

Office of Personnel Management

§ 842.902

(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 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 MWAA 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 MWAA 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

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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—
 - (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.

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§ 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 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