



# Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised November 2016

## 1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number
g. Agency Liaison Email Address		
h. Date of Public Notice		i. Comment Period End Date
j. Public Comment URL or Email Address:		
k. Program		

\*  By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

## 2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No.  Yes. Please provide the Enrolled Act Numbers and Years Enacted:

## 3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.  
*Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.*

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

#### **4. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

#### **5. Federal Law Requirements**

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements.  No.  Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

#### **6. State Statutory Requirements**

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

Not Applicable.

**7. Additional APA Provisions**

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

\_\_\_\_\_ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

**8. Authorization**

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

**Rules Governing the Wyoming Retirement Board as Administrator of the Wyoming Retirement System  
Intent to Amend Rules**

**STATEMENT OF PRINCIPAL REASONS**

Pursuant to the authority granted by Wyoming Statutes §§ 9-3-409(a) and 9-3-417(c) of the Wyoming Retirement Act, the Wyoming Retirement Board (Board) has determined to amend its administrative rules.

The Board is proposing to amend Chapter 7 of its rules for the purpose of updating and clarifying the administrative procedures of the Wyoming Retirement System (WRS) related to the allowance of credit in the retirement system for any period of time which a participating member spends in active military or other emergency service of the United States pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 et seq., and the Wyoming Military Service Relief Act (WMSRA), W.S. §§ 19-11-101 through 19-11-124. The current rule has not been updated since its original adoption in 1993. Principally, the proposed rule would amend the state statutory and United States Code provisions to reflect current law and amend the eligibility criteria for a member on a military leave of absence to receive credit in the retirement system upon reemployment with a participating employer. Additionally, the proposed rule would codify certain provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 (The HEART Act), a federal law that provides tax and pension benefits to members who become disabled during active military service for more than thirty (30) days and to their survivors if they die in active military service. The Board is required to codify these particular HEART Act provisions in order to comply with Internal Revenue Code Section 401(a)(37) and maintain its status as a tax qualified 401(a) defined benefit retirement plan with the Internal Revenue Service.

**Rules proposed to be amended:**

**Chapter 7 – Military Service Credit:** This Chapter of the rules is proposed to be amended for the purpose of updating and clarifying the administrative procedures of Wyoming Retirement System (WRS) related to the allowance of credit in the retirement system for any period of time which a participating member spends in active military or other emergency service of the United States pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 et seq., and the Wyoming Military Service Relief Act (WMSRA), W.S. §§ 19-11-101 through 19-11-124. Following is a summary of the proposed amendments to Chapter 7:

- **Section 1: Authority** – Proposed to reflect current statutory authority.
- **Section 2: Qualified Military Service** – Proposed to provide a definition of the term “Qualified Military Service” as used throughout the rule.

- **Section 3: Eligibility** – Proposed to amend existing language describing the eligibility criteria for a member returning from Qualified Military Service and who becomes reemployed by a participating employer of the system to make up the service credit in the system that would have been earned if not for the military leave.
  - (a) Language cleanup.
  - (b) Clarifies that applicable military leave must not exceed five years.
  - (c) Language cleanup.
  - (d) Clarifies that the member must apply for reemployment with a participating employer within 30 days (changed from 90) of honorable discharge from military service or 90 days following discharge from hospitalization related to the military service.
  - (e) Language cleanup.
- **Section 4: Member Contribution Requirements** – This section is proposed to clarify that a member may elect to make contributions concurrently with applicable military leave as though the member was not taking a military leave of absence. If the member does not make that election, the member may make retroactive payments of applicable contributions upon return from military leave and reemployment with a participating employer, together with any applicable interest.

The current rule was promulgated prior to federal and state law that limit the time a returning member has to make retroactive payments. As such, the current rule arguably would allow a returning member to make such payments any time prior to the member's retirement in the system. This section clarifies that the time period to make the contribution payments is limited to 5 years from the date of reemployment, which is consistent with current federal and state law.

- **Section 5: Employer Contribution Requirements** – This section is proposed to be amended to clarify the employer's requirements to make applicable employer contributions depending on the election of a member taking a military leave of absence.
- **Section 6 – HEART Act Provisions** – This section is proposed to codify certain provisions of the Heroes Earnings Assistance and Relief Tax Act (the Heart Act), which is a federal law that provides tax and pension benefits to members who become disabled while on active military service for more than thirty (30) days and to their survivors if they die in active military service in compliance with Internal Revenue Code Section 401(a)(37). WRS currently administers its plans in

accordance with these provisions, but the IRS has identified that the provisions are not adequately reflected in statute or rule.

- **(a)** Clarifies that s survivor of a member that dies while performing Qualified Military Service is entitled to any additional benefits the member would have been eligible for if the member had resumed employment and then died.
- **(b)** Clarifies that members that die or become disabled while performing Qualified Military Service are entitled to the benefit accruals that the member would have been entitled to if not for the military leave.
- **(c)** Clarifies that any differential wage payments paid to a member during Qualified Military service be treated as retirement-eligible compensation.

## CHAPTER 7 MILITARY SERVICE CREDIT

~~Section 1. Purchase of Qualified Military Service. A member may elect to purchase qualified military service credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] (VRRRA) by submitting a valid application and paying the required member contributions and any applicable interest. It is the responsibility of the applicant to supply any documentation required by the board Authority. Pursuant to Wyoming Statute § 9-3-409(a), the Wyoming Retirement Board is authorized to adopt rules and regulations for the administration of the Wyoming Retirement System. Further, pursuant to W.S. § 9-3-417(c), the Board is authorized to adopt rules and regulations to allow credit in the retirement system for any period of time which a participating member spends in active military or other emergency service of the United States pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 et seq., and the Wyoming Military Service Relief Act (WMSRA), W.S. §§ 19-11-101 through 19-11-124.~~

~~Section 2. Definitions. "Qualified mMilitary sService\_ credit" means military service of a member who is inducted into the armed forces of the United States for training and service and who leaves employment (other than a temporary position) with a participating employer in the system to perform such service or who performs such service because of any obligation as a member of a reserve component of the armed forces of the United States. Performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority including active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty and active state service by members of the national guard who are activated pursuant to a call of the governor as provided by law.~~

~~Section 3. Eligibility. A member ismay be eligible to receive qualified military service credit in the retirement system upon satisfying the following requirements of the VUSERRA and the WMSRA. Specifically, and without limitation, the member must:~~

~~(a) LeaveThe member must take a military leave of absence from employment with a participating employer with the intent tofor the purpose of entering into eligibleQualified mMilitary sService;~~

~~(b) Must serve no longer than the maximum period specified under 38 U.S.S. 2024The military service must not exceed five (5) years plus any period of additional service imposed by law;~~

~~(c) The member Mmust be able to demonstrate honorable discharged or released from service under honorable conditions;~~

(d) ~~The member M~~ must apply for reemployment with the former or another participating employer ~~in the System~~ within ~~ninety~~ninetythirty (930) days of honorable discharge or release from the military service or ninety (90) days after discharge from ~~eligible~~ hospitalization ~~under the VRRRA incident to such military service~~, or medical treatment which immediately follows the termination of, and results from, the service;

(e) The member or the beneficiary of any death and survivor benefits must pay in full the unpaid member's contributions, plus together with any applicable interest as established by the Board, for each year or portion thereof of Qualified mMilitary sService to be counted as credited~~able service in the retirement system~~.

#### Section 4. Member Contribution Requirements.

(a) A member who notifies an employer in writing in advance of a period of Qualified Military Service may elect to pay the required member contributions to the retirement system during such period of service and timely furnish to the employer an amount equal to that which would have been deducted from the member's compensation had the member not taken a military leave of absence, ~~plus interest as established by the Board for qualified military service credit at any time prior to retirement. A member may pay the required member contributions and interest after retirement upon a determination by the Board that the failure to make such payments was not unreasonable and does not result in undue cost or expense to the System, or is required under the VRRRA.~~

(b) Upon reemployment in accordance with Section 3 of this Chapter, a member who did not elect to make contributions to the retirement system during a period of Qualified Military Service shall be entitled to make payment to the retirement system in an amount equal to the member contributions that would have been paid had the member continued in employment and not taken a military leave of absence, together with any applicable interest.

(i) All member contributions and any applicable interest made in payment for Qualified Military Service must be received by the retirement system within five (5) years of the member's reemployment.

#### Section 5. Employer Contribution Requirements.

(a) For a member who notifies an employer in writing in advance of a period of Qualified Military Service of the member's intent to pay the required contributions to the retirement system during such period of service, and upon receipt of the timely submitted member contributions, the employer shall remit the member and employer contributions to the retirement system that would have been contributed on behalf of the member.~~The former participating employer must pay the required employer contributions plus interest as established by the Board for each year or portion thereof of military service to be credited. Qualified military service credit will be granted notwithstanding the failure of the former participating employer to pay the required employer contributions plus interest for the military service credit.~~

(b) For a member who did not elect to pay the required contributions to the retirement system during a period of Qualified Military Service, and upon reemployment of the member in accordance with Section 3 of this Chapter and payment to the retirement system of the member contributions plus any applicable interest, the employer shall pay to the retirement system an amount equal to the employer contributions that the employer would have paid to the retirement system had the member not taken a military leave of absence, together with any applicable interest.

(i) Any employer contributions and applicable interest due to the retirement system shall be paid within thirty (30) days of payment by the member of all applicable contributions and interest.

Section 6. HEART Act Provisions. The Heroes Earnings Assistance and Relief Tax Act of 2008 (The HEART Act) is a federal law that provides tax and pension benefits to members who become disabled while on active military service for more than thirty (30) days and to their survivors if they die in active military service. The HEART Act requires that employers treat such members as having been reemployed by the employer for purposes of entitlement to benefits under the retirement system. The benefits of the HEART Act depend on the specific benefits available to members of the retirement system. The following provisions codify particular HEART Act amendments in compliance with Internal Revenue Code Section 401(a)(37):

(a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing Qualified Military Service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 401(a)(37) of the Internal Revenue Code, survivors of a member of the retirement system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of Qualified Military Service must be counted for vesting purposes.

(b) Effective with respect to deaths and/or disabilities occurring on or after January 1, 2007, while a member is performing Qualified Military Service (as defined in chapter 43 of title 38, United States Code), to the extent permitted by section 414(u)(9) of the Internal Revenue Code, for benefit accrual purposes and in the case of death, for vesting purposes, the member shall be treated as having earned service credit for the period of Qualified Military Service, having returned to employment on the day before the death and/or disability, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, a member receiving differential wage payments (as defined under section 3401(h)(2) of the Internal Revenue Code) from a participating employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

## **CHAPTER 7 MILITARY SERVICE CREDIT**

Section 1. Authority. Pursuant to Wyoming Statute § 9-3-409(a), the Wyoming Retirement Board is authorized to adopt rules and regulations for the administration of the Wyoming Retirement System. Further, pursuant to W.S. § 9-3-417(c), the Board is authorized to adopt rules and regulations to allow credit in the retirement system for any period of time which a participating member spends in active military or other emergency service of the United States pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 et seq., and the Wyoming Military Service Relief Act (WMSRA), W.S. §§ 19-11-101 through 19-11-124.

Section 2. Qualified Military Service. Performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority including active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty and active state service by members of the national guard who are activated pursuant to a call of the governor as provided by law.

Section 3. Eligibility. A member may be eligible to receive qualified military service credit in the retirement system upon satisfying the following requirements of the USERRA and the WMSRA:

- (a) The member must take a military leave of absence from employment with a participating employer for the purpose of entering into Qualified Military Service;
- (b) The military service must not exceed five (5) years plus any period of additional service imposed by law;
- (c) The member must be able to demonstrate honorable discharge or release from service under honorable conditions;
- (d) The member must apply for reemployment with the former or another participating employer within thirty (30) days of honorable discharge or release from the military service or ninety (90) days after discharge from hospitalization or medical treatment which immediately follows the termination of, and results from, the service;
- (e) The member or the beneficiary of any death and survivor benefits must pay in full the unpaid member contributions, together with any applicable interest as established by the Board, for each year or portion thereof of Qualified Military Service to be counted as creditable service in the retirement system.

Section 4. Member Contribution Requirements.

(a) A member who notifies an employer in writing in advance of a period of Qualified Military Service may elect to pay the required member contributions to the retirement system during such period of service and timely furnish to the employer an amount equal to that which would have been deducted from the member's compensation had the member not taken a military leave of absence.

(b) Upon reemployment in accordance with Section 3 of this Chapter, a member who did not elect to make contributions to the retirement system during a period of Qualified Military Service shall be entitled to make payment to the retirement system in an amount equal to the member contributions that would have been paid had the member continued in employment and not taken a military leave of absence, together with any applicable interest.

(i) All member contributions and any applicable interest made in payment for Qualified Military Service must be received by the retirement system within five (5) years of the member's reemployment.

#### Section 5. Employer Contribution Requirements.

(a) For a member who notifies an employer in writing in advance of a period of Qualified Military Service of the member's intent to pay the required contributions to the retirement system during such period of service, and upon receipt of the timely submitted member contributions, the employer shall remit the member and employer contributions to the retirement system that would have been contributed on behalf of the member.

(b) For a member who did not elect to pay the required contributions to the retirement system during a period of Qualified Military Service, and upon reemployment of the member in accordance with Section 3 of this Chapter and payment to the retirement system of the member contributions plus any applicable interest, the employer shall pay to the retirement system an amount equal to the employer contributions that the employer would have paid to the retirement system had the member not taken a military leave of absence, together with any applicable interest.

(i) Any employer contributions and applicable interest due to the retirement system shall be paid within thirty (30) days of payment by the member of all applicable contributions and interest.

Section 6. HEART Act Provisions. The Heroes Earnings Assistance and Relief Tax Act of 2008 (The HEART Act) is a federal law that provides tax and pension benefits to members who become disabled while on active military service for more than thirty (30) days and to their survivors if they die in active military service. The HEART Act requires that employers treat such members as having been reemployed by the employer for purposes of entitlement to benefits under the retirement system. The benefits of the HEART Act depend on the specific benefits available to members of the retirement system. The following provisions codify particular HEART Act amendments in compliance with Internal Revenue Code Section 401(a)(37):

(a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing Qualified Military Service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 401(a)(37) of the Internal Revenue Code, survivors of a member of the retirement system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of Qualified Military Service must be counted for vesting purposes.

(b) Effective with respect to deaths and/or disabilities occurring on or after January 1, 2007, while a member is performing Qualified Military Service (as defined in chapter 43 of title 38, United States Code), to the extent permitted by section 414(u)(9) of the Internal Revenue Code, for benefit accrual purposes and in the case of death, for vesting purposes, the member shall be treated as having earned service credit for the period of Qualified Military Service, having returned to employment on the day before the death and/or disability, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, a member receiving differential wage payments (as defined under section 3401(h)(2) of the Internal Revenue Code) from a participating employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.