

(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

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from mandatory separation in accordance with the provisions of 5 U.S.C. 8425(b) and 5 CFR 831.502(b)(1).

(i) *Reemployment.* An MWWA police officer who has been mandatorily separated under 5 U.S.C. 8425(b) is not barred from reemployment in any position except a FERS rigorous or secondary law enforcement officer position after age 60. Service by a reemployed former MWWA police officer who retired under 5 U.S.C. 8412(d) is not covered by the provisions of 5 U.S.C. 8412(d).

[66 FR 38525, July 25, 2001]

Subpart I—Nuclear Materials Couriers

SOURCE: 65 FR 2524, Jan. 18, 2000, unless otherwise noted.

§ 842.901 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement—

(1) 5 U.S.C. 8412(d) and (e), which establish special retirement eligibility for law enforcement officers, firefighters, air traffic controllers, and nuclear materials couriers employed under the Federal Employees Retirement System (FERS);

(2) 5 U.S.C. 8422(a), pertaining to deductions;

(3) 5 U.S.C. 8423(a), pertaining to Government contributions; and

(4) 5 U.S.C. 8425, pertaining to mandatory retirement.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8461(g) to prescribe regulations to carry out the provisions of 5 U.S.C. chapter 84 and in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies.

§ 842.902 Definitions.

Agency head means the Secretary of Energy. For purposes of this subpart, *agency head* is also deemed to include the designated representative of the Secretary of Energy, except that the designated representative must be a department headquarters-level official who reports directly to the Secretary of Energy, or to the Deputy Secretary

of Energy, and who is the sole such representative for the entire department.

Employee means an employee as defined by 5 U.S.C. 8401(11).

Nuclear materials courier means an employee of the Department of Energy, the duties of whose position are primarily to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security, including an employee engaged in this activity who is transferred directly to a supervisory or administrative position within the same Department of Energy organization, after performing this activity for at least 3 years. (See 5 U.S.C. 8331(27).)

Primary duties means those duties of a position that—

(1)(i) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(ii) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(iii) Are assigned on a regular and recurring basis.

(2) Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

Primary position means a position that is in an organization of the Department of Energy and whose primary duties are to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security.

Secondary position means a position that—

(1) Is clearly in the nuclear materials transportation field;

(2) Is in an organization of the Department of Energy having a nuclear materials transportation mission; and

(3) Is either—