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Mary Fallin, Governor
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Secretary of State
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Notices of Rulemaking Intent

Prior to adoption and gubernatorial/legislative review of a proposed PERMANENT rulemaking action, an agency must publish a Notice of Rulemaking Intent in the *Register*. In addition, an agency may publish a Notice of Rulemaking Intent in the *Register* prior to adoption of a proposed EMERGENCY or PREEMPTIVE rulemaking action.

A Notice of Rulemaking Intent announces a comment period, or a comment period and public hearing, and provides other information about the intended rulemaking action as required by law, including where copies of proposed rules may be obtained.

For additional information on Notices of Rulemaking Intent, see 75 O.S., Section 303.

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 140. OKLAHOMA QUICK ACTION CLOSING FUND [NEW]

[OAR Docket #11-1023]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

150:140-1-1. Purpose and scope [NEW]

150:140-1-2. Definitions [NEW]

150:140-1-3. Application process [NEW]

150:140-1-4. Award process [NEW]

SUMMARY:

The proposed rules would set forth the process for making application to the Oklahoma Department of Commerce for funds from the Oklahoma Quick Action Closing Fund.

AUTHORITY:

The legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq., and the Oklahoma Quick Action Closing Fund 62 O.S. § 48.2(F).

COMMENT PERIOD:

Written and oral comments will be accepted from November 2, 2011 through December 2, 2011 during regular business hours by contacting Donald R. Hackler, Jr., Deputy General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104 (405) 815-5359.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m. on Friday, December 2, 2011, at Gallery 1-2, 900 North Stiles Avenue, Oklahoma City, Oklahoma. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Donald R. Hackler, Jr., Deputy General Counsel, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104.

COPIES OF THE PROPOSED RULES:

Copies of the proposed rules may be obtained without charge from the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104 by contacting Donald R. Hackler, Jr. at (405) 815-5359.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement has been prepared and is available at the offices of the Oklahoma Department of Commerce (address below).

CONTACT PERSON:

Donald R. Hackler, Jr., Attorney, Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma 73104 (405) 815-5359.

[OAR Docket #11-1023; filed 10-3-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #11-1029]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 2. Incorporation By Reference

252:100-2.1. [AMENDED]

252:100-2-3. [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 5. Permits for Part 70 Sources

252:100-8-2. [AMENDED]

252:100-8-4. [AMENDED]

Part 7. Prevention of Significant Deterioration (PSD)

Requirements for Attainment Areas

252:100-8-31. [AMENDED]

252:100-8-33. [AMENDED]

Part 9. Major Sources Affecting Nonattainment Areas

252:100-8-51.1. [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to clarify language in Subchapter 2, Incorporation By Reference, and to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. Included are changes or additions to 40 CFR Part 60, New Source Performance

Notices of Rulemaking Intent

Standards (NSPS), and Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP).

The Department is proposing to modify Subchapter 8 to include the EPA's recent changes to the Prevention of Significant Deterioration (PSD) and Part 70 programs regarding permitting of carbon dioxide (CO₂) emissions from certain biomass sources. EPA has deferred for a period of three (3) years the application of the PSD and Part 70 permitting requirements to biogenic CO₂ emissions from bioenergy and other biogenic stationary sources. The Department proposes to modify the definitions of "subject to regulation" in 252:100-8-2 and 252:100-8-31 to accomplish this deferral. The proposed modification to Parts 5 and 7 of Subchapter 8 will prevent the State rule from being perceived to be more stringent than the corresponding federal rule.

The Department is proposing to make a change to OAC 252:100-8-4(a)(1), which would clarify that construction permits for new and modified Part 70 sources shall be obtained under the requirements of Part 5 of 252:100-8 and not 252:100-7, Permits for Minor Facilities. In addition, a change is proposed to 252:100-8-4(b), which would set a schedule for a timely application submittal for sources that become subject to the Part 70 operating permit program without any physical or operational change or any increase in emissions of air pollutants subject to regulation.

Due to errors in the *Oklahoma Register* (28 OK Reg 1079) published June 15, 2011, the Department is proposing a series of corrections to Subchapter 8. The corrections are in paragraph (B) of the definition of "subject to regulation" in 252:100-8-2 and in paragraph (B)(i) of the definition of "subject to regulation" in 252:100-8-31 where dashes were erroneously converted to the letter "B"; in the definitions of "baseline area" and "significant" in 252:100-8-31 where "µg/m³" was erroneously converted to "Fg/m³"; in 252:100-8-33(c)(1) where a number of occurrences of "µg/m³" were erroneously converted to "Fg/m³"; and in 252:100-8-51.1(c) where the date of incorporation by reference was July 1, 2011 when it should have been July 1, 2010. The Department proposes to make other nonsubstantive changes in the sections of the rules that are being revised.

AUTHORITY:

Generally, Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, and 27A O.S. § 2-5-106; Air Quality Advisory Council powers and duties, 27A O.S. § 2-2-201 and 27A O.S. § 2-5-107; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 through -117, and specifically 27A O.S. §§ 2-5-105 (OAC 252:100, Subchapters 2 and 8, and Appendix Q), -112 (Subchapters 2 and 8, and Appendix Q), and -114 (Subchapter 8 and Appendix Q).

COMMENT PERIOD:

The Notice of Rulemaking Intent for these actions was published at 28 Ok Reg 2351 on September 1, 2011. Oral comments may be made at the November 15, 2011 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, November 15, 2011, at the National Weather Center, 120 David L. Boren Blvd., Class Room 3910, University of Oklahoma Campus, Norman, OK 73019.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

The proposed rules are available for review on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtg/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

RULE IMPACT STATEMENTS:

The rule impact statements are available for review on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtg/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl E. Bradley. The Air Quality Division FAX number is (405)702-4101.

ADDITIONAL INFORMATION:

This Notice reflects a location change for the hearing of these rules by the Environmental Quality Board.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-7100. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #11-1029; filed 10-11-11]

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 20. ACQUISITION AND DISPOSAL OF PROPERTIES

[OAR Docket #11-1028]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Rights-of-Way [NEW]

Subchapter 3. Improvement Removal and Contract Administration [NEW]

730:20-3-1. Processes for Right-of-Way Improvement Removal Contracts Below \$50,000 [NEW]

730:20-3-2. Selection Process for Right-of-Way Improvement Removal Contracts Below \$50,000 [NEW]

SUMMARY:

The proposed rulemaking action is to reflect Department policy regarding the administration and processes for right-of-way improvement removal contracts under \$50,000.

AUTHORITY:

61 O.S. § 103.5; 69 O.S. §§ 101, 301, 303, 304, 1209, and 1403

COMMENT PERIOD:

Persons may submit written and oral comments to Mike Patterson, Deputy Director, at 200 NE 21st Street, Oklahoma City, OK 73105-3204 during the period from November 1, 2011 to December 1, 2011.

PUBLIC HEARING:

A public hearing will be held at 3:00pm on Friday, January 6, 2012 at the Oklahoma Department of Transportation Commission Room, 200 NE 21st Street, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 3:05pm.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Comments from business entities may be sent to: Oklahoma Department of Transportation, Attn: Brian Bigbie, 200 NE 21st Street, Room 1B7, Oklahoma City, OK 73105 or sent electronically by sending requests to bbigbie@odot.org

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained at the Oklahoma Department of Transportation, 200 NE 21st Street, Room 1B7, Oklahoma City, OK 73105 or sent electronically by sending request to: bbigbie@odot.org

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared prior to November 1, 2011 and may be obtained at the same location listed above for obtaining copies.

CONTACT PERSON:

Brian Bigbie (405)522-6002

[OAR Docket #11-1028; filed 10-10-11]

Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.

**TITLE 595. DEPARTMENT OF PUBLIC
SAFETY
CHAPTER 11. COMMERCIAL DRIVER
LICENSES**

[OAR Docket #11-1025]

RULEMAKING ACTION:

Withdrawal of EMERGENCY rulemaking

RULES:

Subchapter 9. Driver Status Notification System
595:11-9-12. Apportionment of fees [NEW]

ADOPTION:

July 29, 2011

SUBMITTED TO GOVERNOR:

August 4, 2011

SUBMITTED TO HOUSE:

August 4, 2011

SUBMITTED TO SENATE:

August 4, 2011

WITHDRAWN:

September 19, 2011

[OAR Docket #11-1025; filed 10-5-11]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #11-1024]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions
- 590:10-1-7. Non-state agency contributions [AMENDED]
- Subchapter 3. Credited Service
- 590:10-3-10. Incentive credit [AMENDED]
- 590:10-3-11. Termination credit [AMENDED]
- 590:10-3-14. Elected official service credit [AMENDED]
- Subchapter 7. Retirement Benefits
- 590:10-7-4. Early retirement factor [AMENDED]
- 590:10-7-9. Fractional year computations [AMENDED]
- Subchapter 8. Department of Corrections Benefits
- 590:10-8-5. Normal retirement date for Post-Hazardous Duty Members [AMENDED]
- Subchapter 9. Survivors and Beneficiaries
- 590:10-9-1. Survivors' benefits [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees, pursuant to 74 O.S. §§901, 909 and 909.1

DATES:

Public Hearing:

August 18, 2011

Adoption:

August 18, 2011

Approved by Governor:

September 28, 2011

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2012, unless superseded by another rule or disapproved by the legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Agency finds that an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule, amendment, revision, or revocation of an existing rule. These emergency rules are necessary to implement legislation enacted in 2011 amending the Oklahoma Statutes relating to the Agency.

ANALYSIS:

The amendment to 590:10-1-7 changes the late charge for unpaid contributions from the non-state agency employer. The monthly charge is increased from 1.5% to 3% of the unpaid balance. The amendment is in accordance with Section 2 of Enrolled Senate Bill 840, amending 74 O.S. §920B, which is effective August 26, 2011.

The amendment to 590:10-3-10 brings the rule setting forth eligibility requirements for purchasing incentive credit into compliance with the new retirement date provisions for employees and elected officials joining OPERS after November 1, 2011. The amendment complies with the new provisions contained in Sections 1 and 2 of Enrolled Senate Bill 794, amending 74 O.S. §902 and §913.4, which becomes effective November 1, 2011.

The amendment to 590:10-3-11 sets forth the eligibility requirements for purchasing termination credit. The amendment cross references the new retirement date provisions for employees joining OPERS after November 1, 2011. The amendment is in accordance with newly enacted provisions of Section 1 of Enrolled Senate Bill 794, amending 74 O.S. §902, which becomes effective November 1, 2011.

The amendment to 590:10-3-14 sets forth how service credit is calculated for the different classes of elected officials depending on when they joined OPERS and when they were elected or appointed. The amendment adds the new class of officials who are elected or appointed on or after November 1, 2011. The amendment is in accordance with newly enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794, amending 74 O.S. §902, §913.4 and §914, which becomes effective November 1, 2011.

The amendment to 590:10-7-4 sets forth the factors in determining early retirement. The amendment provides the new age factors for members who first join on or after November 1, 2011. The amendment complies with newly enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794, amending 74 O.S. §902, §913.4 and §914, which becomes effective November 1, 2011.

The amendment to 590:10-7-9 sets forth the procedures for calculating fractional years of service. The amendment distinguishes between officials elected prior to or on or after November 1, 2011. The amendment complies with newly enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794, amending 74 O.S. §902, §913.4 and §914, which becomes effective November 1, 2011.

The amendment to 590:10-8-5 updates the normal retirement date for Post-Hazardous Duty Members to include the new retirement dates for employees joining OPERS after November 1, 2011. The amendment is in accordance with newly enacted provisions of Section 1 of Enrolled Senate Bill 794, amending 74 O.S. §902, which becomes effective November 1, 2011.

The amendment to 590:10-9-1 relates to survivor benefits and the amendment sets forth the new vesting period of 8 years for those officials elected on or after November 1, 2011. The amendment complies with newly enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794, amending 74 O.S. §902, §913.4 and §914, which becomes effective November 1, 2011.

CONTACT PERSON:

Joseph A. Fox (405) 858-6737

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE
UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 253(D):**

SUBCHAPTER 1. GENERAL PROVISIONS

Emergency Adoptions

590:10-1-7. Non-state agency contributions

Any participating county, county hospital, city or town, conservation district, or circuit engineering district or trust shall contribute to the System all required retirement contributions due on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. Any non-state agency employer who remits contributions later than ~~30~~ thirty (30) days following the due date, will be assessed a late charge of ~~1.5%~~ three percent (3%). The late charge will be calculated on the unpaid balance and will compound monthly until paid.

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-10. Incentive credit

(a) Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value.

~~(1)~~ Incentive credit may be used as participating service or addition to age.

~~(2) Members are eligible for purchase of up to 2 years of credit (24 months).~~

(b) Those eligible to purchase incentive credit include the following:

~~(3)~~ Employees who are eligible for normal or early retirement because of age or are within ~~2~~ two (2) years of reaching normal or early retirement age;

(2) members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90 ~~are eligible for this purchase, except that:~~

(3) elected officials who are first elected or appointed prior to November 1, 2011, may purchase incentive credit to qualify for the Rule of 80 only;

(4) elected officials who are first elected or appointed on or after November 1, 2011, who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age; and

(5) Hazardous Duty Members may purchase incentive credit to qualify only for the Rule of 80 or 90 or for early retirement.

~~(4c)~~ Incentive credit can not be used as full time equivalent employment. Members must have at least ~~4~~ four (4) years of the required ~~6~~ six (6) years of full time equivalent employment in order to be eligible for this purchase and must accrue ~~6~~ six (6) years of full time equivalent employment prior to retirement.

~~(5d)~~ Members must be active and participating at the time of purchase or at the time of the transfer pursuant to ~~paragraph (7)~~ subsection (f) of this section.

~~(6e)~~ This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

~~(7f)~~ Eligible members purchasing incentive credit pursuant to this section may transfer a participating service purchase to an addition to age purchase or an addition to age purchase to a participating service purchase. This transfer applies to

purchases already made by an eligible member or to purchases currently being made through installment payments pursuant to 590:10-3-9. Full or partial installment payments made pursuant to this section shall not be refundable under any circumstances. Transferring an incentive purchase to another incentive purchase pursuant to this paragraph may not result in an equal transfer.

590:10-3-11. Termination credit

(a) Pursuant to 74 O. S. §913c, certain eligible members of the System may purchase up to three (3) full years of termination credit.

~~(4b)~~ Following official notice from a participating employer of an approved reduction-in-force on or after July 1, 1998, and of ~~the~~ those employees subject to ~~said~~ the reduction-in-force, the System will communicate detailed instructions about the purchase of termination credit to those members affected.

~~(2c)~~ Purchase of termination credit allows an eligible member to constructively participate as if still employed by a participating employer until reaching eligibility for a normal retirement either at age 62 or by achieving 80/90 points date as defined in 74 O.S. §902(24). The purchase of termination credit represents the amount of service which would have accrued through the member's normal retirement date had they not been terminated due to a reduction-in-force and will allow an eligible member to preserve the same normal retirement date as he or she would have had if the member's position had not been terminated by a reduction-in-force.

~~(3d)~~ Members must have at least six (6) years of full-time equivalent employment with a participating employer in order to be eligible to purchase termination credit.

~~(4e)~~ Members who ~~are between the ages of 59 and 62 (those members who are within 3~~ three (3) years of achieving eligibility for a normal retirement at age 62) date based on age as set forth in 74 O.S. §902(24), or who have accumulated at least 74 points toward the Rule of 80 or 84 points toward the Rule of 90 (those members who are within ~~6~~ six (6) years of achieving eligibility for normal retirement under the 80/90 point provisions), are eligible to purchase termination credit if they are subject to a reduction-in-force.

~~(5f)~~ Members cannot purchase both termination credit and incentive credit.

~~(6g)~~ Members may purchase termination credit not to exceed the amount of years and months required to reach normal retirement. The maximum amount of termination credit which may be purchased is ~~3~~ three (3) years of service.

~~(7h)~~ The cost to purchase termination credit will be an amount equal to the employee and employer contributions which would have been paid to the System based upon the last full month of compensation.

~~(8i)~~ To purchase termination credit, the member must file a written election of intent within six (6) months from the date the member is terminated. Payment in full must be received by the System within sixty (60) days of the filing of the election to purchase.

~~(9j)~~ Failure to make payment in full by the due date, returning to employment with a participating employer or retirement by the member or surviving spouse at any time prior to the normal

retirement date will void the purchase of termination credit. The System will return the purchase price tendered.

590:10-3-14. Elected official service credit

(a) **First elected service on or after August 22, 2008.** Any member of the System before August 22, 2008, who is first elected or appointed on or after August 22, 2008, but prior to November 1, 2011, and who retires as an elected official with at least six (6) years in elected office, may count all of his or her non-elected service which occurred prior to the elected service, if any, as if it were elected service. The applicable contribution rate selected by the elected official shall apply and the calculation of the benefit shall be made in accordance with the provisions of 74 O.S. §913.4. However, in no event shall the retirement benefits be more than one hundred percent (100%) of his or her highest contiguous twelve (12) months of compensation earned as an elected official or as a non-elected member.

(b) **Joining System on or after August 22, 2008.** Any member who first joins the System on or after August 22, 2008, and who is first elected or appointed prior to November 1, 2011, shall have elected and non-elected service separately calculated as follows:

(1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.

(2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.

(3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.

(4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.

(c) **Elected service prior to August 22, 2008.** The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.

(d) **Effective date.** The authorizing legislation for determining elected official service credit provided by subsections (a) through (c) of this section is Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008. ~~The internal references to July 1, 2008, in 74 O.S.~~

~~§913.4(C)(3) and (4), shall be interpreted to mean August 22, 2008.~~

(e) **First elected on or after November 1, 2011.** Pursuant to 74 O.S. §913.4(A)(5) and §913.4(B), as amended in Enrolled Senate Bill 794 of the 1st Regular Session of the 53rd Legislature (2011), Section 2, Chapter 206, O.S.L. 2011, any member of the System joining prior to or on or after November 1, 2011, and who is first elected or appointed on or after November 1, 2011, shall have the contribution rate specified in 74 O.S. §919.1(1)(a) and the amount of the benefit for all elected and non-elected service credit shall be based on the provisions of 74 O.S. §915(A)(1).

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-4. Early retirement factor

The monthly benefit to be paid under early retirement shall be based on the actual age in years and months the retirement member has attained on the date retirement benefits are to begin. The reduction factor is based on a level interpolation, between ages 55 and 62 for members whose first participating service occurs before November 1, 2011, and between ages 60 and 65 for members whose first participating service occurs on or after November 1, 2011.

590:10-7-9. Fractional year computations

(a) ~~Title~~ **Rounding of fractional year.** Pursuant to 74 O.S. §913(C) ~~provides that~~, a fractional year of six (6) months or more shall be considered as one (1) year, and less than six (6) months shall be disregarded. This round-up provision may be used one time for credited service of a member to establish the benefit of ~~said the~~ member. This rule is necessary to prevent the gain or loss of service credit to a member. In no event shall the rounding up provisions apply if it would result in any member receiving an additional year or years that the member would not otherwise be entitled to receive.

(b) ~~Title~~ **Correctional and probation and parole officers.** Pursuant to 74 O.S. §915(A) ~~provides for~~, the computation of retirement benefits of Department of Corrections Correctional and ~~Pardon Probation and Parole Officers~~ ~~at~~ is 2.25% for certain credit prior to July 1, 1990, and 2.5% for certain credit after July 1, 1990, and ~~at~~ 2% for all other credit.

(1) Such members may retire with fractional years of service credit in the 2.25% and the 2.5% categories and the statutes only provide for computation at these rates on full years of service. Due to the fact that only the total credited service can be rounded up, some members may face losing a year of service credit when the fractional years of credit are disregarded.

(2) To prevent such a loss of service credit, the fractional portions of years in the 2.25% and the 2.5% categories will be added to the years of credit used in the 2% category and rounded up therein, if applicable. If a member still loses a year of service credit after adding the fractional years to the 2% category, the fractional

Emergency Adoptions

years may be added to the 2.25% category and rounded up therein, if applicable.

(c) **Hazardous Duty Members.** Hazardous Duty Members who elect to participate or are required to participate at the higher employee contribution rate will receive retirement benefits at the 2.5% category only on full years of service as Hazardous Duty Members for which the higher contributions have been paid. The fractional portions of years in the 2.5% category will be added to any other service credit, calculated in the 2% category and rounded up therein, if applicable, for the computation of the retirement benefit.

(d) **Elected officials.**

(1) If first elected or appointed prior to November 1, 2011, elected officials who do not participate in an elected status for at least six (6) full years will receive retirement benefits on the years and months of elected service instead of full years. The benefit shall be calculated using the computation factor corresponding to the contribution rate the official paid during those years and months of elected service and on the highest annual salary earned as an elected official. Non-elected service credit will be calculated using the applicable computation factor. The elected and non-elected service shall be added to determine the total credited service. If this total results in a fractional year of six (6) months or more, it shall be considered as one year, and less than six (6) months shall be disregarded. The years and months of elected service shall then be deducted from the total credited service and the remaining balance of service shall be calculated using the applicable non-elected service computation factor.

(2) If first elected or appointed on or after November 1, 2011, elected officials who do not participate in an elected status for at least eight (8) full years will receive retirement benefits on the years and months of elected service instead of full years. The contribution rate for such officials shall be as specified in 74 O.S. §919.1(1)(a) and the amount of the benefit shall be based on the provisions of 74 O.S. §915(A)(1).

(e) **Elected officials participating at more than one rate.** Elected officials who participate at more than one contribution rate during their elected service will receive retirement benefits calculated using (1) the computation factor assigned for each contribution rate paid and (2) the highest annual salary for which that particular contribution rate was paid for each full year of elected service credit. Fractional years of elected service credit will be added to the years of elected service for which the highest contribution rate was paid and rounded up therein, if applicable, for the computation of the retirement benefit.

SUBCHAPTER 8. DEPARTMENT OF CORRECTIONS BENEFITS

590:10-8-5. Normal retirement date for Post-Hazardous Duty Members

In addition to a normal retirement at age 62, under Rule of 80 or under Rule of 90 date as defined in 74 O.S. §902(24),

Post-Hazardous Duty Members who are employed by the Department of Corrections at the time of retirement are eligible to retire after completion of at least twenty (20) years of full-time-equivalent employment as provided in 590:10-3-6 of these rules; provided, the required higher contribution for Hazardous Duty Members is paid or the member was employed, pursuant to 74 O.S. §915(A)(8), as a correctional officer or probation and parole officer at the Department of Corrections.

SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES

590:10-9-1. Survivors' benefits

(a) If an active or retired elected official with a minimum of six (6) years of participating service, who was first elected or appointed before November 1, 2011, or an active or retired elected official with a minimum of eight (8) years of participating service who was first elected or appointed on or after November 1, 2011, dies, the surviving spouse is eligible to receive one half (1/2) of the elected official's benefit provided the elected official had met the service requirements for retirement. If a retired elected member selected an Option to apply to his/her service, the joint annuitant receives the Option benefit instead of the one half (1/2) benefit to the spouse.

(b) At the death of a member who is eligible to retire pursuant to law but is not actually retired, or is eligible to vest or had elected a vested benefit, the surviving spouse shall be entitled to receive the appropriate Option benefit as provided by law beginning at the date the deceased member would have become eligible to receive such benefits had the member survived. The System may withhold benefits to the surviving spouse until the necessary documentation is received and verified. The benefits payable shall accrue from the first day of the month following the death of the member if the deceased member met the requirements for an early or normal retirement.

[OAR Docket #11-1024; filed 10-5-11]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #11-1026]

RULEMAKING ACTION:

EMERGENCY adoption

PROPOSED RULES:

Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card

Part 19. Driver License and Identification Card Content
595:10-1-92. Driving restriction codes [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

DATES:

Adoption:

July 29, 2011

Approved by Governor:

September 12, 2011

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2012, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

These rules are of compelling public interest to protect the public health, safety and welfare of Oklahoma motorists as it relates to the operation of commercial motor vehicles, to avoid conflict with federal regulation [49 C.F.R., Part 383, Commercial Driver's License Standards; Requirements and Penalties] relating to restriction codes for operators of commercial motor vehicles.

ANALYSIS:

Amendments to this chapter would update procedures relating to commercial driver licenses.

The proposed actions is to amend existing rule.

The circumstance which created the need for this rule was the discovery of nonconformance to federal regulation as described in the "Finding of Emergency" above.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by state law and federal law and regulation.

CONTACT PERSON:

David W. Beatty, Administrative Rules, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Fax: (405)419-2043. E-mail: dbeatty@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S. § 253(D):

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 19. DRIVER LICENSE AND IDENTIFICATION CARD CONTENT

595:10-1-92. Driving restriction codes

A restriction or restrictions may be placed upon a person's driving privilege as deemed necessary by the Department

[47 O.S. §6-113]. The restriction(s) will appear as a code on the person's driver license. Following are the various driving restriction codes and their meanings:

- (1) 1. Corrective lenses
- (2) 2. Left outside rearview mirror
- (3) 3. Restriction 1 or 2
- (4) 4. Automatic transmission
- (5) 5. Turn indicators, power steering, or steering knob
- (6) 6. Food, fruit, or candy within reach of driver
- (7) 7. Adequate artificial limbs
- (8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
- (9) 9. Accompanied by licensed driver age 21 or older in front seat
- (10) 0. Motorcycle only - if under age 16, restricted to 250 cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.
- (11) A. Regardless of age, when operating a motorcycle must be in view of licensed driver at least 21 years old
- (12) E. When operating a commercial motor vehicle, restricted to automatic transmission
- (13) G. Inquire of Oklahoma driver license file until age 17 or older
- (14) K. CDL intrastate only
- (15) L. When operating a commercial motor vehicle, restricted to a vehicle without air brakes
- (16) M. When operating a passenger bus, restricted to Class B or C commercial motor vehicle
- (17) N. When operating a passenger bus, restricted to a Class ~~B~~ C commercial motor vehicle
- (18) O. Restricted from operating tractor trailer vehicles
- (19) R. Ignition interlock device
- (20) V. Medical variance
- (21) Z. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic

[OAR Docket #11-1026; filed 10-5-11]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2011-46.

EXECUTIVE ORDER 2011-46

I, Todd Lamb, Governor of the State of Oklahoma, pursuant to 25 O.S. § 90.19, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Thursday, October 6, 2011, to honor Specialist Francisco J. Briseño-Alvarez, Jr., an Oklahoma soldier, who died on September 25, 2011, at the age of 27 while on active duty supporting Operation Enduring Freedom in Afghanistan.

This executive order shall be forwarded to the Director of Central Services, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 5th day of October, 2011.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Todd Lamb

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #11-1027; filed 10-5-11]
