

**§ 842.809**

**5 CFR Ch. I (1–1–03 Edition)**

Treasury) or under 5 U.S.C. 8401(17)(D) (concerning certain positions primarily involved in detention activities).

(b) Each agency must establish a file containing all coverage determinations made by an agency head under §842.803, and all background material used in making the determination.

(c) Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested. For rigorous positions, the list must show the specific entry age requirement and physical qualification requirements for each position.

[52 FR 2069, Jan. 16, 1987, as amended at 57 FR 32691, July 23, 1992]

**§ 842.809 Transitional provisions.**

(a) Any service as an air traffic controller, within the meaning of this term under 5 U.S.C. 2109 as in effect on or after January 1, 1987—even if performed before that date—is included in determining an employee’s length of air traffic controller service under 5 U.S.C. 8412(e) for the purposes of retirement eligibility and for mandatory separation under 5 U.S.C. 8425(a) as long as the annuity is based on a separation from service occurring after 1986.

(b) Any service as a law enforcement officer or firefighter, within the meaning of these terms under 5 U.S.C. 8331 (20) and (21), that was performed before the date on which an employee becomes subject to chapter 84 of title 5, United States Code, is included in determining the employee’s length of law enforcement officer and firefighter service under 5 U.S.C. 8412(d) for the purposes of retirement eligibility and mandatory separation under 5 U.S.C. 8425(b). Service performed as a law enforcement officer or firefighter within the meaning of 5 U.S.C. 8331, other than service in a supervisory or administrative position, is considered to be service in a rigorous position for the purpose of the 3-year requirement of §842.803(b)(1)(ii). The FERS definitions of firefighter under 5 U.S.C. 8401(14) and

law enforcement officer under 5 U.S.C. 8401(17) are not applicable to service performed—

(1) Before 1987; or

(2) After 1986 and before an employee first becomes subject to chapter 84 (that is, subject to FERS deductions), unless that service was neither subject to CSRS deductions nor creditable in a CSRS component as described in §846.304(b).

(c)(1) An individual who—

(i) Is covered as a law enforcement officer or firefighter under 5 U.S.C. 8336(c) in a supervisory or administrative position, having already met the transfer requirement of subpart I of part 831 of this chapter; and

(ii) Elects under section 301 of Pub. L. 99–335 to become subject to chapter 84 of such title and begins service in a secondary position with no break in service is considered to have met the transfer and 3-year requirements of §§842.803(b)(1)(i) and (ii) for coverage in a secondary position upon the effective date of the election.

(2) An individual who—

(i) Is covered as a law enforcement officer or firefighter under 5 U.S.C. 8336(c) in a supervisory or administrative position, having already met the transfer requirement of subpart I of part 831 of this chapter; and

(ii) Automatically becomes subject to chapter 84 of title 5 of the United States Code (not by election under section 301 of Pub. L. 99–335) serving in a secondary position is considered to have met the 3-year requirement of §842.803(b)(1)(ii) for coverage in a secondary position. The employee is not covered as a law enforcement officer or firefighter in a secondary position if he or she had a break in coverage as a law enforcement officer or firefighter (within the meaning of 5 U.S.C. 8331) exceeding 3 days immediately before becoming subject to chapter 84 of title 5 of United States Code. However, a break in coverage in supervisory or administrative positions occurring before the individual becomes subject to such chapter 84 that began with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8414(b)(1)(A), is not considered to be a break in service for this purpose.

(d) (1) The CSRS definitions of law enforcement officer under 5 U.S.C. 8331(20) and firefighter under 5 U.S.C. 8331(21) are applicable to service performed before an employee became subject to chapter 84 if the service was—

(i) Subject to CSRS deductions at the time it was performed (including service that becomes creditable under FERS annuity computation rules);

(ii) Performed before 1987 and not subject to retirement deductions; or

(iii) Performed after 1986 and not subject to retirement deductions but is creditable in a CSRS component as described in § 846.304(b).

(2) The determination of whether any service meets the CSRS definitions of law enforcement officer under 5 U.S.C. 8331 (20) or firefighter under 5 U.S.C. 8331(21) must be made in accordance with the provisions of subpart I of part 831 of this chapter.

[52 FR 2069, Jan. 16, 1987, as amended at 57 FR 32691, July 23, 1992]

REGULATIONS PERTAINING TO  
NONCODIFIED STATUTES

**§ 842.810 Elections to be deemed a law enforcement officer for retirement purposes by certain police officers employed by the Metropolitan Washington Airports Authority (MWAA).**

(a) *Who may elect.* Metropolitan Washington Airports Authority (MWAA) police officers employed as members of the MWAA police force as of December 21, 2000, who are covered by the provisions of the Federal Employees Retirement System by 49 U.S.C. 49107(b) may elect to be deemed a law enforcement officer for retirement purposes and have past service as a member of the MWAA and Federal Aviation Administration police forces credited as law enforcement officer service.

(b) *Procedure for making an election.* Elections by an MWAA police officer to be treated as a law enforcement officer for retirement purposes must be made in writing to the MWAA and filed in the employee's personnel file in accordance with procedures established by OPM in consultation with the MWAA.

(c) *Time limit for making an election.* An election under paragraph (a) of this section must be made either before the

MWAA police officer separates from service with the MWAA or July 25, 2002, whichever occurs first.

(d) *Effect of an election.* An election under paragraph (a) of this section is effective on the beginning of the first pay period following the date of the MWAA police officer's election.

(e) *Irrevocability.* An election under paragraph (a) of this section becomes irrevocable when received by the MWAA.

(f) *Employee payment for past service.*

(1) An MWAA police officer making an election under this section must pay an amount equal to the difference between law enforcement officer retirement deductions and retirement deductions actually paid by the police officer for the police officer's past police officer service with the Metropolitan Washington Airports Authority and Federal Aviation Administration. The amount paid under this paragraph shall be computed with interest in accordance with 5 U.S.C. 8334(e) and paid to the MWAA prior to separation.

(2) Starting with the effective date under paragraph (d) of this section, the MWAA must make deductions and withholdings from the electing MWAA police officer's base pay in accordance with 5 CFR 832.805.

(g) *Employer contributions.* (1) Upon the police officer's payment for past service credit under paragraph (f) of this section, the MWAA must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the additional agency retirement contribution amounts required for the police officer's past service, plus interest.

(2) Starting with the effective date under paragraph (d) of this section, the MWAA must make agency contributions for the electing police officer in accordance with 5 CFR 842.805.

(h) *Mandatory Separation.* (1) An MWAA police officer who elects to be treated as a law enforcement officer for FERS retirement purposes is subject to the mandatory separation provisions of 5 U.S.C. 8425(b) and 5 CFR 831.502.

(2) The President and Chief Operating Officer of the MWAA is deemed to be the head of an agency for the purpose of exempting an MWAA police officer