

Rules and Regulations

Federal Register

Vol. 66, No. 143

Wednesday, July 25, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206-AJ39

Law Enforcement Officer and Firefighter Retirement

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules that permit certain police officers with the Metropolitan Washington Airports Authority (MWAA) to elect coverage under the special retirement provisions for law enforcement officers. OPM is also amending the regulations governing special retirement provisions for law enforcement officers and firefighters employed under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). These changes are intended to clarify and interpret previously promulgated regulations.

DATES: *Effective Date:* This interim rule is effective July 25, 2001.

Comment: We must receive your comments by August 24, 2001.

ADDRESSES: Send comments on this interim regulation to Mary Ellen Wilson, Director, Retirement Policy Center, Office of Personnel Management, Washington, DC 20415-3200. You may also submit comments by sending electronic mail (E-mail) to: combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings (202) 606-0299.

SUPPLEMENTARY INFORMATION:

Coverage Elections for Metropolitan Washington Airports Authority Police Officers Under CSRS or FERS

On December 21, 2000, Congress enacted the Consolidated

Appropriations Act, 2001 (Public Law 106-554, 114 Stat. 2763). The Consolidated Appropriations Act, 2001 incorporated the Treasury and General Government Appropriations Act, 2001 (H.R. 5658) by reference (published as Appendix C to Pub. L. 106-554 at 114 Stat. 2763A-125). Section 636 of H.R. 5658 allows certain members of the police force of the Metropolitan Washington Airports Authority (MWAA) to elect to be treated as law enforcement officers for the purpose of retirement. Only MWAA police officers employed as of December 21, 2000, who are subject to CSRS or FERS retirement by virtue of section 49107(b) of title 49, United States Code, may make such an election. An election by an MWAA police officer to be treated as a law enforcement officer for retirement purposes must be made either before the police officer separates from the MWAA or within 1 year from the effective date of these regulations, whichever is earlier.

An MWAA police officer covered by CSRS or FERS who elects to be treated as a law enforcement officer will receive law enforcement officer service credit for his or her past service as a police officer with the Federal Aviation Administration and the MWAA, subject to a deposit of retirement deductions plus interest. The MWAA must pay the agency's share of retirement contributions for the employee's service, plus interest.

Delegation of Authority To Deny Coverage

Under the CSRS and FERS law enforcement officer and firefighter regulations a department headquarters-level official who is the sole such representative for the entire department must make law enforcement officer or firefighter coverage-approval decisions for position-based retirement coverage. Due to cost and consistency of decision considerations, the authority to approve law enforcement officer or firefighter coverage must be made by the agency head or, in the case of an executive department, the designated representative of the head of the executive department. The regulations do not expressly provide that an agency head can delegate the authority to deny enhanced retirement coverage to any level within an agency. Although the regulations did not address the issue,

delegation by the agency head of his or her authority to deny enhanced coverage was discussed in the supplementary information published with previous CSRS and FERS regulations. The supplementary comments published with the FERS law enforcement and firefighter regulations indicate that an agency head can delegate the authority to deny enhanced coverage to any level within the agency. Specifically, the supplementary information states that:

Section 842.804(c) allows an individual to request a determination as to whether his or her position qualifies as a law enforcement officer, firefighter, or air traffic controller position. Of course, any affirmative determination must be made by the agency head in accordance with § 842.803. *However, a denial of an individual request for position approval may be made by the agency head's designated representative, in accordance with agency delegations of authority.* Any final agency decision denying an individual's request for position approval may be appealed to the Merit Systems Protection Board.

We are amending § 842.807 to clarify that (1) only agency denial decisions made in response to individual requests under § 842.804(c) are subject to appeal and (2) *agency denial decisions may be made by officials below the level of agency head * * ** (57 FR 32,685, 32,689 (1992)) (emphasis added).

The CSRS regulations also allow an agency head to delegate the authority to deny law enforcement officer and firefighter coverage to any level within the agency. Further, the U.S. Merit Systems Protection Board has held that supplementary information published with the FERS law enforcement and firefighter regulations makes it clear that an agency head can delegate the authority to deny enhanced coverage to any level within the agency. *See Streeter v. Department of Defense*, 80 M.S.P.R. 481, 484 (1998) (citing 57 FR 32685, 32688 (July 23, 1992)). OPM is incorporating into the body of the regulations the information regarding an agency head's authority to delegate denial decisions to any level within the agency.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(3)(A) and (B), and (d)(2) and (3) of title 5, United States Code, I find that these regulations contain interpretive rules and statements of policy, and that good

cause exists for waiving the general notice of proposed rulemaking and for making these rules effective in less than 30 days. Elections of law enforcement coverage by qualifying members of the Metropolitan Washington Airports Authority police force under these regulations will affect qualifying employees' retirement coverage retroactive to their entry on duty with the Metropolitan Washington Airports Authority. Publication of a general notice on proposed rulemaking would be contrary to the public interest because it would delay the election opportunity for eligible individuals.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect a small number of employees of the Metropolitan Washington Airports Authority.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability Benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Steven R. Cohen,
Acting Director.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105–174, 112 Stat. 58; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also

issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004 (c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106–554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart I—Law Enforcement Officers and Firefighters

2. Amend § 831.902 by revising the definition of *agency head* to read as follows:

§ 831.902 Definitions.

* * * * *

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.

* * * * *

3. Amend § 831.908 by revising paragraph (a) to read as follows:

§ 831.908 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.502 provides the procedures for requesting an exemption from mandatory separation.

* * * * *

4. Revise § 831.910 to read as follows:

§ 831.910 Review of decisions.

(a) The final decision of an agency head or OPM issued to an employee, former employee, or survivor as the result of a request for determination filed under § 831.906 may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency head that a break in service referred to in § 831.904(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8336(d)(1) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

5. Add an undesignated center heading and a new § 831.912 to subpart I to read as follows:

Regulations Pertaining to Noncodified Statutes

§ 831.912 Elections to be deemed a law enforcement officer for retirement purposes by certain police officers employed by the Metropolitan Washington Airports Authority (MWAA).

(a) *Who may elect.* Metropolitan Washington Airports Authority (MWAA) police officers employed as members of the MWAA police force as of December 21, 2000, who are covered by the provisions of the Civil Service Retirement System by 49 U.S.C. 49107(b) may elect to be deemed a law enforcement officer for retirement purposes and have past service as a member of the MWAA and Federal Aviation Administration police forces credited as law enforcement officer service.

(b) *Procedure for making an election.* Elections by an MWAA police officer to be treated as a law enforcement officer for retirement purposes must be made in writing to the MWAA and filed in the employee's personnel file in accordance with procedures established by OPM in consultation with the MWAA.

(c) *Time limit for making an election.* An election under paragraph (a) of this section must be made either before the

MWAA police officer separates from service with the MWAA or July 25, 2002.

(d) *Effect of an election.* An election under paragraph (a) of this section is effective on the beginning of the first pay period following the date of the MWAA police officer's election.

(e) *Irrevocability.* An election under paragraph (a) of this section becomes irrevocable when received by the MWAA.

(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 831.907.

(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 831.907.

(h) *Mandatory Separation.* (1) An MWAA police officer who elects to be treated as a law enforcement officer for CSRS retirement purposes is subject to the mandatory separation provisions of 5 U.S.C. 8335(b) and 5 CFR 831.502(a).

(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. 8335(b) and 5 CFR 831.502.

(i) *Reemployment.* An MWAA police officer who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment after age 60 in any position except a CSRS primary or secondary law enforcement officer position or a FERS rigorous law or secondary enforcement officer position.

Service by a reemployed former MWAA police officer who retired under 5 U.S.C. 8336(c) is not covered by the provisions of 5 U.S.C. 8336(c).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for Part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 7001 of Pub. L. 105–174, 112 Stat. 58, as amended by section 651 of Pub. L. 106–58, 113 Stat. 430; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106–554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–125.

Subpart H—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

7. Amend § 842.802 by revising the definition of *agency head* to read as follows:

§ 842.802 Definitions.

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.

* * * * *

8. Revise § 842.807 to read as follows:

§ 842.807 Review of decisions.

(a) The final decision of an agency head denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under § 842.804(c) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency head denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 842.803(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

9. Add an undesignated center heading and new § 842.810 to subpart H to read as follows:

Regulations Pertaining to Noncodified Statutes

§ 842.810 Elections to be deemed a law enforcement officer for retirement purposes by certain police officers employed by the Metropolitan Washington Airports Authority (MWAA).

(a) *Who may elect.* Metropolitan Washington Airports Authority (MWAA) police officers employed as members of the MWAA police force as of December 21, 2000, who are covered by the provisions of the Federal Employees Retirement System by 49 U.S.C. 49107(b) may elect to be deemed a law enforcement officer for retirement purposes and have past service as a member of the MWAA and Federal Aviation Administration police forces credited as law enforcement officer service.

(b) *Procedure for making an election.* Elections by an MWAA police officer to be treated as a law enforcement officer for retirement purposes must be made in writing to the MWAA and filed in the employee's personnel file in accordance with procedures established by OPM in consultation with the MWAA.

(c) *Time limit for making an election.* An election under paragraph (a) of this section must be made either before the MWAA police officer separates from service with the MWAA or July 25, 2002, whichever occurs first.

(d) *Effect of an election.* An election under paragraph (a) of this section is effective on the beginning of the first pay period following the date of the MWAA police officer's election.

(e) *Irrevocability.* An election under paragraph (a) of this section becomes irrevocable when received by the MWAA.

(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).

[FR Doc. 01-18530 Filed 7-24-01; 8:45 am]

BILLING CODE 6325-50-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

RIN 0551-AA51

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Sales Reporting Requirements Regulation to add certain beef to the list of commodities subject to this Regulation. Under this final rule, exporters are required to report on a weekly basis information concerning the quantity, country of destination, and marketing period of shipment for their export sales. Information collected will be aggregated and included in the weekly "U.S. Export Sales" report published by the Foreign Agricultural Service (FAS).

DATES: The final rule is effective August 24, 2001.

FOR FURTHER INFORMATION CONTACT:

David Williams, Import Policies and Programs Division, Stop 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250-1021, or telephone at (202) 720-3273, or e-mail at WilliamsDJ@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State or local officials (See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988. The provisions of this final rule will not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. This final rule will not have retroactive effect. Administrative proceedings are not

required before parties may seek judicial review.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This final rule should not have a significant economic impact on a substantial number of small entities. Although there are exporters of beef and beef products that operate small businesses, the data required under the final rule are routinely maintained during the normal course of export sales contracting business activity. A copy of this final rule has been sent to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the Department of Agriculture (Department) submitted a revised information collection package to OMB (OMB control number 0551-0007) to support the proposed rule. The proposed rule, published on March 3, 2000 (65 FR 11483-11485), required export sales reporting for fresh, chilled, or frozen muscle cuts of beef, and fresh, chilled, or frozen muscle cuts of pork. Since the final rule does not include pork, the Department will request a revision of the information collection to support the final rule.

The Department is required under section 913(b)(1) of Pub. L. 106-78 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000), to establish a streamlined electronic system to collect export sales information and data for muscle cuts of meat food products in the least intrusive manner possible. Prior to establishing the electronic system, the Department will issue a **Federal Register** notice soliciting public comments on the requested revision of the information collection, and on the electronic forms and program developed by the Department to provide exporters the opportunity to submit export sales reports for beef electronically. The Department will also request OMB approval of forms that are being developed for electronic submission of export sales reports for fresh, chilled, or frozen muscle cuts of beef. All public comments received with respect to export sales reporting for beef will be