

WSR 09-14-008
EXPEDITED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed June 22, 2009, 10:28 a.m.]

Title of Rule and Other Identifying Information: New section defining the term "domestic partner" for purposes of title 192 WAC. Amending WAC 192-150-055, 192-150-110, 192-150-112, 192-310-150, 192-310-160, and 192-310-190 to include the term "domestic partner" when making reference to family, immediate family, or family member. The term "siblings" is also added to the definition of "immediate family" for consistency with other rules.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY September 1, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend unemployment insurance rules to incorporate individuals in a state registered domestic partnership when using the terms spouse, family, immediate family, or family member. For purposes of consistency, the term "siblings" is added to the definition of "immediate family."

Reasons Supporting Proposal: E2SSB 5688 (section 2, chapter 521, Laws of 2009) requires agencies to amend their rules to reflect legislative intent that all privileges, immunities, rights, benefits, or responsibilities of a spouse in a marital community relationship are granted or imposed on an individual in a state registered domestic partnership. Section 137 of E2SSB 5688 adds a new section to chapter 50.04 RCW providing that all references to spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family are to apply equally to state registered domestic partnerships or individuals in a state registered domestic partnership.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and section 2, chapter 521, Laws of 2009.

Statute Being Implemented: Sections 2 and 137, chapter 521, Laws of 2009.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, WA, (360) 902-9665; Implementation and Enforcement: Nan Thomas, 212 Maple Park, Olympia, WA, (360) 902-9303.

June 19, 2009

Paul Trause
Deputy Commissioner

NEW SECTION

WAC 192-100-075 Domestic partner. For purposes of this title "domestic partner" or "state registered domestic partner" means two adults who meet the requirements of RCW 26.60.030 and have been issued a certificate of state registered domestic partnership by the Washington secretary of state.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50-20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

(a) You left work primarily because of such illness, disability, or death; and

(b) The illness, disability, or death made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:

(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

(a) "Disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (2)(b)(iii). (1) Any military transfer is considered mandatory if your spouse or domestic partner receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may show good cause to quit work if you relocate for your spouse or domestic partner's employment that was due to a mandatory military transfer if:

(a) Your spouse or domestic partner's new duty station is outside your existing labor market. For claims with an effective date prior to July 2, 2006, the new duty station must be in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued to work for your previous employer for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse or domestic partner to a new duty location; or

(b) Your spouse or domestic partner leaves military service and you elect to relocate to your home of record or elsewhere.

AMENDATORY SECTION (Amending WSR 05-13-156, filed 6/21/05, effective 7/22/05)

WAC 192-150-112 Definitions—Domestic violence and stalking—RCW 50.20.050 (2)(b)(iv). To constitute good cause for leaving work, your job separation must have been necessary to protect yourself or a member of your immediate family from domestic violence or stalking.

(1) **Immediate family** is defined in WAC 192-150-055 and means your spouse, domestic partner, and the children (including your unborn children), siblings, stepchildren, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household. ~~((In addition, for purposes of this section only, the term shall also include your siblings.))~~

(2)(a) **Domestic violence** is defined in RCW 26.50.010. It includes the following acts committed between family or household members:

- (i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault;
- (ii) Sexual assault; or
- (iii) Stalking.

(b) The perpetrator of domestic violence must be a family or household member, which means:

(i) Spouses, domestic partners, ~~((and))~~ former spouses, and former domestic partners.

(ii) Persons who have a child in common regardless of whether they have been married or have lived together at any time,

(iii) Adult persons related by blood or marriage,

(iv) Adult persons who are presently residing together or who have resided together in the past,

(v) Persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship,

(vi) Persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and

(vii) Persons who have a biological or legal parent-child relationship, including stepparents, stepchildren, grandparents, and grandchildren.

(c) "Dating relationship" means a social relationship of a romantic nature.

(3) **Stalking** is defined by RCW 9A.46.110. It means:

(a) Intentionally and repeatedly harassing or following another person; and

(b) Placing the person being harassed or followed in fear of injury to self or property, or to another person or the property of another person; and

(c) Intending to frighten, intimidate, or harass the other person; or

(d) Knowing or having reason to know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(i) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose.

(ii) "Repeatedly" means on two or more separate occasions.

(iii) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(iv) "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/09)

WAC 192-310-150 Are corporate officers covered for unemployment insurance? (1) For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state. For purposes of this section, it includes state registered domestic partnerships authorized under Chapter 26.60 RCW.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

AMENDATORY SECTION (Amending WSR 07-23-127 [09-07-010], filed 11/21/07 [3/5/09], effective 1/1/09 [4/5/09])

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the

exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all exempted officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife or domestic partner, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses or domestic partners of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers exempted do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

change for use in adjudicative hearings and contested cases before the office of the insurance commissioner.

Reasons Supporting Proposal: The office of administrative hearings specifically permits agencies to adopt discovery rules applicable to agency hearings and contested matters. At present, the office of the insurance commissioner does not have specific rules in place defining discovery procedures, and proposes these rules to provide greater clarity and certainty to all parties to contested cases and adjudicative hearings involving the agency.

Statutory Authority for Adoption: RCW 34.05.446(2) and 48.02.060.

Statute Being Implemented: RCW 34.05.220.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7197; Implementation and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

June 30, 2009

Mike Kreidler

Insurance Commissioner

WSR 09-14-101

EXPEDITED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-24—Filed June 30, 2009, 11:41 a.m.]

Title of Rule and Other Identifying Information: Discovery rules for contested cases or adjudicative hearings.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Meg Jones, Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, e-mail megj@oic.wa.gov, AND RECEIVED BY September 1, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules adopt the Washington civil rules of procedure without

AMENDATORY SECTION (Amending Matter No. R 2008-10, filed 7/2/08, effective 8/2/08)

WAC 284-02-070 How does the OIC conduct hearings? (1) Generally.

(a) Hearings of the OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). In addition to general hearings conducted pursuant to RCW 48.04.010, two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings or contested case hearings. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand or request a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Requests for hearings must be in writing and delivered to the Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

(2) Proceedings for contested cases or adjudicative hearings.

(a) Provisions specifically relating to disciplinary action taken against persons or entities authorized by the OIC to

transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance agents, brokers, solicitors, and adjusters are contained in RCW 48.17.530; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against viatical settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer; or may use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

(iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of

insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).

(v) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(d) Discovery is available in adjudicative proceedings and contested cases pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).

(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.

(ii) The presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW) and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site (www.insurance.wa.gov).

WSR 09-14-107
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 30, 2009, 12:52 p.m.]

Title of Rule and Other Identifying Information: Chapter 296-842 WAC, Respirators.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Joshua Swanson, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY August 31, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are responding to a Federal Register notice that OSHA updated their respirators' requirements for the controlled negative pressure REDON fit testing protocol. We are updating our rule to be identical to OSHA's rule.

This rule was also reformatted recently. During that process some helpful information (not including requirements) was inadvertently deleted, so we are putting it back in. In addition there are some minor typos and language changes to make this rule consistent with other division of occupational safety and health (DOSH) rules.

The proposed language in chapter 296-842 WAC will meet L&I's statutory mandate to be as-effective-as the federal equivalent.

A previous expedited rule package was filed on March 31, 2009, for WSR 09-08-106. A stakeholder requested clarification of WAC 296-842-100 regarding when respirators are required, and that clarification is reflected in this new CR-105 filing package. Also, we added a clarifying exemption statement to WAC 296-842-16005 that training requirements do not apply when respirators are voluntarily used.

Reasons Supporting Proposal: By law, L&I's DOSH is required to have laws at-least-as-effective-as OSHA.

Statutory Authority for Adoption: RCW 49.17.050.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. Subpart Z.

Name of Proponent: L&I, DOSH, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Steve Cant, Tumwater, (360) 902-5495.

June 30, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-100 Scope and application. (1) Respirators are required whenever respiratory hazards (including oxygen-deficient conditions) are present. For example, use respirators at any of the following times:

(a) While exposure controls are being evaluated or put in place;

(b) When it is not feasible to use exposure controls to remove or reduce the airborne hazard to below the PEL.

(2) This chapter applies ~~((to all use of))~~ whenever respirators are used at work.

IMPORTANT:

Before ~~((you decide to use))~~ using respirators, ~~((you))~~ employers are required to evaluate respiratory hazards and implement control methods as outlined in chapter 296-841 WAC, Airborne contaminants.

The term "respiratory hazards" will be used throughout this chapter to refer to oxygen-deficient conditions and harmful airborne hazards.

~~((Definition:~~

~~Respirators are a type of personal protective equipment designed to protect the wearer from respiratory hazards.))~~

You ~~((can))~~ may use Table 1 for general guidance on which chapter sections apply ~~((to you))~~.

**Table 1
Chapter sections that apply to your workplace**

If employees...	Then the sections marked with an "X" apply...							
	((405)) <u>10505</u>	((410)) <u>11005</u>	((420)) <u>12005</u>	((430-210)) <u>13005</u>	((220)) <u>14005</u>	((300)) <u>15005 - 21005</u>	<u>22005</u>	<u>22010</u>
Request and are permitted to voluntarily use filtering-facepiece respirators, and are not exposed to a respiratory hazard		X				((X))		
Request and are permitted to voluntarily use respirators that are NOT filtering-facepiece respirators, and are not exposed to a respiratory hazard	X	X			X	((X))	<u>X</u>	

Table 1
Chapter sections that apply to your workplace

If employees...	Then the sections marked with an "X" apply...							
	((405)) <u>10505</u>	((110)) <u>11005</u>	((120)) <u>12005</u>	((130-210)) <u>13005</u>	((220)) <u>14005</u>	((300)) <u>15005 - 21005</u>	<u>22005</u>	<u>22010</u>
Are required to use any respirator by ((WISHA)) <u>DOSH</u> or the employer	X		X	X	X	X	<u>X</u>	<u>X</u>
Would use an escape respirator in an emergency	X		X	X	X	X	<u>X</u>	<u>X</u>

Reference: See WAC 296-800-160, Personal protective equipment (PPE) to find requirements for other types of PPE such as eye, hand, and head protection.

NEW SECTION

WAC 296-842-10200 Definitions. (1) **Air-purifying respirator (APR)** means a respirator equipped with an air-purifying element such as a filter, cartridge, or canister, OR having a filtering facepiece, for example, a dust mask. The element or filtering facepiece is designed to remove specific contaminants, such as particles, vapors, or gases, from air that passes through it.

(2) **Air-line respirator** means an atmosphere-supplying respirator for which breathing air is drawn from a source separate from and not worn by the user, such as:

- A cylinder or a tank;
- A compressor;
- An uncontaminated environment.

(3) **Air supplied respirator (see air-line respirator).**

(4) **Assigned protection factor (APF)** indicates the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when you implement a continuing, effective respiratory protection program as specified by this chapter. For example, an effective program makes sure the respirator is:

- Functioning properly;
- Fitted to the user;
- Worn by trained individuals; and
- Used with the limitations specified on the NIOSH-approval label.

(5) **Atmosphere-supplying respirator** means a respirator that supplies the user with breathing air from sources, such as:

- A cylinder or a tank;
- A compressor;
- An uncontaminated environment.

(6) **Breathing air** means air supplied to an atmosphere-supplying respirator. This air meets the specifications found in WAC 296-842-20005.

(7) **Canister or cartridge (air-purifying)** is part of an air-purifying respirator that consists of a container holding materials such as fiber, treated charcoal, or a combination of the two, that removes contaminants from the air passing through the cartridge or canister.

(8) **Cartridge respirator (see also air-purifying respirator)** means an air-purifying respirator equipped with one or more cartridges. These respirators have a facepiece made from silicone, rubber OR other plastic-like materials.

(9) **Demand respirator** means an atmosphere-supplying respirator that sends breathing air to the facepiece only when suction (negative pressure) is created inside the facepiece by inhalation. Demand respirators are "**negative pressure**" respirators.

(10) **DOSH** means the division of occupational safety and health, located in the department of labor and industries.

(11) **Dust mask** is a name used to refer to filtering-facepiece respirators. Dust masks may or may not be NIOSH certified. See filtering facepiece.

(12) **Emergency respirator** means a respirator suitable for rescue, escape, or other activities during emergency situations.

(13) **Emergency situation** means any occurrence that could or does result in a significant uncontrolled release of an airborne contaminant. Causes of emergency situations include, but are not limited to, equipment failure, rupture of containers, or failure of control equipment.

(14) **End-of-service-life indicator (ESLI)** is a system that warns the air-purifying respirator user that cartridges or canisters must be changed. An example of an ESLI is a dot on the respirator cartridge that changes color.

(15) **Escape-only respirator** is a respirator that can only be used to exit during emergencies. Look for this use limitation on the respirator's NIOSH approval label.

(16) **Exposed, or exposure** means the contact an employee has with a toxic substance, harmful physical agent, or oxygen deficient condition. Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

(17) **Filter** means fibrous material that removes dust, spray, mist, fume, fog, smoke particles, OR other aerosols from the air.

(18) **Filtering-facepiece respirator** means a tight-fitting, half-facepiece, negative-pressure, particulate air-purifying respirator with the facepiece mainly composed of filter material. These respirators do not use cartridges or canisters

and may have sealing surfaces composed of rubber, silicone or other plastic-like materials. They are sometimes referred to as "dust masks."

(19) **Fit factor** is a number providing an estimate of fit for a particular respiratory inlet covering to a specific individual during quantitative fit testing.

(20) **Fit test** (see also qualitative fit test and quantitative fit test) is an activity where the facepiece seal of a respirator is challenged, using a DOSH accepted procedure, to determine if the respirator provides an adequate seal.

(21) **Full-facepiece respirator** means a tight-fitting respirator that covers the wearer's nose, mouth, and eyes.

(22) **Gas mask** means an air-purifying respirator equipped with one or more canisters. These respirators have a facepiece made from silicone, rubber OR other plastic-like materials.

(23) **Half-facepiece respirator** is a tight-fitting respirator that only covers the wearer's nose and mouth.

(24) **Helmet** means the rigid part of a respirator that covers the wearer's head AND also provides head protection against impact or penetration.

(25) **High-efficiency particulate air filter (HEPA)** is a powered air-purifying respirator (PAPR) filter that removes at least 99.97% of monodisperse dioctyl phthalate (DOP) particles with a mean particle diameter of 0.3 micrometer from contaminated air.

Note: Filters designated, under 42 CFR Part 84, as an "N100," "R100," or "P100" provide the same filter efficiency (99.97%) as HEPA filters.

(26) **Hood** is the part of a respirator that completely covers the wearer's head and neck AND may also cover some or all of the shoulders and torso.

(27) **Immediately dangerous to life or health (IDLH)** means an atmospheric condition that would:

- Cause an immediate threat to life; or
- Cause permanent or delayed adverse health effects; or
- Interfere with an employee's ability to escape.

(28) **Licensed health care professional (LHCP)** means an individual whose legally permitted scope of medical practice allows him or her to provide some or all of the health care services required for respirator users' medical evaluations.

(29) **Loose-fitting facepiece** is a respiratory inlet covering that is designed to form a partial seal with the face.

(30) **Negative-pressure respirator** means any tight-fitting respirator in which the air pressure inside the facepiece is less than the air pressure outside the respirator during inhalation.

(31) **NIOSH** is the National Institute for Occupational Safety and Health. NIOSH is the federal agency that certifies respirators for occupational use.

(32) **Oxygen deficient** is an atmosphere with an oxygen content below 19.5% by volume.

(33) **Permissible exposure limits (PELs)** are employee exposures to toxic substances or harmful agents that must not be exceeded. PELs are specified in applicable DOSH chapters.

(34) **Positive-pressure respirator** means a respirator in which the air pressure inside the respiratory inlet covering is greater than the air pressure outside the respirator.

(35) **Powered air-purifying respirator (PAPR)** means an air-purifying respirator equipped with a blower that draws ambient air through cartridges or canisters. These respirators, as a group, are not classified as positive pressure respirators and must not be used as such.

(36) **Pressure-demand respirator** means a positive-pressure atmosphere-supplying respirator that sends breathing air to the respiratory inlet covering when the positive pressure is reduced inside the facepiece by inhalation or leakage.

(37) **Qualitative fit test (QLFT)** is a test that determines the adequacy of respirator fit for an individual. The test relies on the employee's ability to detect a test substance. Test results are either "pass" or "fail."

(38) **Quantitative fit test (QNFT)** is a test that determines the adequacy of respirator fit for an individual. The test relies on specialized equipment that performs numeric measurements of leakage into the respiratory inlet covering. Test results are used to calculate a "fit factor."

(39) **Required use** is respirator use that:

- Is necessary to protect employees from respiratory hazards; or
- The employer decides to require for his or her own reasons. For example, the employer decides to follow more rigorous exposure limits.

(40) **Respirator** is a type of personal protective equipment designed to protect the wearer from airborne contaminants, oxygen deficiency, or both.

(41) **Respiratory hazard** means airborne hazards and oxygen deficiency that are addressed in chapter 296-841 WAC, Airborne contaminants.

(42) **Respiratory inlet covering** is the part of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source or both. The respiratory inlet covering may be a facepiece, helmet, hood, suit, or mouthpiece respirator with nose clamp.

(43) **Seal check** means actions conducted by the respirator user each time the respirator is put on, to determine if the respirator is properly seated on the face.

(44) **Self-contained breathing apparatus (SCBA)** is an atmosphere-supplying respirator designed for the breathing air source, to be carried by the user.

(45) **Service-life** means the period of time that a respirator, filter or sorbent, or other respiratory equipment provides adequate protection to the wearer. For example, the period of time that sorbent cartridge is effective for removing a harmful substance from the air.

(46) **Sorbent** means rigid, porous material, such as charcoal, used to remove vapor or gas from the air.

(47) **Supplied-air respirator (see air-line respirator).**

(48) **Tight-fitting facepiece** is a respiratory inlet covering forming a complete seal with the face OR neck. Mouthpiece respirators are not tight-fitting facepieces.

(49) **Voluntary use** means respirator use that is requested by the employee and permitted by the employer when no respiratory hazard exists.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-10505 Designate a program administrator.

Exemption: You do not need to designate a program administrator if employees use only filtering-facepiece respirators and do so only as voluntary use.

~~((Definition:~~

~~Voluntary use is respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.))~~

Designate a program administrator who has overall responsibility for your program and has sufficient training or experience to oversee program development, coordinate implementation, and conduct required evaluations of program effectiveness outlined in WAC 296-842-12005.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-11005 Make sure voluntary use of respirators is safe.

~~((Definition:~~

~~Voluntary use is respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.))~~

IMPORTANT:

~~((If you)) • Respirator use is **not** voluntary, and the required use sections of this chapter apply, if:~~

~~– An employer chooses to require respirator use (use is NOT voluntary and the required use sections of this chapter apply).~~

~~– A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present. To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, Airborne contaminants.~~

~~– Some requirements in this section do not apply if only filtering-facepiece respirators are used voluntarily.~~

~~– Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.~~

- (1) Make sure voluntary respirator use does **NOT**:
 - (a) Interfere with an employee's ability to work safely, such as restricting necessary vision or radio communication; **OR**
 - (b) Create health hazards.

Note: Examples of health hazards include:

- Skin irritation, dermatitis, or other health effects caused by using a dirty respirator.
- Illness created by sharing contaminated respirators.
- Health effects caused by use of an unsafe air supply, such as carbon monoxide poisoning.

- (2) Provide all voluntary respirator users with the advisory information in Table 2 at no cost to them.

~~((Note: If you have provided employees with the advisory information required in the previous rule, WAC 296-62-07117, you do not need to provide the additional information in Table 2 to those employees.))~~

- (3) Develop and maintain a written program that includes the following:

~~((Exemption: If employees use only filtering-facepiece respirators and do so only voluntarily, you do not need to develop and maintain a written program.))~~

- (a) Medical evaluation provisions as specified in WAC ~~((296-842-140))~~ 296-842-14005.

- (b) Procedures to properly clean and disinfect respirators, according to WAC 296-842-22015, if they are reused.

- (c) How to properly store respirators, according to WAC 296-842-17010, so that using them does not create hazards.

- (d) Procedures to make sure there is a safe air supply, according to WAC ~~((296-842-200))~~ 296-842-20010, when using air-line respirators and SCBAs.

- (e) Effective training to ensure respirator use does NOT create a hazard.

~~((Note: • Pay for medical evaluations, training, travel related costs, and wages. You do NOT need to pay for respirators employees use only voluntarily. • If you have both voluntary and required respirator users, you may choose to treat voluntary users as required users. Doing this exceeds the requirements in this section.))~~

Exemption: If employees use only filtering-facepiece respirators and do so only voluntarily, you do not need to develop and maintain a written program.

- (4) Use Table 2 to provide information to employees who voluntarily use any type of respirator.

Table 2

Advisory Information for Employees Who Voluntarily Use Respirators
<p>• Respirators protect against airborne hazards when properly selected and used. Respirator usage that is required by ((WISHA)) <u>DOSH</u> or your employer is not voluntary use. With required use, your employer will need to provide further training and meet additional requirements in this chapter. ((WISHA)) <u>DOSH</u> recommends voluntary use of respirators when exposure to substances is below ((WISHA)) <u>DOSH</u> permissible exposure limits (PELs) because respirators can provide you an additional level of comfort and protection.</p> <p>• If you choose to voluntarily use a respirator (whether it is provided by you or your employer) be aware that respirators can create hazards for you, the user. You can avoid these hazards if you know how to use your respirator properly AND how to keep it clean. Take these steps:</p> <ul style="list-style-type: none"> – Read and follow all instructions provided by the manufacturer about use, maintenance (cleaning and care), and warnings regarding the respirator's limitations.

Advisory Information for Employees Who Voluntarily Use Respirators

- Choose respirators that have been certified for use to protect against the substance of concern. The National Institute for Occupational Safety and Health (NIOSH) certifies respirators. If a respirator is not certified by NIOSH, you have no guarantee that it meets minimum design and performance standards for workplace use.
 - A NIOSH approval label will appear on or in the respirator packaging. It will tell you what protection the respirator provides.
- Keep track of your respirator so you do not mistakenly use someone else's.
- **DO NOT** wear your respirator into:
 - Required use situations when you are only allowed voluntary use.
 - Atmospheres containing hazards that your respirator is not designed to protect against.

For example, a respirator designed to filter dust particles will not protect you against solvent vapor, smoke or oxygen deficiency.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-12010 Keep respirator program records. (1) ~~((Keep records of your))~~ A written copy of the current respirator program must be kept by the employer.

(2) Keep each employee's current fit test record, if fit testing is conducted, until the next fit test is administered. Fit test records must include:

- (a) Employee name;
- (b) Test date;
- (c) Type of fit-test performed;
- (d) Description (type, manufacturer, model, style, and size) of the respirator tested;
- (e) Results of fit tests, for example, for quantitative fit tests include the overall fit factor AND a print out, or other recording of the test.

(3) Keep training records that include ~~((employee's))~~ employees' names and the dates trained.

(4) Keep written recommendations from the LHCP.

Reference: See chapter 296-802 WAC, Employee medical and exposure records, for additional requirements that apply to medical records.

(5) Employers must allow affected employees and their representatives to examine and copy records required by this section ((to be examined and copied by affected employees and their representatives)).

~~((Reference: See chapter 296-802 WAC, Employee medical and exposure records, for additional requirements that apply to medical records.))~~

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-13005 Select and provide appropriate respirators.

Exemption: This section does NOT apply to respirator use that is voluntary. See WAC 296-842-11005 for voluntary use program requirements.

IMPORTANT:

See chapter 296-841 WAC, Airborne contaminants, for:

- Hazard evaluation requirements. Evaluation results are necessary for respirator selection.
- References to substance-specific rules that may also apply to you and have additional respirator selection require-

ments. These references are found in the permissible exposure limit (PEL) table.

A respirator shall be provided to each employee when such equipment is necessary to protect the health of the employee. Select and provide, at no cost to employees, appropriate respirators for routine use, infrequent use, and reasonably foreseeable emergencies (such as escape, emergency, and spill response situations) by completing the following process:

Respirator Selection Process

Step 1: If your only respirator use is for escape, skip to **Step 8** to select appropriate respirators.

Step 2: If the respiratory hazard is a biological aerosol, such as TB (tuberculosis), anthrax, psittacosis (parrot fever), or hanta virus, select a respirator appropriate for **nonemergency** activities recognized to present a health risk to workers AND skip to **Step 8**.

- If respirator use will occur during **emergencies**, skip to **Step 8** and document the analysis used to select the appropriate respirator.

- Use Centers for Disease Control (CDC) selection guidance for exposures to specific biological agents when this guidance exists. Visit <http://www.cdc.gov>.

Step 3: If the respiratory hazard is a pesticide, follow the respirator specification on the pesticide label AND skip to **Step 9**.

Step 4: Determine the expected exposure concentration for each respiratory hazard of concern. Use the results from the evaluation required by chapter 296-841 WAC, Airborne contaminants.

Step 5: Determine if the respiratory hazard is classified as IDLH; if it is NOT IDLH skip to **Step 7**.

- The respiratory hazard IS classified as IDLH if:
 - The atmosphere is oxygen deficient or oxygen enriched;

OR

- You CANNOT measure or estimate your expected exposure concentration;

OR

- Your measured or estimated expected exposure concentration is greater or equal to the IDLH value in the NIOSH *Pocket Guide to Chemical Hazards*;

Note: ((~~WISHA~~)) ~~DOSH~~ uses the IDLH values in the 1990 edition of the NIOSH *Pocket Guide to Hazardous Chemicals* to determine the existence of IDLH conditions. You may use more recent editions of this guide. Visit www.cdc.gov/niosh for more information.
 ((~~If your measured or estimated expected exposure concentration is below NIOSH's IDLH values, proceed to Step 7.~~))

Step 6: Select an appropriate respirator from one of the following respirators for IDLH conditions and skip to **Step 8:**

- Full-facepiece, pressure demand, self-contained breathing apparatus (SCBA) certified by NIOSH for a minimum service life of thirty minutes;

OR

- Full-facepiece, pressure demand air-line respirator equipped with an auxiliary self-contained air supply;

Exception: If the respiratory hazard is oxygen deficiency AND you can show oxygen concentrations can be controlled within the ranges listed in Table 4 under ALL foreseeable conditions, you are allowed to select ANY type of SCBA or air-line respirator:

**Table 4
Concentration Ranges for Oxygen Deficiency**

Altitude (as ft. above sea level)	Oxygen Concentration Range (as percent oxygen)
Below 3,001	16.0 - 19.5
3,001 - 4,000	16.4 - 19.5
4,001 - 5,000	17.1 - 19.5
5,001 - 6,000	17.8 - 19.5
6,001 - 7,000	18.5 - 19.5
7,001 - 8,000	19.3 - 19.5
Above 8,000 feet the exception does not apply. Oxygen-enriched breathing air must be supplied above 14,000 feet.	

Step 7: Select respirator types with assigned protection factors (APFs) from Table 5 that are appropriate to protect employees from the expected exposure concentration.

Note: • ((~~The helpful tool!~~)) Appendix B, using assigned protection factors (APFs) for respirator selection, found in ((~~the resource section of~~)) this chapter, ((~~utilizes~~)) uses the hazard-ratio approach established by ANSI Z88.2-1992 to determine which respirator types can provide a sufficient level of protection.

• If no permissible exposure limit (PEL) is established for an airborne contaminant, use relevant available information and informed professional judgment to determine an acceptable exposure limit value to use for calculating hazard ratios. For example, you may use exposure limit values established by the American Conference of Governmental Industrial Hygienists ((~~(ACGIH)~~)) (ACGIH).

Step 8: Consider hazards that could require selection of specific respirator types. For example, select full-facepiece respirators to prevent eye irritation or abrasive blasting helmets to provide particle rebound protection.

Note: Rules for specific substances have additional selection specifications that apply to escape and other types of respirators. Make sure you follow those additional requirements before finalizing your selection.

Step 9: Evaluate user and workplace factors that might compromise respirator performance, reliability or safety.

Examples:

- High humidity or temperature extremes in the workplace.
- Necessary voice communication.
- High traffic areas and moving machinery.
- If respirator use is for escape only, follow this step and then skip to **Step 11.**

• If the respiratory hazard is a pesticide, follow the requirements on the pesticide label and skip to **Step 11.**

• Time or distance for escape.

Step 10: Follow Table 6 requirements to select an air-purifying respirator.

• If Table 6 requirements cannot be met, you must select an appropriate air-line respirator or an SCBA.

Step 11: Make sure respirators you select are certified by the National Institute for Occupational Safety and Health (NIOSH).

• Respirators provided exclusively for escape from IDLH atmospheres must be NIOSH-certified for escape from the atmosphere in which they will be used.

• To maintain certification, make sure the respirator is used according to cautions and limitations specified on the NIOSH approval label. This includes manufacturer restrictions on cartridges and canisters.

Note: While selecting respirators, you will need to select a sufficient number of types, models or sizes to provide for fit testing. You can also consider other respirator use issues, such as accommodating facial hair with a loose fitting respirator.

Use Table 5 to identify the assigned protection factor for different types of respirators.

• These assigned protection factors are only effective when the employer implements a continuing, effective respirator program as required by this chapter, including training, fit testing, maintenance, and use requirements.

• You may select respirators assigned for use in higher workplace concentrations of a hazardous substance for use at lower concentrations of that substance, or when required use is independent of concentration.

**Table 5
Assigned Protection Factors (APF) for Respirator Types**

If the respirator is a(n) . . .	Then the APF is . . .
Air-purifying respirator with a:	
• Quarter-mask	5
• Half-facepiece. This category includes filtering facepiece and elastomeric facepiece models	10
• Full-facepiece	50
Powered air-purifying respirator (PAPR) with a:	
• Loose-fitting facepiece	25
• Half-facepiece	50
• Full-facepiece	1000

If the respirator is a(n) . . .	Then the APF is . . .
• Hood or helmet	25/1000 (see note)
Note: PAPRs with helmets/hoods may receive an APF of 1000 only when you have evidence that testing of these respirators demonstrates performance at a level of protection of 1,000 or greater. Such evidence must be provided by the respirator manufacturer. This level of performance can best be demonstrated by performing a workplace protection factor (WPF) or simulated workplace protection factor (SWPF) study or equivalent testing.	
Air-line respirator with a:	
• Half-facepiece and designed to operate in demand mode	10
• Loose-fitting facepiece and designed to operate in continuous flow mode	25
• Half-facepiece and designed to operate in continuous-flow mode	50
• Half-facepiece and designed to operate in pressure-demand or other positive-pressure mode	50
• Full-facepiece and designed to operate in demand mode	50
• Full-facepiece and designed to operate in continuous-flow mode	1000
• Full-facepiece and designed to operate in pressure-demand or other positive-pressure mode	1000
• Helmet or hood and designed to operate in continuous-flow mode	25/1000 (see note)
Note: Air-line respirators with helmets/hoods designed to operate in continuous-flow mode may receive an APF of 1000 when you have evidence that testing of these respirators demonstrates performance at a level of protection of 1,000 or greater. Such evidence must be provided by the respirator manufacturer. This level of performance can best be demonstrated by performing a workplace protection factor (WPF) or simulated workplace protection factor (SWPF) study or equivalent testing.	
Self-contained breathing apparatus (SCBA) with a tight fitting:	
• Half-facepiece and designed to operate in demand mode	10
• Full-facepiece and designed to operate in demand mode	50

If the respirator is a(n) . . .	Then the APF is . . .
• Full-facepiece and designed to operate in pressure-demand or other positive pressure mode (e.g., open/closed circuit) . . .	10,000
• Helmet or hood and designed to operate in demand mode . .	50
• Helmet or hood and designed to operate in pressure-demand or other positive-pressure mode (e.g., open/closed circuit) . . .	10,000
Combination respirators:	
• When using a combination respirator, such as an air-line respirator with an air-purifying filter, you must make sure the APF is appropriate to the mode of operation in which the respirator is used	
Escape respirators:	
• APFs in this table do not apply to respirators used solely for escape. To select escape respirators, go to Step 8 of this section	

Use Table 6 to select air-purifying respirators for particle, vapor, or gas contaminants.

Table 6
Requirements for Selecting Any Air-purifying Respirator

If the contaminant is a . . .	Then . . .
• Gas OR vapor	<ul style="list-style-type: none"> • Provide a respirator with canisters or cartridges equipped with a NIOSH-certified, end-of-service-life indicator (ESLI) OR • If a canister or cartridge with an ESLI is NOT available, develop a cartridge change schedule to make sure the canisters or cartridges are replaced before they are no longer effective OR • Select an atmosphere-supplying respirator
• Particle, such as a dust, spray, mist, fog, fume, or aerosol	• Select respirators with filters certified to be at least 95% efficient by NIOSH

If the contaminant is a . . .	Then . . .
	<p>– For example, N95s, R99s, P100s, or High Efficiency Particulate Air (HEPA) filters</p> <p>((OR</p> <p>• You may select respirators NIOSH certified as "dust and mist," "dust, fume, or mist," OR "pesticides." You can only use these respirators if particles primarily have a mass median aerodynamic diameter of at least two micrometers.</p> <p>Note: These respirators are no longer sold for occupational use.)</p>

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-14005 Provide medical evaluations.

Exemption: This section does **not** apply to employees who **only** use:

- Filtering-facepiece respirators voluntarily. See WAC 296-842-11005 for voluntary use requirements; or
- Escape-only respirators that are mouthpiece, loose-fitting, or hooded respirators.

IMPORTANT:

• If ~~((you have provided))~~ an employee has been provided with a medical evaluation addressing respirator use, as required by another chapter, that evaluation will meet the requirements of this section.

• Using a respirator can create physical risks for an employee each time it is worn. The extent of these risks depends on these factors:

- Type of respirator;
- Environmental conditions at the worksite;
- Physical demands of the work;
- Use of the protective clothing;
- Employee's health status.

Follow the medical evaluation process, Steps 1 through 7 in this section, to provide medical evaluations for employees at no cost to them.

Medical Evaluation Process

Step 1: Identify employees who need medical evaluations AND determine the frequency of evaluations from Table 7. Include employees who:

- Are required to use respirators;

OR

• Voluntarily use respirators that are **not** filtering-facepiece respirators.

Note: You may use a previous employer's medical evaluation for an employee if you can:

- Show the employee's previous work and use conditions were substantially similar to yours;

AND

- Obtain a copy of the licensed health care professional's (LHCP's) written recommendation approving the employee's use of the respirator chosen by you.

Step 2: Identify a licensed health care professional (LHCP) to perform your medical evaluations.

Note: If you select a different LHCP, you do not need to have new medical evaluations done.

Step 3: Make sure your LHCP has the following information **before** the evaluation is completed:

- Information describing the respirators employees may use, including the weight and type.
- How the respirators will be used, including:
 - How often the respirator will be used, for example, daily, or once a month;
 - The duration of respirator use, for example, a minimum of one hour, or up to twelve hours;
 - The employee's expected physical work effort;
 - Additional personal protective clothing and equipment to be worn;
 - Temperature and humidity extremes expected during use;
- A copy of your written respiratory protection program and this chapter.

Note:

- You may choose to send the questionnaire to the LHCP ahead of time, giving time to review it and add any necessary questions.
- The LHCP determines what questions to add to the questionnaire, if any; however, questions in Parts 1-3 may not be deleted or substantially altered.

Step 4: Administer the medical questionnaire in WAC 296-842-22005 to employees, OR provide them a medical exam that obtains the same information.

Note: You may use on-line questionnaires if the questions are the same and requirements of this section are met.

• Administer the examination or questionnaire at no cost to employees:

- During the employee's normal working hours;

OR

- At a time and place convenient to the employee;

• Maintain employee confidentiality during examination or questionnaire administration:

- Do **not** view employee's answers on the questionnaire;
- Do **not** act in a manner that may be considered a breach of confidentiality.

Note: Providing confidentiality is important for securing successful medical evaluations. It helps make sure the LHCP gets complete and dependable answers on the questionnaire.

• Make sure employees understand the content of the questionnaire.

• Provide the employee with an opportunity to discuss the questionnaire or exam results with the LHCP.

Step 5: Provide follow-up evaluation for employees when:

- The LHCP needs more information to make a final recommendation;

OR

• An employee gives any positive response to questions 1-8 in Part 2 OR to questions 1-6 in Part 3 of the ((~~WISHA~~))

DOSH medical evaluation questionnaire in WAC 296-842-22005.

- Note:** Follow-up may include:
- Employee consultation with the LHCP such as a telephone conversation to evaluate positive questionnaire responses;
 - Medical exams;
 - Medical tests or other diagnostic procedures.

Step 6: Obtain a written recommendation from the LHCP that contains only the following medical information:

- Whether or not the employee is medically able to use the respirator;
- Any limitations of respirator use for the employee;
- What future medical evaluations, if any, are needed;

- A statement that the employee has been provided a copy of the written recommendation.

Step 7: Provide a powered, air-purifying respirator (PAPR) when the LHCP determines the employee should not wear a negative-pressure air-purifying respirator **AND** is able to wear a PAPR.

Reference: See WAC ((296-842-130)) 296-842-13005 for requirements regarding selection of air-purifying respirators.

- Note:**
- You may discontinue medical evaluations for an employee when the employee no longer uses a respirator.
 - If you have staff conducting your medical evaluations, they may keep completed questionnaires and findings as confidential medical records, if they are maintained separately from other records.

Use Table 7 to determine medical evaluation frequency.

Table 7
Evaluation Frequency

Type of Evaluation:	When required:
Initial medical evaluations	<ul style="list-style-type: none"> • Before respirators are fit-tested or used in the workplace.
Subsequent medical evaluations	<ul style="list-style-type: none"> • If any of these occur: <ul style="list-style-type: none"> – Your licensed health care professional (LHCP) recommends them; for example, periodic evaluations at specified intervals. – A respirator program administrator or supervisor informs you that an employee needs reevaluation. – Medical signs or symptoms (such as breathing difficulties) are: <ul style="list-style-type: none"> ■ Observed during fit testing or program evaluation OR ■ Reported by the employee – Changes in worksite conditions such as physical work effort, personal protective clothing, or temperature that could substantially increase the employee's physiological stress.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-15005 Conduct fit testing.

- Exemption:** This section does not apply to any respirators that are:
- Voluntarily used. See WAC 296-842-11005 for voluntary use requirements.
 - Mouthpiece respirators and other escape-only respirators.
 - Loose-fitting respirators.

IMPORTANT:

• Fit testing is an activity where the seal of a respirator is tested to determine if it's adequate.

• This section covers general requirements for fit testing.

Specific fit testing procedures are covered in WAC 296-842-22010.

(1) Provide, at no cost to the employee, fit tests for ALL tight fitting respirators on the following schedule:

- (a) Before employees are assigned duties that may require the use of respirators;
- (b) At least every twelve months after initial testing;
- (c) Whenever any of the following occurs:
 - A different respirator facepiece is chosen such as a different type, model, style, or size;

- You become aware of a physical change in an employee that could affect respirator fit. For example, you may observe, or be told about, facial scarring, dental changes, cosmetic surgery, or obvious weight changes;

- An employee notifies you, or your LHCP, that the respirator fit is unacceptable. During the retest, you must give an employee reasonable opportunity to select a different respirator facepiece (size, model, etc.).

Note: You may accept a fit test completed by a previous employer **IF:**

- You obtain written documentation of the fit test;
- AND**
- The results of the fit test are not more than twelve months old;
- AND**
- The employee will use the same respirator (the same type, model, style, and size);
- AND**
- The fit test was conducted in a way that meets the requirements of WAC ((296-842-150)) 296-842-15005 and 296-842-22010.

(2) Select and use an appropriate fit-testing procedure from WAC 296-842-22010 of this chapter.

(3) Use quantitative fit-test methods when a negative pressure respirator will be used in concentrations requiring a protection factor greater than 10. This includes:

- Full facepiece air-purifying respirators;
- SCBAs operated in demand (negative pressure) mode;

- Air-line respirators operated in demand mode.

(4) Make sure tight-fitting PAPRs, SCBAs, or air-line respirators are fit tested in negative-pressure mode. This must be done by either:

(a) Temporarily converting the respirator user's actual facepiece into a negative pressure respirator using the appropriate filters;

OR

(b) Using an identical negative pressure air-purifying respirator facepiece as a surrogate for the SCBA, air-line or PAPR. The surrogate facepiece must have the same sealing surfaces as the SCBA, air-line, or PAPR.

Remove any modifications made to the respirator facepiece for fit testing and return the facepiece to the NIOSH approved configuration before the facepiece is used in the workplace.

(5) Make sure the person conducting fit testing is able to do ALL of the following:

- (a) Prepare test solutions if required;
- (b) Make sure equipment works properly;
- (c) Perform tests properly;
- (d) Recognize invalid tests;
- (e) Calculate fit factors properly if required.

Note:

- No specific training program or certification is required for those who conduct fit tests.
- You should consider evaluating these individuals to determine their proficiency in the fit-testing method to be used.
- You can use an evaluation form such as the form included in the American National Standard for Respirator Fit Testing Methods, ANSI/AIHA Z88.10-2001 to determine if the individual meets these requirements. Visit www.ansi.org or www.aiha.org.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-16005 Provide effective training.

Exemption: This section does not apply to respirators that are voluntarily used. See WAC 296-842-11005 for voluntary use requirements.

(1) Train employees, based on their duties, if they do any of the following:

- (a) Use respirators
- (b) Supervise respirator users
- (c) Issue, repair, or adjust respirators

(2) Present effective training in a way that employees understand.

Note:

- Training may be provided using audiovisuals, slide presentations, formal classroom instruction, informal discussions during safety meetings, training programs conducted by outside sources, or a combination of these methods.
- You may want to have instructors available when using video or automated training methods to:
 - Encourage and provide responses to questions for the benefit of employees
 - Evaluate employees' understanding of the material
 - Provide other instructional interaction to employees.

(3) Make sure a qualified instructor provides training

(4) Provide training, at no cost to the employee, at these times:

(a) Initially, before worksite respirator use begins

(b) Periodically, within twelve months of the previous training

(c) Additionally, when the following occur:

- The employee has not retained knowledge or skills
- OR**

■ Changes in the worksite, or type of respirator make previous training incomplete or obsolete.

Note:

- You may accept an employee's previous training, such as training provided by another employer, to satisfy the initial training requirement if:
 - You can demonstrate the employee received training within the past twelve months

AND

- The employee can demonstrate the knowledge and skills to use required respirators effectively.

- If you accept an employee's previous training to satisfy the initial training requirement, you are still responsible for providing periodic, and additional training when needed. Periodic training would need to be provided within twelve months of the employee's previous training.

(5) Make sure employees can demonstrate the following knowledge and skills as required by their duties:

(a) Why the respirator is necessary. Include, for example, information identifying respiratory hazards such as hazardous chemicals, the extent of the employee's exposure, and potential health effects and symptoms

(b) The respirator's capabilities and limitations. Include, for example, how the respirator provides protection and why air-purifying respirators cannot be used in oxygen-deficient conditions

(c) How improper fit, use, or maintenance can compromise the respirator's effectiveness and reliability

(d) How to properly inspect, put on, seal check, use, and remove the respirator

(e) How to clean, disinfect, repair, and store the respirator, or how to get this done by someone else

(f) How to use the respirator effectively in emergency situations; including what to do when a respirator fails and where emergency respirators are stored

(g) Medical signs and symptoms that may limit or prevent the effective use of respirators such as shortness of breath or dizziness

(h) The employer's general obligations under this chapter. For example, developing a written program, selecting appropriate respirators, and providing medical evaluations.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-17005 Maintain respirators in a clean and reliable condition.

IMPORTANT:

• This section applies to employees who voluntarily use respirators only when maintenance is necessary to prevent the respirator from creating a hazard. See WAC 296-842-11005 for voluntary use requirements.

(1) Make sure respirators are kept, at no cost to the employee, clean, sanitary and in good working order.

(2) Clean and disinfect respirators as often as specified in Table 8 of this section.

- Note:**
- Use required cleaning and disinfecting procedures in WAC 296-842-22015, or the manufacturer's procedures that:
 - Result in a clean and sanitary respirator;
 - Do not damage the respirator;
 - Do not harm the user.
 - Automated cleaning and disinfecting are permitted.
 - Cleaning and disinfecting may be done by a central facility as long as you make sure respirators provided are clean, sanitary, and function properly.

(3) Make sure respirators are assembled properly after cleaning or disinfecting.

Table 8
Required Frequencies for Cleaning and Disinfecting Respirators

If the respirator will be . . .	Then(§) clean and disinfect the respirator . . .
<ul style="list-style-type: none"> • Used exclusively by one employee 	<ul style="list-style-type: none"> • As often as needed to: <ul style="list-style-type: none"> – Keep it clean and functional AND – To prevent health hazards such as skin irritation
<ul style="list-style-type: none"> • Shared for nonemergency use <p>OR</p> <ul style="list-style-type: none"> • Used for fit-testing or training 	<ul style="list-style-type: none"> • Before it is worn by another employee
<ul style="list-style-type: none"> • Shared for emergency use 	<ul style="list-style-type: none"> • After each use so the respirator is immediately ready for use at all times

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-18005 Prevent sealing problems with tight-fitting respirators.

Exemption: This section does not apply to respirator use that is voluntary. See WAC 296-842-11005 for voluntary use program requirements.

(1) Make sure employees use the procedure in WAC 296-842-22020 to perform a user seal check each time they put on their tight-fitting respirator.

(2) Make sure you do NOT permit respirator use if employees have a characteristic that interferes with the respirator facepiece seal or valve function. For example, stubble, moustaches, sideburns, bangs, hairlines, or scars between the face and the sealing surface of the respirator will affect the seal.

(3) Make sure corrective glasses or personal protective equipment (PPE) do NOT interfere with the facepiece seal. Examples of PPE include safety glasses, goggles, faceshields, clothing, and hard hats.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-19005 Provide standby assistance in immediately dangerous to life or health (IDLH) conditions.

IMPORTANT:

((WISHA)) DOSH currently uses the IDLH values in the 1990 NIOSH *Pocket Guide to Chemical Hazards* to determine the existence of IDLH conditions. You may use more recent editions of this guide. Visit www.cdc.gov/niosh for more information.

(1) Provide at least two standby employees outside the IDLH area.

- Note:** You need only one standby employee if the IDLH condition is well characterized, will remain stable AND you can show one employee can adequately do ALL of the following:
- Monitor employees in the IDLH area;
 - Implement communication; and
 - Initiate rescue duties.

(2) Train and equip standby employees to provide effective emergency rescue. Equip them with:

(a) A pressure-demand SCBA or a pressure-demand airline respirator with an auxiliary SCBA, for each standby employee;

(b) Appropriate retrieval equipment, when it would help with the effective rescue of the entrant, or an equivalent means of rescue.

(3) Make sure standby employees maintain visual, voice, or signal line communication with employees in the IDLH area.

(4) Make sure that in the event of an emergency:

(a) Standby employees notify you or your designee before they enter the IDLH area to provide emergency rescue;

(b) You provide necessary assistance when notified.

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-22005 Use this medical questionnaire for medical evaluations. Use the medical questionnaire in Table 10 when conducting medical evaluations.

- Note:**
- You may use a physical exam instead of this questionnaire if the exam covers the same information as the questionnaire.
 - You may use on-line questionnaires if the questions are the same and the requirements in WAC ((296-842-140)) 296-842-14005 of this chapter are met.
 - You may choose to send the questionnaire to the LHCP ahead of time, giving time to review it and add any necessary questions.
 - The LHCP determines what questions to add to the questionnaire, if any; however, questions in Parts 1-3 may not be deleted or substantially altered.

Table 10

((WISHA)) <u>DOSH</u> Medical Evaluation Questionnaire
Employer instructions:
<ul style="list-style-type: none"> • You may use on-line questionnaires if the requirements in WAC 296-842-14005 are met.

((WISHA)) DOSH Medical Evaluation Questionnaire

- You must tell your employee how to deliver or send the completed questionnaire to the health care provider you have selected.
- You must **NOT** review employees' questionnaires.

Health care provider's instructions:

- Review the information in this questionnaire and any additional information provided to you by the employer.
- You may add questions to this questionnaire at your discretion; HOWEVER, questions in Parts 1-3 may not be deleted or substantially altered.
- Follow-up evaluation is required for any positive response to questions 1-8 in Part 2, or questions 1-6 in Part 3. This might include: Phone consultations to evaluate positive responses, medical tests, and diagnostic procedures.
- When your evaluation is complete, send a copy of your written recommendation to the employer AND employee.

Employee information and instructions:

- Your employer must allow you to answer this questionnaire during normal working hours, or at a time and place that is convenient to you.
- Your employer or supervisor must not look at or review your answers at any time.

Part 1 - Employee Background Information**ALL employees must complete this part****Please print**

1. Today's date: _____
 2. Your name: _____
 3. Your age (to nearest year): ____
 4. Sex (circle one): Male / Female
 5. Your height: ___ft. ___in.
 6. Your weight: ___lbs.
 7. Your job title: _____
 8. A phone number where you can be reached by the health care professional who reviews this questionnaire (include Area Code): _____
 9. The best time to call you at this number: _____
 10. Has your employer told you how to contact the health care professional who will review this questionnaire? Yes / No
 11. Check the type of respirator(s) you will be using:
 - a. ___ N, R, or P filtering-facepiece respirator (for example, a dust mask, OR an N95 filtering-facepiece respirator).
 - b. Check all that apply.
 - Half mask Full facepiece mask Helmet hood Escape
 - Nonpowered cartridge or canister Powered air-purifying cartridge respirator (PAPR)
 - Supplied-air or Air-line
- Self contained breathing apparatus (SCBA): Demand or Pressure demand
- Other: _____

12. Have you previously worn a respirator? If "yes," describe what type(s): _____	Yes	/	No
Part 2 - General Health Information ALL employees must complete this part Please circle "Yes" or "No"			
1. Do you <i>currently</i> smoke tobacco, or have you smoked tobacco in the last month?	Yes	/	No
2. Have you <i>ever had</i> any of the following conditions?			
a. Seizures (fits):	Yes	/	No
b. Diabetes (sugar disease):	Yes	/	No
c. Allergic reactions that interfere with your breathing:	Yes	/	No
d. Claustrophobia (fear of closed-in places):	Yes	/	No
e. Trouble smelling odors:	Yes	/	No
3. Have you <i>ever had</i> any of the following pulmonary or lung problems?			
a. Asbestosis:	Yes	/	No
b. Asthma:	Yes	/	No
c. Chronic bronchitis:	Yes	/	No
d. Emphysema:	Yes	/	No
e. Pneumonia:	Yes	/	No
f. Tuberculosis:	Yes	/	No
g. Silicosis:	Yes	/	No
h. Pneumothorax (collapsed lung):	Yes	/	No
i. Lung cancer:	Yes	/	No
j. Broken ribs:	Yes	/	No
k. Any chest injuries or surgeries:	Yes	/	No
l. Any other lung problem that you have been told about:	Yes	/	No
4. Do you <i>currently</i> have any of the following symptoms of pulmonary or lung illness?			
a. Shortness of breath:	Yes	/	No
b. Shortness of breath when walking fast on level ground or walking up a slight hill or incline:	Yes	/	No
c. Shortness of breath when walking with other people at an ordinary pace on level ground:	Yes	/	No
d. Have to stop for breath when walking at your own pace on level ground:	Yes	/	No
e. Shortness of breath when washing or dressing yourself:	Yes	/	No
f. Shortness of breath that interferes with your job:	Yes	/	No
g. Coughing that produces phlegm (thick sputum):	Yes	/	No
h. Coughing that wakes you early in the morning:	Yes	/	No
i. Coughing that occurs mostly when you are lying down:	Yes	/	No
j. Coughing up blood in the last month:	Yes	/	No
k. Wheezing:	Yes	/	No
l. Wheezing that interferes with your job:	Yes	/	No
m. Chest pain when you breathe deeply:	Yes	/	No
n. Any other symptoms that you think may be related to lung problems:	Yes	/	No
5. Have you <i>ever had</i> any of the following cardiovascular or heart problems?	Yes	/	No
a. Heart attack:	Yes	/	No
b. Stroke:	Yes	/	No
c. Angina:	Yes	/	No
d. Heart failure:	Yes	/	No
e. Swelling in your legs or feet (not caused by walking):	Yes	/	No
f. Heart arrhythmia (heart beating irregularly):	Yes	/	No
g. High blood pressure:	Yes	/	No

h. Any other heart problem that you have been told about:	Yes	/	No
6. Have you <i>ever had</i> any of the following cardiovascular or heart symptoms?			
a. Frequent pain or tightness in your chest:	Yes	/	No
b. Pain or tightness in your chest during physical activity:	Yes	/	No
c. Pain or tightness in your chest that interferes with your job:	Yes	/	No
d. In the past 2 years, have you noticed your heart skipping or missing a beat:	Yes	/	No
e. Heartburn or indigestion that is not related to eating:	Yes	/	No
f. Any other symptoms that you think may be related to heart or circulation problems:	Yes	/	No
7. Do you <i>currently</i> take medication for any of the following problems?	Yes	/	No
a. Breathing or lung problems:	Yes	/	No
b. Heart trouble:	Yes	/	No
c. Blood pressure:	Yes	/	No
d. Seizures (fits):	Yes	/	No
8. If you have used a respirator, have you <i>ever had</i> any of the following problems? (If you have never used a respirator, check the following space and go to question 9:) ____			
a. Eye irritation:	Yes	/	No
b. Skin allergies or rashes:	Yes	/	No
c. Anxiety:	Yes	/	No
d. General weakness or fatigue:	Yes	/	No
e. Any other problem that interferes with your use of a respirator?	Yes	/	No
9. Would you like to talk to the health care professional who will review this questionnaire about your answers?	Yes	/	No
Part 3 - Additional Questions for Users of Full-Facepiece Respirators or SCBAs			
Please circle "Yes" or "No"			
1. Have you <i>ever lost</i> vision in either eye (temporarily or permanently)?	Yes	/	No
2. Do you <i>currently</i> have any of these vision problems?			
a. Need to wear contact lenses:	Yes	/	No
b. Need to wear glasses:	Yes	/	No
c. Color blindness:	Yes	/	No
d. Any other eye or vision problem:	Yes	/	No
3. Have you <i>ever had</i> an injury to your ears, including a broken ear drum?	Yes	/	No
4. Do you <i>currently</i> have any of these hearing problems?			
a. Difficulty hearing:	Yes	/	No
b. Need to wear a hearing aid:	Yes	/	No
c. Any other hearing or ear problem:	Yes	/	No
5. Have you <i>ever had</i> a back injury?	Yes	/	No
6. Do you <i>currently</i> have any of the following musculoskeletal problems?			
a. Weakness in any of your arms, hands, legs, or feet:	Yes	/	No
b. Back pain:	Yes	/	No
c. Difficulty fully moving your arms and legs:	Yes	/	No
d. Pain or stiffness when you lean forward or backward at the waist:	Yes	/	No
e. Difficulty fully moving your head up or down:	Yes	/	No
f. Difficulty fully moving your head side to side:	Yes	/	No
g. Difficulty bending at your knees:	Yes	/	No
h. Difficulty squatting to the ground:	Yes	/	No
i. Climbing a flight of stairs or a ladder carrying more than 25 lbs:	Yes	/	No
j. Any other muscle or skeletal problem that interferes with using a respirator:	Yes	/	No

Part 4 - Discretionary Questions

Complete questions in this part ONLY if your employer's health care provider says they are necessary

1. In your present job, are you working at high altitudes (over 5,000 feet) or in a place that has lower than normal amounts of oxygen? Yes / No
- If "yes," do you have feelings of dizziness, shortness of breath, pounding in your chest, or other symptoms when you are working under these conditions? Yes / No
2. Have you ever been exposed (at work or home) to hazardous solvents, hazardous airborne chemicals (such as gases, fumes, or dust), OR have you come into skin contact with hazardous chemicals? Yes / No
- If "yes," name the chemicals, if you know them: _____
3. Have you ever worked with any of the materials, or under any of the conditions, listed below:
- a. Asbestos? Yes / No
 - b. Silica (for example, in sandblasting)? Yes / No
 - c. Tungsten/cobalt (for example, grinding or welding this material)? Yes / No
 - d. Beryllium? Yes / No
 - e. Aluminum? Yes / No
 - f. Coal (for example, mining)? Yes / No
 - g. Iron? Yes / No
 - h. Tin? Yes / No
 - i. Dusty environments? Yes / No
 - j. Any other hazardous exposures? Yes / No
- If "yes," describe these exposures: _____
4. List any second jobs or side businesses you have: _____
5. List your previous occupations: _____
6. List your current and previous hobbies: _____
7. Have you been in the military services? Yes / No
- If "yes," were you exposed to biological or chemical agents (either in training or combat)? Yes / No
8. Have you ever worked on a HAZMAT team? Yes / No
9. Other than medications for breathing and lung problems, heart trouble, blood pressure, and seizures mentioned earlier in this questionnaire, are you taking any other medications for any reason (including over-the-counter medications)? Yes / No
- If "yes," name the medications if you know them: _____
10. Will you be using any of the following items with your respirator(s)?
- a. HEPA filters: Yes / No
 - b. Canisters (for example, gas masks): Yes / No
 - c. Cartridges: Yes / No
11. How often are you expected to use the respirator(s)?
- a. Escape-only (no rescue): Yes / No
 - b. Emergency rescue only: Yes / No
 - c. Less than 5 hours *per week*: Yes / No
 - d. Less than 2 hours *per day*: Yes / No
 - e. 2 to 4 hours per day: Yes / No
 - f. Over 4 hours per day: Yes / No
12. During the period you are using the respirator(s), is your work effort:
- a. *Light* (less than 200 kcal per hour): Yes / No
- If "yes," how long does this period last during the average shift: ____hrs. ____mins.
- Examples of a light work effort are sitting while writing, typing, drafting, or performing light assembly work; or standing while operating a drill press (1-3 lbs.) or controlling machines.
- b. *Moderate* (200 to 350 kcal per hour): Yes / No

If "yes," how long does this period last during the average shift: ____hrs. ____mins.

Examples of moderate work effort are sitting while nailing or filing; driving a truck or bus in urban traffic; standing while drilling, nailing, performing assembly work, or transferring a moderate load (about 35 lbs.) at trunk level; walking on a level surface about 2 mph or down a 5-degree grade about 3 mph; or pushing a wheelbarrow with a heavy load (about 100 lbs.) on a level surface.

c. *Heavy* (above 350 kcal per hour): Yes / No

If "yes," how long does this period last during the average shift: ____hrs. ____mins.

Examples of heavy work are lifting a heavy load (about 50 lbs.) from the floor to your waist or shoulder; working on a loading dock; shoveling; standing while bricklaying or chipping castings; walking up an 8-degree grade about 2 mph; climbing stairs with a heavy load (about 50 lbs.).

13. Will you be wearing protective clothing and/or equipment (other than the respirator) when you are using your respirator? Yes / No

If "yes," describe this protective clothing and/or equipment: _____

14. Will you be working under hot conditions (temperature exceeding 77°F): Yes / No

15. Will you be working under humid conditions: Yes / No

16. Describe the work you will be doing while using your respirator(s): _____

17. Describe any special or hazardous conditions you might encounter when you are using your respirator(s) (for example, confined spaces, life-threatening gases): _____

18. Provide the following information, if you know it, for each toxic substance that you will be exposed to when you are using your respirator(s):

Name of the first toxic substance: _____

Estimated maximum exposure level per shift: _____

Duration of exposure per shift: _____

Name of the second toxic substance: _____

Estimated maximum exposure level per shift: _____

Duration of exposure per shift: _____

Name of the third toxic substance: _____

Estimated maximum exposure level per shift: _____

Duration of exposure per shift: _____

The name of any other toxic substances that you will be exposed to while using your respirator: _____

19. Describe any special responsibilities you will have while using your respirator(s) that may affect the safety and well being of others (for example, rescue, security). _____

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-22010 Follow these fit-testing procedures for tight-fitting respirators.

IMPORTANT:

- This section contains procedural requirements that apply during actual fit testing.
- See WAC 296-842-15005 of this chapter for fit-testing requirements that apply to your overall program.

Exemptions: This section does NOT apply to employees who:

- Voluntarily use respirators;
- OR**
- Are required to use mouthpiece respirators.

(1) Follow the procedure in Table 11 to choose a respirator for fit testing:

- (a) Prior to conducting fit tests;

AND

(b) Any time your employee must select a different respirator such as when a previously selected respirator fails a test.

(2) Select and follow at least one of the following fit test procedures:

(a) Qualitative fit-test procedures:

- ◆ Isoamyl acetate vapor (IAA, banana oil) in Table 12;
- ◆ Saccharine aerosol in Table 13;
- ◆ Bitrex™ aerosol in Table 14;
- ◆ Irritant smoke in Table 15.

(b) Quantitative fit-test procedures:

- ◆ Ambient aerosol condensation nuclei counter such as the Portacount™, in Table 16;
- ◆ Controlled negative pressure (CNP) such as the Fit-Tester 3000™, in Table 17;
- ◆ Generated aerosol in Table 18.

(3) Make sure employees perform the appropriate fit-test exercises listed in Table 19.

(4) Clean and maintain equipment according to the manufacturer's instructions.

(5) Make sure during fit testing employees wear any safety equipment that could:

- (a) Interfere with respirator fit;

AND

(b) Be worn in the workplace. For example, chemical splash goggles.

(6) Check, prior to fit testing, for conditions that may interfere with the respirator seal or valve functions. If you find such conditions, do **NOT** conduct fit testing for that individual.

Note: Examples of conditions that may interfere with the respirator seal or valve functions include:

- Moustache, stubble, sideburns, bangs, hairline, and other types of facial hair in areas where the respirator facepiece seals or that interfere with valve function.
- Temple bars of corrective eyewear or headgear that extend through the face seal area.

(7) Follow the appropriate fit test exercises in Table 19 as indicated.

Table 11

Procedure for Choosing a Respirator for Fit Testing
<p>1. Inform the employee:</p> <ul style="list-style-type: none"> • To choose the most comfortable respirator that provides an adequate fit • That each respirator sample represents a different size and, if more than one model is supplied, a different shape • That if fitted and used properly, the respirator chosen will provide adequate protection <p>2. Provide a mirror and show the employee how to:</p> <ul style="list-style-type: none"> • Put on the respirator • Position the respirator on the face • Set strap tension. <p>Note: This instruction does NOT take the place of the employee's formal training since it is only a review.</p> <p>3. Review with the employee how to check for a comfortable fit around the nose, cheeks and other areas on the face.</p> <ul style="list-style-type: none"> • Tell the employee the respirator should be comfortable while talking or wearing eye protection. <p>4. Have the employee hold each facepiece against the face, taking enough time to compare the fit of each. The employee can then either:</p> <ul style="list-style-type: none"> • Reject any facepiece that clearly does not feel comfortable or fit adequately <p>OR</p> <ul style="list-style-type: none"> • Choose which facepiece is most acceptable and which are less acceptable, if any.

Procedure for Choosing a Respirator for Fit Testing
<p>Note:</p> <ul style="list-style-type: none"> • Supply as many respirator models and sizes as needed to make sure the employee finds a respirator that is acceptable and fits correctly • To save time later, during this step note the more acceptable facepieces in case the one chosen fails the fit test or proves unacceptable later. <p>5. Have the employee wear the most acceptable respirator for AT LEAST 5 minutes to evaluate comfort and fit. Do ALL of the following during this time:</p> <ul style="list-style-type: none"> • Ask the employee to observe and comment about the comfort and fit: <ul style="list-style-type: none"> – Around the nose, cheeks, and other areas on the face – When talking or wearing eye protection • Have the employee put on the respirator and adjust the straps until they show proficiency • Evaluate the respirator's general fit by checking: <ul style="list-style-type: none"> – Proper chin placement – Properly tightened straps (do NOT over tighten) – Acceptable fit across the nose bridge – Respirator size; it must span the distance from nose to chin – To see if the respirator stays in position • Have the employee complete a successful seal check as specified in WAC ((296-842-22025) <u>296-842-22020</u> of this chapter <ul style="list-style-type: none"> – Prior to the seal check they must settle the respirator on their face by taking a few slow deep breaths WHILE SLOWLY: <ul style="list-style-type: none"> ■ Moving their head from side-to-side <p>AND</p> <ul style="list-style-type: none"> ■ Up and down. <p>6. If the employee finds the respirator unacceptable, allow the employee to select another one and return to Step 5. Otherwise, proceed to Step 7.</p> <p>7. Before starting the fit test, you must:</p> <ul style="list-style-type: none"> • Describe the fit test including screening procedures, employee responsibilities, and test exercises <p>AND</p> <ul style="list-style-type: none"> • Make sure the employee wears the respirator AT LEAST five minutes.

Table 12

Isoamyl Acetate (Banana Oil) Vapor Test Procedure
<p>Important:</p> <ul style="list-style-type: none"> • This is a qualitative fit-test (QLFT) procedure • The success of this test depends on preserving the employee's odor sensitivity to isoamyl acetate (IAA) vapor

<p>Isoamyl Acetate (Banana Oil) Vapor Test Procedure</p> <ul style="list-style-type: none"> – Vapor accumulations in ambient air can decrease odor sensitivity. To prevent this: <ul style="list-style-type: none"> ■ Prepare ALL solutions in a location separate from screening and test areas ■ Conduct screening and tests in separate well-ventilated rooms. For example, use an exhaust fan or laboratory hood to prevent IAA vapor from accumulating in the room air – Always use odor-free water, for example, distilled or spring water that is 25°C (77°F). • Isoamyl acetate is also known as isopentyl acetate.
<p style="text-align: center;">Screening Preparations</p>
<p>Important:</p> <p>Odor threshold screening determines if the employee can detect weak concentrations of IAA vapor.</p> <ol style="list-style-type: none"> 1. Choose an appropriate location to conduct screening. <ul style="list-style-type: none"> • Conduct screening and tests in separate well-ventilated rooms. 2. Prepare a stock solution AT LEAST weekly as follows: <ul style="list-style-type: none"> • Add one milliliter (ml) of pure IAA to 800 ml of odor-free water in a one-liter glass jar with a metal lid using a measuring dropper or pipette • Seal the jar with the lid and shake it for 30 seconds • Clean the dropper or pipette. 3. Prepare the odor test solution daily as follows: <ul style="list-style-type: none"> • Add 0.4 ml from the stock solution to 500 ml of water in a one liter glass jar with a metal lid using a clean pipette or dropper • Seal the jar with the lid and shake it for 30 seconds • Let this solution stand for 2-3 minutes so the IAA concentration above the liquid reaches equilibrium • Label this jar so you know the contents but the employee cannot know its contents, for example, "1." <p>Note:</p> <p>To maintain the integrity of the test, use labels that peel off easily AND periodically switch the labels.</p> <ol style="list-style-type: none"> 4. Prepare a "test blank" solution as follows: <ul style="list-style-type: none"> • Add 500 ml of odor-free water to a one liter glass jar with a metal lid • Seal the jar • Label the jar so you know the contents but the employee cannot know its contents. 5. Type or neatly print the following instructions on a card and place it on the table in front of the two test jars: <p style="margin-left: 20px;"><i>"The purpose of this test is to find out if you can smell banana oil at a low concentration. While both jars contain water, one ALSO contains a small amount of banana oil.</i></p>

<p>Isoamyl Acetate (Banana Oil) Vapor Test Procedure</p> <p><i>Make sure the lid is secure then pick up a jar and shake it for two seconds. Open the jar and sniff at the opening. Repeat this for the second jar.</i></p> <p><i>Tell the individual conducting the fit test which jar contains banana oil."</i></p>
<p style="text-align: center;">Test Preparations</p>
<ol style="list-style-type: none"> 6. Choose an appropriate location to conduct fit testing. <ul style="list-style-type: none"> • Conduct screening and tests in separate well-ventilated rooms. 7. Assemble the fit test enclosure in the room. <ul style="list-style-type: none"> • Invert a clear 55-gallon drum liner over a circular 2-foot diameter frame made of plywood or other light-weight rigid material OR construct a similar enclosure using plastic sheeting • Hang the frame with the plastic covering so the top of the enclosure is about six inches above the employee's head • Attach a small hook inside top center of the enclosure • Tape a copy of the test exercises (see Table 19) to the inside of the test enclosure where the employee can read it. 8. Have organic vapor cartridges or equivalent on hand for each employee's chosen respirator. 9. Have ready a 6 x 5-inch piece of paper towel or other porous absorbent single-ply material AND 0.75 ml of pure IAA. Do NOT apply IAA yet. <p>Note:</p> <p>As an alternative to using the paper towel, you may use an IAA test swab OR ampoule if it has been demonstrated to generate an equivalent test concentration.</p>
<p style="text-align: center;">Screening</p>
<ol style="list-style-type: none"> 10. Have the employee, while NOT wearing a respirator, follow the instructions on the card provided. <ul style="list-style-type: none"> • If the employee correctly identifies the jar containing IAA, proceed to conduct testing (Step 11) • If the employee is NOT able to correctly identify the jar containing IAA, you must STOP and use a different fit test protocol.
<p style="text-align: center;">Test</p>
<ol style="list-style-type: none"> 11. BEFORE entering the fit test room, have the employee attach cartridges, put on, properly adjust, and seal check the respirator. Have the employee enter the test enclosure. 12. Wet the paper towel with 0.75 ml of pure IAA AND fold it in half. 13. Pass the paper towel to the employee inside the enclosure AND instruct the employee to hang it on the hook at the top of the enclosure. 14. Wait two minutes for the IAA vapor to fill the enclosure.

Isoamyl Acetate (Banana Oil) Vapor Test Procedure
<ul style="list-style-type: none"> • While waiting, explain the fit test, including the purpose of the test exercises, the importance of cooperation, and that you must be informed if a banana-like odor is detected during the test • You may also demonstrate the test exercises. <p>15. Have the employee perform the appropriate fit-test exercises in Table 19.</p> <ul style="list-style-type: none"> • If the employee does NOT detect IAA while performing test exercises, the fit test has been PASSED. Proceed as follows: <ul style="list-style-type: none"> – BEFORE leaving the enclosure, have the employee break the respirator seal and inhale. If they detect IAA, the test is valid – When exiting the employee must remove the paper towel and give it to the individual conducting the fit test. This prevents IAA vapor from building up in the enclosure during subsequent tests – The individual conducting the fit test must keep used paper towels in a self-sealing plastic bag to prevent area contamination • If the employee detects IAA during any test exercise, the fit test has FAILED. STOP and have the employee do the following: <ul style="list-style-type: none"> – Quickly return to the selection room to remove the respirator. This avoids decreasing the employee's odor sensitivity – Select another respirator – Repeat screening and testing <ul style="list-style-type: none"> ■ At this stage, if the employee fails the screening part of this procedure, the employee can repeat it AFTER waiting at least five minutes for odor sensitivity to return.

Table 13

Saccharin Aerosol Test Procedure
Screening Preparations
<p>Important:</p> <ul style="list-style-type: none"> • This is a qualitative fit-test (QLFT) procedure • Taste threshold screening determines whether the employee being tested can detect the taste of saccharin <ul style="list-style-type: none"> – The employee must NOT eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes BEFORE the fit test. Sweet foods or drink consumed before the test may make the employee unable to detect saccharin during screening – Nebulizers must be thoroughly rinsed in water and shaken dry: <ul style="list-style-type: none"> ■ Each morning and afternoon

Saccharin Aerosol Test Procedure
Screening Preparations
<p style="text-align: center;">OR</p> <ul style="list-style-type: none"> ■ At least every four hours. • You may use commercially prepared solutions if they meet the requirements in this procedure. <p>1. Obtain a test enclosure (hood) that meets the following specifications:</p> <ul style="list-style-type: none"> • Twelve inches in diameter by fourteen inches tall • A clear front portion • Enough space inside to allow free movement of the head when a respirator is worn • A 3/4 inch (or 1.9 centimeter) hole to accommodate the nebulizer nozzle. The hole must line up in front of the wearer's nose and mouth. <p>Note:</p> <ul style="list-style-type: none"> • An enclosure similar to the 3M hood assembly, parts #FT 14 and #FT 15 combined, meets these specifications • This enclosure can also be used for testing. <p>2. Obtain and assemble two clean DeVilbiss Model 40 Inhalation Medication Nebulizers OR equivalent.</p> <p>3. Prepare the screening solution as follows:</p> <ul style="list-style-type: none"> • Dissolve 830.0 milligrams of sodium saccharin USP in 100 ml of warm distilled water <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • IF you have already prepared the fit-test solution, you can make the screening solution by adding 1 ml of this solution to 100 ml of distilled water. <p>4. Add about 1 ml of the screening solution to one of the nebulizers.</p> <ul style="list-style-type: none"> • Mark this nebulizer to distinguish it from the one to be used for fit testing.
Test Preparations
<p>5. Prepare the fit-test solution as follows:</p> <ul style="list-style-type: none"> • Add 83.0 grams of sodium saccharin to 100 ml of warm water. <p>6. Add about 1 ml of the test solution to the second nebulizer.</p> <ul style="list-style-type: none"> • Mark this nebulizer to distinguish it from the one used for screening <p>7. Have particulate filters ready for the employee's chosen respirator or have filtering-facepiece respirators ready.</p>
Screening
<p>8. Have the employee, while NOT wearing a respirator, put on the test enclosure.</p> <p>9. Instruct the employee to:</p> <ul style="list-style-type: none"> • Breath through a slightly open mouth with tongue extended during screening AND testing • Immediately report when a sweet taste is detected. <p>10. Insert the nebulizer into the front hole of the test enclosure AND administer saccharin as follows:</p>

Saccharin Aerosol Test Procedure
Screening Preparations
<ul style="list-style-type: none"> • Direct the nozzle away from the employee's nose and mouth • Complete 10 squeezes in rapid succession • Each time firmly squeeze the bulb so it collapses completely, then release and allow it to fully expand. <p>11. Ask the employee if a sweet taste is detected.</p> <ul style="list-style-type: none"> • If YES, screening is completed. Proceed to conduct testing, Step 14, AFTER you: <ul style="list-style-type: none"> – Ask the employee to remember the taste for reference during the fit test – Note the employee's taste threshold as "10" regardless of the number of squeezes actually completed • If NO, screening must continue. Proceed to Step 12. <p>12. Repeat with 10 more squeezes. Then follow Step 11 again; EXCEPT this time note the employee's taste threshold as "20" IF a sweet taste is reported.</p> <ul style="list-style-type: none"> • If a sweet taste is still NOT detected, repeat with 10 more squeezes and follow Step 11 one last time; EXCEPT this time note "30" for the taste threshold IF a sweet taste is reported. <p>13. If NO sweet taste is reported after 30 squeezes, you must STOP and choose a different fit-test protocol for the employee.</p>
Test
<p>Important!</p> <ul style="list-style-type: none"> • Periodically check nebulizers to make sure they do not clog during use. A test is NOT valid if the nebulizer is clogged at the end of the test. <p>14. Have the employee attach particulate filters, put on, properly adjust, and seal check the respirator. Have the employee put on the test enclosure (hood).</p> <p>15. Instruct the employee to immediately report if a sweet taste is detected.</p> <p>16. Insert the nebulizer into the front hole of the test enclosure AND administer the same number of squeezes, either 10, 20, or 30, as noted during screening.</p> <p>17. Have the employee perform the appropriate fit-test exercises as described in Table 19. During this step:</p> <ul style="list-style-type: none"> • Replenish the aerosol in the hood EVERY 30 seconds using 1/2 the number of squeezes used in Step 16, either 5, 10, or 15 • The employee must report if a sweet taste is detected: <ul style="list-style-type: none"> – If NO saccharin is tasted, the test has been PASSED <ul style="list-style-type: none"> ■ If saccharin is tasted the test has FAILED, have the employee select another respirator <p style="text-align: center;">AND</p>

Saccharin Aerosol Test Procedure
Screening Preparations
<ul style="list-style-type: none"> ■ Repeat screening and testing.

Table 14

Bitrex™ Aerosol Test Procedure
<p>Important!</p> <ul style="list-style-type: none"> • This is a qualitative fit-test (QLFT) procedure • Bitrex™ (denatonium benzoate) is routinely used as a taste aversion agent in household liquids that children should not drink and is endorsed by the American Medical Association, the National Safety Council, and the American Association of Poison Control Centers • The employee must NOT eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes BEFORE the fit test.
Screening Preparations
<p>Important!</p> <ul style="list-style-type: none"> • Taste threshold screening determines whether the employee being tested can detect the taste of Bitrex™ • Nebulizers must be thoroughly rinsed in water and shaken dry: <ul style="list-style-type: none"> – Each morning and afternoon <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> – At least every four hours. <ul style="list-style-type: none"> • You may use commercially prepared solutions if they meet the requirements in this procedure. <p>1. Obtain a test enclosure that meets the following specifications:</p> <ul style="list-style-type: none"> • Twelve inches in diameter by fourteen inches tall • A clear front portion • Enough space inside the front to allow free movement of the head when a respirator is worn • 3/4 inch (or 1.9 centimeter) hole to accommodate the nebulizer nozzle. The hole must line up in front of the wearer's nose and mouth. <p>Note:</p> <ul style="list-style-type: none"> • An enclosure similar to the 3M hood assembly, parts #FT 14 and #FT 15 combined, meets these specifications • This enclosure can also be used for testing. <p>2. Obtain and assemble two clean DeVilbiss Model 40 Inhalation Medication Nebulizers OR equivalent:</p> <p>3. Prepare the screening solution as follows:</p> <ul style="list-style-type: none"> • Make up a 5% salt solution by dissolving 5.0 grams of salt (sodium chloride) into 100 ml of distilled water • Dissolve 13.5 milligrams of Bitrex™ in the salt solution.

Bitrex™ Aerosol Test Procedure
<p>4. Add about 1 ml of the screening solution to one of the nebulizers.</p> <ul style="list-style-type: none"> • Mark this nebulizer to distinguish it from the one to be used for fit testing.
Test Preparations
<p>5. Prepare the fit test solution.</p> <ul style="list-style-type: none"> • Dissolve 10.0 grams of salt (sodium chloride) into 200 ml of distilled water • Add 337.5 milligrams of Bitrex™ to the warmed salt solution. <p>6. Add about 1 ml of the test solution to the second nebulizer.</p> <ul style="list-style-type: none"> • Mark this nebulizer to distinguish it from the one used for screening. <p>7. Have particulate filters ready for the employee's chosen respirator or have filtering-facepiece respirators ready.</p>
Screening
<p>Important: The employee must NOT eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes BEFORE the screening and test</p> <p>8. Have the employee, while NOT wearing a respirator, put on the test enclosure.</p> <p>9. Instruct the employee to:</p> <ul style="list-style-type: none"> • Breath through a slightly opened mouth with tongue extended during screening AND testing • Immediately report when a bitter taste is detected. <p>10. Insert the nebulizer into the front hole of the test enclosure AND administer Bitrex™ as follows:</p> <ul style="list-style-type: none"> • Direct the nozzle away from the employee's nose and mouth • Complete 10 squeezes in rapid succession • Each time firmly squeeze the bulb so it collapses completely, then release and allow it to fully expand. <p>11. Ask the employee whether a bitter taste is detected.</p> <ul style="list-style-type: none"> • If YES, screening is completed. Proceed to conduct testing, Step 14, AFTER you: <ul style="list-style-type: none"> – Ask the employee to remember the taste for reference during the fit test – Note the employee's taste threshold as "10," regardless of the number of squeezes actually completed • If NO, screening must continue. Proceed to Step 12. <p>12. Repeat with 10 more squeezes. Then follow Step 11 again; EXCEPT this time note the employee's taste threshold as "20" IF a bitter taste is reported.</p> <ul style="list-style-type: none"> • If a bitter taste is still NOT detected repeat with 10 more squeezes and follow Step 11 one last time; EXCEPT this time note "30" for the taste threshold IF a bitter taste is reported.

Bitrex™ Aerosol Test Procedure
<p>13. If NO bitter taste is reported after 30 squeezes, you must STOP and choose a different fit-test protocol for the employee.</p>
Test
<p>14. Have the employee attach particulate filters, put on, properly adjust, and seal check the respirator. Have the employee put on the test enclosure.</p> <p>15. Instruct the employee to:</p> <ul style="list-style-type: none"> • Breathe through a slightly opened mouth with tongue extended during screening AND testing • Immediately report when a bitter taste is detected. <p>16. Insert the nebulizer into the front hole of the test enclosure AND administer the same number of squeezes, either 10, 20, or 30, as noted during screening.</p> <p>17. Have the employee perform the appropriate fit-test exercises as described in Table 19. During this step:</p> <ul style="list-style-type: none"> • Replenish the aerosol in the hood EVERY 30 seconds using 1/2 the number of squeezes used in Step 16, either 5, 10, or 15 • The employee must report if a bitter taste is detected: <ul style="list-style-type: none"> – If NO Bitrex™ is tasted, the test has been PASSED – If Bitrex™ is tasted the test has FAILED.((-)) Have the employee: <ul style="list-style-type: none"> ■ Select another respirator <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ■ Repeat all screening and testing steps.

Table 15

Irritant Smoke (Stannic Chloride) Test Procedure
<p>Important:</p> <ul style="list-style-type: none"> • DO NOT USE A TEST ENCLOSURE OR HOOD FOR THIS FIT TEST! • This is a qualitative fit-test (QLFT) procedure • During this test an employee is exposed to irritating smoke containing hydrochloric acid produced by a stannic chloride ventilation smoke tube to detect leakage. The smoke will irritate eyes, lungs, and nasal passages • Employee sensitivity varies, and certain employees may respond more intensely than others exposed to irritant smoke. The individual conducting the fit test must take precautions to minimize the employees' exposure to irritant smoke • Conduct fit testing in an area with adequate ventilation to prevent exposure of the individual conducting the fit test and build-up of irritant smoke in the ambient air.

Irritant Smoke (Stannic Chloride) Test Procedure
Screening AND Test Preparations
<p>Important: Sensitivity screening is necessary to determine whether the employee can detect a weak concentration of irritant smoke AND whether any gross facepiece leakage is detected.</p> <ol style="list-style-type: none"> 1. Obtain only stannic chloride (ventilation) smoke tubes, AND an aspirator squeeze bulb OR use a low-flow air pump set to deliver 200 milliliters of air flow per minute. 2. Equip the employee's chosen respirator with P100 series filters if a negative pressure air-purifying respirator will be tested. If a powered air-purifying respirator (PAPR) will be tested equip the respirator with high-efficiency particulate air (HEPA) filters.
Screening
<p>Important! When performing sensitivity screening checks use only the MINIMUM amount of smoke necessary to elicit a response from the employee.</p> <ol style="list-style-type: none"> 3. Advise the employee that the smoke can be irritating to eyes, lungs, and nasal passages AND instruct the employee to keep eyes closed while exposed. 4. Break both ends of the ventilation smoke tube AND fit a short piece of plastic tubing, for example, two-to-six inches of tygon tubing, over one end to prevent exposure to the sharp end of the tube. Connect the other end to an aspirator bulb or a low-flow air pump set to deliver a flow of 200 ml per minute. 5. While the employee is NOT wearing a respirator, have the employee smell a weak concentration of irritant smoke to become familiar with its irritating properties. <ul style="list-style-type: none"> • Carefully direct a small amount of irritant smoke toward the employee.
Test
<p>Test 6. Have the employee attach respirator filters, put on, adjust, and seal check the respirator without assistance. The employee must be proficient at these tasks.</p> <ol style="list-style-type: none"> 7. Remind the employee to keep eyes closed during testing. 8. Direct a stream of irritant smoke toward the respirator's face seal area as follows: <ul style="list-style-type: none"> • Begin at least 12 inches from the facepiece AND move the smoke around the whole perimeter of the mask • Gradually make two more passes around the perimeter of the facepiece, moving to within 6 inches of the respirator • STOP at any time the employee detects smoke in the facepiece. If this occurs a different respirator will need to be chosen and tested, beginning with sensitivity screening.

Irritant Smoke (Stannic Chloride) Test Procedure
<ol style="list-style-type: none"> 9. Have the employee perform appropriate fit-test exercises in Table 19 IF the employee has NOT had an involuntary response such as evidence of coughing, flinching, or other response, OR detected smoke in the facepiece. <ul style="list-style-type: none"> • Continue to direct smoke from a distance of 6 inches around the facepiece perimeter <ul style="list-style-type: none"> – If smoke is detected at any time the test has FAILED. A different respirator must be chosen and tested, starting with sensitivity screening – If NO smoke is detected proceed to Step 10. 10. Have the employee remove the respirator AND perform another sensitivity screening check as follows: <ul style="list-style-type: none"> • Continue to use the smoke tube used for fit testing • Carefully direct a SMALL amount of irritant smoke toward the employee <ul style="list-style-type: none"> – The test has been PASSED IF the employee responds to the smoke – The fit test is VOIDED IF the employee does NOT respond to the smoke.

Table 16

Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure
<p>Important:</p> <ul style="list-style-type: none"> • This is a quantitative (QNFT) fit-test procedure • This method uses a particle counting instrument that measures and compares the particle concentration both inside and outside the respirator facepiece while the employee performs a series of test exercises • Particles in the ambient air are used as the test aerosol.
Test Preparations
<ol style="list-style-type: none"> 1. Obtain a test instrument such as a Portacount™. 2. Have probed respirators available for each respirator model and size the employer uses, OR have a sampling adapter available if the employee's actual or chosen respirator will be tested. <p>Note:</p> <ul style="list-style-type: none"> • A probed respirator has a special fitting installed on the facepiece designed to connect with the end of the test instrument's plastic sampling tube so that air samples can be taken inside the facepiece. Probed respirators can be obtained from the respirator manufacturer, or distributor, AND can only be used for fit-testing purposes • Contact TSI Inc., OR the respirator's manufacturer to obtain probed respirators or facepiece sampling adapters.

Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure
<p>3. Follow the test instrument manufacturer's instructions for test preparation, including particle, zero, and system checks. Make sure the instrument's pass OR fail criterion is programmed to the following MINIMUM performance levels:</p> <ul style="list-style-type: none"> • For half-facepiece respirators, an overall minimum fit factor of 100 as a passing level • For full-facepiece respirators, an overall minimum fit factor of 500 as a passing level <p>4. Have high-efficiency particulate air (HEPA) filters, OR other respirator filters available that are capable of preventing significant penetration by particles generated by the test instrument such as, P100 or N95 series filters.</p> <ul style="list-style-type: none"> • If you will use a sampling adapter instead of probed respirators be sure to have the correct type for the respirators chosen.
Test
<p>5. Properly attach the sampling line to the facepiece probe or sampling adapter.</p> <p>6. Have the employee attach respirator filters, put on, properly adjust, and wear the respirator five minutes BEFORE the fit test. During this time you and the employee must evaluate the respirator's general fit by checking:</p> <ul style="list-style-type: none"> • Proper chin placement • Properly tightened straps (do NOT over tighten) • Acceptable fit across the nose bridge • Respirator size. It must span the distance from nose to chin • To see if the respirator stays in position. <p>Note: Wearing the respirator for five minutes permits the employee to make certain the respirator is comfortable AND allows for purging of ambient particles trapped inside the facepiece.</p> <p>7. Have the employee perform a seal check. Make sure the sampling line is crimped to avoid leakage during the seal check. If NO leakage is detected, proceed to Step 8. If leakage is detected:</p> <ul style="list-style-type: none"> • Determine the cause <p>AND</p> <ul style="list-style-type: none"> • If leakage is due to a poorly fitting facepiece, have the employee: <ul style="list-style-type: none"> – Choose another respirator size or model <p>AND</p> <ul style="list-style-type: none"> – Start again at Step 6. <p>8. Start the fit test cycle.</p> <ul style="list-style-type: none"> • Follow the manufacturer's instructions for operating the test instrument

Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure
<ul style="list-style-type: none"> • Have the employee perform the appropriate fit-test exercises in Table 19 <ul style="list-style-type: none"> – The test instrument will automatically stop and calculate the overall fit factor. Use this result to determine whether or not the test is passed <ul style="list-style-type: none"> ■ The test has been PASSED if the overall fit factor is at least 100 for a half facepiece, OR 500 for a full facepiece ■ The test has FAILED if the overall fit factor is below 100 for a half facepiece or 500 for a full facepiece. <p>Note: If the test has failed, have the employee select another respirator model or size following Table 11 AND repeat this procedure.</p>

Table 17

Controlled Negative Pressure (CNP) Test Procedure
<p>Important!</p> <ul style="list-style-type: none"> • This is a quantitative fit-test (QNFT) procedure • This method determines respirator fit by measuring how much the facepiece leaks when it is subject to a slight negative pressure AFTER various premeasurement activities • Instruments used must have a nonadjustable test pressure of 15.0 mm water pressure • Measurements occur while employees remain still AND hold their breath for 10 seconds • No test aerosols are used. Respirator cartridges are not needed for this test. Sampling manifolds that replace the filter cartridges are available from the instrument manufacturer, and allow fit testing of an employee's own respirator.
Test Preparations
<ol style="list-style-type: none"> 1. Make sure the individual conducting the fit test is thoroughly trained to perform this test. 2. Obtain a CNP test instrument such as a FitTester 3000™. Make sure: <ul style="list-style-type: none"> • Defaults are set at: <ul style="list-style-type: none"> – -15mm (-0.58 inches) of water test pressure <p>AND</p> <ul style="list-style-type: none"> – A modeled inspiratory flow rate of 53.8 liters per minute <ul style="list-style-type: none"> • It has an effective audio warning device <u>or visual screen tracing</u> that signals when employees fail to hold their breath.

Controlled Negative Pressure (CNP) Test Procedure
<p>Note:</p> <ul style="list-style-type: none"> You are not required to obtain test recording and printing equipment such as computers OR printers. Hand recording results is acceptable To see default settings, check the instrument's "REDON protocol." <p>3. Obtain facepiece adapters appropriate for each test respirator.</p> <p>Note:</p> <ul style="list-style-type: none"> Adapters are either a one-piece (for SCBA facepieces), OR two-piece (for dual cartridge facepieces) device providing a manifold and breathing valve system. For positive pressure respirators, you will need to obtain an additional fitting, available from the respirator manufacturer, to convert the facepiece to negative pressure To obtain adapters, contact the CNP instrument's distributor, Occupational Health Dynamics, OR the respirator manufacturer.
Test
<p>Important!</p> <ul style="list-style-type: none"> The respirator must not be adjusted once the fit-test exercises begin. Any adjustment voids the test and the test must be repeated. <p>((After the test, you must ask the employee about the comfort of the respirator AND if the respirator has become unacceptable, another size or model must be chosen and tested.))</p> <p>4. Explain the test procedure to the employee.</p> <p>5. Train the employee on how to hold a breath for at least 10 seconds.</p> <p>6. Prepare the respirator for the fit test as follows:</p> <ul style="list-style-type: none"> Remove or prop open the inhalation valves. If a breathing tube is present, disconnect it Replace cartridges, if present, with the manifold and breathing valve adapter <ul style="list-style-type: none"> For positive pressure facepieces, mount the manufacturer's additional fitting followed by the manifold-breathing valve adapter Connect the respirator to the CNP device according to the CNP instrument manufacturer's directions. <p>7. Have the employee put on, adjust, and seal check the respirator without assistance.</p> <p>8. Turn on the instrument AND have the employee stand and perform the fit-test exercises in Table 19. <u>Once exercises begin, any adjustments will void the test and you must begin again.</u></p> <p>9. Once test exercises are completed, ask the employee about facepiece comfort. If the employee states the respirator is unacceptable, repeat the fit test using another <u>size or model.</u></p>

Controlled Negative Pressure (CNP) Test Procedure
<p>10. Determine the overall fit factor for each employee by calculating the harmonic mean of the fit-testing <u>exercises</u> as follows:</p> $\text{Overall fit factor} = \frac{n}{1/\text{ffE1} + 1/\text{ffE2} + 1/\text{ffE3} \dots + 1/\text{ffEn}}$ <p><u>Where:</u></p> <p><u>n = The number of exercises;</u> <u>ffE1 = The fit factor for the first exercise;</u> <u>ffE2 = The fit factor for the second exercise;</u> <u>ffE3 = The fit factor for the third exercise; and</u> <u>ffEn = The fit factor for the nth exercise.</u></p> <ul style="list-style-type: none"> The test is PASSED IF the overall fit factor obtained is at least 100 for a half facepiece, or at least 500 for a full facepiece The test has FAILED IF the fit factor is less than 100 for a half facepiece; 500 for a full facepiece <ul style="list-style-type: none"> If the test has FAILED you must have the employee select another respirator model or size following the steps in Table 11 AND repeat this procedure, starting at Step 6.

Table 18

Generated Aerosol Test Procedure

Important:

- This is a quantitative (QNFT) fit-test procedure
- In this method, a test aerosol is used to challenge the facepiece seal while aerosol concentrations inside and outside the facepiece are measured during test exercises
- Special equipment is needed to generate, disperse, detect, and measure test aerosols.

Test Preparations

1. Test aerosol.

- Use a particulate, for example, corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride.

2. Instrumentation.

- Do **ALL** the following:
 - Obtain and use aerosol generation, dilution, and measurement systems appropriate for particulates
 - Use an aerosol-generating instrument that will maintain test concentrations within a 10% variation
 - Select a sampling instrument that allows for a computer record or strip chart record to be created
 - The record must show the rise and fall of test agent concentration during each inhalation and exhalation at fit factors of at least 2000.
- Note:** Integrators, or computers that integrate the amount of test agent penetration leakage into the respirator for each exercise, may be used if a record of the readings is made.
- Minimize the time interval between the activity and the recording of the activity so you can clearly connect what you see to what is being recorded. For example, use a small diameter and length of sampling line.

3. Test enclosure.

- Do **ALL** the following:
 - Make sure the enclosure is equipped and constructed to effectively:
 - Maintain a uniform concentration of the test agent inside the enclosure. For example, the enclosure must be large enough to allow **ALL** employees freedom of movement during testing **WITHOUT** disturbing the test concentration or measurement instrument
 - Keep the test agent from contaminating the air outside the enclosure. For example, use a HEPA filter to purify exhausted air
 - Allow the individual conducting the fit test to view the employee during the test
 - Make sure the tubing used to collect samples from the enclosure **AND** respirator is the same material, diameter, **AND** length. This makes the effect of aerosol loss caused by deposition in each sample line equal
 - If sodium chloride is used, relative humidity inside the enclosure must be kept below 50%.

4. Prepare test respirators.

- Do **ALL** the following:
 - Inspect test respirators regularly for missing parts **AND** damage
 - Keep test respirators in proper working order
 - Make sure in-mask sampling probes are:
 - Designed and installed so the air sample will be drawn from the employee's breathing zone; midway between the nose and mouth
 - AND**
 - The probe extends inside the facepiece at least 1/4 inch
 - Make sure sampling ports such as probes, or adapters on respirators are constructed and installed so they do **NOT**:
 - Block air flow into the sampling line
 - Leak
 - Interfere with the respirator's fit or performance
- Have high efficiency particulate air (HEPA) filters **OR** P100 series filter available
 - Replace filters when increased breathing resistance is detected **OR** when the test agent has altered the filter material's integrity.

Generated Aerosol Test Procedure

Test

Important!

- Throughout the test, maintain the employee's exposure to any test agent below the established exposure limit. Exposures allowed must be based on exposure time and exposure limit duration
- If a single peak penetration exceeds 5% for half facepieces OR 1% for full facepieces:

- STOP the test

AND

- Have the employee select another respirator for testing.

5. Have the employee attach filters, put on, adjust, and seal check the respirator.

- Be sure to crimp the sampling line to avoid pressure leaks during the seal check

AND

- Have the employee adjust the respirator straps, without assistance, so the fit is comfortable. Do NOT over tighten.

6. **OPTIONAL Step.** To save time conduct a screening test to quickly identify poorly fitting respirators.

Note:

You may use a qualitative screening test **OR** an ambient aerosol condensation nuclei counter instrument in the count mode.

7. Make sure test aerosol concentration is reasonably stable.

- If a canopy or shower curtain enclosure is used, determine stability of the test aerosol concentration **AFTER** the employee enters the enclosure.

8. Have the employee enter the test enclosure and connect the respirator to the sample lines.

9. Immediately after entering the enclosure measure test aerosol concentration inside the respirator.

- Make sure the peak penetration does **NOT** exceed 5% for half facepieces, **OR** 1% for full facepieces.

10. Have employee perform the appropriate fit-test exercises in Table 19.

- Do **NOT** adjust the respirator once exercises begin.

11. Calculate the overall fit factor as specified in Steps 12-13. The fit test is:

- **PASSED IF** the minimum fit factor of 100 for half facepieces **OR** 500 for full facepieces is obtained

OR

- If a passing fit factor is **NOT** obtained, the test has **FAILED** and you must have the employee select and test another respirator.

Calculations

Important!

- Do **NOT** count the grimace exercise measurements during these calculations
- Take into account the limitations of instrument detection when determining fit factors.

12. Calculate individual fit factors for **EACH** exercise by applying the following:

Exercise fit factor (ffE) = $\frac{\text{Average test enclosure concentration}}{\text{Test aerosol concentration inside the respirator}}$

Test aerosol concentration inside the respirator

- To determine the average test enclosure concentration use one of the following methods:
 - Arithmetic average of the concentration before and after each **test** (an average of two values per entire test)
 - Arithmetic average of concentration before and after each **exercise** (an average of two values per exercise)
 - True average measured continuously during the respirator sample
- Determine the test aerosol concentration inside the respirator in one of the following ways:
 - Average peak penetration values. Determine aerosol penetration for each exercise by:
 - Using integrators or computers that calculate the actual test agent penetration
 - OR**
 - Average the peak heights shown on the strip chart recording, graph, or by computer integration
 - Maximum peak penetration. Use strip chart recordings to determine the highest peak penetration for each exercise and use this value

Generated Aerosol Test Procedure

– Area under the peaks. Use computerized integration or other appropriate calculations to integrate the area under individual peaks for each exercise.

13. Using individual exercise fit factors (ffE) calculate the **overall fit factor** by doing ALL of the following:

- Convert each exercise fit factor to a penetration value
- Determine the average penetration value
- Convert the average penetration value back to a fit factor

OR

Use this equation to calculate the **overall fit factor**:

Overall fit factor =
$$\frac{1}{\frac{1}{ffE1} + \frac{1}{ffE2} + \frac{1}{ffE3} \dots + \frac{1}{ffEn}}$$

Where:

n = The number of exercises;

ffE1 = The fit factor for the first exercise;

ffE2 = The fit factor for the second exercise;

ffE3 = The fit factor for the third exercise; and

ffEn = The fit factor for the nth exercise.

Table 19

Fit-Test Exercises			
Important:			
<ul style="list-style-type: none"> • This list applies when you use any fit test • Employees tested must perform ALL exercises marked with an "X" as described for the fit-test procedure used <ul style="list-style-type: none"> – Once exercises begin, any adjustments made void the test AND you must begin again – After test exercises are completed, you must ask the employee about the comfort of the respirator. If it has become unacceptable, have the employee choose another one for testing • When the controlled negative pressure procedure is used, STOP and repeat the test if the employee adjusts the respirator OR takes a breath and fails to hold it for 10 seconds • Controlled negative pressure tests conducted according to the method published in 29 CFR 1910.134, Appendix A are an acceptable alternative to the method outlined below. 			
	Fit-Test Procedures		
Description of Required Fit-Test Exercises	Qualitative Procedures	Quantitative Procedures; EXCEPT the CNPP	Controlled Negative Pressure Procedure (CNPP)
<ul style="list-style-type: none"> • Normal breathing <ul style="list-style-type: none"> – Breathe normally, while standing for one minute 	X	X	
<ul style="list-style-type: none"> • Deep breathing <ul style="list-style-type: none"> – Breathe slowly and deeply while standing for one minute – Take caution to avoid hyperventilating 	X	X	
<ul style="list-style-type: none"> • Head side to side <ul style="list-style-type: none"> – Slowly turn head from side to side while standing for one minute, pausing at each extreme position to inhale – Be careful to NOT bump the respirator 	X	X	
<ul style="list-style-type: none"> • Head up and down <ul style="list-style-type: none"> – Slowly move head up and down while standing for one minute, inhaling in the up position – Be careful to NOT bump the respirator 	X	X	

Fit-Test Exercises			
<ul style="list-style-type: none"> • Talking <ul style="list-style-type: none"> – Talk slowly and loud enough to be heard clearly by the individual conducting fit testing for one minute. Choose ONE of the following: <ul style="list-style-type: none"> ■ Read from a prepared text such as the Rainbow Passage¹ ■ Count backward from 100 ■ Recite a memorized poem or song. 	X	X	
<ul style="list-style-type: none"> • Grimace <ul style="list-style-type: none"> – Smile or frown for fifteen seconds. 		X	
<ul style="list-style-type: none"> • Bending over <ul style="list-style-type: none"> – Bend over to touch toes while standing. Repeat at a comfortable pace for one minute OR – Jog in place for one minute if the test enclosure, such as a hood, does not permit bending over 	X	X	
<ul style="list-style-type: none"> • Normal breathing <ul style="list-style-type: none"> – Breathe normally while standing for one minute 	X	X	
<ul style="list-style-type: none"> • Face forward <ul style="list-style-type: none"> – Premeasurement activity: Stand and breath normally, without talking, for 30 seconds – Measurement position: Face forward while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Bending over <ul style="list-style-type: none"> – Premeasurement activity: While standing, bend at the waist, as if to touch toes – Measurement position: Hold the bending position with face parallel to the floor while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Head shaking <ul style="list-style-type: none"> – Premeasurement activity: Vigorously shake head from side to side for about 3 seconds while shouting – Measurement position: Face forward, while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Redon-1 <ul style="list-style-type: none"> – Premeasurement activity: Loosen all facepiece straps and remove the respirator completely, then put it back on – Measurement position: Face forward while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Redon-2 <ul style="list-style-type: none"> – Repeat the premeasurement activity and measurement position described in Redon-1 			X

¹The Rainbow Passage:

"When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow."

AMENDATORY SECTION (Amending WSR 07-05-072, filed 2/20/07, effective 4/1/07)

WAC 296-842-22020 Follow procedures established for seal checking respirators. Make sure employees perform a user seal check as outlined in Table 21 each time the respirator is worn, to make sure the seal is adequate.

IMPORTANT:

• User seal checks are **NOT** a substitute for fit tests. See WAC 296-842-22010 for fit test procedures.

• You may use a seal check procedure recommended by the respirator manufacturer **INSTEAD** of the procedure outlined in Table 21 if you can demonstrate the procedure is based on a scientific study that, for example, demonstrates the procedure effectively identifies respirators that fit poorly when put on or adjusted.

~~((Make sure employees perform a user seal check as outlined in Table 21, **EACH TIME** the respirator is worn, to make sure the seal is adequate.))~~

Table 21

User Seal Check Procedure
<p>Important information for employees:</p> <ul style="list-style-type: none"> • You need to conduct a seal check each time you put your respirator on BEFORE you enter the respirator use area. The purpose of a seal check is to make sure your respirator (which has been previously fit tested by your employer) is properly positioned on your face to prevent leakage during use and to detect functional problems • The procedure below has two parts; a positive pressure check and a negative pressure check. You must complete both parts each time. It should only take a few seconds to perform, once you learn it ◆ If you cannot pass both parts, your respirator is NOT functioning properly, see your supervisor for further instruction.
<p>Positive pressure check:</p> <ol style="list-style-type: none"> 1. Remove exhalation valve cover, if removable. 2. Cover the exhalation valve completely with the palm of your hand WHILE exhaling gently to inflate the facepiece slightly. 3. The respirator facepiece should remain inflated (indicating a build-up of positive pressure and NO outward leakage). <ul style="list-style-type: none"> • If you detect NO leakage, replace the exhalation valve cover (if removed), and proceed to conduct the negative pressure check • If you detect evidence of leakage, reposition the respirator (after removing and inspecting it), and try the positive pressure check again.
<p>Negative pressure check:</p> <ol style="list-style-type: none"> 4. Completely cover the inhalation opening(s) on the cartridges or canister with the palm(s) of your hands WHILE inhaling gently to collapse the facepiece slightly.

User Seal Check Procedure
<ul style="list-style-type: none"> • If you cannot use the palm(s) of your hands to effectively cover the inhalation openings on cartridges or canisters, you may use: <ul style="list-style-type: none"> – Filter seal(s) (if available) <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> – Thin rubber gloves. <ol style="list-style-type: none"> 5. Once the facepiece is collapsed, hold your breath for 10 seconds WHILE keeping the inhalation openings covered. 6. The facepiece should remain slightly collapsed (indicating negative pressure and NO inward leakage). <ul style="list-style-type: none"> • If you detect NO evidence of leakage, the tightness of the facepiece is considered adequate, the procedure is completed, and you may now use the respirator • If you detect leakage, reposition the respirator (after removing and inspecting it) and repeat BOTH the positive and negative fit checks.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-842-110 Voluntary respirator use requirements.
- WAC 296-842-300 Definitions.

**WSR 09-14-117
WITHDRAWAL OF
EXPEDITED RULE MAKING
DEPARTMENT OF
LABOR AND INDUSTRIES**
[Filed July 1, 2009, 8:51 a.m.]

Our notice of expedited rule making regarding chapter 296-842 WAC, Respirators, filed with your office under WSR 09-08-106 and distributed in the 09-08 state register, is being withdrawn.

Please contact Tracy Spencer, standards manager at 902-5530, if you have any questions.

Michael R. Seale
for Stephen M. Cant, CIH
Assistant Director

**WSR 09-14-137
EXPEDITED RULES
DEPARTMENT OF REVENUE**
[Filed July 1, 2009, 11:28 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16-280 Art, scientific, and historical collections, 458-16-282 Musical, dance, artistic, dramatic and literary associations, 458-19-070 Procedure to adjust consolidated levy rate

for taxing districts when the statutory aggregate dollar rate limit is exceeded, 458-19-075 Constitutional one percent limit calculation, 458-30-230 Application for open space classification, 458-30-232 Application for timber land classification, 458-30-295 Removal of classification, 458-30-300 Additional tax—Withdrawal or removal from classification, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kim M. Qually, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail kimq@dor.wa.gov, AND RECEIVED BY August 31, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend these to reflect the current content of the underlying statutes.

- WAC 458-16-280 and 458-16-282, which describe the property tax exemptions for art, scientific, and historical collections and for musical, dance, artistic, dramatic, and literary associations, are being amended to incorporate changes in the authorizing statute. The changes to RCW 84.36.060 allow the exempt property to be used by entities not entitled to receive a property tax exemption.
- WAC 458-19-070 and 458-19-075, which outline the process used in prorating property tax levies under RCW 84.52.043 and 84.52.010, are being updated to include new property tax levies and the correct order for prorating property tax levies.
- Recent changes to RCW 84.34.037 and 84.34.041 require the amendment of WAC 458-30-230 and 458-30-232 because there is a new procedure that may be used when classifying land as open space land under RCW 84.34.037 and timber land under RCW 84.34.-041.
- WAC 458-30-295 and 458-30-300 are being amended because of recent legislative changes to RCW 84.34.-108, regarding the removal of land from classification under chapter 84.34 RCW, and to RCW 84.33.140 and 84.33.145, regarding the removal of land from designation under chapter 84.33 RCW.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: The statutes authorizing these rules have been amended. RCW 84.36.060, interpreted in WAC 458-16-280 and 458-16-282, was amended by section 1, chapter 58, Laws of 2009, and section 1, chapter 121, Laws of 2003. RCW 84.52.043, interpreted in WAC 458-19-

070, was amended by section 6, chapter 551, Laws of 2009. RCW 84.52.010, interpreted in WAC 458-19-075, was amended by section 7, chapter 551, Laws of 2009 and section 26, chapter 54, Laws of 2007. RCW 84.34.037, interpreted in WAC 458-30-230, was amended by section 13, chapter 350, Laws of 2009. RCW 84.34.041, interpreted in WAC 458-30-232, was amended by section 14, chapter 350, Laws of 2009. RCW 84.34.108, interpreted in WAC 458-30-295 and 458-30-300, was amended by sections 2 and 3, chapter 246, Laws of 2009, section 2, chapter 255, Laws of 2009, section 3, chapter 354, Laws of 2009, section 2, chapter 513, Laws of 2009, section 25, chapter 54, Laws of 2007, and section 6, chapter 170, Laws of 2003. RCW 84.33.140 and 84.33.145, interpreted in WAC 458-30-700, were amended by section 2, chapter 246, Laws of 2009, section 3, chapter 255, Laws of 2009, and sections 2 and 4, chapter 354, Laws of 2009. The rules are being amended to reflect the current text of the underlying statutes.

Statutory Authority for Adoption: RCW 84.08.070, 84.-34.141, 84.36.865, 84.52.0502.

Statute Being Implemented: RCW 84.33.140, 84.33.-145, 84.34.037, 84.34.041, 84.34.108, 84.36.060, 84.52.043, 84.52.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Kim M. Qually, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6113; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

July 1, 2009

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-18-008, filed 8/19/99, effective 9/19/99)

WAC 458-16-280 Art, scientific, and historical collections. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.-060 to art, scientific, or historical collections.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Governmental entity" means any political unit or division of the federal, state, city, county, or municipal government.

(b) "Property" means all real and personal property exclusively used to secure, maintain, and exhibit art, scientific, or historical collections.

(3) **Exemption for existing property.** All art, scientific, or historical collections owned by associations maintaining and exhibiting the collections to the general public and not for profit, together with all real and personal property owned by these associations and used exclusively to secure, maintain, and exhibit the collections, shall be exempt from taxation under the following conditions:

(a) An organization, association, or corporation must be organized and operated exclusively for artistic, scientific, or historical purposes.

(b) The organization, association, or corporation organized and operated for artistic, scientific, or historical purposes must receive a substantial part of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or function shall not be included within the figures used to calculate "a substantial part" of the organization's, association's, or corporation's income.

(i) For example, an art museum may receive support from a city government and from donations made by the general public in addition to general admission fees paid by visitors. When determining whether the art museum receives a substantial part of its income from a governmental entity or through contributions from the general public, the admission fees may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial part for its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to maintain and exhibit art, scientific, or historical collections, may qualify for exemption under certain circumstances. A non-profit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used to maintain and exhibit an art, scientific, or historical collection.

(a) Acceptable proof of a specific and active building or remodeling program shall include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction shall not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) **Use of exempt property by entities not entitled to a property tax exemption.** As a general rule, exempt property may not be used by an entity not entitled to receive a property tax exemption under this chapter. The use of

exempt property by an ineligible entity will nullify the exemption for the assessment year. However, the property exemption will not be nullified if:

(a) The property is used by entities not entitled to a property tax exemption under this chapter for periods of not more than fifty days in a calendar year;

(b) The property is not used for pecuniary gain or to promote business for more than fifteen of the fifty days in a calendar year; and

(c) The property is used for:

(i) Artistic, scientific, or historic purposes;

(ii) The production and performance of musical, dance, artistic, dramatic, or literary works; or

(iii) Community gatherings or assembly, or meetings.

(d) The fifty and fifteen day limitations set forth in (a) and (b) of this subsection do not include the days the exempt property is used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as described in this subsection.

(6) Additional requirements. Any organization, association, or corporation ~~((that applies))~~ applying for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

AMENDATORY SECTION (Amending WSR 99-18-008, filed 8/19/99, effective 9/19/99)

WAC 458-16-282 Musical, dance, artistic, dramatic and literary associations. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to organizations, associations, or corporations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(b) "Property" means all real and personal property exclusively used to produce or perform musical, dance, artistic, dramatic, or literary works.

(3) **Exemption.** All real and personal property owned by or leased to a nonprofit organization, association, or corporation engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit shall be exempt from taxation under the following conditions:

(a) The property must be used exclusively to produce or perform musical, dance, artistic, dramatic, or literary works.

(b) An organization, association, or corporation must be organized and operated exclusively for musical, dance, artistic, dramatic, literary, or educational purposes.

(c) The organization, association, or corporation organized and operated for musical, dance, artistic, dramatic, literary, or educational purposes must receive a substantial portion of its income from a governmental entity or from direct or indirect contributions of money, real or personal property,

or services from the general public. Admission or entrance fees derived from producing or performing musical, dance, artistic, dramatic, literary, or educational works shall not be included within the figures used to calculate "a substantial part" of the organization's, association's or corporation's income.

(i) For example, a theater may receive support from a city government and from donations made by the general public in addition to ticket sales for admission to its performances. When determining whether the theater receives a substantial part of its income from a governmental entity or through contributions from the general public, the ticket sales may not be considered as contributions from the general public.

(ii) Any organization that relies on services donated by the general public for a substantial portion of its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to be used by associations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works, may qualify for exemption under certain circumstances. A nonprofit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose, may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used by associations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works.

(a) Acceptable proof of a specific and active building or remodeling program shall include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction shall not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) **Use of exempt property by entities not entitled to a property tax exemption.** As a general rule, exempt property may not be used by an entity not entitled to receive a property tax exemption under this chapter. The use of exempt property by an ineligible entity will nullify the exemption for the assessment year. However, the property exemption will not be nullified if:

(a) The property is used by entities not entitled to a property tax exemption under this chapter for periods of not more than fifty days in a calendar year;

(b) The property is not used for pecuniary gain or to promote business for more than fifteen of the fifty days in a calendar year; and

(c) The property is used for:

(i) Artistic, scientific, or historic purposes;

(ii) The production and performance of musical, dance, artistic, dramatic, or literary works; or

(iii) Community gatherings or assembly, or meetings.

(d) The fifty and fifteen day limitations set forth in (a) and (b) of this subsection do not include the days the exempt property is used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as described in this subsection.

(6) Additional requirements. Any organization, association, or corporation (~~that applies~~) applying for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

AMENDATORY SECTION (Amending WSR 06-02-008, filed 12/22/05, effective 1/22/06)

WAC 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded. (1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This (~~rate~~) section describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

(a) Levies by the state;

(b) Levies by or for port or public utility districts;

(c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;

~~(d) Levies ((for financing affordable housing for very low income households under RCW 84.52.105;~~

~~(e) Levies for acquiring conservation futures under RCW 84.34.230;~~

~~(f) Levies for criminal justice purposes under RCW 84.52.135;~~

~~(g) Levies for emergency medical care or emergency medical services under RCW 84.52.069;~~

~~(h) Levies by or for county ferry districts under RCW 36.54.130;~~

~~(i) The portion of fire protection district levies protected under RCW 84.52.125; and~~

~~(j) The portion of metropolitan park district levies protected under RCW 84.52.120)) by or for county ferry districts under RCW 36.54.130;~~

(e) Levies for acquiring conservation futures under RCW 84.34.230;

(f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(g) Levies for financing affordable housing for very low-income households under RCW 84.52.105;

(h) The portion of metropolitan park district levies protected under RCW 84.52.120;

(i) The portion of fire protection district levies protected under RCW 84.52.125;

(j) Levies for criminal justice purposes under RCW 84.52.135; and

(k) Levies for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009.

(3) Prorating under consolidated levy rate limitation. RCW 84.52.010 sets forth the prorating order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorating order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this ~~(rate)~~ section is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorating is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125 fire protection districts may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorating.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.-125 come into play; that is, a fire protection district may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorating under RCW 84.52.043(2), if the total levies would otherwise be prorated under RCW 84.52.-010 (2)(e) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorating, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts under RCW 86.15.160.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130(~~park and recreation districts under RCW 36.69.145, and park and recreation service areas under RCW 36.68.525~~) on a pro rata basis until the remaining levy capacity equals zero.

(4) Example.

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County Road	1.8000	NONE	1.8000	1.850
	2.2500	NONE	2.2500	
Library	.5000	NONE	.5000	.350
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	
Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

1. Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

2. Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

3. Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

4. The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. And finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital respectively are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 06-02-008, filed 12/22/05, effective 1/22/06)

WAC 458-19-075 Constitutional one percent limit calculation. (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This (~~rule~~) section explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** After prorationing under RCW 84.52.043 (the five dollar and ninety cent per thousand

dollars of assessed value limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The following regular levy rates are used to calculate the combined levy rate of any particular tax code area:

- (i) The local rate for the state levy;
- (ii) ~~((The levy rate for financing affordable housing for very low income households under RCW 84.52.105;~~
- ~~(iii) The levy rate for acquiring conservation futures under RCW 84.34.230;~~
- ~~(iv) The levy rate for criminal justice purposes under RCW 84.52.135;~~
- ~~(v) The levy rate for emergency medical care or emergency medical services under RCW 84.52.069;~~
- ~~(vi) The levy rate by or for county ferry districts under RCW 36.54.130;~~
- ~~(vii) The levy rate for the portion of fire protection district levies protected under RCW 84.52.125; and~~
- ~~(viii) The levy rate for the portion of metropolitan park district levies protected under RCW 84.52.120)) Levies by or for county ferry districts under RCW 36.54.130;~~
- (iii) Levies for acquiring conservation futures under RCW 84.34.230;
- (iv) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (v) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (vi) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (vii) The portion of fire protection district levies protected under RCW 84.52.125;
- (viii) Levies for criminal justice purposes under RCW 84.52.135; and
- (ix) The levy rate for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009.

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Prorationing - constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded. The order contained in this statute begins with the taxing districts that are the first to have their levy rates either reduced or eliminated. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Levy rates are reduced or eliminated on a pro rata basis within each tier of taxing district

levies until the combined levy rate no longer exceeds one percent of the true and fair value of property.

If the constitutional one percent limit is exceeded, the following levies are to be reduced or eliminated in the following order until the combined levy rate no longer exceeds the maximum effective levy rate:

- (a) The levy rate for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009;
- ~~(b) The levy rate for fire protection districts protected under RCW 84.52.125;~~
- ~~((~~(b)~~)) (c) The levy rate for criminal justice purposes imposed under RCW 84.52.135;~~
- ~~((~~(c)~~)) (d) The levy rate for county ferry districts under RCW 36.54.130;~~
- ~~((~~(d)~~)) (e) The ((twenty-five cents per thousand dollars of assessed value)) levy rate for metropolitan park districts protected under RCW 84.52.120;~~
- ~~((~~(e)~~)) (f) The levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low-income households under RCW 84.52.105, ((acquiring conservation futures under RCW 84.34.230)) and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value are reduced on a pro rata basis or eliminated;~~
- ~~((~~(f)~~)) (g) The levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069;~~
- ~~((~~(g)~~)) (h) The levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130((~~-park and recreation districts under RCW 36.69.145, and park and recreation service areas under RCW 36.68.525~~)) are reduced on a pro rata basis or eliminated;~~
- ~~((~~(h)~~)) (i) The levy rate for flood control zone districts under RCW 86.15.160;~~
- ~~((~~(i)~~)) (j) The levy rates for all other junior taxing districts, except fire protection districts under RCW 52.16.140 and 52.16.160, regional fire protection service authorities under RCW 52.26.140, library districts under RCW 27.12.050 and 27.12.150, and the first fifty cents per thousand dollars of assessed value for metropolitan park districts under RCW 84.52.120 and for public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;~~
- ~~((~~(j)~~)) (k) The levy rate of the first fifty cents per thousand dollars of assessed value for metropolitan park districts created on or after January 1, 2002 under RCW 35.61.210;~~
- ~~((~~(k)~~)) (l) The levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c) are reduced on a pro rata basis or eliminated;~~
- ~~((~~(l)~~)) (m) The levy rates for fire protection ((~~districts~~)) service authorities under RCW 52.16.130, regional fire protection districts under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per~~

thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and ((the levy rate for first fifty cents per thousand dollars of assessed value)) for public hospital districts under RCW 70.44.060(6) ((and for metropolitan park districts under RCW 35.61.210 created before January 1, 2002,)) are reduced on a pro rata basis or eliminated;

((m)) (n) The levy rates for the county, county road district, and ((a)) for city or town purposes are reduced on a pro rata basis or eliminated; and

((n)) (o) The levy rate for the state for the support of common schools.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-230 Application for open space classification. (1) **Introduction.** This section explains the application process for an applicant who seeks to have land classified or reclassified as open space land under RCW 84.34.020(1).

(2) **Where to submit.** An application for classification or reclassification of land as open space shall be made to the county legislative authority of the county in which the land is located.

(3) **Granting authority.** The identity of the entity that will act as the granting authority shall be determined by the location of the land the applicant seeks to classify or reclassify as open space land. The granting authority shall be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of the county, the county legislative authority shall be the granting authority.

(b) If the parcel(s) of land is located in an incorporated area of the county, a copy of the application for classification or reclassification shall be forwarded to the city legislative authority in which the land is located. ((The)) Applications must be acted upon by:

(i) A granting authority ((shall be)) composed of three members of the county legislative authority and three members of the city legislative authority in a meeting where members may be physically absent but participating through a telephonic connection; or

(ii) Separate affirmative acts by both the county and city legislative authorities whereby each authority affirms the entirety of the application without modification or each authority affirms the application with identical modifications.

(4) **Application process.** An application for classification or reclassification of a parcel(s) of land as open space land shall be processed as follows:

(a) **Comprehensive land use plan.** The granting authority shall determine whether or not the land is located in an area designated as "open space" by an official comprehensive land use plan adopted by a city or county and zoned accordingly.

(i) If the land is in an area subject to a comprehensive plan, the application for classification or reclassification shall be treated in the same manner as a proposed amendment to that plan.

(ii) If the land is in an area not subject to a comprehensive plan, a public hearing on the application shall be conducted. A notice of this hearing shall be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification that is the subject of the public hearing shall be notified in writing of the date, time, and location of this hearing.

(b) **Factors to consider.** In determining whether an application for classification or reclassification as open space land should be approved, the granting authority:

(i) May take particular notice of the benefits to the general welfare of preserving the current use of the parcel(s) of land described in the application; and

(ii) Shall consider the following:

(A) The revenue loss or tax shift that will result from granting the application;

(B) Whether granting the application for classification or reclassification of land under RCW 84.34.020 (1)(b) will:

(I) Conserve or enhance natural, cultural, or scenic resources;

(II) Protect streams, stream corridors, wetlands, natural shorelines, and aquifers;

(III) Protect soil resources, unique or critical wildlife, and native plant habitat;

(IV) Promote conservation principles by example or by offering educational opportunities;

(V) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces;

(VI) Enhance recreation opportunities;

(VII) Preserve historic and archaeological sites;

(VIII) Preserve visual quality along highway, road, and street corridors or scenic vistas; or

(IX) Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the land; and

(C) Whether granting the application for classification or reclassification of land as farm and agricultural conservation land (RCW 84.34.020 (1)(c)) will:

(I) Either preserve land previously classified as farm and agricultural land under RCW 84.34.020(2) or preserve traditional farmland not classified under chapter 84.33 or 84.34 RCW;

(II) Preserve land with a potential for returning to commercial agriculture; and

(III) Affect any other factors relevant in weighing general benefits of preserving the current use of the property.

(ii) In addition to the foregoing concerns, the granting authority shall consider:

(A) The existence of any mining claim or mining lease on the land, and if such a claim or lease will seriously interfere with the considerations stated in (b)(i) and (ii) of this subsection. If the granting authority determines serious interference will occur, it may deny the application in whole or in part. If a mining claim or mining lease is obtained after the land is classified or reclassified, the same determination must be made in deciding whether serious interference will occur; and

(B) The zoning of the parcel(s) of land at the time the application for classification or reclassification is filed.

(5) **Approval or denial of application.** The granting authority shall either approve or disapprove the application within six months of the date the completed application was received by the county legislative authority.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met including, but not limited to, the granting of easements. As a condition of granting an application for open space classification, the granting authority may not require public access on land classified under RCW 84.34.020 (1)(b)(iii) to promote the conservation of wetlands.

(c) If approved, valuation of the land at its current use value shall begin on January 1 of the year following the year the application was filed. However, any application approved on or after July 1 of any year shall cause the land to be listed on the assessment roll at its current use value on January 1 of the following assessment year.

(d) When the application for classification or reclassification as open space has been approved, the granting authority shall prepare an agreement. See WAC 458-30-240 for a detailed description of this agreement.

(e) The granting or denial of an application for classification or reclassification as open space land is a legislative determination and shall be reviewable only for arbitrary and capricious actions.

(6) **Public benefit rating system.** When an application for classification or reclassification under RCW 84.34.020 (1)(b) and (c) is submitted regarding land that is subject to a public benefit rating system adopted under RCW 84.34.055, the county legislative authority shall rate the parcel(s) of land in accordance with the public benefit rating system to determine whether the application should be approved or denied.

Land that was classified under RCW 84.34.020 (1)(b) or (c) prior to the adoption of a public benefit rating system does not have to requalify for classification under the criteria of the public benefit rating system. The land shall not be removed from classification by an assessor. This land may be rated according to the public benefit rating system as appropriate. (See WAC 458-30-330(~~, 458-30-335, and 458-30-340~~)) for more information about the public benefit rating system.)

(7) **Record retention.** The granting authority shall keep a record of each application, agreement, and records relating to each agreement.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-232 Application for timber land classification. Introduction. This (~~rule~~) section explains the application process used by an applicant who seeks to have land classified or reclassified as timber land under RCW 84.34.020(3).

Definition. For purposes of this (~~rule~~) section, the following definitions apply:

(1) **"Stand of timber"** means a stand of trees that will yield log and/or fiber:

(a) Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; and

(b) Of sufficient value to cover at least all the costs of harvest and transportation to available markets.

(2) **"Timber management plan"** means a plan prepared by a professional forester, or by another person who has adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes the following elements:

(a) A legal description of the land;

(b) A statement that the timber land is held in contiguous ownership of at least five acres and is primarily devoted to and used to grow and harvest timber;

(c) A brief description of the timber on the timber land or, if the timber has been recently harvested, the owner's plan to restock the land with timber;

(d) A statement about whether the timber land is also used to graze livestock;

(e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the timber land within three years.

(3) **Where to submit.** An application for classification or reclassification of land as timber land under RCW 84.34.020(3) is submitted to the county legislative authority of the county in which the land is located.

(4) **Granting authority.** The identity of the entity that will act as the granting authority will be determined by the location of the land the applicant seeks to classify or reclassify as timber land. The granting authority will be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of county, the county legislative authority is the granting authority.

(b) If the parcel(s) of land is located in an incorporated area, a copy of the application for classification is forwarded to the city legislative authority in which the land is located. (~~The~~) Applications must be acted upon by:

(i) A granting authority (~~is~~) composed of three members of the county legislative body and three members of the city legislative authority in a meeting where members may be physically absent but participating through a telephonic connection; or

(ii) Separate affirmative acts by both the county and city legislative authorities whereby each authority affirms the entirety of the application without modification or each authority affirms the application with identical modifications.

(5) **Application process.**

(a) **Consider all relevant evidence.** The granting authority will act upon the application with due regard to all relevant evidence.

(b) **Information that must accompany application.** An application for classification or reclassification of a parcel(s) of land as timber land is made on forms prepared by the department. An application must include the following information and be accompanied by a timber management plan as defined in subsection (2) of this ~~(rule)~~ section:

- (i) A legal description of or the parcel number(s) of all land the applicant desires to be classified as timber land;
- (ii) The date or dates the land was acquired;
- (iii) A brief description of the timber on the land or, if the timber has been harvested, the owner's plan for restocking;
- (iv) If the timber or forest management plan for the land has existed for more than one year, the application must indicate the nature and extent to which the plan has been implemented or changed;
- (v) Whether the land is used for grazing;
- (vi) Whether the land has been subdivided or a plat has been filed with respect for the land;
- (vii) Whether the land and the applicant have complied with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;
- (viii) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;
- (ix) Whether the land is subject to a lease, option, or other right that permits the land to be used for a purpose other than growing and harvesting timber;
- (x) A summary of the applicant's past experience and activities in growing and harvesting timber;
- (xi) A summary of the applicant's current and continuing activities in growing and harvesting of timber; and
- (xii) A statement that the applicant is aware of the potential tax liability involved if the land ceases to be classified as timber land.

(c) **Solitary factors that will result in automatic denial.** An application may be denied for any of the following reasons without regard to any other factor:

(i) The land does not contain a stand of timber as defined in subsection (1) of this ~~(rule)~~ section, as well as in chapter 76.09 RCW, and WAC 222-16-010. This reason alone is not sufficient to deny the application if:

(A) The land has been recently harvested or supports a growth of brush or noncommercial type timber and the application includes a plan for restocking within three years or a longer period necessitated because seed or seedlings are unavailable; or

(B) Only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions.

(ii) The applicant, with respect to the land for which classification or reclassification is sought, has failed to comply with a final administrative or judicial order regarding a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW.

(iii) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordi-

nary high tide line and two hundred feet horizontally landward from the high tide line.

(6) **Public hearing required.** An application for classification of land as timber land will be approved or denied after a public hearing on the application is held. A notice of this hearing is to be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification is to be notified in writing of the date, time, and location of the public hearing.

(7) **Timber management plan required.** A timber management plan must be filed with the county legislative authority either:

(a) When an application for classification is submitted; or

(b) Within sixty days of the date an application for reclassification under chapter 84.34 RCW or from designated forest land under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until the timber management plan is received. If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(c) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for classification or reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for a timber management plan, the county legislative authority should delay processing the application until this plan is received. If this plan is not received by the date set by the assessor, the application for classification or reclassification will be automatically denied.

(8) **Approval or denial of application.** The granting authority will either approve or disapprove the application for classification or reclassification within six months of the date it is received by the county legislative authority.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met. The granting authority may not require the granting of easements for land classified as timber land.

(c) The granting or denial of an application for classification as open space land or reclassification is a legislative determination and is reviewable only for arbitrary and capricious actions.

AMENDATORY SECTION (Amending WSR 01-24-030, filed 11/27/01, effective 12/28/01)

WAC 458-30-295 Removal of classification. (1) **Introduction.** This ~~(rule)~~ section discusses the circumstances that may cause land to be removed from classification and the actions an assessor takes to remove the land, in whole or in part, from classification under chapter 84.34 RCW.

(2) **General requirement - removal process.** If land classified under chapter 84.34 RCW is applied to a use other than the one for which classification is granted, the owner must notify the assessor of the change in use within sixty days of the change. If the new use of the land does not qualify for classification under chapter 84.34 RCW, the land must be removed from classification and, in most cases, additional tax, interest, and a penalty are imposed. Land may be totally or partially removed from classification depending on the reason(s) for the removal. See WAC 458-30-300 for details about the additional tax, interest, and penalty imposed when land is removed.

(3) **Circumstances that cause removal of land from classification.** When any of the following actions occur, the assessor shall remove all or a portion of the land from classification:

(a) Receipt of a written notice from the owner directing the assessor to remove the land from classification;

(b) Sale or transfer of the land to an owner that makes the land exempt from property taxes, except a transfer resulting from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the land for the same use as before;

(c) Any change in use that occurs after a request to withdraw classification is made under RCW 84.34.070 and before the actual withdrawal of the classification occurs;

(d) Sale or transfer of classified land to a new owner who is required to pay property tax and who does not sign the notice of classification continuance, except a transfer to an owner who is an heir or devisee of a deceased owner;

(e) Failure of an owner to respond to a request from the assessor for data regarding the use of the land, productivity of typical crops, and similar information pertinent to continued classification and assessment of the land (see RCW 84.34.121 and WAC 458-30-270);

(f) The assessor denies an owner's request for reclassification and the land no longer meets the criteria under which it was originally classified; ~~((or))~~

(g) The assessor determines, based on field inspections, analysis of income and expense data, or any other reasonable evidence, that the land no longer meets the criteria for classification under chapter 84.34 RCW; or

(h) The assessor discovers that the land was classified under chapter 84.34 RCW in error.

(i) Example 1. During an on-site inspection, the assessor discovers that classified farm and agricultural land has been paved over and is used as a parking lot for school buses.

(ii) Example 2. Based on information released at a public meeting of the county planning commission, the assessor learns that an owner of classified timber land has harvested all timber from the land, the land has been platted, public services such as roads, sewers, and domestic water supply have been made available to the platted land, and houses have been built on the land. This information has led the assessor to conclude that the use of the land has changed or that the land no longer meets the criteria for classification as timber land.

(4) **Procedure when an assessor discovers a change in use.** If the assessor determines that the land is not being used for a classified use, the assessor must ~~((notify))~~ provide the owner ~~((in writing))~~ a written notice regarding this determi-

nation ~~((and))~~; e.g., the Notice of Intent to Remove Current Use Classification form. The assessor may not remove the land from classification until the owner has had an opportunity to respond to the assessor's determination.

(a) The owner must respond, in writing, to the assessor's inquiry about the use of the classified land no later than thirty calendar days following the postmark date the assessor's inquiry was mailed to the owner.

(b) If the parcel in question is classified open space land or timber land, the assessor may ask, but is not required to ask, the granting authority to provide reasonable assistance in determining whether the classified land continues to meet the criteria for classification. The granting authority shall provide this assistance within thirty days of receiving the assessor's request for assistance (see RCW 84.34.108(1)).

(c) Unless the owner demonstrates to the assessor that the classified use of the land has not changed, the assessor will remove the land from classification and impose additional tax, interest, and penalty from the date of the change in use (see RCW 84.34.080 and 84.34.108).

(5) **Procedure for partial removal.** If the use of only a portion of the classified land has changed and it no longer qualifies for classification under chapter 84.34 RCW, the assessor will remove the nonqualifying portion of the classified land. The remaining parcel must satisfy the same requirements the entire parcel was required to meet when the land was originally granted classification unless different criteria are required by statute because of the reduced size of the land that remains classified.

(a) The assessor may ask the owner of the parcel that will remain classified to submit information relevant to its continuing eligibility under chapter 84.34 RCW. See WAC 458-30-270 for more details.

(b) If the parcel is classified farm and agricultural land, the assessor will verify that the remaining portion meets the requirements of RCW 84.34.020(2).

(c) If the parcel is classified open space or timber land, the assessor will consult with the granting authority before determining whether the remaining portion meets the requirements of RCW 84.34.020 (1) or (3). The granting authority and assessor may ask the owner to submit pertinent data for this determination.

(d) The assessor may segregate the portion of land from which classification is being removed for valuation and taxation purposes.

(6) **Transactions that do not cause land to be removed from classification.** Land cannot be removed from classification solely because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a ~~((fee interest or a))~~ conservation easement ~~((for the riparian open space program))~~ of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040.

(7) **Notice to owner.** Within thirty days of the removal of land from classification, the assessor must notify the owner in writing of the reason(s) for removal. The removal notice must explain the steps an owner needs to follow if he or she wants to appeal the removal decision, including when

a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

(8) **Right of appeal.** The seller, transferor, or owner of classified land may appeal the removal from classification to the board of equalization of the county in which the land is located. The appeal must be filed within thirty calendar days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the date the notice of removal was mailed by the assessor or given to the owner, or on or before July 1st of the year of removal, whichever is later (RCW 84.40.038).

(9) **Assessor's duty after removal.** Unless the removal is reversed on appeal, the assessor places the land on the assessment roll at its true and fair value determined in accordance with the county's approved revaluation plan. The value on the date of removal is the true and fair value as of January 1st of the year of removal. The assessment roll lists both the assessed value of the land before and after the removal of classification. Taxes for the current tax year are prorated according to the portion of the year to which each assessed value applies.

(10) **Possible segregation after removal.** If only a portion of the land is being removed from classification, the assessor must segregate the affected portion for valuation and tax purposes.

(11) **Additional tax, interest, and penalty are due when land is removed.** The additional tax, interest, and penalty imposed by RCW 84.34.080 and 84.34.108 are due ~~((when land is removed from classification))~~ and payable to the treasurer thirty days after the owner is notified of the amount due, unless the removal is the result of one of the exempt circumstances or transactions listed in RCW 84.34.-108(6). (See WAC 458-30-300.)

AMENDATORY SECTION (Amending WSR 07-21-097, filed 10/18/07, effective 11/18/07)

WAC 458-30-300 Additional tax—Withdrawal or removal from classification. (1) **Introduction.** This ~~((rule))~~ section outlines the withdrawal and removal procedures, events that trigger removal, and how to calculate the additional property tax ("additional tax"), interest, and penalty that may be imposed because land is withdrawn or removed from classification. When land is withdrawn or removed additional tax and interest are due. A twenty percent penalty is also due when land is removed from classification (see RCW 84.34.108 and 84.34.070(2)).

(2) **Duties of assessor and treasurer.** As soon as possible after determining that the land no longer qualifies for classification under chapter 84.34 RCW ~~((or))~~, the use of the land has changed, or the land was classified under chapter 84.34 RCW in error, the assessor must ~~((notify))~~ provide the owner ~~((in writing))~~ a written notice regarding this determination and of his or her intent to remove the land from classification; e.g., the Notice of Intent to Remove Current Use Classification form. The assessor may not remove the land from classification until the owner has had an opportunity to be heard on the issue of removal.

(a) The owner has thirty calendar days following the postmark date on the assessor's notice of intent to remove to respond, in writing, to the assessor about the removal of the land from classification. After giving the owner an opportunity to be heard and unless sufficient information or evidence is presented as to why the land should not be removed from classified status, the land will be removed from classification as of the date the land no longer qualified for classification or the use of the land changed.

(b) Within thirty days of removing land from classification, the assessor notifies the owner, in writing, about the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(c) Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value on ~~((the date))~~ January 1st of the year of removal from classification. The assessment roll will list the assessed value of the land before and after the removal from classification. Taxes will be allocated to the part of the year to which each assessed value applies; that is, current use and true and fair value.

(d) The assessor computes the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this ~~((rule))~~ section.

(e) The assessor notifies the treasurer of the amount of additional tax, interest, and penalty due.

(f) The treasurer mails or gives the owner written notice about the amount of the additional tax, interest, and, if required, penalty due and the date on which the total amount must be paid.

(g) The total amount is due and payable to the treasurer thirty days after the owner is notified of the amount of additional tax, interest, and penalty due.

(3) **Amount of additional tax, interest, and penalty.** The amount of additional tax, interest, and penalty will be determined as follows:

(a) The amount of additional tax is equal to the difference between the property tax paid on the land because of its classified status and the property tax that would have been paid on the land based on its true and fair value for the seven tax years preceding the withdrawal or removal. And in the case of a removal, the taxes owed for the balance of the current tax year;

(b) The amount of interest, calculated at the same statutory rate charged on delinquent property taxes specified in RCW 84.56.020, is based upon the amount of additional tax determined under (a) of this subsection, starting from the date the additional tax could have been paid without interest until the date the tax is paid; and

(c) A penalty amounting to twenty percent of the additional tax and interest; that is, twenty percent of the total amount computed in (a) and (b) of this subsection. A penalty is not imposed when:

(i) The land has been classified for at least ten years at the time it is withdrawn from classification and the owner submitted a request to withdraw classification to the assessor at least two assessment years prior to the date the land is withdrawn from classification; or

(ii) The use of the land has changed and the change in use was the result of one of the circumstances listed in RCW 84.34.108(6). See subsection (5) of this ~~((rule for a detailed list of these circumstances))~~ section.

(4) **Failure to sign notice of continuance.** Land will be removed from current use classification if a new owner fails to sign the notice of continuance when the classified land is sold or transferred. Additional tax, interest, and penalty will be imposed in accordance with RCW 84.34.108(4) because of this removal. A notice of continuance is not required when classified land is transferred to a new owner who is the heir or devisee of a deceased owner and the new owner wishes to continue classified use (see RCW 84.34.108 (1)(c)). If the heir or devisee elects not to continue classified use, the land will be removed from classification and additional tax, interest, and penalty are due.

(5) **Exceptions.** No additional tax, interest, or penalty will be imposed if the withdrawal or removal from classification ~~((was the result of one or more))~~ resulted solely from any of the following ((circumstances)):

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain or the sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power. This entity must have declared its intent to exercise the power of eminent domain in writing or by some other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than an act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city in which the land is located disallowing the current use of classified land. For the purposes of this ~~((rule))~~ section, "official action" includes: City ordinances, zoning restrictions, Growth Management Act, Shoreline Management Act, and Environmental Policy Act;

(e) Transfer of land to a church when the land would qualify for a property tax exemption under RCW 84.36.020. Only the land that would qualify for exemption under RCW 84.36.020 is included within this exception. Additional tax, interest, and, if appropriate, the penalty will be assessed upon the remainder of the land withdrawn or removed from classification;

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the conservation purposes specified therein. See subsection (6) of this ~~((rule))~~ section for a listing of these agencies, organizations, and purposes. However, when the property interests are no longer used for one of the purposes enumerated in RCW 84.34.210 or 64.04.130, additional tax, interest, and penalty will be imposed on the owner of the property at that time;

(g) Removal of land granted classification as farm and agricultural land under RCW 84.34.020 (2)~~((+))~~ (f) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it. This exception applies only to the land upon which the housing is located even if this portion of the agricultural

enterprise has not been allocated a separate parcel number for assessment and tax purposes;

(h) Removal of classification after a statutory exemption is enacted that would exempt the land from property tax and the landowner submits a written request to the assessor to remove the land from classification. This exception applies only to newly enacted exemptions that would cause classified land to go from taxable to exempt status. For example, in 1999 the legislature created a new property tax exemption for property used for agricultural research and education programs. ~~((Subsequently,))~~ If the owner of such land subsequently requests removal of the land from classification, no additional tax, interest or penalty are imposed because of this new property tax exemption authorized by RCW 84.36.570((-));

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a ~~((fee interest or a))~~ conservation easement ((for the riparian open space program)) of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years of the death of an owner who held at least a fifty percent interest in the land if:

(i) The individual(s) or entity(ies) who received the land from the deceased owner is selling or transferring the land; and

(ii) The land has been continuously assessed and valued as ~~((classified or))~~ designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer; ((or))

(l) The assessor discovers that the land was classified under chapter 84.34 RCW in error through no fault of the owner:

(i) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for classification or the failure of the assessor to remove the land from classification;

(ii) This exception does not apply if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification; or

(m) The result of one of the following changes in classification because of the owner's request for:

(i) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(ii) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(iii) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(iv) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1).

(6) **Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130.** If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, interest, or penalty will be imposed as long as the property is used for one of these purposes:

- (a) State agency;
- (b) Federal agency;
- (c) County;
- (d) City;
- (e) Town;
- (f) Metropolitan park district (see RCW 35.61.010);
- (g) Metropolitan municipal corporation (see RCW 35.-58.020);
- (h) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or
- (i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

(7) **Removal of classification from land that was previously (~~classified or~~) designated forest land under chapter 84.33 RCW.** Land that was previously (~~classified or~~) designated as forest land under chapter 84.33 RCW may be reclassified under chapter 84.34 RCW at the (~~request of the land owner~~) owner's request made no later than thirty days after removal of the land from designation. If such land is subsequently removed from the current use program before the land has been classified under chapter 84.34 RCW for at least ten assessment years, a combination of compensating tax imposed under chapter 84.33 RCW and additional tax, interest, and penalty imposed under chapter 84.34 RCW is due. RCW 84.33.145 explains the way in which these taxes are to be calculated.

AMENDATORY SECTION (Amending WSR 07-21-097, filed 10/18/07, effective 11/18/07)

WAC 458-30-700 Designated forest land—Removal—Change in status—Compensating tax. (1) Introduction. This (~~rule~~) section describes what events trigger the removal of land from designated forest land status under chapter 84.33 RCW, the procedures followed for removal, and the resulting compensating tax.

(2) **Events triggering the removal of designated forest land status.** The assessor must remove forest land from its designated forest land status when:

- (a) The owner submits a written request to remove the owner's land from designated forest land status;
- (b) The owner sells or transfers the land to an individual or entity exempt from property tax because of that individual's or entity's ownership;
- (c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber;
- (d) The owner has failed to comply with a final administrative or judicial order made because of the violation of the restocking, forest management, fire protection, insect and

disease control and forest debris provisions of Title 76 RCW or the rules that implement Title 76 RCW;

(e) Restocking has not occurred to the extent or within the time specified in the application for designation of the land; (~~or~~)

(f) The owner sells or transfers forest land to a new owner who has not signed a notice of continuance, except when the new owner is the heir or devisee of a deceased owner. RCW 84.33.140(5); or

(g) The assessor discovers that the land was designated under chapter 84.33 RCW in error.

(3) **How to retain designated forest land status when the land is sold or transferred.** When designated forest land is sold or transferred, the new owner may retain designated forest land status by filing a signed notice of continuance with the deed. The notice of continuance may be signed as part of the real estate excise tax (REET) affidavit or as a separate form if the county has decided it will require owners to submit both the REET affidavit and an attached separate notice of continuance. If multiple owners own the land, all owners or their agent(s) must sign the notice of continuance. A notice of continuance is not required for a new owner to retain designated forest land status when the new owner inherits the property.

(a) The owner may obtain the notice of continuance form and a real estate excise tax (REET) affidavit from the county. The county assessor's office has the notice of continuance form and the county treasurer's office has the REET affidavit.

The notice of continuance may also be obtained on the internet at <http://dor.wa.gov> under property tax, "forms."

(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

(i) The assessor signs the REET affidavit and indicates whether the land will or will not qualify to continue as designated forest land.

(ii) An assessor signs the REET affidavit and approves the land for continued classification if:

(A) The owner provides a complete and accurate notice of continuance signed by the new owner demonstrating that the forest land will continue to qualify as designated forest land; and

(B) At the assessor's option, the new owner provides a timber management plan for the property.

(iii) The assessor is allowed up to fifteen days to confirm that the information upon the notice is complete and accurate. The assessor may use this time to confirm that the timber management plan provides:

(A) The correct legal description for the forest land;

(B) The new owner's statement that the forest land is owned by the same person, consists of twenty or more contiguous acres, and is primarily devoted to and used to grow and harvest timber;

(C) A statement about whether the land is used to graze livestock;

(D) A brief description of the timber stands located on the land;

(E) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(F) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

A timber management plan may contain, but is not required to contain, any other information that the harvester needs for its own business purposes (i.e., a statement of goals for managing the land or identifying resource protection areas on the land (like riparian buffer areas along a stream or an unstable slope) that limit harvesting activities).

(iv) If the assessor determines that the notice of continuance or the timber management plan is not accurate or complete, the owner may resubmit the corrected information to the assessor.

(v) If the assessor determines that the land does not qualify to continue as designated forest land, the assessor removes the land upon the date of the conveyance and provides the owner with a notice of removal containing reason(s) for the removal and the amount of compensating taxes owed.

(c) Once the assessor signs the notice of continuance as part of the REET affidavit and the separate notice of continuance, if required, the notice(s) are then submitted to the treasurer. Before the treasurer can stamp the REET affidavit as approved for recording, the treasurer collects any REET due because of the transfer, and collects all compensating tax if the land does not qualify for continuance as designated forest land because it was denied continuance by the assessor. The county recording clerk must not accept any deeds or other transfer documents unless the treasurer has stamped the REET affidavit.

(d) A notice of continuance is not required when the transfer of the forest land is to a new owner who is an heir or devisee, however, the new owner must continue to meet the requirements of designated forest land to avoid removal from designation. The treasurer determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when forest land has been transferred by inheritance without a notice of continuance.

(4) Assessor decisions and procedures. Before removing the land from its designated forest land status, the assessor follows certain procedures and takes into account circumstances that may delay or prevent removal.

(a) The assessor must determine:

(i) The actual area of land to be removed from forest land status;

(ii) Whether the land has been exempted from an unre-tired special benefit assessment;

(iii) The true and fair value of the area being removed as of January 1st of the year of removal from designation;

(iv) Forest land value for the area to be removed;

(v) The last levy rate that applied for that area; and

(vi) The amount of time the land has been designated ~~((and classified))~~ as forest land, including the number of days up to the date of removal for the current year of removal.

(b) The assessor may require the owner to provide a legal description of the land area intended for removal when the landowner requests removal of owner's land from designated forest land status.

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains twenty or more contiguous acres primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet the forest land definition because there are less than twenty contiguous acres primarily devoted to and used for growing and harvesting timber, the owner may request reclassification as timber land under the open space program in chapter 84.34 RCW.

(d) The assessor must provide the owner with a written notice and an opportunity to be heard by the assessor, or the assessor's deputy, when the assessor intends to remove the land because it is no longer primarily devoted to and used for growing and harvesting timber. RCW 84.33.140 (5)(d). Each county assessor may set his or her own procedure for giving a landowner this notice and opportunity to be heard so long as it is done in a reasonable and consistent manner that ensures due process for each owner.

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if contiguous parcels of the subdivided land still add up to at least twenty contiguous acres, remain in the same ownership, and continue to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the owner subdivides a tract of designated forest land into separate parcels.

(f) If the assessor determines the land is no longer primarily devoted to and used for growing and harvesting timber, but there is a pending acquisition by an entity that would qualify for exemption from compensating tax under subsection (6)(e) of this ~~((rule))~~ section, the assessor must not remove the land from its designated forest land status. RCW 84.33.140 (5)(d)(i). In order to prevent removal, the governmental entity or other qualified recipient must provide written proof to the assessor of its intent to acquire the land or documentation that demonstrates the transaction will qualify for an exemption from compensating tax under subsection (6)(e) of this ~~((rule))~~ section. The entity acquiring the land must provide this written proof within sixty days of a request by the assessor. Thereafter, once a year, the governmental entity or other recipient must provide the assessor of the county in which the land is located written evidence of its intent to acquire the land. This written evidence must be provided on or before December 31st of each year or at an earlier date if the assessor makes a written request for such information. RCW 84.33.140 (5)(d)(i). Upon the assessor's written request, the information must be provided within sixty days from the date the assessor mails or hands the request to the owner or the postmark date of the request, if later.

(g) The assessor must not remove forest land from its designation if a governmental restriction is imposed on the land that prohibits, in whole or in part, the harvesting of timber.

(i) If only a portion of the forest land is impacted by the governmental restriction, the assessor cannot use the restric-

tion as a basis to remove the remainder of the land from its designated forest land status.

(ii) A governmental restriction includes:

(A) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or

(B) The land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(5) **Removal proceedings.** After determining that a triggering event causing removal has occurred, the assessor must provide timely written notice(s) to the taxpayer. RCW 84.33.140 (5)(d) (written notice and opportunity to be heard), RCW 84.33.140(9) (notice of removal). Upon receiving the notice of removal, the landowner may appeal the removal and/or apply for reclassification of the land to the open space program under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days of the postmark date for the notice or by July 1st of the year of removal, whichever is later. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

(a) **When does the land get removed from the designated forest land status?** If the removal is a result of a sale or transfer, the assessor removes the land on the date of sale or transfer provided in the legal conveyance. If the removal is based upon a determination or discovery made about the land by the assessor or at the request of the owner, the assessor removes the land on the date shown on the notice of removal mailed to the owner.

(b) **Notice of removal.** The assessor uses the notice of removal to notify the owner that the land has been removed from designated forest land status. Within thirty days of removing land from designated forest land status, the assessor must mail a notice of removal to the owner with the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(i) If the property is being removed because the assessor has determined the land is no longer primarily devoted to and used for growing and harvesting timber, the assessor provides two notices. First, the assessor must notify the taxpayer of his or her intent to remove the property and give the owner an opportunity to be heard. The assessor may require the owner to provide pertinent information about the land and its use in the response to the assessor's first notice. When the assessor determines that the property still does not qualify as designated forest land after the first notice is sent, the assessor mails the owner the second notice, the notice of removal, but only after:

(A) The owner declines the opportunity to be heard;

(B) The owner fails to timely respond to the first notice; or

(C) The assessor has received and considered the owner's timely response to the notice of intent to remove and nevertheless concludes that the property is no longer primarily devoted to growing and harvesting timber.

(ii) If the removal is based upon an owner's request for removal, upon receipt of a request for removal from an owner, the assessor sends the notice of removal to the owner showing the compensating tax and recording fee due.

(ii) The notice provides the reason(s) for removing the land from designation and the date of the removal. RCW 84.33.140(9). The notice includes the compensating tax calculated in ~~((rule section))~~ subsection (6) of this section and the necessary recording fees to be paid. It also includes the due date for payment, along with the landowner's rights to appeal the removal or the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form prepared by the department.

(iv) The assessor must also provide written notice of the removal to any local government filing a notice regarding a special benefit assessment under RCW 84.33.210 within a reasonable time after the assessor's decision to remove the land. The assessor may provide a simple statement with the legal description of the land, the name of the landowner, and the date of removal, if he or she includes a copy of the notice sent to the landowner. RCW 84.33.230.

(c) **What happens when an owner chooses to appeal the removal?** Unless the removal is reversed upon appeal, the assessor continues the process to remove the property from designated forest land status. The assessor may choose to delay collection of the compensating tax and recording fee until the appeal is decided. However, if the assessor postpones the collection of the compensating tax and recording fee, the assessor must notify the treasurer to temporarily delay collection. The assessor must also notify the owner that if the determination to remove is upheld, then interest will be due from the date the compensating tax and recording fee were due.

(i) If the removal is reversed upon appeal, the assessor shall reinstate the land as designated forest land, discharge any lien placed against the land, revise any assessments made against the property during the interim, refund the recording fee paid, and refund or cancel any compensating taxes and interest paid or owing.

(ii) If the removal is upheld upon an appeal in which the assessor has delayed collection, the compensating tax and recording fee are due immediately with interest accrued from the date the tax and fee were originally due. Upon receiving notice of the decision upholding the removal, the assessor must immediately notify the treasurer to collect any unpaid compensating taxes, fees, and interest on the land.

(d) **What happens when an owner applies to have the land reclassified under chapter 84.34 RCW?** If an application for reclassification is submitted by the owner ~~((within))~~ no later than thirty days after the notice of removal ~~((has been))~~ was mailed, the forest land is not removed from classification until the application for reclassification under chapter 84.34 RCW is denied or later removed from classification under RCW 84.34.108. RCW 84.33.145(1).

(i) ~~((The assessor processes))~~ An application for reclassification is processed in the same manner as ~~((it processes))~~ an initial application for classification under chapter 84.34 RCW.

(ii) A timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification under this chapter or from designated ~~((forestland))~~ forest land under chapter 84.33

RCW is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(A) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(B) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the county legislative authority may delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(iii) When the owner sells or transfers land (or a portion of the land) while an application for reclassification is pending, an assessor may accept a notice of continuation, and allow the owner to revise the application for reclassification to reflect the name of the new owner of the property.

(iv) If the application for reclassification under chapter 84.34 RCW is approved, the assessor shall transfer the property to its new classification.

(v) If the application for reclassification under chapter 84.34 RCW is denied, the assessor must record the removal notice and inform the treasurer's office to immediately begin collection of the compensating tax and the recording fee.

(6) **Compensating tax.** Compensating tax is imposed when land is removed from its designated forest land status. This tax recaptures taxes that would have been paid on the

land if it had been assessed and taxed at its true and fair value instead of the forest land value.

(a) **Calculating the compensating tax.** The assessor uses the current year's levy rate, the forest land value, and the true and fair value for the area to be removed from forest land status to calculate the compensating tax. The compensating tax consists of two parts: The recapture of taxes for previous years that the land was (~~classified or~~) designated as forest land, up to a maximum of nine years; and the recapture of taxes for the portion of the current year up to the date of removal in the year the land is removed from designation. RCW 84.33.140(11).

(i) The compensating tax for the previous years is calculated by determining the difference between the amount of taxes assessed at the forest land value for the removal area and the amount of taxes that would have been paid if the land had been valued at its true and fair value in the year of removal. That difference is multiplied by the number of years the land was (~~classified or~~) designated as forest land up to a maximum of nine years.

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated by determining the difference between the amount of taxes assessed at the forest land value and the taxes that would have been paid if the land had been valued at its true and fair value for the portion of the year up to the removal date.

(b) Formulas for calculating taxes after removal:

(i) Calculation of prior year's compensating tax:

True and Fair Value of Land (Jan 1st of year removed)	Less	Forest Land Value at time of removal	Multiplied by	Last levy Rate Extended Against Land	Multiplied by	Years (not to exceed 9)	Equals	Compensating Tax
\$ _____	-	\$ _____	x	\$ _____	x		=	\$ _____

(ii) Calculation of current year's taxes to date of removal:

		÷			=		
	No. of days designated as forest land		365			Proration factor (To items (A) and (B))	
(A)	\$ _____	x	_____	x	_____	= \$ _____	
	Market value		Levy rate		Proration factor		
(B)	\$ _____	x	_____	x	_____	= \$ _____	
	Forest land value		Levy rate		Proration factor		
(C)	Amount of compensating tax for current year ((A) minus (B))					=	\$ _____

(c) **The assessor notifies the treasurer of the amount of compensating tax and the due date for the tax by providing the treasurer a copy of the removal notice.** Compensating tax is due and payable to the county treasurer thirty days after the assessor mails to the owner the notice of removal informing the owner of the reasons for removal and the amount of compensating tax due. RCW 84.33.140(11). However, when property is sold or transferred, any compensating tax owed must be paid to the county treasurer before recording the conveyance. The county recording authority will not accept any instrument transferring the land, unless the compensating tax was paid or was not owed.

(d) **What happens if the compensating tax is not paid on the due date?** If the compensating tax is not paid by the

due date, the tax is considered delinquent. Interest, set at the statutory rate for delinquent property taxes specified in RCW 84.56.020, will accrue against the amount of the outstanding taxes from the due date until the entire amount owing is paid. Unpaid compensating tax and interest becomes a lien on the land. RCW 84.60.020.

(i) This lien attaches at the time the forest land is removed from designation.

(ii) The lien has priority over any recognizance, mortgage, judgment, debt, obligation, or responsibility against the land.

(iii) This lien must be fully paid before any other recognizance, mortgage, judgment, debt, obligation, or responsibility may be charged against the land.

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

(e) Compensating tax is not imposed on land removed from the forest land designation if the removal resulted solely from any of the following:

(i) A transfer to a government entity in exchange for other forest land within Washington state;

(ii) A transfer under either the power of eminent domain or upon the threat of eminent domain by an entity with the power of eminent domain that intends to exercise this power. The entity must threaten to exercise eminent domain in writing or demonstrate this threat by some other official action;

(iii) A donation of fee title, development rights, or the right to harvest timber in order to protect, preserve, maintain, improve, restore, limit the future use, or conserve the property for public use or enjoyment (see RCW 84.34.210 and 64.04.130). Provided, this donation is made to a:

(A) State agency;

(B) Federal agency;

(C) County;

(D) City;

(E) Town;

(F) Metropolitan park district (see RCW 35.61.010);

(G) Metropolitan municipal corporation (see RCW 35.-58.020);

(H) Nonprofit historic preservation corporation as defined in RCW 64.04.130; or

(I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250.

However, when the land is no longer being used for one of the purposes listed above, compensating tax will be imposed on the owner of the land at that time;

(iv) The sale or transfer of fee title to a government entity (see the governmental entities listed ~~((above))~~ in ~~((clause (iii) of this rule))~~ subsection (6)(e)(iii) of this section or a nonprofit nature conservancy corporation as defined in RCW 64.04.130 exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage advisory council under its established natural heritage plan as defined in chapter 79.70 RCW (natural area preserves). However, if the land is no longer used to protect and conserve the area for state natural area preserve purposes, or fails to comply with the terms of a natural heritage plan, compensating tax will be imposed on the owner of the land at that time;

(v) A sale or transfer of fee title to the state's parks and recreations commission for park and recreation purposes;

(vi) An official action of an agency of the state of Washington or the county or city in which the land is located disallowing the current use of the land. "Official action" includes city ordinances, zoning restrictions, the Growth Management Act, the Shoreline Management Act, and the Environmental Policy Act;

(vii) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(viii) The creation, sale, or transfer of a ~~((fee interest or a))~~ conservation easement ((for the riparian open space program)) of private forest lands within unconfined channel

migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(ix) In a county with a population of more than ~~((one million (i.e., King County)))~~ six hundred thousand, a transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation (as these corporations are defined in RCW 64.04.130) and the property interest being transferred is to:

(A) Protect or enhance public resources; or

(B) Preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment. When the land is no longer being used for any of these purposes, the owner of the land at the time will be required to pay compensating tax. RCW 84.33.140 (12) and (13); ~~((or))~~

(x) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as ~~((classified or))~~ designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer; or

(xi) The assessor discovers that the land was designated under chapter 84.33 RCW in error through no fault of the owner;

(A) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for designation or the failure of the assessor to remove the land from designation;

(B) This exception does not apply if an independent basis for removal exists. An example of an independent basis for removal includes the land is no longer devoted to and used for the growing and harvesting of timber.

(7) When will the land be assessed at its true and fair value and the taxes become payable? The land will be assessed at its true and fair value on the date it is removed from forest land status. The assessor revalues the land removed from designated forest land status with reference to its true and fair value on January 1st in the year of removal. RCW 84.33.140(10). The property tax for the remainder of the year following the date of removal is based on land's true and fair value.

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due date as all other property taxes are due for the year (generally, April 30th and October 1st of the current year. See RCW 84.-56.020).

(b) Formula for calculating the increase in property taxes for the remainder of the year in which the land is being removed:

(i)	_____	÷	365	=	_____	
	No. of days from date of removal to the end of the year		No. of days in year			Proration factor for true and fair land value
(ii)	\$ _____	x	_____	x	_____	= \$ _____
	Market value		Levy rate		Proration factor	
(iii)	\$ _____	x	_____	x	_____	= \$ _____
	Forest land value		Levy rate		Proration factor	
(iv)	Total amount of increased taxes for current year ((ii) minus (iii))					= \$ _____

(c) If the taxes for the year of removal have not yet been billed, the tax should be recalculated based on the true and fair value of the land removed for the portion of the year following the date of removal.

(d) An owner may appeal the true and fair value of the land used to calculate the increase in the remaining current year's taxes or the compensating taxes within thirty days of the notice (or up to sixty days if such time limit has been adopted by the county legislative authority) or on or before July 1st, whichever is later. RCW 84.40.038.

(8) What happens when forest land reclassified under chapter 84.34 RCW is later removed from that classification before ten years have passed? If reclassified forest land is later removed, a combination of compensating tax and additional tax will be imposed unless the basis for removal is one of the circumstances listed as exempt from additional tax under RCW 84.34.108(6).

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as designated forest land and an amount equal to the new true and fair value of the land when removed from classification under RCW 84.34.108 multiplied by the dollar rate of the last property tax levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was (~~classified or~~) designated as forest land under chapter 84.33 RCW, if the total number of years the land was (~~classified or~~) designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was (~~classified or~~) designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is at least ten.