

### 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 or-

ganization, 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—

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

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

#### § 842.903 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

## § 842.904

to be a primary nuclear materials courier position is covered under the provisions of 5 U.S.C. 8412(d).

(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. 8412(d).

### § 842.904 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. 8412(d) 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. 8414(b)(1)(A), is not considered in determining 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. 8412(d).

### § 842.905 Evidence.

(a) The Secretary of Energy's determination under § 842.903 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 § 842.902.

(b) A determination under § 842.904 must be based on the official position description and any other evidence

## 5 CFR Ch. I (1-1-01 Edition)

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. 8422(a)(3), 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.

### § 842.906 Requests from individuals.

(a) An employee who requests credit for service under 5 U.S.C. 8412(d) 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 service is creditable as service in a primary or secondary position may request the agency head to determine whether or not the employee's current service should be credited and, if it qualifies, whether it should be credited as service in a primary or secondary position. A written request for current service must be made within 6 months after entering the position or after any significant change in the position.

(c) A current or former employee (or the survivor of a former employee) who believes that a period of past service in an unapproved position qualifies as service in a primary or secondary position and meets the conditions for credit may request the agency head to determine whether or not the employee's past service should be credited and, if it qualifies, whether it should be credited as service in a primary or secondary position. A written request for