

### § 831.803

*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—

(i) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of nuclear materials couriers in primary positions; or

(ii) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary nuclear materials courier position is a prerequisite.

#### **§ 831.803 Conditions for coverage in primary positions.**

(a) An employee's service in a position that has been determined by the Secretary of the Department of Energy to be a primary nuclear materials courier position is covered under the provisions of 5 U.S.C. 8336(c).

(b) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a primary position is not covered under the provisions of 5 U.S.C. 8336(c).

#### **§ 831.804 Conditions for coverage in secondary positions.**

(a) An employee's service in a position that has been determined by the Secretary of the Department of Energy to be a secondary nuclear materials courier position following 3 years of service in a primary nuclear materials courier position is covered under the provisions of 5 U.S.C. 8336(c) if all of the following criteria are met:

(1) The employee is transferred directly (*i.e.*, without a break in service exceeding 3 days) from a primary position to a secondary position; and

(2) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions which begins with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8336(d)(1), is not considered in deter-

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mining whether the service in secondary positions is continuous for this purpose.

(b) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8336(c).

#### **§ 831.805 Evidence.**

(a) The Secretary of Energy's determination under § 831.803 that a position is a primary position must be based solely on the official position description of the position in question, and any other official description of duties and qualifications. The official documentation for the position must establish that it satisfies the requirements defined in § 831.802.

(b) A determination under § 831.804 must be based on the official position description and any other evidence deemed appropriate by the agency head for making the determination.

(c) If an employee is in a position not subject to the one-half percent higher withholding rate of 5 U.S.C. 8334(a)(1), and the employee does not, within 6 months after entering the position or after any significant change in the position, formally and in writing seek a determination from the employing agency that his or her service is properly covered by the higher withholding rate, the agency head's determination that the service was not so covered at the time of the service is presumed to be correct. This presumption may be rebutted by a preponderance of the evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed at the time the service was performed.

#### **§ 831.806 Requests from individuals.**

(a) An employee who requests credit for service under 5 U.S.C. 8336(c) bears the burden of proof with respect to that service, and must provide the employing agency with all pertinent information regarding duties performed.

(b) An employee who is currently serving in a position that has not been approved as a primary or secondary position, but who believes that his or her