

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

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Retirement Benefits

590:10-7-3. Longevity and other annual lump-sum payments [AMENDED]

590:10-7-10. Final benefit [AMENDED]

590:10-7-14. Permanent part-time employment [AMENDED]

Subchapter 9. Survivors and Beneficiaries

590:10-9-4. Probate Waivers [AMENDED]

AUTHORITY:

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

DATES:

Public Hearing:

August 15, 2013

Adoption:

August 15, 2013

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2014, unless superseded by another rule or disapproved by the legislature.

SUPERSEDED EMERGENCY ACTIONS: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 2013 amending the Oklahoma Statutes relating to the Agency.

ANALYSIS:

The amendment to 590:10-7-3 incorporates the calculation of longevity pay into the new definition of "final average compensation" for members whose first participating service occurs on or after July 1, 2013 from the highest three (3) of the last ten (10) years of participating service to the highest five (5) years of the last ten (10) years. The amendment complies with the new provisions contained in Sections 1 and 3 of Enrolled House Bill 1325, amending 74 O.S. §902 and §915, which became effective July 1, 2013.

The amendment to 590:10-7-10 brings the rule setting forth the process for paying a deceased member's final monthly benefit into compliance with new law which allows OPERS to pay a deceased member's named beneficiary before paying the estate. The amendment complies

with the new provisions contained in Section 5 of Enrolled House Bill 1325, amending 74 O.S. §917, which became effective July 1, 2013.

The amendment to 590:10-7-14 incorporates the new definition of "final average compensation" for permanent part-time members of the System whose first participating service occurs on or after July 1, 2013 from the highest three (3) of the last ten (10) years of participating service to the highest five (5) years of the last ten (10) years. The amendment complies with the new provisions contained in Sections 1 and 3 of Enrolled House Bill 1325, amending 74 O.S. §902 and §915, which became effective July 1, 2013.

The amendment to 590:10-9-4 sets forth the requirements for waiving the appointment of an administrator or an executor of an estate to pay benefits or unpaid contributions to a member's heirs. This amendment incorporates new law which increases the amount that OPERS can pay using the probate waiver process. The amendment complies with the new provisions contained in Section 4 of Enrolled House Bill 1325, amending 74 O.S. §916.1 which became effective July 1, 2013.

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 7. RETIREMENT BENEFITS

590:10-7-3. Longevity and other annual lump-sum payments

(a) ~~Only~~ The three (3) highest annual longevity payments will be added into the sum of three years of salary (thirty-six months) used in computing the final average compensation for members whose first participating service occurs before July 1, 2013. The five (5) highest annual longevity payments will be added into the sum of five years of salary (sixty months) used in computing the final average compensation for members whose first participating service occurs on or after July 1, 2013. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments for members whose first participating service occurs before July 1, 2013, or one of the five highest longevity payments for members whose first participating service occurs on or after July 1, 2013. The final average salary shall not be reduced if the annual longevity payment causes any one month's salary to exceed the maximum monthly compensation level, provided the annual salary including longevity does not exceed the maximum compensation level.

(b) Other lump-sum annual payments that are included as compensation for retirement purposes shall be averaged over the previous twelve (12) months of salary immediately preceding the month of payment for use in computing the final average compensation. These lump-sum payments include those which are paid on an annual basis at the discretion of the employer such as performance or skill based pay adjustments.

590:10-7-10. Final benefit

The retirement benefit payable for the month of death of a member, joint annuitant or survivor shall be payable to said member, joint annuitant, or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, ~~said the benefit will~~ shall be paid to the member's ~~estate named beneficiary~~. If there is no named beneficiary or estate, the final monthly benefit payment shall be paid to the first of the following:

- (1) surviving spouse;
- (2) surviving children in equal shares;
- (3) surviving parents in equal shares;
- (4) surviving siblings in equal shares;
- (5) member's estate.

590:10-7-14. Permanent part-time employment

(a) For purposes of this rule, permanent part-time employment is less than full time employment and is defined as employment with a participating employer of the System in a position which is certified by the employer to require, on an on-going basis, less than forty (40) hours of work per week, or 173 hours per calendar month, or 80 hours per bi-weekly payroll period. If a question exists as to whether or not a member's employment is permanent part-time employment, written certification signed by the participating employer or an agent of the participating employer will be required to qualify a member as a permanent part-time employee for the purpose of computing the member's final average compensation under the provisions of ~~Section 915 C. of Title 74 of the Oklahoma Statutes~~ 74 O.S. §915(D).

(b) The provisions of this rule for the computation of an annualized final average compensation shall not apply to ~~retirants~~ retirees who have returned to work unless they have waived receipt of their benefit and subsequently re-retire with a recomputation of their benefit.

(c) The phrase "last ten (10) years immediately preceding termination or retirement" is defined as the last ten (10) years of participation in the System. Any breaks in participation are not counted as part of the ten (10) years.

(d) Any employee having thirty-six (36) or more months of full-time participation in the last ten (10) years of participation is not considered to be permanent part-time for the purposes of annualization of the final average compensation.

(e) ~~In~~ For members whose first participating service occurs before July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members, only salary received during the last ten (10) years of participation in the System is considered. Out of these ten (10) years, the System will use the 36 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 36 months ~~are~~ shall be added together. The number of hours of work reported for each of these 36 months ~~are~~ shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 6,240 hours plus the three (3) highest eligible longevity payments (if any), and divided by three (3) to arrive at the final average compensation.

(f) For members whose first participating service occurs on or after July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members. Out of these ten (10) years, the System will use the 60 monthly entries of salary at the highest

hourly rates received by the member. The gross salaries for each of the 60 months shall be added together. The number of hours of work reported for each of these 60 months shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 10,400 hours plus the five (5) highest eligible longevity payments (if any), and divided by five (5) to arrive at the final average compensation.

SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES

590:10-9-4. Probate waivers

In the event a member dies, leaving no living beneficiary or having designated his Estate as beneficiary, the System may require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. This requirement may be waived for payments in an amount of ~~Ten~~ Twenty Five Thousand Dollars ~~(\$10,000.00)~~ (\$25,000) or less upon presentation of the member's valid Last Will and Testament, trust documents or affidavit that a will does not exist, an Affidavit of Heirship naming all heirs to the member's estate, a Hold-Harmless Agreement signed by all heirs, a corroborating affidavit from someone other than an heir who is familiar with the deceased member, and proof of payment of all last debts of the member. These documents shall comply with the provisions of 74 O.S. ~~Section~~ §916.1. If there is any question as to the validity of any document herein required, the judicial appointment shall not be waived.