action is taken.
- (5) OPM retains the authority to make suitability determinations and take suitability action in all cases where evidence of material, intentional false statement, or deception or fraud is discovered. Additionally, OPM retains authority on cases involving a refusal to furnish testimony as required by 5 C.F.R. 731.103(g). The respective Suitability Adjudicator must forward the case to OPM action as soon as possible.

e. Suitability Determinations.

- (1) Prior to recommending or adjudicating suitability actions, Suitability Adjudicators must be trained in accordance with the OPM National Suitability Training Standards and complete the Fundamentals of Suitability for Suitability and Fitness Adjudicators, or equivalent.
- (2) Suitability determinations must be based on a careful, objective analysis of relevant information about a person's character and conduct, both favorable and unfavorable, and must consider the relevance, recentness, and seriousness of such conduct. In addition, these determinations must be

made in a manner to promote the efficiency of the service while assuring fair, impartial, and equitable treatment of the subject of the investigation.

- (3) A suitability investigation or reinvestigation must result in a determination that is based on the presence or absence of one or more of the specific factors in 5 C.F.R. 731.202.
- (4) If a suitability factor is present in the investigation, where OPM retains the authority to adjudicate, the investigation and any information obtained must be referred to OPM for action and possible Government-wide debarment.
- (5) In cases where derogatory information is found for current DOE employees in (or applying for) national security positions, the Suitability Adjudicator must confer with the Personnel Security Specialist or the Cognizant Personnel Security Office (CPSO) before any suitability action is taken. This may avoid duplicative efforts in obtaining information from the subject of the investigation.
- (6) Generally, for new employees, suitability determinations are taken prior to adjudicating security clearances; therefore, any derogatory information that precludes an applicant from obtaining a DOE position, thereby determined unsuitable, would not require conference with the CPSO/Personnel Security Officer conducting security clearance, unless the security investigation is underway or pending.
- (7) If a suitability review reveals derogatory information that cannot be mitigated, the applicant must be notified in writing as to the specific factors and informed that they have 30 calendar days to provide a written response that should include an explanation of any discrepancies, omissions, misinformation, or mitigating circumstances.
- (8) If the suitability review is favorable, the SHRO/SSC and the initiating office will be notified in writing of the favorable determination for further action.
- (9) The Suitability Adjudicator must report the suitability determinations to OPM within 90 days of receipt of the closed background investigation.

f. Fitness Determinations for Certain Excepted Service Positions.

- (1) A Fitness determination is required for any position that is not covered under 5 C.F.R. 731.101, *Purpose*. This includes positions in the excepted service that are not eligible for non-competitive conversion to the competitive service (e.g., EJ, EN and EK).
- (2) Fitness refers to the level of character and conduct determined necessary for an individual to perform work for, or on behalf of, a Federal agency as

an employee in the excepted service (other than in a position subject to suitability).

- (3) Equivalent factors will be used and applied as in a suitability adjudication when making fitness determinations.

g. Unfavorable Suitability or Fitness Determinations.

- (1) Suitability adjudicators will use the criteria provided in 5 C.F.R. 731.202 when making suitability determinations.
- (2) DOE may remove an employee in a covered position serving a probationary period under 5 C.F.R. 315, *Career and Career-Conditional Employment*; 5 C.F.R. 359, *Removal from the Senior Executive Service*; 5 C.F.R. 731; or 5 C.F.R. 752, *Adverse Actions*, as appropriate. Under these circumstances, the Suitability Adjudicator must coordinate with the Employee Labor Relations Office and the Office of the General Counsel in determining the appropriate course of action.
- (3) Actions for unfavorable determinations for employees and applicants not covered under 5 C.F.R. 731.101(b) (including reemployed annuitants, temporary appointments and positions in the excepted service that are not eligible for non-competitive conversion to the competitive service) are covered under general termination procedures for excepted service positions (5 C.F.R. 302, *Employment in the Excepted Service*) or for temporary positions in the competitive service (5 C.F.R. 315).
- (4) An employee in a covered position may be subject to an adverse suitability action by OPM for:
 - (a) Material intentional false statement(s) or deception or fraud in examination or appointment;
 - (b) Refusal to furnish testimony required under 5 C.F.R. 5.4, *Information and Testimony*; or
 - (c) Any statutory bar or regulatory bar that prevents the lawful employment of the person involved in the position in question.

For certain employees in DOE-specific excepted service positions (e.g., EK, EJ) who have been employed for more than one year and are not serving on a trial period, DOE may choose to take disciplinary action as defined in 5 C.F.R. 752, as appropriate. Such action must be coordinated with the Employee and Labor Relations Policy Office and the Office of the General Counsel.

- (5) In cases where there is insufficient cause to make an unfavorable suitability determination, a letter of advisement may be issued. The letter

advises the individual that future problems in the area of concern could have a negative impact on a future suitability determination or result in disciplinary action. In addition, the letter must also inform the individual that a favorable determination has been made and no further action is being taken in his or her case other than to issue the letter of advisement.

h. Suitability Actions/Debarment Procedures.

- (1) Suitability actions under 5 C.F.R. 731.203 may be taken by OPM or DOE.
- (2) When a suitability action is proposed against an applicant or appointee, procedures in 5 C.F.R. 731 Subpart C, OPM initiated action or Subpart D, Agency initiated action must be followed.
- (3) The applicant or appointee must be notified in writing of the proposed action, the specific charges, and the availability of information relied upon. The individual is afforded 30 days from the date of the Notice of Proposed Action (NOPA) to refute, explain, clarify, or mitigate the unfavorable information and provide an answer to the proposed action in writing. In addition, the individual may provide documentation and/or affidavits in support of the response.
- (4) If the proposed action is still warranted, the applicant or appointee is notified in writing of the final action and reasons for the decision. An unfavorable suitability determination may be appealed to the Merit Systems Protection Board (MSPB). If removal is required, the appointee must be removed within five business days of the determination.
- (5) When an unfavorable suitability determination is made by OPM in a referred case or a case where OPM has assumed jurisdiction, OPM has the authority to impose a Government-wide debarment for up to three years. OPM may impose an additional period of debarment, if warranted, only after the individual again becomes an applicant, appointee, or employee subject to suitability.
- (6) When an unfavorable suitability determination is made in a case not referred to OPM, a period of debarment from DOE for up to three years may be imposed depending on the seriousness and recentness of the issue(s). DOE may impose an additional period of debarment, if warranted, only after the individual again becomes an applicant or appointee subject to suitability.
- (7) Procedures in 5 C.F.R. 752 are followed for the removal of an employee and these actions are handled by the Employee and Labor Relations Policy Office and the Office of General Counsel.

- i. Evaluation of Suitability Program.
 - (1) Actions taken in accordance with this Order are subject to accountability reviews and audits.
 - (2) All files and supporting documentation must be available for Human Capital Management Accountability Program (HCMAP) review at any time.
- j. Reciprocity. If an applicant has a current investigation that meets the investigative and adjudicative requirements for the new position, no new investigation or adjudication is necessary.

5. RESPONSIBILITIES.

- a. Secretary. Provides general direction and written delegated authority to the Administrator of the National Nuclear Security Administration (NNSA) and the Chief Human Capital Officer for the DOE suitability program.
- b. Chief Human Capital Officer (or NNSA's equivalent).
 - (1) Ensures that the Department has a suitability program compliant with 5 C.F.R. 731.
 - (2) Establishes suitability program expectations.
 - (3) Delegates the appropriate responsibilities to conduct Suitability adjudications to the SHRO/SSC or applicable Suitability Adjudicator.
 - (4) Coordinates with the proper Personnel Security Office to assist, as required, in supporting suitability reviews and adjudications.
- c. Office of the General Counsel (or NNSA's equivalent).
 - (1) Advises on unfavorable suitability determinations.
 - (2) Advises on adverse actions due to unfavorable suitability determination(s).
- d. Office of Human Capital Policy.
 - (1) Develops, disseminates, implements, and provides advice on policies and suitability standards, position sensitivity level designations, and related matters.
 - (2) Conducts Department-level suitability reviews and makes final determinations on complex suitability cases.

- (3) Evaluates the effectiveness of and compliance with the suitability and position sensitivity level designation programs in accordance with the Department and OPM's requirements.
 - (4) Liaises with OPM and other organizations regarding suitability and position sensitivity matters.
 - (5) Maintains a log of active Suitability Adjudicators across the Department and the dates of their most recent suitability training.
 - (6) Conducts random independent audits of the suitability determinations under the HCMAP.
 - (7) Designates a Senior Suitability Adjudicator when appropriate.
- e. Servicing Human Resources Offices and Shared Service Centers.
- (1) Provide day-to-day advice and guidance to managers, employees, and supervisors on the suitability and position sensitivity level designation programs.
 - (2) Designate Suitability Adjudicators who will determine the best action to take in response to the identification of adverse suitability information and, as appropriate, review complex or controversial suitability cases under a second-level review process.
 - (3) Advise and provide guidance to managers on adverse and/or disciplinary actions under 5 C.F.R. 752 due to unfavorable suitability determinations.
- f. Heads of Departmental Elements. Designate points of contact to coordinate with HC for position designations and processing of investigative forms.
- g. Senior Suitability Adjudicator.
- (1) Makes second-level suitability determinations at the SHRO/SSC level, or applicable office conducting suitability adjudications.
 - (2) Maintains training certification for Suitability Adjudication through OPM's formal training or equivalent.
- h. Suitability Adjudicators.
- (1) Maintain training certification for Suitability Adjudication through OPM's formal training or equivalent.
 - (2) Ensure proper adjudication of all suitability cases in accordance with the OPM Suitability Handbook, all legal and regulatory requirements, and the provisions of this Order.

- (3) Coordinate with the Senior Suitability Adjudicator on cases requiring Department-level final suitability determinations.
 - (4) Coordinate with Employee and Labor Relations Specialists, the Office of the General Counsel, and the Office of the Inspector General when a suitability determination is found to be unfavorable to determine whether action under 5 C.F.R. 752 or 5 C.F.R. 315 is more appropriate.
 - i. Cognizant Personnel Security Office.
 - (1) Coordinates with the applicable Departmental Elements and SHRO/SSC in obtaining required documentation for processing background investigations to be used for suitability adjudications.
 - (2) Coordinates with the Heads of Departmental Elements (or designee) and/or the proper SHRO/SSC to assist, as required, in supporting suitability reviews and adjudications.
 - j. Managers and Supervisors.
 - (1) Determine the risk and sensitivity of each subordinate position and certify information as required by the provisions of this Order.
 - (2) Coordinate with Employee and Labor Relations Specialists in HC immediately when notified of unfavorable suitability cases likely to result in an adverse action under 5 C.F.R. 752.
 - (3) Coordinate with HC to ensure accurate completion of position sensitivity forms and/or records as required by the provisions of this Order.
 - k. Applicants, Appointees, and Employees. As required, complete suitability forms accurately and in a timely manner. This involves providing complete, honest, and truthful answers to relevant and material questions and, when appropriate, furnishing, or authorizing others to furnish, information during an initial background investigation or a reinvestigation. An individual may elect not to furnish such information, but such an election may result in a disciplinary action, up to and including removal, or, in the case of an applicant, a decision to rescind an offer of employment.
6. INVOKED TECHNICAL STANDARDS. This Order does not invoke any DOE technical standards or industry standards as required methods. Note: DOE O 251.1D, Appendix J provides a definition for “invoked technical standard.”
7. REFERENCES.
 - a. Executive Order (E.O.) 12968, *Access to Classified Information* (August 2, 1995), as amended

- b. E.O. 13467, *To Modernize the Executive Branch-Wide Governance Structure and Processes for Security Clearances, Suitability and Fitness for Employment and Credentialing, and Related Matters* (January 23, 2017)
- c. E.O. 13488, *Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust* (January 16, 2009)
- d. E.O. 13526, *Classified National Security Information* (December 29, 2009)
- e. E.O. 13764, *Amending the Civil Service Rules*, Executive Order 13488
- f. Title 5 United States Code (U.S.C.) § 7311, *Loyalty and Striking*
- g. 42 U.S.C. §§ 2011 et seq., *Atomic Energy Act of 1954*, as amended
- h. Title 5 Code of Federal Regulations (C.F.R.) Part 5, *Regulation, Investigation and Enforcement*
- i. 5 C.F.R. Part 315, *Career and Career-Conditional Employment*
- j. 5 C.F.R. Part 330, *Recruitment, Selection, and Placement (General)*
- k. 5 C.F.R. Part 359, *Removal from the Senior Executive Service*
- l. 5 C.F.R. Part 731, *Suitability*
- m. 5 C.F.R. Part 732, *National Security Positions*
- n. 5 C.F.R. Part 736, *Personnel Investigations*
- o. 5 C.F.R. Part 752, *Adverse Actions*
- p. 5 C.F.R. Part 1400, *Designation of National Security Positions*
- q. Homeland Security Presidential Directive-12 (HSPD-12), *Policies for a Common Identification Standard for Federal Employees and Contractors*
- r. Office of Management and Budget Memorandum, M-19-17, *Enabling Mission Delivery through Improved Identity, Credential, and Access Management* (May 21, 2019)
- s. 2012 Federal Investigative Standards
- t. Office of Personnel Management (OPM) *Suitability Processing Handbook*, September 2008
- u. Declaration for Federal Employment, Optional Form 306 (OF-306)

- v. DOE O 251.1, *Departmental Directives Program*, current version
- w. DOE O 470.4, *Safeguards and Security Program*, current version
- x. DOE O 472.2, *Personnel Security*, current version

8. DEFINITIONS.

- a. Applicant. A person who is being considered or has been considered for employment.
- b. Appointee. A person who has entered on duty and is in the first calendar year of a subject-to-investigation appointment.
- c. Certain Excepted Service Position. A position that is not covered under 5 C.F.R. 731.101, *Purpose*. This includes positions in the excepted service that are not eligible for non-competitive conversion to the competitive service (e.g., EJ, EN and EK, attorney). These positions require a fitness determination in lieu of a suitability determination (see paragraph 7.i). DOE uses equivalent factors applied in a suitability adjudication when making fitness determinations.
- d. Covered Position. For the purposes of this Order, covered positions include positions in the following: competitive service; excepted service, where the incumbent can be noncompetitively converted to the competitive service; and career appointments to positions in the Senior Executive Service.
- e. Debarment. A prohibition from taking a competitive service examination or from being hired (or retained in) a covered position for a specific period.
- f. Employee. A person who has completed the first year of a subject-to-investigation appointment.
- g. Fingerprint Special Agreement Check (SAC). A check on an individual's fingerprints by an agency to run a criminal history check. It can be done as a stand-alone check for the purpose of continuous evaluation, a follow-up to a report of arrest, used for the issuance of a government credential or in most cases, is the precursor to the submission of a full background investigation.
- h. Fitness. The level of character and conduct determined necessary for an individual to perform work for, or on behalf of, a Federal agency as an employee in the excepted service (other than in a position subject to suitability).
- i. Investigation. A review of an applicant or employee's background. Per the 2012 Revised Federal Investigative Standards, the different levels of investigation are:
 - (1) Tier 1. Investigations conducted to this standard are for positions designated as low risk, non-sensitive and for physical and/or logical access, pursuant to Federal Information Processing Standards

Publication 201 and Homeland Security Presidential Directive-12, using Standard Form 85, or its successor form.

- (2) Tier 2. Investigations conducted to this standard are for non-sensitive positions designated as moderate risk public trust, using Standard form 85P, or its successor form.
 - (3) Tier 3. Investigations conducted to this standard are for positions designated as non-critical sensitive, and/or requiring eligibility "L" access or access to Confidential or Secret information. This is the lowest level of investigation acceptable for access to classified information, using Standard Form 86, or its successor form.
 - (4) Tier 4. Investigations conducted to this standard are for non-sensitive positions designated as high-risk public trust, using Standard Form 85P, or its successor form.
 - (5) Tier 5. Investigations conducted to this standard are for positions designated as critical sensitive, special sensitive, and/or requiring eligibility for "Q" access or access to Top Secret or Sensitive Compartmented Information (SCI), using Standard Form 86, or its successor form.
- j. Suitability. A person's identifiable character traits and conduct used to decide whether an individual's employment or continued employment would or would not protect the integrity or promote the efficiency of the service. Suitability investigations are conducted under 5 C.F.R. 731 for all covered positions.
- k. Suitability Determination. A decision regarding whether an individual's employment or continued employment would or would not protect the integrity and promote the efficiency of the service based on a person's identifiable character traits and conduct.
9. CONTACT. Questions concerning this Order should be directed to the Office of Chief Human Capital Officer, Office of Human Capital Policy, at (202) 586-1234.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK
Deputy Secretary