FPPA
Fire & Police Pension Association of Colorado

FPPA Rules and Regulations

Adopted on emergency basis, effective August 12, 2026.
Adopted permanently, effective November 1, 2026.

In accordance with its duty to administer the Fire and Police Pension Association (FPPA), the Board of Directors has the authority to adopt and revise Rules and Regulations in accordance with 31-31-202, C.R.S. and 31-31.5-102(2), C.R.S.

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(I) Longevity pay, sick leave pay taken in the normal course of employment, vacation leave pay taken in the normal course of employment, shift differential, and mandatory overtime that is part of the Member's fixed, periodic compensation.

(II) Accumulated Vacation Leave Pay if a Member completes the service requirement for purposes of normal retirement while exhausting accumulated vacation leave.

(III) In the event an Employer has established or does establish a Deferred Compensation Plan, the amount of the Member's salary that is deferred shall be included in the Member's Base Salary.

(IV) Any amounts voluntarily contributed to an Internal Revenue Code Section 125 "Cafeteria Plan" shall be included in the Member's Base Salary.

(b) Base Salary shall not include overtime pay (except as noted in subparagraph (8)(a)(I) above), step-up pay or other pay for temporarily acting in a higher rank (a Member is deemed temporarily acting in a higher rank if the appointment to the rank is anticipated to last less than six months), uniform allowances, payout for accumulated sick leave, payout for accumulated vacation leave (except as noted in subparagraph (8)(A)(II) above), and other forms of extra pay (including Member Contributions which are paid by the Employer and not deducted from the Member's salary).

(9) "Board" means the Board of Directors established as the governing body of the Fire and Police Pension Association of Colorado as provided in C.R.S. § 31-31-102(2). Board includes representatives of FPPA as delegated by the Board.

(10) "Cash Equivalent of the Death and Disability Benefit" means the value of the benefits provided under the Statewide Death and Disability Plan determined, for each Employer, by multiplying the cost percentage provided in the latest actuarial valuation of the Statewide Death and Disability Plan times the covered payroll of the applicable Employer.

(11) "Civil Union" means a relationship established by two eligible persons pursuant to C.R.S. § 14-15-101, et seq., the Colorado Civil Union Act, that entitles them to receive the benefits and protections and be subject to the responsibilities of spouses, as a matter of state law.

(12) "Code" means the provisions of the Internal Revenue Code of 1986, as amended, applicable to governmental plans.

(13) "C.R.S." means the Colorado Revised Statutes, as amended from time to time.

(14) "Defined Benefit Component" is the defined benefit arrangement in the Statewide Retirement Plan.

(15) "DDRC" means the Death and Disability Review Committee of the Fire and Police Pension Association of Colorado.

(16) "Defined Benefit System", "FPPA Defined Benefit System", or "System**"** is a defined benefit plan, which is a qualified retirement plan under Section 401(a) of the Internal Revenue Code of 1986, and a governmental plan exempt from the provisions of Title I of the Employee Retirement Income Security Act of 1974 pursuant to § 4(b)(1) of that Act. The System has two plans: the Statewide Retirement Plan under Part 4 of C.R.S. § 31-31 and 31-31.5 and the Colorado Springs New Hire Pension Plan under C.R.S. § 31-31-706(2)(a).

(17) "Department Chief" means the senior command officer of any fire or police department of any Employer, by whatever title known, including but not limited to chief, administrator, director, sheriff or marshal.

(18) “Dependent Child” or "Dependent Children” pursuant to C.R.S. § 31-31-~~801~~802(2), means an unmarried child or child who is not a party to a Civil Union under the age of 23 and includes, if FPPA so determines, any child, regardless of age or marital status, who is so mentally or physically incapacitated at the time of the Member’s retirement for disability or the Member’s death while an active employee, that the child cannot provide for the child’s own care. In the case of an unmarried child or child who is not a party to a Civil Union under the age of 23, the term also includes an adopted child, and a child who is conceived but unborn at the date of the Member's death or the date of disability, whichever applies. Conceived shall mean that a fertilized egg has become implanted in the uterus. Any applicable increase in benefits will occur upon birth.

(19) “Designated Beneficiary” means the person(s) designated by a Member in writing to the Plan Administrator, entitled to receive benefits under this Plan after the death of a Member, except that a Designated Beneficiary must be a natural person in order to receive a defined benefit.

(20) “Direct Rollover” means a payment from one Eligible Retirement Plan to another Eligible Retirement Plan as specified by the Distributee.

(21) “Disability” means a Member has been found ~~by the Board~~ to be eligible for disability benefits as a result of such Member's becoming Totally Disabled or Occupationally Disabled as provided under and defined in C.R.S. § 31-31-~~801~~802(3), ~~(3.2)~~(4), ~~(3.4)~~(6) and ~~(4)~~(7).

(22) “Distributee” includes a Member or former Member, as well as the Member's or former Member's surviving Spouse, Partner in a Civil Union, or former Spouse or former Partner in a Civil Union who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). For federal tax purposes, only a marriage is recognized to be treated as a spouse. A Partner in a Civil Union is treated as a non-spouse beneficiary under federal law. Effective January 1, 2007, a Distributee also includes a non-spouse beneficiary who is a Designated Beneficiary as defined by Code Section 401(a)(9)(E). However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(23) “Earned income” means wages, salaries, professional fees, or other amounts received as compensation for personal services, actually rendered, but does not include that part of compensation derived by the Member for personal services rendered by him or her to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(24) “Effective Date” means the effective date of coverage by an Employer under the Statewide Retirement Plan, as approved by the Board. The Employer may establish a separate and distinct “Effective Date for New Hires”, which shall be a date after the filing of the certification of compliance and prior to the Effective Date, on and after which all Members hired shall participate in the Plan designated by the Employer for new hires.

(25) “Eligible Retirement Plan” means any program defined in Code Sections 401(a)(31) and 402(c)(8)(B), that accepts the Distributee's Eligible Rollover Distribution, as follows:

(a) An individual retirement account under Code Section 408(a);

(b) An individual retirement annuity under Code Section 408(b) (other than an endowment contract);

(c) A qualified trust;

(31) "Employer/Member Funded Separate Retirement Excess Contributions Account" means the funds that were formerly known as the Reentry Separate Retirement Account. This account is not used to offset any benefit payable under the Statewide Death and Disability Plan.

(32) "Employer Voluntary Account" means the account maintained for a Member, as part of the Money Purchase Component to which voluntary Employer contributions to the Statewide Retirement Plan are credited.

(33) "Equal Base Pay" for purposes of C.R.S. § 31-31-~~805~~813(2)(a), as amended, means base pay which is equal to the current base pay of an active Member having the same rank and grade and longevity as the disabled Member held at the time the disabled Member was retired for disability.

(34) "Examination" means the medical examination, either in person or by electronic means, or medical records review by a licensed physician.

(35) "Executive Director" means the administrative officer in charge of FPPA and includes the title Chief Executive Officer (CEO).

(36) "Expenses" means the administrative, legal, investment, banking and consulting fees and expenses of the Plan.

(37) "Fire and Police Member's Benefit Investment Fund" means one of three investment pools for the assets of the Plan and Affiliated Plans as set forth in Part XVIII:

(a) Long-Term Pool - Designed primarily for open plans with a longer time horizon, higher risk tolerance, and lower liquidity needs;

(b) Short-Term Pool - Designed primarily for closed plans with a shorter time horizon, lower risk tolerance, and higher liquidity needs;

(c) Glide-Path Pool - Designed for plans that need to transition over time from Long-Term Pool to the Short-Term Pool.

(38) "Fire and Police Member's Self-Directed Investment Fund" means the assets held by FPPA's third party administrator for the benefit of Members to self-direct their investments in their individual accounts.

(39) "Forfeiture" means the portion of a Member's Employer Account, Employer Transfer Account, Employer Voluntary Account, and Employer Statewide Defined Benefit Excess Contribution Account, which is forfeited because of a termination of employment prior to full vesting.

(40) "Forms" includes, but is not limited to, photocopies, printed forms, web forms, and any forms described in the FPPA Rules and Regulations.

(41) "FPPA" means the Fire and Police Pension Association, a corporate body and political subdivision of the State of Colorado, created pursuant to C.R.S. § 31-31-201.

(41.5) "Health History Form" means the form that shall be completed by each Member as required by C.R.S. § 31-31-~~810~~803(4) that describes all the health conditions that exist as of the Member's date of hire or existed prior to the Member's date of hire.

(42) "HEART" means the Heroes Earnings and Assistance Relief Tax Act of 2008.

(43) "Highest Average Salary" means the average of the Member's highest three (3) calendar years' actual salary on which contributions were paid. The calendar years' actual salary is based on the Employer reported payroll period end date. If the Employer changes payroll frequency resulting in a substantial reduction in the amount of salary paid in a given year, an adjustment may be made to account for the Member's salary in the year it was earned when calculating the average of a Member's highest three years' Base Salary. The year in which a Member retires may be considered in calculating the average of the Member's highest three (3) years' Base Salary if the Member retired on or after July 1. In that event, FPPA will annualize the last year's salary by comparing total pay periods for the year to total pay periods actually paid. If a Member retires on or before June 30 of any given year, the Member's salary for that year shall not be considered for the purpose of calculating the average of the Member's highest three (3) years' salary. If a Member purchased service credit within the last three (3) years of service, the attributed salaries calculated by using the actuarial data in the service credit calculator for the periods of service credit purchase may also be used in calculating the average of a Member's highest three (3) years' Base Salary. When a Member has less than 3 years of service credit, but is vested through a combination of service credits from the Defined Benefit Component, Social Security Component and the Hybrid Component, the Highest Annual Salary for periods of service that are less than three (3) years shall be calculated using the average salary paid for the period calculated on an annualized basis.

(44) "Hours of Service" means each hour for which a Member is:

(a) Directly or indirectly paid, or entitled to payment, by an Employer for the performance of duties;

(b) Directly or indirectly paid, or entitled to payment, by an Employer on account of a period during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military service or Authorized Leave of Absence; and

(c) Entitled to backpay (irrespective to mitigation of damages) which is awarded, or agreed to, by an Employer on behalf of a Member.

Hours of Service under (a) shall be credited to a Member for the period in which the duties are performed, and Hours of Service under (b) and (c) shall be credited for the period to which they relate, but there shall be no duplication of Hours of Service credited.

(45) "Hybrid Component" means the hybrid arrangement in the Statewide Retirement Plan, comprised of both a defined benefit and money purchase component.

(46) "Inactive Member" means a Member whose employment with the Employer has terminated but who has (i) a vested Account balance or (ii) an accrued defined benefit under the FPPA Defined Benefit System.

(47) "Investment Option" means an investment option selected and monitored by the Board and Plan Administrator for Accounts, subject to the provisions of C.R.S. § 31-31.5-503(2)(a).

(48) "Leave of Absence" includes a military leave of absence and a medical leave of absence, and means an authorized absence during which the employee does not receive compensation for one (1) month or more, but less than two (2) years, during which the employee has not been terminated from employment. For purposes of establishing eligibility to apply for disability or survivor benefits, leaves of absence are further defined in Rule 16024 below.

(49) "Lifetime Benefit Components" means the Defined Benefit Component, the Social Security Component, and the Hybrid Component, as described in C.R.S. § 31-31.5, collectively.

(57) "Member Voluntary Account" means the account maintained for a Member as part of the Money Purchase Component to which voluntary Member contributions are credited.

(58) "Money Purchase Component" is the money purchase arrangement in the Statewide Retirement Plan.

(59) "Normal Retirement Age" means age fifty-five (55) if the Member is employed by the Employer after reaching that age in the Money Purchase Component, or otherwise for the Statewide Retirement Plan, age fifty-five (55) or when the Member's combined age and years of accrued service is equal to at least eighty (80) with a minimum age of 50.

(60) "Partner in a Civil Union" or "Party to a Civil Union" means a person who has established a Civil Union pursuant to § 14-15-101, et seq., C.R.S. For purposes of state law, a Partner in a Civil Union or a Party to a Civil Union is included in any definition or use of the terms "dependent", "family", "heir", "spouse", and any other term that denotes the familial or spousal relationship, as those terms are used throughout Colorado Revised Statutes, Title 31, Articles 30, 30.5, 31, and 31.5 including Member Approved Plan Amendments, and of the Rules and Regulations adopted thereunder.

(61) "Peace Officer" means a Peace Officers Standards & Training (POST) certified officer or guard as described in C.R.S. § 16-2.5-101, and includes any guards employed by a county sheriff pursuant to C.R.S. § 17-26-122.

(62) "Pensionable Earnings" means Base Salary as defined in Rule 101(8)(a) and (b).

(63) "Plan" refers to the Statewide Retirement Plan or its individual Components, and the Predecessor Plans as the context requires.

(64) "Plan Administrator" means the FPPA and includes any entity to which the Board or FPPA has delegated duties under the Statewide Retirement Plan and Affiliated Plans set forth in Part XVIII of these Rules. The term includes a Recordkeeper if one is appointed by the FPPA.

(65) "Plan Year" means the calendar year.

(66) "Predecessor Plan(s)" means the Statewide Defined Benefit Plan, the Statewide Hybrid Plan, the Money Purchase Plan, and the Social Security Supplemental Plan, which are components of the Statewide Retirement Plan, effective January 1, 2023.

(67) "Recordkeeper" means the individual or entity appointed by FPPA to perform third-party service and administrative functions.

(68) "Required Beginning Date" means April 1 of the calendar year following the later of:

(a) the calendar year in which the Member attains 72 (or age 70 ½ if the Member was born before July 1, 1949), or

(b) the calendar year in which the employee retires.

(69) "Resolution" means a Resolution adopted by the Employer in accordance with the requirements of Part 7 of these Rules.

(70) "Salary" for the purpose of calculating the contribution to the Statewide Retirement Plan and the Statewide Death and Disability Plan required by C.R.S. § 31-31-~~811~~819(4), as amended, means Base Salary as defined in Rule 101(8)(a) and (b), except that for Members who are not enrolled in the Statewide Retirement Plan or the Statewide Money Purchase Plan, salary shall

include Member Contributions to any alternative retirement plan which are "picked up" by the Employer. Contributions to the Statewide Death and Disability Plan, as required by C.R.S. § 31-31-~~811~~819(4), are made by Members or on behalf of Members.

(71) "Self-Directed Plans Committee (SDPC)" means a committee designated by the Board to review, evaluate and monitor the self-directed assets in FPPA Plans.

(72) "Social Security Component" means the social security arrangement in the defined benefit portion of the Statewide Retirement Plan.

(73) "Spouse" means the individual to whom a Member is married or has established a Civil Union as determined under Colorado law. For federal tax purposes, only a marriage is recognized to be treated as a spouse. A Partner in a Civil Union is treated as a non-spouse beneficiary under federal law.

(74) "State" means the State of Colorado.

(75) "Statewide Money Purchase Plan" means the FPPA Statewide Money Purchase Plan established pursuant to Part 5 of C.R.S. § 31-31.

(76) "Statewide Retirement Plan" means the FPPA Statewide Retirement Plan established pursuant to C.R.S. § 31-31.5-101, et seq. The Statewide Retirement Plan is comprised of four (4) components: the Defined Benefit Component, the Social Security Component, the Hybrid Component, and the Money Purchase Component.

(77) "Total Pay and Service Method" means the Member's retirement benefit is calculated using the total service (service from the original retirement plus credited service since the Member's return to work) and the Highest Average Salary (HAS) from the entire employment history.

(78) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act.

(79) "Year of Service in the Money Purchase Component" means a twelve-month (12-month) period commencing on the Member's hire date and ending one (1) year later in which a Member completes sixteen hundred (1600) Hours of Service.

(80) "Year of Service Credit" means a twelve-month (12-month) period, and can include a fractional period based upon one (1) month, that measures a Member's term of service for the Defined Benefit Component or Hybrid Component.

102. Rules of Construction. Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

103. Successor Plan. Pursuant to C.R.S. § 31-31-412, the components of the Statewide Retirement Plan are the successor plans to the Predecessor Plans in existence prior to January 1, 2023.

PART II - MEMBER PARTICIPATION

201. Eligibility for Member Status. For the Statewide Retirement Plan, Statewide Money Purchase Plan or Statewide Death and Disability Plan, FPPA may determine whether the employee meets the eligibility requirements to become a Member.

202. Clerical and Other Personnel. Clerical and support staff may participate in the Statewide Retirement Plan at the election of the Employer, if they otherwise meet the definition of Member.

203. Department Chief Election.

(1) A newly hired Department Chief may be exempted from participating in the Statewide Retirement Plan. The department and the chief shall provide notice to FPPA within sixty (60) days of the first day of employment of the agreement to participate in an alternate pension plan. The newly hired Department Chief and the Employer may elect: (i) to be exempted pursuant to C.R.S. § 31-31.5-203 and (ii) to participate in the Statewide Money Purchase Plan, a Local Money Purchase Plan, Social Security, the Colorado Public Employees' Retirement Association, or an employer-sponsored 457 Deferred Compensation Plan. FPPA shall return to the Employer, all Member and Employer contributions made to the Statewide Retirement Plan on behalf of an exempt Department Chief within sixty (60) days of receipt of notice of the Department Chief's election of coverage, unless the Department Chief elects coverage under the Statewide Money Purchase Plan in which case the Member and Employer contributions shall be transferred to the Statewide Money Purchase Plan. If the Department Chief does not agree to participate in an alternate pension plan within the sixty (60) days, the Department Chief shall be a Member of the component of the Statewide Retirement Plan that the Employer participates in.

(2) A new Department Chief who is promoted into the position by the Department is not exempt from continuing participation in the Statewide Retirement Plan as prohibited by the restrictions against a cash or deferred arrangement contained in the Internal Revenue Code.

(3) A newly hired Department Chief who, prior to permanent appointment or election to the position of Department Chief, has qualified for a pension for employment with a different Employer under the Statewide Retirement Plan, may elect a pension under that component before electing to be covered by any alternate plan pursuant to this Rule during employment as a newly hired Department Chief.

~~(4) An exempt Department Chief may be covered under the Statewide Death and Disability Plan, but only if the Department Chief has elected coverage in the Statewide Money Purchase Plan, the Statewide Retirement Plan, or a Local Money Purchase Plan with a combined contribution rate of at least eighteen (18) percent. An exempt Department Chief who elects to be covered under Social Security alone or the Colorado Public Employees' Retirement Association or a 457 Deferred Compensation Plan, shall not be covered under the Statewide Death and Disability Plan.~~

204. Reemployment.

(1) An Inactive Member who terminated employment prior to January 1, 2023 while in a Predecessor Plan, and is rehired by the same Employer after said date, shall participate in the component of the plan which succeeded the Predecessor Plan.

(2) An Inactive Member who terminated employment on or after January 1, 2023, and is thereafter reemployed by the same Employer shall participate in the same component in which the Member previously participated.

(3) An individual who terminates employment while in a local plan, and is thereafter reemployed by an Employer which covers its members in the Statewide Retirement Plan, shall participate in the component of the Plan in which the Employer's newly hired members participate.

been accepted by the Member as correct unless written notice to the contrary is received by the Plan Administrator, as appropriate, within ninety (90) days (or such longer period as determined by the Plan Administrator) after the mailing or distribution of a report to the Member.

507. Year End Reports. Within ninety (90) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Plan Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements, and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Plan Administrator requires. The report shall also contain such information as is necessary to enable the Board to prepare their accounting due under the Trust Fund.

508. Valuation. The Plan Administrator (or its designee) shall value the assets in the Accounts each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values. The value of the Member's Accounts shall be adjusted in accordance with the daily values.

509. Deposits. In all cases, deposits of contributions shall be treated as actually made only as of the date the contributions are accepted as in good order by the Plan Administrator.

510. Vesting for Money Purchase Component Accounts.

(1) A Member shall be one hundred percent (100%) vested in the Member Accounts.

(2) Employer contributions that are credited to the Employer Accounts, the Employer Transfer Account, the Employer Excess Contribution Account, the Employer/Member Funded Separate Retirement Account, and the Employer Voluntary Account are subject to the following vesting rules:

(a)(I) A Member shall be 100% vested once the Member attains Normal Retirement Age (if employed by the Employer on or after that date).

(II) A Member who has not attained Normal Retirement Age as specified in paragraph (2)(a)(I) above, is subject to the following vesting rules:

Employer Accounts Vesting Schedule

Years of Service	Vested Percentage
Less than 1	0%
1 but less than 2	20%
2 but less than 3	40%
3 but less than 4	60%
4 but less than 5	80%
5 or more	100%

(b) For purposes of this Vesting Schedule, Years of Service includes Years of Service with the Member's Employer prior to the Member's participation in this Plan and all other Years of Service earned under the Money Purchase Component of the Statewide Retirement Plan for which no distribution has been made.

(c) In the event of Permanent Occupational or Total Disability retirement pursuant to C.R.S. §§ 31-31-~~803~~805 and 31-31-804 or death as an active Member, a Member shall be 100% vested in all Member and Employer Accounts.

to a domestic relations order (DRO) prior to January 1, 2021, any division of property from the Member's Employer Funded Separate Retirement Account shall be distributed from the balance transferred to the Money Purchase Component, subject to subsequent gains and losses. An alternate payee must withdraw the alternate payee's share of all funds from a Member's Accounts either as a fixed lump sum or as a percentage of the Member's Accounts as of a date certain. A distribution to a former Spouse or Partner in a Civil Union pursuant to a domestic relations order is a distribution to the Member for the purposes of C.R.S. § ~~31-31-804 (2) and (2.1)~~31-31-812.

1006. DRO Approved in a Predecessor Plan. When a DRO has been approved in a Predecessor Plan that DRO shall apply to the corresponding component(s) in the Statewide Retirement Plan.

PART XVI - DISABILITY RETIREMENT AND SURVIVOR BENEFITS

1601. Applicability. This Part applies to the Statewide Death and Disability Plan under C.R.S. § 31-31-801, et seq., as amended.

1602. Total Disability retirement. (1) Pursuant to C.R.S. §§ 31-31-804 and 31-31-806, a Member eligible for the normal annual disability retirement benefit for total disability may elect to receive one of the following disability benefit options in lieu of the normal annual disability benefit:

(a) Option 1. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's Designated Beneficiary for life;

(b) Option 2. A reduced annual disability benefit payable to the Member and, upon the Member's death, one-half of such reduced annual disability benefit to be paid to the Member's Designated Beneficiary for life; or

(c) Option 3. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's surviving spouse and Dependent Children, if any, until the death of the surviving spouse,

the death of any adult Dependent Child found to be incapacitated, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(2) A Member shall be deemed to have elected option 3 as specified in subparagraph (1)(c) of this Rule if the Member is eligible for a benefit for total disability under paragraph (1) of this Rule, is survived by a spouse or Dependent Child, and dies before making an election allowed under this Rule.

1603. Permanent occupational disability benefit. (1) Pursuant to C.R.S. §§ 31-31-805 and 31-31-806, a Member eligible for the normal annual disability retirement benefit for a permanent occupational disability benefit may elect to receive one of the following disability benefit options in lieu of the normal annual disability benefit:

(a) Option 1. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's Designated Beneficiary for life;

(b) Option 2. A reduced annual disability benefit payable to the Member and, upon the Member's death, one-half of such reduced annual disability benefit to be paid to the member's Designated Beneficiary for life; or

(c) Option 3. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's surviving spouse and Dependent Children, if any, until the death of the surviving spouse, the death of any adult Dependent Child found to be incapacitated, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(2) A Member shall be deemed to have elected option 3 as specified in subparagraph (1)(c) of this Rule if the Member is awarded a permanent occupational disability under paragraph (1) of this Rule, is survived by a spouse or Dependent Child, and dies before making an election allowed under this Rule.

1602~~2~~4. Leaves of Absence or Modified Duty.

(1) For purposes of establishing eligibility to apply for disability or survivor benefits, Leaves of Absence are categorized into two general types:

(a) Absences during which the Member receives compensation in an amount equal to or less than the Member's regular salary and which lasts for a period of up to one (1) month; and

(b) Absences during which the Member does not receive compensation for one (1) month or more but less than two (2) years but during which the Member has not been terminated from employment (defined herein as a "Leave of Absence").

(2) Members shall be eligible for disability or survivor benefits as follows:

(a) A Member will continue to be covered under the Statewide Death and Disability Plan for death or injuries occurring during a month in which the Member receives compensation in an amount equal to or less than the Member's regular salary and which lasts for a period of up to one (1) month and if the Member has not been terminated from employment.

(b) A Member shall continue to be covered under the Statewide Death and Disability Plan while on a Leave of Absence. A Member hired on or after January 1, 1997 on a Leave of Absence will continue to be covered and FPPA shall receive the regular payroll contribution

at the established contribution rate multiplied by the Member's Base Salary immediately prior to the beginning of the Leave of Absence.

(3) An absence attributable to a work stoppage in which the Member has been unable to work, for example, because of picket lines or Employer lockout, shall be considered an authorized and certified Leave of Absence. However, the absence shall cease to be termed an authorized and certified leave whenever the person fails to observe a valid order issued by a court of proper jurisdiction to return to work.

(4) A Member on military leave is entitled to the same Death and Disability benefits that a person on a Leave of Absence is entitled to receive. Contributions for Members receiving differential pay from their Employer must be based on the Member's Base Salary prior to the beginning of the authorized leave and not on the amount of the differential pay. Members on military leave for service that is covered by USERRA may qualify for a Leave of Absence of up to five (5) years. Any benefits payable under the Statewide Death and Disability Plan shall be offset by any Death or Disability benefits received from the military.

(5) For Members who go on modified duty due to a health condition and have their salary reduced, FPPA shall receive regular contributions at the established contribution rate multiplied by the Member's Base Salary immediately prior to the beginning of the modified duty.

16035. Marital Status, Civil Union Status and Dependent Children

(1) For purposes of calculating Disability benefits or eligibility for survivor benefits, the terms "spouse" and "surviving spouse" may include a spouse by common law marriage, if the Member or such spouse can prove the existence of a common law marriage. A common law marriage is established by the mutual consent or agreement of the couple to enter a marital relationship - that is, to share a life together as spouses in a committed, intimate relationship of mutual support and mutual obligation, followed by conduct manifesting that mutual agreement. In assessing whether a common law marriage has been established, weight should be given to evidence reflecting a couple's express agreement to marry, such as an affidavit of common law marriage. In the absence of an express agreement, the parties' agreement to enter a marital relationship may be inferred from their conduct. When examining the parties' conduct, relevant factors as evidence of a common law marriage may include, but shall not be limited to, evidence of cohabitation, reputation in the community as spouses, joint credit, joint checking or savings accounts, joint purchase and ownership of property, joint tax returns, or the use of one spouse's surname by the other or by the children raised by the parties, leases in both parties' names, joint bills or other payment records, evidence of joint estate planning, beneficiary and emergency contact designations, or other symbols of commitment, such as ceremonies, anniversaries, cards, gifts, and the couple's references to or labels for one another. These factors must be assessed in context, and the inferences to be drawn from the parties' conduct may vary depending upon the circumstances. There is no single form that any such evidence must take. Any form of evidence that openly manifests the intention of the parties that their relationship is that of a married couple will provide the requisite proof from which the existence of their mutual understanding can be inferred. In addition, a party to a valid civil union established under Colorado law or the laws of another state or foreign country is considered to be a spouse for purposes of calculating Disability benefits or eligibility for survivor benefits under Colorado law. Distributions, taxation and other matters regulated by federal law will be treated as allowed by federal law.

(2) An initial determination as to whether an individual qualifies as a spouse by common law marriage for disability and survivor benefits, as set forth in subparagraph (1) of this rule, either shall be made by the staff reviewing the application or shall be referred to the Death and Disability Review Committee ("DDRC") established under Rule 16079. An appeal of the initial determination may be made by requesting an evidentiary hearing before a Hearing Officer pursuant to Rule 16079(2) within 30 days of issuance of the initial determination.

(3) For purposes of calculating disability benefits or eligibility for survivor benefits, the term Dependent Child as defined in C.R.S. § 31-31-80~~1~~2(2), as amended, and Rule 101(18) of these Rules, includes a Member's birth child, adopted child, and stepchild living in the Member's household. It also may include a Member's birth child or adopted child living in another household or any other child living in the Member's household if:

(a) The Member has, or prior to death had, the right to claim the birth child or adopted child living in another household, or any other child living in the Member's household, as dependents for federal income tax purposes, and did make that claim; or the Member or applicant for survivor benefits can otherwise establish that the Member is, or prior to death was, supporting such child to the same extent as that which would normally permit the Member to claim such child as a dependent for federal income tax purposes; or the Member is, or prior to death was, required to make payments for the support of the child pursuant to Court Order; and

(b) The child otherwise meets the definition of Dependent Child as set forth in C.R.S. § 31-31- 801(2), as amended, and Rule 101(18) of these Rules.

(4) A Member or applicant for survivor benefits wishing to claim the Member's stepchild, stepchildren, birth children or adopted children living in another household as dependent children shall list the names of such children on the application for disability or survivor benefits. The Member or applicant for survivor benefits also shall give the percentage of support provided by the Member to such children. Failing to list a Dependent Child shall not prevent an otherwise eligible child from being eligible. A guardian or custodial parent may file a waiver of benefit or other document disclaiming a benefit for which a Dependent Child is eligible.

(5) To determine eligibility for dependent status of a stepchild, stepchildren, birth children or adopted children living in another household, FPPA may require the Member or applicant for survivor benefits to submit to FPPA, or sign IRS Form 4506 allowing the FPPA to obtain, a copy of the Member's most recent Federal Income Tax Return.

(6) An initial determination of eligibility for dependent status of a stepchild, stepchildren, birth children or adopted children living in another household, shall be made by the DDRC. A review of the initial determination may be made by requesting an evidentiary hearing before a hearing officer pursuant to Rule 1708 within thirty (30) days of issuance of the initial determination.

(7) Mental or physical incapacity of any Dependent Child shall be initially determined at the time of the award of disability or survivor benefits. Subsequent review and consideration of the continuing status of the child initially found to be incapacitated may be required as a condition of approval.

(8) Members found to be occupationally disabled prior to October 1, 2002 and receiving a spousal benefit who become divorced may continue to receive the spousal benefit in an amount equal to the amount of maintenance legally required to be paid by the Member to the former Spouse, but not more than ten (10) percent of the annual Base Salary, as provided under C.R.S. § 31-31-80~~3~~8(2)(a). For purposes of this determination, staff will also consider the amount paid to the former Spouse per domestic relations order or other court order.

(9) Regarding Payment Option 3 Disability Survivors' Benefits under ~~C.R.S. §31-31-803(1)(b)(III)~~Rule 1602 (1)(c) and ~~(8)(a)(III)~~Rule 1603(1)(c):

(a) If the spouse or Partner in a Civil Union and one (1) or more dependent children do not live in the same household, one-half (½) of the benefit shall be paid to the spouse or Partner in a Civil Union and the other one-half (½) of the benefit shall be paid in equal parts to the dependent children.

(b) Upon the termination of the benefit payable to the child or children pursuant to paragraph (1) or (2) of this rule, the surviving spouse or Partner in a Civil Union shall receive the entire benefit.

(c) Spouse for the purposes of payment option 3 means the Member's spouse at the time the first benefit payment is negotiated. If the spouse joint annuitant is either removed by the Member through divorce or dies, the Member is not permitted to add a subsequent spouse. The Member shall direct FPPA to remove a spouse joint annuitant due to a change in marital status.

16046. Reduction of Disability and Survivor Benefits

(1) Spousal and Dependent Child benefits for occupational disabilities granted prior to October 1, 2002, shall be reduced by the amount of benefit allocated to the spouse or Dependent Child at the time of the initial award of benefit, plus any pro-rated cost of living adjustment, upon the loss of eligibility of the spouse or Dependent Child. The Member's portion of the benefit is not subject to recalculation using current actuarial tables.

(2) In the event where a Member is participating in a Deferred Retirement Option Plan (DROP) under a Vested or Early retirement and where a Member's survivor is granted survivor benefits under the Statewide Death and Disability Plan and is eligible for a distribution of the Member's DROP account under any Statewide or Local Plan, the monthly survivor's benefit payable by the Statewide Death and Disability Plan shall be offset by the actuarial equivalent monthly amount of the DROP account.

(3) (a) A permanent occupational disability benefit, a total disability benefit, or survivor's benefit granted under the Statewide Death and Disability Plan to a Member or survivor of an active Member who was covered under a pension plan in either part-time or full-time employment, and that contained one or more of the following, shall be subject to offset pursuant to this Part 16;

(I) a money purchase account (net of affiliation SWDD continuing rates of contribution);

(II) a separate retirement account (but not that portion of the balance established in a Member's Employer Funded Separate Retirement Account) in the Member and Employer Statewide Defined Benefit Excess Contribution Account balances of the Money Purchase Component of the Statewide Retirement Plan);

(III) a DROP account;

(IV) social security, as in the case of Social Security Component benefits, or which is or was the Member's primary pension; or

(V) a money purchase account which accrued during part-time employment prior to full-time employment or full-time employment prior to part-time employment with the same Employer without a break in service and participation in the Statewide Retirement Plan.

(b) Within this Rule 16046, a balance contained in the accounts referenced in subparagraphs (I), (II), and (III), above, will collectively be called a money purchase balance.

(4) The calculation of the defined benefit offset to a death and disability benefit or survivor's benefit shall be reduced by the amount of the defined benefit before any benefit adjustments.

(5) The calculation of the money purchase offset to a death or disability benefit shall be made pursuant to a calculator provided by FPPA's actuary using the following factors:

(a) The Member's life expectancy and the beneficiary's life expectancy if an optional benefit payment is selected;

(b) The actuarial assumed rate of return used by FPPA on plans within the FPPA Defined Benefit System;

(c) An additional margin for anticipated future benefit adjustments and/or adverse experience in order to protect the plan;

(d) The vested amount of funds within the money purchase balance plus the actuarial equivalent value of any amount previously withdrawn from the plan;

(6) The first three factors are combined to calculate an annuity factor which is divided into the money purchase balance. This calculation determines the amount of monthly payment a Member could afford to pay from the money purchase account on a monthly basis over the expected lifetime. This amount is then subtracted from the monthly death or disability benefit. The resulting amount shall be paid to the Member or survivor.

(7) The actuarially equivalent value of an amount previously withdrawn from the plan, as required to be added to the money purchase balance in Rule 16046(5)(d)), shall be determined by using a calculator provided by FPPA's actuary using the following factors:

(a) The amount withdrawn;

(b) The length of the time period between the date of withdrawal and the date of death or disability;

(c) The average gross actual rate of return for the Fire and Police Members' Benefit Investment Fund Long-Term Pool for the years included in the time period, less one (1) percent.

(8) Rounding to whole months may be used in creating calculations under this Rule.

16057. General Rules Governing the Processing of Disability Retirement Applications.

(1) FPPA will determine only those applications for Total or Occupational Disability benefits, where the Member became disabled on or after January 1, 1980. The Board presumes that all disability applications filed on and after January 1, 1980, concern disabilities occurring on and after January 1, 1980, until such time as this presumption is rebutted by substantial evidence. If the presumption is rebutted, then the Board shall refer the case to the appropriate local pension authority for determination in accordance with the applicable provisions of C.R.S. § 31-30.5-701 et seq., as amended.

(2) The Member is disabled when, as a reasonable person, the Member should recognize the nature, seriousness and probable compensable character of the injury.

(3) An applicant for disability retirement is encouraged to file the application prior to termination of employment.

(4) FPPA will accept applications within 365 days from the date certified by the Employer to be the applicant's last day on the payroll, provided that:

(a) Said Member has not received a refund;

(b) Said Member has not reached eligibility for a Normal retirement based upon age and service, with service aggregated from more than one (1) component in the Statewide Retirement Plan;

(c) Said Member can demonstrate that the disability existed during the period of coverage under the Statewide Death and Disability Plan;

(d) The Member has not elected to take a Delayed, Vested, or Early retirement, unless participating in DROP under Early or Vested retirement, in which case FPPA will accept applications within 365 days from the date the Member exits DROP regardless if post-DROP retirement payments have begun. The amount of any pension benefits received by the Member after exiting DROP shall be refunded to the pension plan from the Member's disability benefit distributions. All other disability offsets will be calculated based on the value of the account on the date of separation from service.

(5) As a supplement to a Member's application for disability benefits, the Employer of such a Member shall indicate the reason for the Member's separation from employment. The Employer shall state any additional basis for disability, which the Employer believes exists and shall include any documentation of relevant medical evidence. The Employer shall, if requested, or may if not specifically requested, submit available records, reports and other information, which might be helpful in the determination of a Member's disability.

(6) Records, reports and other information submitted under Rule 16057(5) shall be retained by FPPA, placed in the appropriate file covering the applicant for disability retirement, and treated as confidential, although the affected Member shall receive a copy and shall have the right to inspect said information.

(7) An application for disability must be completed within ninety (90) days from the date FPPA first receives any part of the application packet required by FPPA. If not completed within ninety (90) days, FPPA will treat the application as having been withdrawn. Once withdrawn, a Member must file a completely new application packet in order to apply for Disability benefits.

(8) Once a complete application for disability benefits has been received by FPPA, the DDRC shall, in consultation with its Medical Advisor, appoint ~~a panel of three (3) physicians~~physician(s) to examine the applicant unless the applicant requests that a preliminary determination of jurisdiction be made. In the event such a request is made, the DDRC shall determine if the application reveals on its face whether FPPA has jurisdiction to grant an award of Disability benefits, pursuant to the limitations set forth in Rule 16057(1), and shall proceed as follows:

(a) If FPPA determines that it has jurisdiction it shall, in consultation with its Medical Advisor, appoint ~~a panel of three (3) physicians~~physician(s) to examine the applicant.

(b) If the FPPA is unable to determine that it has jurisdiction, it shall proceed in accordance with subparagraph (1) of this rule.

(c) If the FPPA determines it does not have jurisdiction, it shall notify the applicant and the Local Pension Authority of its decision. It shall further inform both the applicant and the Local Pension Authority that either party may file a request for redetermination of the jurisdictional question within thirty (30) days of the mailing of the Notice of Determination of lack of jurisdiction. If either party files such a request, then the matter shall proceed as provided in Rule 1702.

(9) A Member applying for disability benefits may refuse to undergo an invasive test during examination by the ~~panel of three (3) physicians~~appointed physician(s). If, however, the ~~panel of physicians~~physician(s) cannot determine that a disability exists without performing the invasive test, then the Disability benefits cannot be awarded.

(10) Once the examination required under Rule 16057(8) has been completed, the ~~panel of three (3) physicians~~appointed physician(s) shall submit ~~their~~ findings and conclusions to the Medical Advisor for review. On the basis of the ~~reports of the three (3) physicians~~findings and conclusions, the Medical Advisor may make a recommendation regarding future reexaminations and treatment plans in the event the Member is granted Disability benefits.

(11) The applicant and the applicant's attorney shall have full access to any medical information and reports in the possession of FPPA for the purposes of inspection and copying after DDRC review of the file.

(12) Prior to the release of medical information and reports to the attorney for the applicant, the applicant or their attorney shall file a written release signed by the applicant, verified by a Notary Public or other officer entitled to administer oaths, authorizing FPPA to provide such medical information to the attorney.

(13) A Member who has been granted a Disability retirement will begin to accrue Disability benefits on the day following the Member's actual last day on the payroll or on the day that FPPA accepts the Member's disability application as complete for a Member on an authorized unpaid Leave of Absence over one hundred eighty (180) days for a Member who is still considered an employee, or a Member who applies for disability retirement benefits beyond one hundred eighty (180) days after the last day on payroll for a Member who has terminated service. Last day on the payroll for purposes of this Rule shall include any form of accrued leave time if the Member remains on the Employer's payroll while exhausting such leave. Lump sum payments by the Employer for accrued leave will not be considered in calculating a Member's last day on the payroll if the Member's employment has been terminated. If a Member receives short-term disability benefits from the Employer, pending a determination regarding the Disability retirement application, Disability benefits under the Statewide Death and Disability Plan will accrue from the date the Member's short-term Disability benefits are discontinued.

(14) If a disability retirement is granted and the Employer lists that the last day of payroll is pending an FPPA decision, the FPPA will notify the Member and the Employer of the effective date of the award, which will be the first day of the month following the decision or such other date as the Employer designates.

(15) The disability benefit will be calculated based on the Member's Base Salary immediately prior to the date of disability, pursuant to C.R.S. §§ ~~31-31-803 (1)(a)(II)~~31-31-804(2), ~~(2)(b)~~31-31-805(2), ~~(2.1)(b)~~31-31-807(2), and ~~(2.2)(b)~~31-31-808(2). If due to the health condition, a Member has continued to be employed in a position of accommodation or light-duty at a lesser Base Salary, the disability benefits shall be calculated based on the Base Salary just prior to the Member beginning the accommodating position.

(16) A Member who has been granted a Disability retirement must elect a payment option, as provided by Rules 1602 and 1603 and C.R.S. § 31-31-~~803~~806, within ninety (90) days after the date of the FPPA decision letter granting the Disability retirement. Any Member who does not elect a payment option within ninety (90) days after the date of the FPPA decision letter will have their payment option defaulted to the Normal payment option, unless good cause is shown. If the Member has elected either Option 1 or Option 2 pursuant to ~~C.R.S. § 31-31- 803(1)(b)(I) or (II)~~Rule 1602(1)(b) and (1)(c) and designates a new beneficiary, the benefit calculated under the payment option originally selected shall be recalculated using the life expectancy of both the Member and the newly designated beneficiary and the actuarial equivalent of the remainder of the original pension for which the Member would otherwise have been eligible if the Member had not designated a new beneficiary.

(17) In the event of a disability application by a Member with two (2) Employers, a Member is required to seek a disability determination with regard to each job. A Member may be found to

be disabled for one (1) but not both jobs. A Member may have a pre-existing condition that prevents a disability benefit for one (1) job but not the other job. If a Member is determined disabled with regard to both jobs, then a single disability benefit is awarded based on the combined salaries of the two (2) jobs, unless there is a disqualification due to a pre-existing condition.

(18) ~~Pursuant to C.R.S. § 31-31-803(5)(b)(I), a~~An unmarried Member, who receives a single life annuity at the time benefits commence and whose marital status subsequently changes as a result of marriage or civil union, may elect one (1) of the payment options pursuant ~~C.R.S. § 31-31-803(5)(a)~~to Rule 1602 or 1603, ~~as amended~~whichever is applicable, within one hundred eighty (180) days of the date of the marriage or civil union. If, after such selection of a different payment option, the Member subsequently dies within one hundred eighty (180) days following the marriage or civil union, the only survivor benefit payable to the Member's spouse shall be the difference between the single life annuity option amount payable to the Member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased Member after the marriage or civil union and prior to the Member's death.

1606~~7~~8. General Rules Governing Survivor Benefit Matters

(1) If, preceding death, a Member was on extended sick leave drawing only a portion of the Member's normal Base Salary, the Member's normal salary, and not the Member's sick leave pay, shall be used to calculate survivor benefits as set forth in C.R.S. § 31-31-8~~07~~15, as amended. The survivor benefit will be calculated based on the Member's Base Salary immediately prior to the date of death. If due to a health condition, a Member was employed in a position of accommodation or light-duty at a lesser Base Salary at the time of death, the survivor benefits shall be calculated based on the Base Salary just prior to the Member beginning the accommodating position.

(2) FPPA will not consider applications for survivor benefits if the Member was otherwise eligible for a retirement pension pursuant to C.R.S. § 31-31-8~~07~~15(1)(a)(I) and (II).

(3) In the event that a Member dies and the Member's survivor becomes eligible for supplemental death benefits pursuant to C.R.S. § 31-31-~~807.5(1.5)~~816(2), the monthly retirement benefit, as used in the statute, shall include, but not be limited to, the monthly defined benefit, an amount that is the actuarial equivalent monthly amount of a DROP account, if any, the actuarial equivalent monthly amount of a Separate Retirement Account, if any, and the actuarial equivalent monthly amount of a Member's local or Statewide Money Purchase Plan account, if any.

(4) When a surviving spouse, Partner in a Civil Union or Dependent Child becomes ineligible to receive survivor benefits, the amount of survivor benefits to which a remaining surviving spouse, Partner in a Civil Union or remaining dependent children are entitled will be re-determined according to the current tables used for calculations under C.R.S. §§ 31-31-8~~07~~15 and 31-31-8~~07.5~~16, as amended.

1607~~7~~9. Administrative Review

(1) The Board hereby establishes the Death and Disability Review Committee, which shall include the Chief Benefits Officer and two additional voting members appointed by the Chief Benefits Officer ("CBO"). The Medical Advisor and the General Counsel (GC) or the GC's designee shall act as advisors to the Committee. The Committee shall be referred to as the DDRC in these rules. The DDRC may take the following actions after administrative review:

(a) Approval or denial of initial disability applications;

(b) Approval of and modification of treatment plans and reexamination schedules for Members awarded Temporary Occupational Disability;

(c) Determinations pursuant to Rule 1703(~~5~~4) and 1704(2)regarding whether the disabling injury or illness or the death arose out of and in the course of the Member's employment;

(d) Find compliance or non-compliance with a treatment plan upon review;

(e) Approval or denial of continuing disability benefits;

(f) Authority to order a reexamination;

(g) Determination that no more reexaminations are required after a review of intervening medical records and a recommendation by the Medical Advisor;

(h) Approval or denial of applications for survivor benefits;

(i) Initial determinations regarding jurisdiction of the Board to hear Death and Disability applications;

(j) Such other authority the Board may grant it by Rule or by specific grant.

(2) Actions taken by the DDRC are subject to the following requirements:

(a) Actions and determinations shall otherwise meet all criteria established under Colorado State law or by FPPA rule in order to receive approval;

(b) An appeal of the DDRC's determination shall be processed pursuant to Rules 1708. The appeal shall be made in writing, shall state the basis for the appeal, and shall be filed within thirty (30) days of the date of issuance of the DDRC's determination;

(c) The DDRC shall report each determination at a regularly scheduled meeting of the Board;

(d) Determinations shall become effective upon issuance of the written determination unless an alternate date is indicated in the notice of determination.

16~~08~~10. Election of Alternate Benefits

(1) A Member who is found to have a Permanent Occupational Disability and who is within five (5) years of reaching the age and service requirements under a Defined Benefit Plan or the requirements under a Defined Contribution Plan for a Normal retirement may elect to be classified as having a Temporary Occupational Disability. Said election shall be irrevocable and shall be made prior to the election of a disability payment option.

(2) The effective date of Normal retirement for Members classified as having a temporary occupational disability shall be the date upon which the Member would have met the age and service requirement if the Member had not been granted a disability; however, the retirement benefit will be calculated as of the first day of the month following the Member's eligibility for Normal retirement.

(3) A Member who is restored to active service after a Temporary Occupational Disability ceases to exist will receive service credit for the period during which the Member received Temporary Occupational Disability Benefits. The Statewide Death and Disability Plan shall transfer to the Member's retirement plan the amount of Member and Employer contributions, of not more than sixteen (16) percent of the monthly Base Salary that the Member was being paid at the time of Disability retirement, multiplied by the number of months the Member received Temporary

Occupational Disability benefits. As an Employer contribution from an Employer's trust, in the event that sixteen (16) percent of the Member's monthly Base Salary transferred to the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Retirement Plan, or a Local Money Purchase Plan would cause total annual contributions for the Member to exceed limitations for contributions to defined contribution plans under IRC §415(c), the amount of the contributions exceeding the limitations under IRC §415(c) shall be distributed to the Member. Any amount in excess of sixteen (16) percent which would normally have been contributed to the Member's retirement plan had the Member not been Temporarily Occupationally disabled shall be contributed by the Employer. A Member who is not restored to active service after a period of Temporary Occupational Disability but instead elects a retirement from the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Retirement Plan, or a local money purchase plan, shall receive a distribution of the amount of Member and Employer contributions of not more than sixteen (16) percent of the Base Salary that the Member was being paid at the time of the Disability retirement multiplied by the number of months the Member received Temporary Occupational Disability benefits.

(4) A Member retired for Disability may elect to terminate the Disability benefits and shall receive the Member's Vested retirement pension under the applicable plan, payable at Normal Retirement Age.

16~~09~~11. Payment of Premiums After Reaching Age and Service or Entry into DROP

(1) A Member having reached eligibility for Normal retirement with the service earned under a defined benefit plan, without aggregating service between plans, or age 55 or older with 25 years of service under a Money Purchase Plan, or an alternative plan elected by a chief, or has entered DROP, shall not be eligible to receive Death and Disability benefits except to the extent provided for supplemental death benefits for survivors due to an on-duty death, pursuant to C.R.S. § 31-31-~~807.5(1.5)~~816(2).

(2) Statewide Death and Disability Plan contributions for a Member required to be made pursuant to C.R.S. § 31-31-~~811~~819(4), shall not be required once the Member becomes ineligible for benefits under Rule 16~~09~~11(1).

~~(3) For a Member participating in DROP under a Vested or Early retirement, the Member shall continue to be covered under the Statewide Death and Disability Plan. Contributions for the cost of the coverage shall continue to be made to the Statewide Death and Disability Plan during participation in DROP for the Member unless the Member was employed prior to January 1, 1997.~~

(~~4~~3) Contributions are required on all employment that qualifies for participation in the Statewide Death and Disability Plan, including situations were a member works for two (2) Employers concurrently. However, if a Member becomes ineligible for coverage based on employment with one (1) Employer, then the Member is ineligible for coverage under the other Employer.

161~~0~~2. Eligibility Verification, Benefit Suspension and Discontinuation

(1) Members or beneficiaries receiving death or disability benefits shall complete the forms necessary to verify eligibility for continuing benefits as requested from time to time. In order to remain eligible for disability or survivor benefits, a Member or the Member's survivors must comply with the applicable Rules and FPPA staff procedures. Failure to comply may result in the discontinuance of disability or survivor benefits, as provided in this Rule 161~~0~~2.

(2) Benefits shall be suspended after the FPPA has sent three (3) notices First Class U.S. Mail, or by electronic delivery with the Member's or beneficiary's consent, to the Member's or the beneficiary's last known post office or electronic address requesting that required eligibility

verification forms be completed and filed or requesting a copy of the Member's most recent Federal Income Tax Return. Benefits may be reinstated when the Member or beneficiary has complied with the requirement of filing the required information. Suspended benefit payments following the third notice and prior to reinstatement of benefits upon compliance shall not be paid upon compliance. Payment of benefit distributions to insurance providers or to other parties on behalf of suspended Members or beneficiaries shall also be suspended until the Member or beneficiary complies with the requirement. It shall be the Member's responsibility to reinstate insurance in the event that it is suspended due to non-payment and FPPA shall have no liability for the consequences of the suspension of insurance payments.

(3) For the third notice, the CBO shall issue a notice demanding compliance. If the Member fails to comply after such notice and after a two-year (2) period of non-compliance from the original deadline for receipt of the required information, the DDRC shall consider terminating the Member's benefits.

(4) A Member may appeal a determination made under this Rule pursuant to Rule 1709.

1611~~1~~3. Transfer or Distribution of Missed Pension Contributions from the Statewide Death and Disability Plan upon Cessation of Temporary Occupational Disability

(1) When a Member is restored to active service after a period of Temporary Occupational Disability:

(a) If the Member's normal retirement plan is the Statewide Retirement Plan, or the Colorado Springs New Hire Pension Plan (Police or Fire Components), the Statewide Death and Disability Plan shall transfer as an Employer contribution from an Employer's trust of not more than sixteen (16) percent of the monthly Base Salary that the Member was being paid at the time of the Member's disablement multiplied by the number of months the Member received Temporary Occupational Disability benefits. No distribution of contributions shall be made to the Member. Any service credit that the Member lost during the period of Temporary Occupational Disability shall be restored under the Member's normal retirement plan.

(b) If the Member's normal retirement plan is the Statewide Money Purchase Plan, the Money Purchase Only Component of the Statewide Retirement Plan, or a Local Money Purchase Plan, the Statewide Death and Disability Plan shall transfer the amount of not more than sixteen (16) percent of the monthly Base Salary that the Member was being paid at the time of the Member's disablement multiplied by the number of months the Member received Temporary Occupational Disability benefits. If the transfer of contributions would cause total annual contributions for the Member to exceed limitations for contributions to defined contribution plans under IRC §415(c), the amount of the contributions exceeding the limitations under IRC §415(c) shall be distributed to the Member. Any amount in excess of sixteen (16) percent which would have been contributed to the Member's normal retirement plan had the Member not been Temporarily Occupationally Disabled shall be contributed by the Employer. Funds not accepted by the Member's retirement plan shall be distributed to the Member.

(2) When a Member is not restored to active service after a period of Temporary Occupational Disability:

(a) If the Member's normal retirement plan is the Statewide Retirement Plan or the Colorado Springs New Hire Pension Plan (Police or Fire Components), and if the Member would have attained the required age and service for a Normal retirement under the Member's retirement plan, during the Member's period of disability, the Statewide Death and Disability Plan shall transfer as an Employer contribution from an Employer's trust of not more than sixteen (16) percent of the Base Salary that the Member was being paid at the time of the

(8) After the presentation of evidence is concluded, the Hearing Officer may, before issuance of the recommendation, order the submission of evidence reopened, with such limitations and instructions as the Hearing Officer desires;

(9) All hearings shall be recorded, and such recordings shall be made available to the Hearing Officer, Member or Member's attorney upon prior request. FPPA will not prepare or arrange for transcription of any recording unless necessary pursuant to judicial review of a final action. To the fullest extent allowed under Colorado law, any exhibits or documents introduced during a hearing or relied upon by the Hearing Officer in making the recommendation shall not be available for inspection and copying except to the applicant or the applicant's attorney as provided by Rules 16057(11) and 16057(12).

(10) All references to "days" shall be measured in calendar days unless stated otherwise. Any deadline falling on a day on which the FPPA's offices are not open for business shall be extended to the next business day.

(11) Evidentiary hearings before a Hearing Officer shall be a new consideration of an initial disability or staff determination, including both questions of fact and issues of law, without deference to the previous determination.

1702. Jurisdictional Hearings.

(1) In the event that the DDRC has declined jurisdiction under Rule 16057(8), and either the applicant or the Local Pension Authority has filed a written request for redetermination of the jurisdictional question, then such hearing shall be held before a Hearing Officer within one hundred twenty (120) days from the receipt of the request. A Member, for good cause, may have the date of the evidentiary hearing continued but in no event will the Hearing Officer permit a continuance or continuances beyond one (1) year from the date of the DDRC's initial determination.

(2) Prior to the hearing, the DDRC shall state in writing the reasons that FPPA declined jurisdiction, and may, if necessary, call upon the Medical Advisor and the attorney for FPPA to assist in the explanation.

(3) The party requesting the redetermination of jurisdiction shall have the burden of proof and shall proceed with that party's proof first. The party opposing redetermination shall proceed second. The party requesting redetermination shall then have the opportunity to rebut. The DDRC may also present evidence and testimony.

(4) If both parties request redetermination, then the applicant shall proceed first and the Local Pension Authority second.

(5) At the conclusion of the evidence offered by the parties, any other witness(es) desired by the Hearing Officer or any Member thereof shall also testify. The Hearing Officer shall issue written findings and a recommendation in accordance with Rule 1710 subject to review by the Executive Director or the Board.

(6) If the Executive Director or the Board affirms the recommendation of the Hearing Officer, then that decision is final as of the date it is announced. Any allowable judicial review may then proceed.

(7) If an initial denial of jurisdiction is reversed, then the application shall proceed in accordance with Rule 16057(8)(a).

1703. Initial Disability Proceedings.

(1) In the event the DDRC has accepted jurisdiction under the provisions of Rule 16057(8) it shall, upon receipt of the reports of the ~~physician panel~~appointed physician(s) and the Medical Advisor, determine disability. If it declines jurisdiction, then the matter shall proceed as set forth in Rule 1702 of these Rules.

~~(2) In a case where the DDRC has accepted jurisdiction, upon receipt of the reports of the physician panel and the Medical Advisor, the DDRC shall determine if a majority of the physician panel has found a Temporary Occupational Disability, a Permanent Occupational Disability or Total Disability as defined under C.R.S. § 31-31-801(3.2), (3.4) and (4), as amended. If not, the applicant shall be notified that the application has been denied and the reason therefore.~~

(~~3~~2) The DDRC shall approve or deny disability benefits pursuant to the statutory requirements and shall determine the type of disability to be granted.

(~~4~~3) The Medical Advisor shall advise the DDRC and the Hearing Officer on the medical issues. The DDRC and the Hearing Officer may consider any relevant evidence in considering a disability award.

(~~5~~4) If the applicant is found to be Temporarily Occupationally Disabled, Permanently Occupationally Disabled, or Totally Disabled and the applicant claims the disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the applicant's employment, the DDRC shall, on the basis of documentary evidence submitted by the applicant with the applicant's Disability Application, the reports of the ~~three (3) physician panel~~appointed physician(s), and any additional information requested by the DDRC, either:

(a) Make an initial determination that the applicant's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the applicant's employment; or

(b) Make specific findings and an initial determination that the applicant's disability is NOT the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the applicant's employment; or

(c) Make specific findings and an initial determination that the applicant's claim is not supported by the weight of the evidence and is therefore denied.

(~~6~~5) In making the decision regarding a recommendation on an injury received while performing official duties or on an occupational disease, the following standards shall be considered:

(a) An "injury received while performing official duties" means an injury occurring:

(I) during a scheduled shift of the Member; or

(II) while the Member is otherwise performing official duties for the Employer; or

(III) while the Member is performing official duties in the employ of a third party and the employment is authorized by the Member's Employer.

(b) A Member's "official duties" are those set forth in the written job description for the Member's position, which the Member is regularly required to perform. If there is no written job description for the Member's position, the Employer shall submit a written summary of the Member's job duties, which the Member is regularly required to perform for the Hearing Officer's consideration in this regard.

(c) An "occupational disease" shall be determined to have resulted directly from the employment of the Member or the conditions under which work was performed, if it follows as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment as a proximate cause and does not come from a hazard to which the Member would have been equally exposed outside of the Member's employment.

(d) Standards established in applicable Colorado statutes and case law governing the award of Workmen's Compensation benefits and disability claims generally may also be considered, but shall not be controlling in the determination.

(~~7~~6) In making a decision regarding a recommendation on an injury received while performing official duties or on an occupational disease, any relevant evidence may be considered, including but not limited to the following:

(a) Evidence demonstrating whether the injury or occupational disease is compensable under the Workmen's Compensation Act of Colorado as having occurred in the course of employment and in the place of employment as defined within C.R.S. § 8-40-~~-~~201(17), as amended;

(b) Employer records as of the date of injury demonstrating whether the disability resulted from an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment;

(c) Other records or documents demonstrating whether the disability resulted from an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment;

(d) The reports of the ~~three- (3) physician panel retained~~physician(s) appointed by FPPA to examine the Member; and

(e) Testimony or written statements from the Member or other persons.

(7~~.5~~) Death or disability of a firefighter caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system shall be presumed to be on duty if, at the time of becoming a firefighter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such condition or impairment of health that preexisted employment as a firefighter. This presumption may be rebutted if there is evidence of another cause of disability or if the condition was not due to being a firefighter.

(8) If the applicant is found to be Temporarily Occupationally Disabled, the DDRC shall establish a treatment plan designed to facilitate the Member's improvement and return to work through surgical treatment, counseling, medication, therapy, or other means and based on the recommendations of the ~~three- (3) physician panel~~appointed physician(s) and advice from the Medical Advisor.

(9) In all cases under this Rule 1703 the DDRC shall issue a written determination. FPPA shall provide the applicant a copy of the DDRC's written determination.

(10) The applicant may file a written request for an evidentiary hearing if the applicant disagrees with any aspect of the initial determination. Such request must be filed within thirty (30) days from the date of notice of the DDRC's determination.

1704. Initial Survivor Benefit Proceedings.

(1) Upon receipt of a completed application for survivor benefits or, where there is more than one applicant, upon receipt of all completed applications for survivor benefits, the DDRC shall approve or deny survivor benefits pursuant to the statutory requirements and these Rules.

(2) If the applicant claims that the Member's death was the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment, the DDRC shall, on the basis of documentary information submitted in connection with the application for survivor benefits, either:

(a) Make an initial determination that the Member's death was the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment. In making its decision, DDRC shall consider the standards set forth in Rule 1703(~~6~~5). In the case of line-of-duty deaths occurring after December 31, 1996, DDRC shall also determine whether any of the exceptions specified in Section 101(h)(2) of the Federal "Internal Revenue Code of 1986," as amended, are applicable; or

(b) Make specific findings and an initial determination that the Member's death is NOT the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment; or

(c) Make specific findings and an initial determination that the applicant's claim is not supported by the weight of the evidence and is therefore denied.

(3) The applicant may file a written request for an evidentiary hearing in the event the applicant believes the initial determination of the applicant's eligibility for survivor benefits is incorrect or, where it has been determined that more than one applicant is eligible for benefits, any such applicant may request an evidentiary hearing on the other applicants' eligibility for benefits. Such request must be filed within thirty (30) days from the date of providing the Member the DDRC's determination.

1705. Change in Status From Total to Permanent Occupational Disability.

(1) When the DDRC has received evidence that indicates a Member is no longer Totally Disabled based upon a reexamination or based upon other evidence of ability to engage in substantial gainful activity, the DDRC may direct an investigation to consider a change in the Member's status from Total to Permanent Occupational Disability.

(2) For purposes of determining whether a Member retired for Total Disability who is employed during any period of the Member's retirement should have the status changed from Total to Permanent Occupational Disability, the term "substantial gainful activity" means work that involves doing significant physical or mental activities for pay or profit.

(3) In determining whether work performed by a Member constitutes substantial gainful activity, the DDRC may consider the following criteria:

(a) The nature of the work performed, including whether the Member's duties require the use of the Member's experience, skills, abilities, supervision and management, or contribute substantially to the operation of a business or enterprise.

(b) How well the Member performs the work.

(c) Whether the work is done under special conditions, such as work done in a sheltered workshop or as a patient in a hospital.

(d) The amount of time spent in work.

consideration of such a change in status must file a complete application with FPPA no later than one hundred eighty (180) days prior to the expiration of the five- (5) year period. The application should be accompanied by physician reports or other medical documentation, which supports the request for a change in status. FPPA will not process an incomplete application. The application must be completed within ninety (90) days from the date FPPA first receives any part of the application packet required by FPPA. If the application is not completed within ninety (90) days, or one hundred eighty (180) days before the expiration of the five- (5) year period, FPPA will treat the application as having been withdrawn.

(3) If a Member requests re-examination in order to find that a disability ceases to exist and the Medical Advisor finds there are reasonable grounds for re-examination, the process will continue per Rule 1706(4). If the Medical Advisor finds there are no reasonable grounds for re-examination, the matter will be referred to the DDRC per Rule 1706(5).

(4) The Medical Advisor will review the application and supporting documentation and advise staff on whether reasonable grounds exist for a reexamination.

(5) If the Medical Advisor does not find reasonable grounds for reexamination, the matter shall be referred to the DDRC for determination. If the DDRC determines there are no reasonable grounds for reexamination, the matter shall terminate and the DDRC shall notify the Member of its determination in writing. The Member may file a written request for an evidentiary hearing pursuant to Rule 1709. Such request must be filed within thirty (30) days from the date of providing the Member the DDRC's determination.

(6) If the DDRC or the Medical Advisor determines there are reasonable grounds for reexamination, the Medical Advisor shall appoint one (1) or more physicians to examine the Member. The physician ~~or physicians~~(s) shall submit report(s) to the DDRC on the Member's disability status and, following submission of the report(s), the DDRC shall approve or deny the change in disability status. Alternatively, on the basis of medical reports submitted by the Member, the DDRC may waive the requirement of a reexamination by the appointed physician ~~panel~~(s) and declare the Member Permanently Occupationally Disabled or Totally Disabled.

(7) The DDRC shall notify the Member of its determination in writing along with copies of the medical report(s) submitted by the appointed physician(s ~~appointed to examine the Member~~). If the DDRC denies the request for a change in status, the Member may file a written request for an evidentiary hearing before a hearing officer. Such request must be filed within thirty (30) days from the date of providing the Member the DDRC's determination.

(8) If the Member's disability status is changed from Permanent Occupational Disability to Total Disability or Temporary Occupational Disability status is changed to Permanent Occupational Disability or Total Disability, the new benefit shall become effective on the first (1st) day of the month following that date on which the determination of change in status becomes final. The Member shall elect one (1) of the payment options available under ~~C.R.S. § 31-31-803(1)~~Rule 1602, as amended, in writing, on the form prescribed by FPPA. The Member's election shall be made within ninety (90) days of the date on which all determinations affecting the change in status have become final. Determinations shall not be deemed final until all applicable appeal periods have expired or have been waived. FPPA shall pay benefits in the amount of the previous award of benefits under the Member's prior status until the election is received for a period of up to ninety (90) days, unless FPPA anticipates a substantial offset of the new benefit. If FPPA does anticipate a substantial offset, the benefit payment will be suspended until the required election forms are submitted. After ninety (90) days, benefit payments shall be suspended until the Member submits the required election form. Upon receipt of the written election, FPPA shall adjust the benefit payments for any over or under payments made prior to receipt of the election and shall pay any unpaid suspended benefits resulting from the change in status, without interest or earnings. If the Member dies without making an election and the Member is survived by a spouse, or Partner in a Civil Union and dependent child, the Member shall be considered to have

elected Option 3 provided by ~~C.R.S. § 31-31-803(1)(b)~~Rule 1602, as amended. If the Member is survived by a spouse or Partner in a Civil Union but no dependent child, the Member shall be considered to have elected Option 1 provided by ~~C.R.S. § 31-31-803(1)(b)~~Rule 1602, as amended.

(9) A change in a Member's disability status shall be effective upon final approval. The benefit amount shall change effective on the first (1st) day of the month following approval.

1707. Discontinuance of Disability Benefits.

(1) Discontinuance Upon Reemployment

(a) If, subsequent to a grant of disability benefits to a Member, the Member is employed or reemployed in this state or any other jurisdiction, pursuant to either an agreement or court order, in a full-time paid position which normally involves working at least 1,600 hours in any given calendar year and the duties of which are directly involved with the provision of police or fire protection, the disability benefits provided to the Member shall be discontinued. If a Member is employed or reemployed either full-time or part-time in a position directly involved with the provision of police or fire protection in which the Member is capable of meeting the physical requirements of the position, the benefit provided to the Member may be discontinued after a review by the DDRC under Part XVI of these Rules and Regulations.

(b) In the event a Member retired for disability is subsequently employed or re-employed in a full-time paid position, the CBO shall make an initial determination concerning the Member's continuing eligibility for disability benefits pursuant to this Rule 1707(1) and C.R.S. § 31-31-~~806~~814, as amended. The CBO will base the initial determination upon a review of the written job description, or a similar explanation provided by the Employer, for the position in question. In reviewing the written job description, the CBO, among other things, may consider the following matters:

(I) Whether the position includes authority to make investigative stops and arrests.

(II) Whether the position requires carrying a firearm while on duty or requires the operation or use of standard firefighting equipment such as fire trucks, fire hoses, etc.

(III) Whether the position requires that the individual be certified by a local, state, federal, international or foreign law enforcement or fire safety authority.

(IV) Whether the position requires that the individual respond to or investigate crime or fire scenes.

(V) Whether the position involves other duties or qualifications normally required of law enforcement officers or firefighters.

(VI) Whether the position is clerical in nature or primarily involved with the provision of services which are auxiliary to police or fire protection.

(c) Employment in a position which is clerical in nature or primarily involved with the provision of services which are auxiliary to police or fire protection will not result in a discontinuation of Occupational disability benefits pursuant to Rule 1707(1) and § 31-31-~~806~~814, C.R.S., as amended. Generally, such positions may include the following:

(I) Secretarial and other office support positions;

(II) Civilian positions within law enforcement agencies and fire departments which provide only technical support services such as crime analysis, code enforcement, dispatch, etc.;

the DDRC prior to the evidentiary hearing for review of the initial determination pursuant to Rules 1703 and 1704.

(3) At the commencement of the hearing, the Hearing Officer shall state the reasons for the hearing.

(4) The applicant may present testimony or other evidence. The applicant has the burden of proof. If the applicant is challenging the determination of eligibility for survivor benefits with respect to another applicant, the other applicant may also present evidence. In that case, the applicant requesting the evidentiary hearing has the burden of proof.

(5) The DDRC may call any witnesses or present any evidence following the applicant's case in chief.

(6) Following the conclusion of the evidence, the Hearing Officer may make the following recommendations:

~~(a) If, in the initial determination, the applicant was found not disabled because less than a majority of the physician panel has found a disability as required by C.R.S. § 31-31-803 (4)(a)(I), as amended, the Hearing Officer may recommend finding the Member not disabled or may order a reexamination by a new panel of physicians. If a reexamination is ordered, the case shall proceed in all particulars as a new case under Rule 1605(8).~~

(~~b~~a) If the initially ~~panel of~~appointed physicians ~~included physicians~~ having~~e~~ different specialties or areas of expertise, the Hearing Officer may order a reexamination by ~~a~~ new ~~panel of~~ physician(s). If the Hearing Officer orders a reexamination, then the case shall proceed in all particulars as a new case under Rule 160~~5~~7(8).

(~~c~~b) In all other cases where an initial determination has been made, the Hearing Officer shall make findings of fact and law and shall make a recommendation granting or denying an award of benefits.

(~~d~~c) In all cases, the decision is final at the time final action is taken pursuant to Rule 1710.

1709. Evidentiary Hearings on Staff Determinations.

(1) When these rules provide for an evidentiary hearing pursuant to Rule 1709 or when a determination is made by FPPA staff or the DDRC affecting benefit eligibility, amount or duration of benefits, an Employer's obligation to enroll Members under one of the state plans administered by FPPA, the calculation of a benefit or alternate payee's portion of a benefit pursuant to a domestic relations order, or any other matter upon which a determination is made and an evidentiary hearing on such a determination is not provided elsewhere in these Rules, then the person or entity affected by the determination will be granted an evidentiary hearing by a Hearing Officer upon request as provided by Rule 1709(2).

(2) The person or entity affected may file a request for a hearing on staff's determination within thirty (30) days from the date of providing the person or entity the determination. Such hearing shall be held within one hundred twenty (120) days from receipt of the request. For good cause, the person or entity requesting the hearing may have the date of the hearing continued but in no event will the Hearing Officer permit a continuance or continuances beyond one (1) year from the date of staff's determination.

(3) A pre-hearing conference shall be set with the applicant and FPPA staff for the purpose of identifying and narrowing the issues and witnesses for the evidentiary hearing and an explanation to the applicant of the FPPA evidentiary hearing procedures. If the FPPA staff

(4) The notice of hearing shall be accompanied by a written statement containing the reasons why the DDRC determined that reasonable grounds exist to believe that the Employer may be liable.

(5) Within thirty (30) days after the evidentiary hearing the Hearing Officer shall file written findings and a recommendation. The Member and the Employer shall be notified of the Hearing Officer's written findings and recommendation and shall have thirty (30) days from the date of providing the findings to file objections thereto. Objections shall be in writing and shall set forth in detail the particular errors and objections relied upon, and may be accompanied by a supporting brief. If objections are not timely filed, the Board shall consider the Hearing Officer's written findings and recommendation uncontested.

(6) The Board shall conduct an administrative appellate review of the Hearing Officer's written findings and recommendation and any timely filed Member or Employer objections to the recommendation, at a regularly scheduled Board meeting. The Member and the Employer shall be notified of the date the Board will conduct such review.

(7) At the administrative appellate review hearing, the Board may issue a summary decision affirming the recommendation of the Hearing Officer. Alternatively, the Board may correct, modify or set aside, or remand any recommendation, but only on the following grounds:

(a) That the Hearing Officer's findings are not sufficient to permit appellate review;

(b) That conflicts in the evidence are not resolved in the written findings;

(c) That the written findings are not supported by the evidence; or

(d) That the recommendation is not supported by applicable law.

1712. Reexamination Hearings and Additional Basis for Disability.

(1) The DDRC shall establish a period for reexamination of all Members awarded Temporary Occupational Disability. Reexamination of Members retired for any type of occupational disability may be ordered as deemed warranted. A member may apply to have their status changed to not disabled. A complete application must be filed with FPPA according to Rule 1706. The DDRC may delegate the decision regarding the necessity and timing of the reexamination to the Medical Advisor. At each subsequent reexamination review, the DDRC may establish the subsequent period for reexamination.

(2) The Medical Advisor may schedule a reexamination with a physician ~~panel~~. The reexamination shall include a review of compliance with the treatment plan if one was required.

(3) If ~~at least two (2) members of~~ the physician ~~panel~~ examining the Member ~~find~~opines that ~~in their opinion~~ an Occupational disability ceases to exist, the DDRC may, but is not required to, determine that such disability ceases to exist. In the event an Occupational disability is based on a medical determination of mental impairment or disease, ~~all three (3) members of~~ the physician ~~panel~~ must agree before the DDRC may determine that the Occupational disability ceases to exist.

(4) Upon a preliminary DDRC determination that a disability ceases to exist, the FPPA shall provide written notice to the Employer and the Member of the physician's~~'~~ findings and of the opportunity for an evidentiary hearing pursuant to Rule 1709 upon request of the Employer or Member. Such request for an evidentiary hearing must be received within thirty (30) days after the date of providing the Employer or Member the determination. The evidentiary hearing shall be scheduled no sooner than thirty (30) days after the date of the original written notice. If no

evidentiary hearing is timely requested and it has been determined that the disability ceases to exist, the DDRC determination shall become final as of the date that the notice of the DDRC's uncontested determination is sent to the parties, and any allowable judicial review may then proceed. If an evidentiary hearing is timely requested, the Board shall conduct an administrative appellate review of the findings and determination of the DDRC in accordance with Rules 1710(6) through 1710(9). After the review, the Board may terminate the benefits or may reverse all or part of the findings and determination.

(5) If the ~~appropriate number of physicians~~physician agree~~s~~ that the disability ceases to exist, and if the Employer has filed a statement of additional basis for disability with the original application, the Member shall be examined by a ~~three (3) member~~ physician ~~panel~~ and evaluated for disability based on the statement of additional basis for disability. If it is found that the Member refuses or fails to cooperate with additional examination, the Member's benefits shall be suspended. Such suspension shall be subject to an administrative appellate review by the Board. Review of the physicians' findings shall be made pursuant to Rule 1712(3) and 1712(4).

PART XVIII - AFFILIATED PLANS

1801. Purpose. Pursuant to Colorado Revised Statutes ("C.R.S.") § 31-30.5-212(2), as amended from time to time, the Board hereby creates rules for the purpose of amending the Old Hire Pension Plans established under C.R.S. § 31-30.5-101 et seq. (hereinafter referred to collectively as "Old Hire Plans" or "Plans" or individually as "Plan") to satisfy the qualification requirements specified in sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended ("Internal Revenue Code"), and such other applicable provisions of the Internal Revenue Code, the Treasury Regulations thereunder, and related guidance. In order to meet those requirements, the Old Hire Plans are subject to the provisions of Part XVIII notwithstanding any provisions to the contrary of an Old Hire Plan's current plan document (if any). Further, the Board has general rulemaking authority under C.R.S.§ 31-31-~~-~~202(1)(j), as amended, and specifically for any volunteer firefighter plan affiliated with FPPA under FPPA Rule 1818 (hereinafter referred to as "the pension plan").

1802. Compliance with Internal Revenue Code § 401(a)(2) for exclusive benefit and non-diversion of pension funds.

(1) The assets of the plan shall never inure to the benefit of an Employer and shall be held for the exclusive purposes of providing benefits to Members and their beneficiaries and defraying reasonable expenses of administering the plan.

(2) The pension fund must not revert, and no contributions shall be permitted to be returned, to the Employers, except due to a mistake of fact as permitted by revenue ruling 91-4.

1803. Compliance with Internal Revenue Code §§ 401(a)(7) and 401(a)(8) for vesting and forfeitures.

(1) A Member shall be 100% vested in the Member's service retirement benefit upon attaining eligibility for a service retirement benefit as specified in C.R.S. §§ 31-30.5-601 through 31-30.5-604 and C.R.S. §31-30-1122. In the event a Member separates from service prior to attaining eligibility for a service retirement benefit, such Member shall be fully vested, in satisfaction of the pre-1974 Internal Revenue Code vesting requirements, if the Member has served for a period of twenty (20) years or such lesser number of years provided under the plan.

(2) A Member shall be 100% vested in the Member's accumulated contributions at all times.