



STATE OF WASHINGTON  
**BOARD FOR VOLUNTEER FIREFIGHTERS & RESERVE OFFICERS**  
*PO Box 114 • Olympia, WA 98507 • (360) 753-7318 • FAX (360) 586-1987 • Toll Free (877) 753-7318*  
*Website: [www.bvff.wa.gov](http://www.bvff.wa.gov)*

October 7, 2008

**RE: Proposed WAC (Chapter 491-03 WAC)**

To all Fire, Police, and EMSD Departments,

In talking with departments, the State Board for Volunteer Firefighters and Reserve Officers often hears that departments are confused about reporting members because the Board has never really issued any clear, concise guidelines regarding who can and can't participate in the system. Departments are also confused about reporting member absences, additions, or resignations. This confusion has resulted in several court cases throughout the years. The largest of those cases, *Schrom v. Board for Volunteer Fire Fighters*, was heard and decided in the State Supreme Court (153 Wn.19 (2004)). Two other cases heard and decided in the Appellate Courts were *City of Kennewick v. Bd. For Volunteer Firefighters* (85 WN. App. 366 (1997)), and *Campbell v. Bd. For Volunteer Fire Fighters* (111 WN. App. 413 (2002)).

The State Supreme Court ruled that "a person asserting pension eligibility must, at minimum, fight fires in order to be a "fire fighter"...(and) must, at minimum, possess some duties that include fighting fires". They also stated that a member must participate in activities such as fire suppression, training to fight fires, and responding to alarms. *Kennewick v. Bd. For Volunteer Firefighters*, stated that "it is inconceivable that the Legislature intended to create a fire fighters' pension fund for individuals who, apart from paying an annual fee, engaged in no activity related to fire fighting" and that a fire fighter was not eligible for pension participation because he "did not engage in sufficient activities related to fire fighting to be eligible for pension credit". *Campbell v. Bd. For Volunteer Fire Fighters*, stated that a firefighter could not receive credit for the years following his removal from fire response duties.

Whenever a case of alleged misuse of the system comes before the Board, it has to come up with some criteria with which it can determine if the participant in question was eligible for pension participation during the time in question. This criteria has never been formally written down. The problems with not having written criteria have never been so prominent as they have been the last couple of years with audit recommendations and court cases. In an effort to be clear, concise, and fair, the Board needs to put its expectations in writing. The way state agencies do that is by adopting a WAC (Washington Administrative Code).

By adopting a WAC, the Board hopes to provide every volunteer with a level "playing field". The WAC would provide clear written guidance to fire, police, and emergency medical service district employees regarding who is allowed to participate in the Volunteer Firefighters' and Reserve Officers' Relief and Pension act, and to what level they have to participate to be considered "active" for pension purposes.

The Board recognizes that call volumes and drill availability varies greatly from community to community depending on local conditions. The Board has tried to draft this WAC with that in mind. It is extremely difficult to try to write one WAC that can fit all departments, and still meet the case law laid out by the State Supreme Court and the Appellate Courts. In its final conclusion, the State Supreme Court said "regardless of how or whether a court believes a statute should be rewritten, there is no judicial authority to do so. Such is the province of the legislative branch". The Board finds itself in the

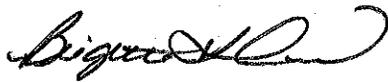


same position. Whether it agrees with the RCW as written or not is irrelevant; it has to uphold the current law. As a result, the enclosed WAC represents the Board's best effort to uphold the current law as written by the Legislature and further defined by the courts, while trying to be as fair as possible to departments and individual participants.

We are enclosing a copy of the CR-102 Form, which is a state form that describes the proposed rule and lays out opportunities for public comment. This draft has changed and evolved since it was first drafted in 2005, and that is due to the input and feedback that we have received. Now that we have formally initiated the WAC process, we ask that you carefully review the enclosed documents and take the opportunity to comment on them. There will be two public hearings in different parts of the state. The first hearing will be held on November 14, 2008, at 9:00 am at Chelan Co. FPD #1 (206 Easy St., Wenatchee, WA 98807). The second will be held on November 21, 2008, at 9:00 am at East Pierce Fire and Rescue (10515 – 234<sup>th</sup> Ave. E., Buckley, WA 98321). If you would like to comment and are unable to do so in person, please send written comments via postal mail to PO Box 114, Olympia, WA 98507, fax to 360-586-1987, or email to [bridgetted@bvff.wa.gov](mailto:bridgetted@bvff.wa.gov) by December 1, 2008.

If you have any questions, please call me at 360-753-7318.

Sincerely,

A handwritten signature in black ink, appearing to read "Brigette K. Smith". The signature is fluid and cursive, with a large loop at the end.

Brigette K. Smith  
Executive Secretary



# PROPOSED RULE MAKING

**CR-102 (June 2004)**  
(Implements RCW 34.05.320)  
Do NOT use for expedited rule making

Agency:

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR <u>08-06-068</u> ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

### Chapter 491-03 WAC

#### Membership and Participation Requirements

1. What duties within a municipality qualify me for participation/membership in the board for volunteer fire fighters' and reserve officers' relief and pension principal fund? - Clarifies the definitions of "fire fighter", "emergency worker", and "reserve officer"
2. What level of activities do I have to participate in to be eligible for participation/membership in the volunteer fire fighters' and reserve officers' pension? - Clarifies what level of activities are required to be an "active member"

Hearing location(s):

November 14, 2008, 9:00 am at Chelan Co. FPD #1 - 206 Easy Street, Wenatchee, WA 98807

November 21, 2008, 9:00 am at East Pierce Fire and Rescue - 10515 - 234<sup>th</sup> Ave E., Buckley, WA 98321

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Submit written comments to:

Name: Brigette K. Smith  
Address: PO Box 114, Olympia, WA 98507

e-mail [bridgettes@bvff.wa.gov](mailto:bridgettes@bvff.wa.gov)  
fax (360)586-1987 by (date) 12/1/08

Assistance for persons with disabilities: Contact

Brigette K. Smith by 11/14/08

TTY (360) 753-7318 or (877) 753-7318

Date of intended adoption: December 12, 2008

(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This proposal would not change any existing rules, but would clarify what is already required by the State Supreme Court case law. It would provide clear written guidance to fire, police, and emergency medical service district employees regarding who is allowed to participate in the volunteer firefighters' and reserve officers' relief and pension act and to what level they have to participate to be considered "active" for pension purposes.

**Reasons supporting proposal:** In *Schrom v. Board for Volunteer Fire Fighters*, the State Supreme Court ruled that "a person asserting pension eligibility must, at minimum, 'fight fires' in order to be a 'fire fighter'...(and) must, at minimum, possess some duties that include fighting fires if a fire were to ever occur". *City of Kennewick v. Bd. For Volunteer Firefighters* 85 Wn. App. 366, 933 P.2d 423 (1997) stated that "it is inconceivable that the Legislature intended to create a fire fighters' pension fund for individuals who, apart from paying an annual fee, engaged in no activity related to fire fighting". In *Campbell v. Bd. For Volunteer Fire Fighters*, 111 Wn. App. 413, 45 P.3d216 (2002), the court stated that a firefighter could not receive credit for the years following his removal from fire response duties. Furthermore, in *Kennewick*, the court stated that the fire fighter was not eligible for pension participation because he "did not engage in sufficient activities related to fire fighting to be eligible for pension credit". Finally, the State Supreme Court stated that a member must participate in activities such as fire suppression, training to fight fires, and responding to fire alarms.

Statutory authority for adoption: RCW 41.24.290

Statute being implemented: Chapter 491-03

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, CITATION:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Schrom v. Bd for Volunteer Fire Fighters  
153 Wn.19 (2004)

DATE  
9/30/08

NAME (type or print)  
Brigette K. Smith

SIGNATURE

TITLE  
Executive Secretary

### CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: September 30, 2008  
TIME: 4:44 PM

WSR 08-20-119

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) State Board for Volunteer Firefighters and Reserve Officers

- Private  
 Public  
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Brigette K. Smith	605 11 <sup>th</sup> Ave SE, Suite #112, Olympia, WA 98501	(360) 753-7318
Implementation.... Brigette K. Smith	605 11 <sup>th</sup> Ave SE, Suite #112, Olympia, WA 98501	(360) 753-7318
Enforcement..... State Board for Volunteer Firefighters and Reserve Officers	605 11 <sup>th</sup> Ave SE, Suite #112, Olympia, WA 98501	(360) 753-7318

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

This rule will not effect small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A prelliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain: The Board's proposed WAC is not a significant rule of the specified governmental departments nor is it a rule that adopts by incorporation or reference federal or state statutes or rules from other state agencies. It is a rule that relates to only internal governmental operations that are not subject to violation by a nongovernmental party, thus negating the requirement.

Chapter 491-03 WAC

MEMBERSHIP AND PARTICIPATION REQUIREMENTS

NEW SECTION

**WAC 491-03-010 Purpose.** This chapter sets forth the qualifications necessary to be a participant/member in the volunteer fire fighters' and reserve officers' relief and pension principal fund.

NEW SECTION

**WAC 491-03-020** What duties within a municipality qualify me for participation/membership in the board for volunteer fire fighters' and reserve officers' relief and pension principal fund? If you are a member of a municipality as a volunteer fire fighter or reserve officer who does not qualify for PERS or LEOFF (for their volunteer duties only), and if:

(1) **Reserve officers:**

(a) You are a reserve officer only if you are commissioned by the Washington state criminal justice training commission under chapter 43.101 RCW, and a member of a municipality as a:

- (i) Reserve city police officer;
- (ii) Reserve town or deputy marshal;
- (iii) Reserve deputy sheriff.

(b) You are not a reserve officer if you volunteer in either:

- (i) A position that is clerical or secretarial in nature;
- (ii) You are not commissioned;
- (iii) A corrections officer position.

(2) **Fire fighter:**

(a) You are a fire fighter only if you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling, and extinguishing fires, or your primary duty is to serve as an emergency worker (see subsection (3) of this section).

"Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance,

fire safety inspections, lecturing, performing community fire drills and inspecting homes, businesses, and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling, and extinguishing fires.

(b) You are not a fire fighter if you volunteer in:

(i) A position that is clerical or secretarial in nature;

(ii) A position where your primary duty is not preventing, controlling, and extinguishing fires;

(iii) A position that pays a wage which qualifies you for participation in either PERS or LEOFF;

(iv) A position that is only supervisory in nature and the primary duty is not preventing, controlling, and extinguishing fires.

**(3) Emergency worker:**

(a) You are an emergency worker only if you have the legal authority and responsibility to perform all aspects of medical assessment, treatment, and care for patients as outlined in state and county protocols for paramedics, emergency medical technicians, and first responders.

"Emergency activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, home safety inspections, lecturing, and driving emergency vehicles. These activities qualify as emergency activities only if the primary duty of your position is to perform all aspects of medical assessment, treatment, and care for patients.

(b) You are not an emergency worker if you volunteer in:

(i) A position that is clerical or secretarial in nature;

(ii) A position where your primary duty is not to perform all aspects of medical assessment, treatment, and care for patients;

(iii) A position that pays a wage that qualifies you for participation in either PERS or LEOFF;

(iv) A position that is only supervisory in nature and the primary duty is not to perform all aspects of medical assessment, treatment, and care for patients.

NEW SECTION

**WAC 491-03-030** What level of activities do I have to participate in to be eligible for participation/membership in the volunteer fire fighters' and reserve officers' pension? All departments are required to develop volunteer participation requirements that meet or exceed the participation requirements as set by the state board. If a department does not develop their own requirements, the board requirements will be in effect.

(1) The board requires that all volunteers:

(a) Attend a minimum of ten percent, or twenty hours, of all drills and/or training annually, whichever is less.

(b) Respond to a minimum of ten percent of all calls at the member's assigned station, or ninety-six hours of shift, duty, on-call, or standby time, annually.

(c) Meet the requirements to be a qualified member under WAC 491-03-010.

(d) Be certified as having met the standards by the local board chair and by the fire chief, police chief, or sheriff annually on the board for volunteer fire fighters and reserve officers provided forms.

(2) An exemption of up to twelve weeks in a twelve-month period may be granted for:

(a) A participant's serious health condition;

(b) A participant to care for a parent, spouse, or minor/dependent child who has a serious health condition;

(c) The birth of and to provide care to an employee's newborn, adopted, or foster child as provided in WAC 357-31-460.

For the purposes of this section, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities).

(3) An exemption of up to twenty-six weeks in a twelve-month period may be granted for: A participant who is the spouse, son, daughter, parent, or next of kin of a covered service member who is suffering from a serious health condition incurred in the line of duty. The leave described in this subsection shall only be available during a single twelve-month period.

For the purposes of this section, "covered service member" is a member of the armed forces, including the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious health condition.

(4) An exemption of up to one year may be granted for injuries covered under chapter 41.24 RCW; or up to one year for reserve officers injured in the line of duty and covered under Title 51 RCW.

(5) Departments granting exemptions shall submit written documentation on the board for volunteer fire fighters and reserve officers provided forms for board review.

(6) Members joining service after January 1st, or separating from service before December 31st, will have their requirements prorated for the calendar year.