



Certification Page Regular and Emergency Rules

Revised September 2016

Emergency Rules _____

Regular Rules

a. Agency/Board Name Wyoming Retirement Board		
b. Agency/Board Address 6101 Yellowstone Road, Suite 500	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Benjamin L. Brandes		f. Agency Liaison Telephone Number 307-777-6108
g. Agency Liaison Email Address ben.brandes@wyo.gov		h. Adoption Date August 25, 2017
i. Program Retirement Board (0003)		

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:

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.

Chapter Number: 7	Chapter Name: Military Service Credit	<input type="checkbox"/> New <input checked="" 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 Repealed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 Repealed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 Repealed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 Repealed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 Repealed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 Repealed

State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **May 23, 2017**

- approved as to form by the Registrar of Rules; and
- provided to the Legislative Service Office and Attorney General:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:
The Wyoming Retirement System received favorable determination letters from the IRS on April 21, 2017 covering its two largest plans, the Public Employee Plan and the Law Enforcement Plan. The letters ensure the favorable tax status of WRS's pension plans with the IRS. The letters were issued contingent on the Board immediately amending the legal provisions of the plans to reflect certain provisions in federal law relative to service credit in the system for members that leave for Qualified Military Service. WRS currently operates its plans in compliance with the provisions, but the rules must be amended immediately in order to satisfy IRS requirements. Pursuant to the provisions of Wyoming Statute 16-3-103(b), WRS is securing an extension of the Emergency Rule period which expires September 20, 2017. The Wyoming Retirement Board has adopted a regular rule to replace the Emergency Rule, which will go into effect as soon as signed by the Governor.

5. Final Filing of Rules

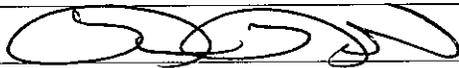
a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature:

b. Date on which final rules were approved as to form by the Secretary of State and sent to the Legislative Service Office:

c. The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.


Laura Ladd
Wyoming Retirement Board Chair
August 25, 2017

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

**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

**Emergency rules are in effect no longer than 120 days after filing
with the Registrar of Rules.**

~~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 is~~may be eligible to receive qualified military service credit in the retirement system upon satisfying the following requirements of the ~~∇~~USERRA and the WMSRA. ~~Specifically, and without limitation, the member must:~~

(a) ~~Leave~~The member must take a military leave of absence from employment with a participating employer ~~with the intent to~~for the purpose of entering into ~~eligible~~Qualified ~~mMilitary sService;~~

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

(c) ~~The member M~~must 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~~thirty (30) 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
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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):

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(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.