

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, or to the deputy 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 di-

rectly 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:

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(1) To perform work directly connected with controlling and extinguishing 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; 70 FR 42253, July 22, 2005]

§ 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

(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 8336(d)(1) of title 5, United States Code, is not considered in determining whether the service in secondary positions is continuous for this purpose.

(b) This requirement for continuous employment in a secondary position applies only to voluntary breaks in service beginning after January 19, 1988.

(c) 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).

(d) The service of an employee who is in a position on January 19, 1988, that has been approved as a secondary position under this subpart will continue to be covered under the provisions of 5 U.S.C. 8336(c) as long as the employee remains in that position without a voluntary break in service, and coverage is not revoked by OPM under § 831.911, or by the agency head.

§ 831.905 Evidence.

(a) An agency head's determination 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 § 831.902.

(b) A determination under § 831.904 must be based on the official position description and any other evidence deemed appropriate by the agency head for making the determination.

§ 831.906 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