

§ 831.811

(b) The final decision of the Department of Energy that a break in service referred to in § 831.804(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8336(d)(1).

§ 831.811 Oversight of coverage determinations.

(a) Upon deciding that a position is a nuclear materials courier position, the agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

(b) The Department of Energy must establish a file containing each coverage determination made by the agency head under § 831.803 and § 831.804, and all background material used in making the determination.

(c) Upon request by OPM, the Department of Energy 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, the Department of Energy must submit to OPM a list of all covered positions and any other pertinent information requested.

Subpart I—Law Enforcement Officers and Firefighters

SOURCE: 58 FR 64367, Dec. 7, 1993, unless otherwise noted.

§ 831.901 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for law enforcement officers and firefighters employed under the Civil Service Retirement System; 5 U.S.C. 8331(3) (C) and (D), pertaining to basic pay; 5 U.S.C. 8334(a) (1) and (c), pertaining to deductions, contributions, and deposits; 5 U.S.C. 8335(b), pertaining to mandatory retirement;

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and 5 U.S.C. 8339(d), pertaining to computation of annuity.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8347 to prescribe regulations to carry out subchapter III of chapter 83 of title 5 of the United States Code, and in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies.

§ 831.902 Definitions.

In this subpart—

Agency head means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment. For the purpose of an approval of coverage under this subpart, *agency head* is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that the designated representative must be a department headquarters-level official who reports directly to the executive department head, and who is the sole such representative for the entire department. For the purpose of a denial of coverage under this subpart, *agency head* is also deemed to include the designated representative of the *agency head*, as defined in the first sentence of this definition, at any level within the agency.

Detention duties means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (10 U.S.C. chapter 47). (See 5 U.S.C. 8331(20).)

Firefighter means an employee, whose duties are *primarily* to perform work directly connected with the control and

extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Also included in this definition is an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(21).) An employee whose primary duties are the performance of routine fire prevention inspection is excluded from this definition.

Frequent direct contact means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

Law enforcement officer means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20).) The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

Primary duties are 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 whose primary duties are:

- (1) To perform work directly connected with controlling and extin-

guishing fires or maintaining and using firefighter apparatus and equipment; or

- (2) Investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.

Secondary position means a position that:

- (1) Is clearly in the law enforcement or firefighting field;

- (2) Is in an organization having a law enforcement or firefighting mission; and

- (3) Is either—

(i) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or

(ii) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government, is a prerequisite.

[58 FR 64367, Dec. 7, 1993, as amended at 60 FR 3339, Jan. 17, 1995; 66 FR 38524, July 25, 2001]

§ 831.903 Conditions for coverage in primary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a primary law enforcement officer or firefighter 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).

§ 831.904 Conditions for coverage in secondary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a secondary law enforcement officer or firefighter 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