



AGREEMENT

Between the

CITY OF RENSSELAER, NEW YORK

And the

**Rensselaer Professional Firefighters-Fire Drivers Association
LOCAL 2643 of the I.A.F.F.**

August 1, 2006 – July 31, 2009

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Preamble

Agreement between the City of Rensselaer, New York and the Professional Fire Fighters – Fire Drivers Association, Local 2643 of the International Association of Fire Fighters.

This Agreement effective August 1, 2006 through July 31, 2009, by and between the City of Rensselaer, a municipality in the County of Rensselaer, State of New York, hereinafter referred to as the “employer” and the Professional Fire Fighters- Fire Drivers Association, Local 2643 of the International Association of Fire Fighters hereinafter referred to as “firefighters/fire drivers” or the union.

Article 1

Collective Bargaining Procedure

Collective bargaining with respect to rates of pay, hours of work, or other conditions of employment shall be conducted by the duly authorized bargaining agent of each party. Unless otherwise designated, the City, and the Professional Fire Fighters-Fire Drivers Association, Local 2643 of the I.A.F.F., their designees, shall be the respective bargaining agents for each party.

Article 2

Recognition, Agency Shop, and Dues Deduction

The employer recognizes the Union as the sole and exclusive representative of all members of the Department of Fire as described herein: Firefighters- Fire Drivers of Local 2643 of the International Association of Fire Fighters. Excluded from such recognition are the Chiefs and the Assistant Chief(s) of the Department.

The employer shall extend to the association the right to membership dues deduction, pursuant to Section 208 of the Civil Service Law, so long as said Union shall remain the certified bargaining agent for the unit described above. Said dues to be remitted to the Union within five (5) work days after deduction.

The Union shall be entitled to have deducted from the wage or salary of the employees described in paragraph one of this Article 2 who are not members of this Union, the amount equivalent to the dues levied by the Union, and the employer shall make such deductions and transmit the sum so directed to the Union. The provisions of this Article 2 shall be applicable while the Union continues to maintain a procedure providing for the refund to any employee demanding return of any part of the deduction so made which represents that employee's pro rata share of expenditures by the Union in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment.

The Union agrees to indemnify the employer and hold harmless the employer for any claims and suits pertaining to this Section. This includes legal fees and any other expenses and costs incurred in defending such claims and suits and any judgments or award resulting therefrom.

Article 3

Insurance

Section A

All full time employees of the Department and eligible members of their families shall be entitled to full health insurance coverage, the time of selection to be governed by the plans.

It is the employer's intent to eventually become self-insured. If the employer wishes to substitute medical and health insurance plans, it must first comply with the following:

1. Provide 60 days' notice of intent to change. Such notice shall include any and all information pertaining to the proposed plan to the Union representatives before said plan may be adopted by the employer.
2. If requested by the Union representatives within 20 days from the above notice, the employer shall meet at least once with the Union representatives to discuss, in good faith, the proposed plan. This meeting is to be held no later than 30 days before said plan may be adopted by the employer.
3. All benefits must be substantially equal or better than those provided in the current plans, and employee contributions to said plan may not exceed that specified in this/article. If one of the parties disagrees with the entire proposed plan or any portion thereof, then a grievance may be filed and that portion in conflict will be submitted to binding arbitration to determine whether or not it is substantially equal to the plan it is proposed to replace.

Nothing contained herein shall preclude the Union from submitting to the employer alternate health insurance plans, as long as the employer's contribution does not exceed the contribution rate established by the Blue Cross Empire Plan offered by the State of New York.

The employer will pay the first two hundred dollars (\$200) of the monthly premium for each employee; all remaining monthly premium costs will be paid 80% by the employer and 20% by the employee. The employer shall deduct any employee health insurance contributions from the employee's gross pay before income taxes are applied.

Section B

The employer shall provide full coverage of thirty-five thousand dollars (\$35,000.00) life, accident, death and dismemberment policy for each full-time employee until said employee's retirement or departure from the Department. The employer shall pay 100% of the premium for said coverage.

Section C

The employer shall provide New York State Disability Insurance coverage for each employee, the premium of which shall be paid for by the City of Rensselaer. Starting date subject to open enrollment date of insurance company.

Article 4

Clothing Allowance

All firefighters/ fire drivers of the Fire Department covered by this contract shall be entitled to an annual clothing allowance payable in the first pay period of the month of December of each year. The amount of the clothing allowance shall be five hundred dollars (\$500.00).

The employer shall pro rate this amount if they have prior knowledge of retirement or said departure of an employee.

The employer shall provide each new employee of the bargaining unit with a new outer wear garment (uniform coat). This item, if damaged or destroyed in the line of duty or as such becomes unserviceable, shall be replaced or repaired if possible, by the employer at the discretion of the Chief or his designee.

The parties agree that the clothing allowance provision herein shall be compliant with the Internal Revenue Code, to wit, the lump sum payment shall be subject to taxes where a firefighter has failed to produce receipts for uniform purchases.

In the event the employer proposes a change in uniform, the Union will receive notice of such proposal.

Article 5

Equipment

The employer shall provide all permanent employees of the Fire Department covered by this agreement with the following equipment: a fire turnout coat, a pair of boots, bunker pants with bunker boots, suspenders, helmet, and a pair of gloves.

It is understood that said equipment shall meet O.S.H.A. (Occupational Health and Safety Association) standards. Such equipment shall be replaced if damaged or destroyed in the line of duty or as such becomes unserviceable. The determination of the worn out condition of such clothing shall be made at the discretion of the Chief or his designee in the event of the Chief's prolonged absence, and in accordance with the manufacturer's safety guidelines. Attempts by the employer to repair equipment shall be made in accordance with industry standards, and the cost shall be borne by the employer.

Article 6

Holidays

Every member covered by this contract or Agreement shall receive eight (8) hours pay for all paid holidays at the employee's regular rate of pay. The holidays are: New Years Day, Lincoln's Birthday, Washington's Birthday, Easter, Memorial Day, July 4th, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas.

Firefighters/ fire drivers shall receive holiday pay in one lump sum with the first payroll period in June.

Article 7

Union Business

Any firefighter/ firedriver elected as a delegate to the I.A.F.F. convention, or the N.Y.S.P.F.F.A. convention, if scheduled to work while a convention is in session, shall receive these days off with pay. A maximum of two paid work days per man per year to be paid by the employer.

Any time in addition to the conventions shall be on fourteen (14) days notice to the Chief or his designee, allowing for five (5) days per year accumulative for other business or seminars. This time shall be subject to prior approval by the Chief or his designee for the release time requested. If the other union business or seminar is local, the firefighter/ fire driver must complete the second half of his shift subsequent to the completion of such seminar (if the second half of the shift is completed, then only ½ day should be charged to the Union). It is understood by the parties that in order to fill in for an absence for union business, the employer retains the authority to use part-timers.

Article 8

Work Shifts

Employees may exchange scheduled shifts when the change does not interfere with the operations of the Fire Department or will not cause overtime and only with the approval of the Fire Chief or his designee.

Article 9

Overtime, Court Appearance, and Recall

Section A

In the event that the need for overtime should occur, overtime shall be paid at one and one-half (1-1/2) times the employee's basic rate of pay for all hours worked beyond the employee's normal work week (i.e. 42 hours per week average on a monthly basis).

Section B

Whenever a member of the Rensselaer Fire Department is required to appear as an agent, servant or employee of the Rensselaer Fire Department, before a grand jury or court of administrative agency, to give testimony in his or her capacity as an agent, servant or employee of the Rensselaer Fire Department, he will receive his regular duty pay, except if appearing in his off duty time he shall be paid one and one-half (1-1/2) times his regular rate of pay and a travel rate of the I.R.S. standard rate.

The appearance time must be documented by a letter from the Court Clerk or presiding officer of the hearing verifying the hours of attendance.

Section C

All employees who are covered by this Agreement who are called back to work from off duty shall be paid at least two (2) hours minimum at one and one-half (1-1/2) times the basic rate of pay. This recall must be made by the Chief or Assistant Chief(s).

Article 10

Seniority

Section A

Seniority is determined by the date of the employee's permanent appointment to the Fire Department. Layoffs and recall from layoff will be by seniority in accordance with Civil Service Law. Seniority shall govern in the approval of vacation requests. Seniority will also be considered as a factor in any transfers of personnel between companies and houses. In the event an employee believes that seniority was not considered a factor, he may file a grievance.

Section B

Work presently being performed by the firefighters/ fire drivers shall not be performed by a non-Union member of the uniformed force or subcontracted to any party without the express written consent of the bargaining unit.

Part-time relief drivers may continue to be used at the discretion of the Chief or his designee to provide job coverage for any and all overtime with the exception of Kelly Days. These part-time relief drivers shall work a maximum of ninety-six (96) hours within a pay period; except in an emergency (i.e. not sufficient permanent members available within a twenty-four hour cycle).

Kelly Shift Days

1. Each firefighter/ fire driver will receive overtime (24 hours) for working their "Kelly" Day and it is also agreed that each career person could turn down the overtime for the day off. In this case overtime would be paid to the next person available on the overtime list. If no career person wishes to work the overtime then a part-time/relief person may be assigned the work.

2. It is up to each career person to notify the Fire Chief at least 72 hours (three days) prior to his/her "Kelly" Day whether he/she is working his/her "Kelly" Day or taking the day off.

All part-time relief drivers and full-time union members/employees shall be trained to the level meeting the minimum New York State basic firefighting standards.

The firefighters/ fire drivers shall allow the employer to form volunteer companies within the City of Rensselaer under the following terms:

1. Volunteer houses will be dispatched to fire calls in the sole discretion of the Fire Chief, on a needs basis.
2. The employer has the right to transfer volunteer vehicles to paid houses should the need arise.
3. Volunteer drivers shall not be allowed to cover permanent vacancies within the Department (i.e. vacations, sickness, and injury).

Article 11

Leave of Absence

Firefighters/ fire drivers may request an unpaid leave of absence for up to one (1) year. The request must be made to the Board of Public Safety. In the event such unpaid leave is granted, it is understood that no benefits or seniority shall accrue or apply during this period of time.

Article 12

Bereavement Leave

In the event of a death in the immediate family of a firefighter/ fire driver, the firefighter/ fire driver shall be granted up to one (1) working shift off with pay. The firefighter/ fire driver will not be required to work until the day after the funeral. Immediate family shall be defined as spouse, child, parent, parent-in-law, brother or sister, brother-in-law, or sister-in-law, or grandparents.

Article 13

Departmental Policies

Permanent policy changes affecting all members of the Fire Department that are issued by the Chief of Department or the Board of Public Safety will be in writing and posted in each station within one week of promulgation.

Article 14

Rules and Regulations

It is the intent of the employer to establish and/or revise the written rules and regulations of the Department of Fire.

Article 15

Vacations

Section A

Each firefighter/ fire driver covered by this Agreement, shall have the following vacation schedule:

| <u>Years of Permanent Service</u> | | <u>Vacation</u> |
|-----------------------------------|-------------|-----------------|
| After | 1 year | 1 week |
| | 2-5 years | 2 weeks |
| | 6-10 years | 3 weeks |
| | 11-20 years | 4 weeks |
| | 21 + years | 5 weeks |

Vacations are to start on the first Sunday in March and can be picked weekly until the last Sunday in February of the following year. Three firefighters/ fire drivers can be on vacation at a time, however, only two (2) firefighters will allowed to be on vacation per shift. Vacations can be picked on a weekly basis.

A firefighter/ fire driver with one to six complete years of service may split one week of vacation. A firefighter/ fire driver with more than six complete years of service may split two weeks of vacation. The firefighter/ fire driver is to request, in writing, the use of a split day with at least two weeks' notice. The Chief will either approve or deny the use of the day, in writing, with at least one weeks' notice. The split vacation day must be taken in a 24 hour increment.

On Febuary 15th of each year, an employee may elect to be paid the cash equivalent of up to two weeks of accumulated unused vacation time. Such payment shall be made the first payroll period in March.

Section B

Any firefighter/ fire driver who is separated from the Department in good standing shall be compensated in cash for all due vacation time not used in the year of separation at his regular rate of pay at the time of separation. In the case of death, payment shall be made to the firefighters/ fire drivers designated beneficiary.

Section C

In the event a firefighter/fire drivers Kelly Day falls in the vacation period the firefighter/ fire driver may have one extra day of vacation or another day off at a later date. The scheduling of the extra day off shall be approved by the Chief.

Article 16

Authorized Aid

Firefighters/ fire drivers, while rendering aid to another community, are fully covered by Workmen's Compensation and Liability Insurance as provided by state laws.

Article 17

Past Practice

All the rights, privileges and benefits which firefighters/ fire drivers covered by this Agreement enjoyed prior to this Agreement are retained by the firefighters/ fire drivers except all those rights, privileges and benefits that are specifically abridged or modified by this Agreement.

Article 18

Retroactive Dates

1. The employer's budget year begins August 1st each year and ends July 31st the following year. If a firefighter/ fire drivers year of service falls anytime after August 1st and before July 31st on the budget year to expire, the year of service time shall be considered as of August 1st date. A firefighter/ fire driver appointed permanent prior to May 1st, will receive wage increases and vacation as stated in this Agreement.

2.A. The Employer's Budget Year begins August 1st each year, and ends July 31st of the following year. New firefighters/ fire drivers will be paid the minimum rate of pay for the job classification in which they are hired.

B-(i) When employment commences between August 1st and January 31st, the firefighters/ fire drivers year of service shall be deemed to have commenced on the previous August 1st (i.e., if hired on January 4, 1994, the employee's year of service shall be deemed to have commenced on August 1, 1993).

B-(ii) When employment commences on or after February 1st, the firefighters/ fire drivers year of service shall be deemed to have commenced on the next succeeding August 1st.

**THIS SECTION 2 WILL APPLY ONLY TO THOSE FIREFIGHTERS/
FIRE DRIVERS HIRED AFTER AUGUST 1, 1994.**

Article 19

Grievance Procedure

Section 1. Declaration of Principals: Every firefighter/ fire driver shall have the right to present his grievance in accordance with the procedure provided herein, free from interference, coercion, restraint, discrimination or reprisal, and shall have the right to be represented at all stages of the grievance procedure.

Section 2. Subject Matter: If both parties cannot agree on the question of arbitrability of any subject matter, the question shall be submitted to an arbitrator.

Section 3. Definitions:

“Aggrieved” shall mean any person or persons in the bargaining unit directly employed and compensated by the City of Rensselaer.

“Time limits” shall mean the number of days for processing grievances.

“Days” shall mean calendar days.

“Decisions” shall mean the rulings, determination, report or disposition made at any step of the grievance procedure.

“Employer” shall mean the City of Rensselaer.

“Employee organization” shall mean the Rensselaer Professional Fire Fighters Association Local 2643 of the I.A.F.F.

“A grievance” is any dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement.

Section 4. General Provisions:

A. Time limits for presentation and resolution of grievance may be extended by mutual written agreement of the parties.

B. If the employer does not comply with the time requirements the grievance shall automatically proceed to the next step. A decision shall be timely if postmarked in the mail or personally delivered to the aggrieved within the time limits provided.

Article 19

Grievance Procedure (cont'd)

Section 4. General Provisions (cont'd.):

C. The various stages of this procedure shall, so far as practicable, be conducted during regular working hours, unless both parties agree by mutual consent to a different time.

D. The arbitrator's fees shall be shared equally by the parties. Any expenses for a stenographer shall be borne by the party requesting a stenographic record and that party must also bear the cost of providing a copy of the transcript for the other party.

Section 5. Representation: Representation at any step of the procedure shall be limited to the Union.

A. The Union shall provide the employer, in writing, at the City Clerk's Office with a list of those individuals who are members of the grievance committee.

B. The Union shall further provide the name of the individual to whom a record of all decisions is to be forwarded.

Section 6. Informal Stage: Any firefighter/ fire driver who claims to have a grievance is encouraged to present his grievance to the Fire Chief or his designee as soon after the occurrence of the event giving rise to the grievance as is practicable, but not later than ten (10) days after the alleged grievance has occurred or becomes known; such presentation may be done orally, so that, if possible, the same may be expeditiously resolved on an informal basis.

Section 7. Stage 1:

A. A grievance must be presented to the Fire Chief or his designee in writing within fifteen (15) days after the grievance occurs or becomes known.

B. The Fire Chief, or his designee, shall discuss the grievance on an informal basis and take whatever investigative action he deems appropriate.

C. Within five (5) days after presentation of the grievance, the Fire Chief or his designee shall deliver a written decision to the aggrieved Union.

Article 19

Grievance Procedure (cont'd)

Section 8. Stage 2:

A. If the aggrieved is not satisfied with the decision made by the Fire Chief or his designee, he may, within five (5) days after receipt of the Chief's decision or within five (5) days of when that decision should have been received, request a review and determination by the Board of Public Safety. Such request must be in writing, contain a statement as to the specific nature of the grievance and the facts relating to it and be accompanied by a copy of the grievance and the decision of the Fire Chief or his designee. Such requests shall be served upon both the Fire Chief or his designee, to whom the grievance was originally presented as well as the Board of Public Safety.

B. The Board may, and at the request of the aggrieved shall, hold a meeting within ten (10) days after receiving the written request and statement from the aggrieved. The aggrieved and his representative, if any, may appear at the meeting and present oral statements or arguments.

C. Within ten (10) days after the close of the meeting, or within eight (8) days after the grievance has been submitted to the Board, if there has been no meeting, the Board shall deliver a written decision to the aggrieved and the Union.

Section 9. Arbitration

A. An appeal to arbitration from an unsatisfactory decision at Stage 2 regarding an arbitrable grievance, may be made by either the Union or the employer within fifteen (15) days of receipt of the Stage 2 decision or within fifteen (15) days of when that decision should have been received.

B. The intent to arbitrate shall be indicated by either party serving written notice upon the other party.

The notice shall identify the contract provisions in dispute, the issue or issues to be determined and the employee or employees involved.

C. Upon receipt of the request to arbitrate, the parties shall meet to select an arbitrator from the American Arbitration Association and/or the New York State Public Employment Relations Board (P.E.R.B.), or any other recognized arbitration groups agreed on by the parties. If the parties cannot agree to an arbitrator, the selection shall be made in accordance to P.E.R.B. rules.

Article 19

Grievance Procedure (cont'd)

D. The arbitrator shall have no power to add to, subtract, or modify the provisions of the contract in arriving at a decision of the issue presented for arbitration.

E. The arbitrator shall confine himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him nor shall he submit observations or declarations of opinion which are not essential in reaching the determination.

F. Within thirty (30) days of the close of the hearing or submission of briefs, the arbitrator shall deliver a written decision to the Union and the employer.

G. The decision or award will be binding on all parties.

Article 20

Salary

Section A. Each employee covered by this Agreement shall be paid an annual salary in accordance with the following schedule:

| | 7/31/06 | 8/1/06- 7/31/07 3.5% | 8/1/07- 1/31/08 2.0% | 2/1/08- 7/31/08 2.0% | 8/1/08- 1/31/09 2.0% | 2/1/09- 7/31/09 2.0% |
|-------------|-----------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Starting | 28,655.92 | 29,658.88 | 30,252.05 | 30,857.10 | 31,474.24 | 32,103.72 |
| After 1 Yr | 29,739.21 | 30,780.08 | 31,395.68 | 32,023.60 | 32,664.07 | 33,317.35 |
| After 2 Yrs | 30,667.15 | 31,740.50 | 32,375.31 | 33,022.82 | 33,683.27 | 34,356.94 |
| After 3 Yrs | 31,595.31 | 32,701.15 | 33,355.17 | 34,022.27 | 34,702.72 | 35,396.77 |
| After 4 Yrs | 33,447.01 | 34,617.66 | 35,310.01 | 36,016.21 | 36,736.53 | 37,471.26 |
| After 5 Yrs | 35,295.88 | 36,531.24 | 37,261.86 | 38,007.10 | 38,767.24 | 39,542.58 |
| After 6 Yrs | 37,620.80 | 38,937.53 | 39,716.28 | 40,510.60 | 41,320.82 | 42,147.23 |

This salary schedule reflects a 3.5% wage adjustment effective August 1, 2006 from the firefighter's regular rate of pay of July 31, 2006, with retroactive* pay.

This salary schedule reflects a 2% wage adjustment on August 1, 2007 from the firefighter's regular rate of pay of July 31, 2007 with retroactive* pay.

This salary schedule reflects a 2% wage adjustment on February 1, 2008 from the firefighter's regular rate of pay of January 31, 2008.

This salary schedule reflects a 2% wage adjustment on August 1, 2008 from the firefighter's regular rate of pay of July 31, 2008.

This salary schedule reflects a 2% wage adjustment on February 1, 2009 from the firefighter's regular rate of pay of January 31, 2009.

*Retroactive pay will include Retired Firefighters Keith Wheeler and Philip Foust.

All retroactive pay will be paid within 30 calendar days of signed agreement.

Article 20

Salary

Section B

In addition to the above salary schedule, longevity increments shall be paid to firefighter/ fire drivers meeting requirements of the following annual schedule:

| | |
|--|-------------------|
| Firefighter/Fire Driver over 8 full years service | \$650.00 Annually |
| Firefighter/Fire Driver over 12 full years service | \$700.00 Annually |
| Firefighter/Fire Driver over 16 full years service | \$750.00 Annually |
| Firefighter/Fire Driver over 20 full years service | \$800.00 Annually |

Longevity shall not be included in the calculation of a firefighter/ fire driver's overtime rate of pay.

Section C

Fire investigators shall be paid at one and one-half (1-1/2) times the employee's basic rate of pay for all hours worked beyond the employee's normal work week (i.e. 42 hours per week average on a monthly basis). In addition, should training for the fire investigators occur during off-duty hours of the investigator, said investigator shall have the choice of one twenty-four (24) hour compensated shift off either before or after such training. All expenses for N.Y.S. mandated training for the investigators shall be paid for by the employer.

Section D

Certified N.Y.S. Emergency Medical Technicians (EMT's), or higher, covered by this Agreement, shall receive fifteen hundred dollars (\$1,500.00) annually included in the firefighter/ fire drivers basic rate of pay. Proof of such certification shall be submitted and verified by the Chief or his designee. Employees receiving this EMT differential shall remain certified and must submit proof, on an annual basis, of the recertification to the Chief, or his designee, for record keeping and verification of said recertification.

The firefighter/ fire driver agrees to cover the costs involved in taking such EMS training. The employer agrees to cooperate in the reimbursement of such costs and to cover all other costs associated with this training.

The employer agrees to include this stipend in the firefighter/ fire driver's calculation of overtime rate of pay.

Section E

In addition to the regular job classification of Firefighter/Fire Driver, the employer agrees to select one firefighter/fire driver from the bargaining unit to maintain and keep records of the department's self contained breathing apparatus (S.C.B.A.).

The firefighter/ fire driver shall be paid ten (10) hours at one and one-half (1-1/2) times his basic rate of pay per month for regular maintenance and record keeping. In addition, the firefighter/ fire driver shall be paid at one and one-half (1-1/2) times his basic rate of pay for time worked for emergencies.

Article 20

Salary

Section F

In addition to the regular job classification of Firefighter/Fire Driver, the employer agrees to select one firefighter/ fire driver from the bargaining unit for record keeping and processing of the N.Y.S. Basic Field Incident Report (BFIRS).

The firefighter/ fire driver shall be paid ten (10) hours at one and one-half (1-1/2) times his basic rate of pay per month for this work.

Article 21

Agreement

This Agreement shall be binding upon the parties hereto and their successors as permitted by law.

Article 22

Savings Clause

In the event that any provision of this Agreement shall be at any time declared invalid by Legislative act or any court of competent jurisdiction or through Government regulations or decrees; such decision shall not invalidate the entire Agreement, it being the express intent of the parties hereto that all other provisions not declared invalid shall remain in full forces and effect.

Article 23

Defensive Action Clause

Section 1. In the event that any member of the bargaining unit is faced with a civil claim involving bodily injury and/or property damage arising solely out of the performance of his official duties at a fire ground or scene of an emergency which are characterized as willful misconduct, intentional tort, or gross negligence, the employer agrees to provide legal counsel for his defense and, unless precluded by law, to hold him harmless for any financial loss, due to either a judgment upon or settlement of such claim. Provided, however, that this Section shall not be applicable in the event the employee has been guilty of intentional tort.

Section 2. In the event of bodily injury to any member of the bargaining unit during the course of his performance of official duties at a fireground, relating to the extinguishment of said fire, said member shall be deemed to have been acting during active duty hours, for payroll period then ensuing.

Article 24

Sick Leave

Section A.

Sick leave shall be earned at the rate of ten (10) working days per year for the benefit of the firefighter/ fire driver when ill or disabled. (Five (5) days on August 1st, and five (5) days on February 1st.) A "working day" for the purposes of sick leave constitutes a twenty-four hour period.

Section B.

Each firefighter/ fire driver may accumulate sick leave to a maximum of One Hundred Sixty-Five (165) work days.

Upon retirement or separation from the department firefighters/ fire drivers shall be reimbursed for any unused sick time with a maximum cap of one hundred sixty (160) hours at their regular rate of pay. In the event of death, such benefit shall be paid to the firefighter/ fire drivers beneficiary.

Section C.

To be entitled to sick leave, firefighters/ fire drivers must notify the Chief or his designee at least three (3) hours prior to the commencement of their scheduled work shift, except in cases of emergency.

Section D.

Abuse of sick leave privileges shall be grounds for disciplinary action.

Section E.

Sick leave may not be used for an illness or injury resulting from employment other than with the Fire Department of the City of Rensselaer. Sick leave may not be used for 207-a injury resulting from employment with another fire department.

Upon use of any sick leave having a duration in excess of one (1) day may require that the employee provide written documentation from a physician, obtained at the firefighters/ fire driver's expense, substantiating the illness or injury; however, in those instances where there is reasonable cause to believe that an abuse of sick leave has occurred, the Chief may require additional medical documentation at any time to be obtained at the employee's expense. The Chief may require additional medical documentation to be furnished periodically for any use of sick leave in excess of two (2) days.

Except in cases of emergency, the firefighter/ fire driver may not charge sick leave unless proper notice has been given to the Chief or his designee at least three (3) hours prior to the commencement of the employee's tour of duty.

Article 24

Sick Leave

Section F.

The firefighter/ fire driver shall be allowed to use up to three (3) unused sick days from the preceding year as personal leave. The leave shall be allowed so as not to exceed the maximum number of employees allowed on leave in each week. Said time shall be requested at least 48 hours in advance, and must be approved by the Chief or his designee. A request shall be made in writing on or before the first pay period in July of each year to convert such sick leave to personal leave. Once converted, the leave must be used in a 24 hour period increment, and must be used within the calendar year, or the firefighter/ fire driver loses such leave.

Section G.

The employer agrees to a sick leave incentive using the following schedule:

| <u>Sick days used</u> | <u>Incentive pay</u> |
|-----------------------|----------------------|
| 0 | \$800.00 |
| 1 | \$600.00 |
| 2 | \$400.00 |
| 3 | \$300.00 |
| 4 | \$250.00 |

The employer agrees to issue this incentive the first pay period following the conclusion of the calendar year (i.e. the first paycheck in January).

Article 25

Training

Section A. All outdoor training will cease when the temperature reaches 85 degrees or drops below 32 degrees. Also, all outdoor training will cease when raining, or threat of thunder and lightning or other dangerous condition.

Section B. All training will cease at 1200 hours, for the dinner hour.

Article 26

Hours of Employment

The basic work week for all members of the Department will be forty (40) hours. The Department will be made up of four (4) platoons of Firefighters/ fire drivers. A platoon will work a shift or tour of duty, consisting of twenty-four (24) hours and will be off for the next seventy-two (72) hours. This work schedule is better known as the one (1) on and three (3) off.

Article 27

Vacant Positions

Vacant permanent positions will be filled with a permanent full-time Fire Driver, in the sole discretion of the employer, from the Civil Service list as soon as feasible, and in accordance with Civil Service Law.

Notwithstanding the foregoing, and in compliance with Article 10, Section B of this Agreement, part-time relief drivers may continue to be used, at the discretion of the Chief or his designee, to provide job coverage for any and all overtime (with the exception of Kelly Days). It is not the intent of the City to use part-time drivers to fill the vacancy of a permanent position.

Article 28

Management Rights

Except as expressly limited by statute or by other provisions of this Agreement, the employer has and retains the right and responsibility to take whatever actions may be necessary to carry out the mission of the Fire Department.

Such rights and responsibilities include, but are not limited to the following:

- A. To determine the mission, purposes, objectives and policies of the department.
- B. To determine the standard of services to be delivered by the Fire Department.
- C. To determine the facilities, methods, means and number of personnel required for the conduct of the Fire Prevention and Fire Fighting program.
- D. To hire, promote, transfer, assign, reassign and retain employees.
- E. To discipline or discharge employees in accordance with law and the provisions of this Agreement.
- F. To direct, deploy and use the work force to maintain the efficiency of the Fire Department.

Article 29

Personal Property Replacement

The City agrees that if any permanent firefighter/ fire driver of the Fire Department, covered under this Agreement, sustains damage or destruction of property, said property shall be repaired or replaced by the employer to the extent not covered by insurance.

Provided, however, that the employer shall be responsible only for reasonable reimbursement and only for damage and/or destruction actually incurred in the course of employment. All firefighters/ fire drivers are on notice that due to the nature of their job duties, that jewelry or other inappropriate clothing should not be worn and will not be reimbursed.

Article 30

Pensions

All firefighters/ fire drivers, covered under this Agreement, shall be enrolled in the New York State Policemen's and Firemen's Retirement System. Each firefighter/ fire driver, covered by this Agreement, shall have the following plan as set forth by the New York State Policemen's and Firemen's Retirement System:

Plan 375 G- this is a twenty-five (25) year at age fifty-five (55) years retirement plan with a 1/60th option for every year worked beyond twenty-five (25) years to a maximum of 5/60ths.

Plan 384 (d)- this is a twenty (20) year at any age retirement plan with a mandatory retirement at age 62.

Plan 384 (e)- The employer will offer the 1/60th salary option set forth in RSSL Section 384-e to all firefighters/ fire drivers at no cost to the firefighter/ fire driver. This is a twenty (20) year at any age retirement plan with a 1/60th option for every year worked beyond twenty (20) years. This plan has a mandatory retirement age of 62.

Article 31

Labor-Management Committee

There shall be a labor-management committee consisting of three (3) union representatives and three (3) employer representatives. The committee may meet on request of either party and at least once a quarter, except by mutual waiver, to discuss all matters of mutual concern. The committee shall have the authority to make recommendations to the union and the employer.

Any agreement reached as a result of the Labor-Management process shall be reduced to writing and signed by both parties.

Upon ratification of this Agreement, the committee shall meet as soon as feasible to develop a book of procedure of Fire Department policies and requirements to be formulated for both paid and volunteer apparatus operators.

Article 32

Family and Medical Leave of Absence Policy

Purpose:

To outline the conditions and procedures under which a firefighter/ fire driver may request time off for a limited period, as required by the federally enacted Family and Medical Leave Act ("FMLA").

Definition:

1. A "family and/or medical leave of absence" shall be defined as an approved absence available to eligible firefighters/ fire drivers for up to twelve weeks of leave per year under particular circumstances. Leave may be taken:

Upon birth of the firefighters/ fire drivers child;

Upon placement of a child with the firefighter/ fire driver of adoption or foster care;

When the firefighter/ fire driver is needed to care for a child, spouse, or parent who has a serious health condition; or

When the firefighter/ fire driver is unable to perform the functions of his/her position because of a serious health condition.

Note that an firefighter/ fire driver's entitlement to leave for the birth, adoption or placement for foster care expires at the end of the 12-month period beginning on the date of birth or placement unless the employer permits a longer time.

Article 32

Family and Medical Leave of Absence Policy

Definition (cont'd.)

2. A "serious health condition" will be defined as any illness, injury, impairment or physical or mental condition that involves (but may not be limited to) the following:
- a. any period of incapacity or treatment in connection with, or following, inpatient care in a hospital, hospice or residential medical care facility; or
 - b. any period of incapacity that requires absence from regular daily activities of more than three days and that involves continuing treatment by (or under supervision of) a health care provider.
3. "Leave" time may be paid or unpaid, see discussion below.

Responsibility:

Each Department Head is responsible for ensuring that this policy is communicated to the employees. Questions regarding the intent and interpretation of this policy shall be directed to the Office of the City Corporation Counsel.

Scope:

The provisions of this policy shall apply to all covered family medical leaves of absence for any part of the twelve (12) weeks of leave to which the firefighter/ fire driver may be entitled.

Eligibility:

To be eligible for leave under this policy, a firefighter/ fire driver must have been employed for at least twelve (12) months and must have worked at least 1250 hours during the twelve month period immediately preceding the commencement of the leave.

Leave of Absence: Paid or Unpaid:

For the adoption, birth or care of a spouse, an eligible firefighter/ fire driver must use accrued vacation, personal leave time and sick time.

For an eligible firefighter/ fire driver's own serious health condition, the firefighter/ fire driver must use all accrued leave time, including accrued sick leave. In the event the eligible firefighter/ fire driver has no accrued leave to his/her credit, the leave provided under this policy will be unpaid.

Extension of Leave:

In the event an firefighter/ fire driver requires leave in excess of the 12 week maximum described herein, the Department Head, at the Department Head's discretion, may provide additional leave. The firefighter/ fire driver will be responsible for his/her medical coverage during any extended leave.

Article 32

Family and Medical Leave of Absence policy

Permission and Documentation:

The employer will require medical certification to support a claim for leave for a firefighter/ fire driver's own serious health condition or to care for a seriously ill child, spouse or parent. For the firefighter/ fire driver's own medical leave, the certification must include a statement that the firefighter/ fire driver is unable to perform the functions of his/her position. For leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the firefighter/ fire driver is needed to provide care. The employer may require a second medical opinion and obtain periodic recertifications (at its own expense) only when the employer has reason to doubt the initial medical certification. If the first and second opinions differ, the employer, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the employer and the firefighter/ fire driver.

If medically necessary for a serious health condition of the firefighter/ fire driver or his/her spouse, child or parent, leave may be taken on an intermittent basis. Intermittent leaves are not permitted for birth or adoption, unless otherwise agreed upon by the parties.

Spouses who are both employed by the employer, are entitled to a total of twelve (12) weeks of leave (rather than twelve (12) weeks each) for the birth or adoption of a child or for the care of a sick parent.

Notification and Reporting Requirements:

When the need for leave is foreseeable, such as the birth or adoption of a child, or planned medical treatment, the firefighter/ fire driver must provide reasonable prior notice, and make efforts to schedule leave so as not to disrupt operations of the employer. In cases of illness, the firefighter/ fire driver will be required to report periodically on his/her leave status and intention to return to work.

The term "reasonable prior notice" shall mean "not less than thirty (30) days notice or as soon as practicable."

Coverage:

Family leaves may be granted for up to twelve (12) weeks during any twelve (12) month period.

The employer may deny reinstatement to a firefighter/ fire driver who fails to produce a "fitness-for-duty" certification to return to work. This requirement applies only where the reason for the leave of absence was the firefighter/ fire driver's own serious health condition.

Firefighters/ fire drivers on authorized family leaves will be covered for those medical, dental, and other health insurance benefits (with the exclusion of any negotiated firefighter/ fire driver contributions, which must begin prior to family leave) under which they were covered prior to their leave.

Article 32

Family and Medical Leave of Absence Policy

Coverage (Cont'd.)

In the event that a firefighter/ fire driver elects not to return to work upon completion of an approved unpaid leave of absence and the firefighter/ fire driver so notifies the employer, the employer may recover from the firefighter/ fire driver the cost of the premium made to maintain the firefighter/ fire driver's health insurance coverage.

Procedures:

Completion of Request for Family and Medical Leave of Absence Notice:

A request for Family and Medical Leave of Absence must be originated in duplicate, by the firefighter/ fire driver utilizing the approved form. The notice should be completed in detail, signed by the firefighter/ fire driver, submitted to the department head for proper approval, and forwarded to the Office of the City Corporation Counsel. If possible, the notice should be submitted thirty (30) days in advance of the effective date of the leave.

All requests for family and medical leaves of absence due to illness will include the following information:

Sufficient medical certification stating:

1. The date on which the serious health condition commenced;
2. The probability of duration of the condition;
3. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

In addition, for purposes of leave to care for a child, spouse or parent, the medical certification should give an estimate of the amount of time that the firefighter/ fire driver is needed to provide such care.

For purposes of leave for an firefighter/ fire driver's own illness, the medical certification must state that the firefighter/ fire driver is unable to perform the functions of his/her position.

In the case of certification for intermittent leave for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.

Article 32

Family and Medical Leave of Absence Policy

Return to Duty:

A firefighter/ fire driver returning from leave as covered by this policy is entitled to the same position held when leave began, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

The employer makes the final determination as to whether to return the firefighter/ fire driver to the same or equivalent position.

A firefighter/ fire driver who fails to return to work promptly at the expiration of the Family and Medical Leave or fails to obtain an approved extension will be notified that they have been considered to have resigned their employment. This notice as to potential "resignation" will be sent by certified mail, return receipt requested, to the affected firefighter/ fire driver at least ten (10) calendar days prior to the end of the FMLA leave.

Effect of Labor Agreement:

It is the intent of the employer to provide the standards as articulated in the federal FMLA and as detailed herein.

Change in Policy:

The City and Union will negotiate any change to this policy unless precluded by law.

Article 33

Due Process Hearing Procedure

Where, because of statutory mandate (i.e., Section 71 and/or 73 of the New York State Civil Service Law) or judicially imposed mandate, the Employer is required to hold a due process hearing, the procedure utilized by the Employer shall be as follows:

1. The Employer and Union will mutually appoint an arbitrator or hearing officer who shall have the authority to receive testimony and evidence, issue subpoenas and issue an opinion and award.
2. If the parties are unable to agree on an arbitrator, PERB will be contacted and in all cases, the rules of PERB shall apply.
3. This Article shall not apply to administrative matters, including, but not limited to grievances and arbitrations.

Article 34

Apparatus, Maintenance and Inspection

Fire apparatus (including aerial apparatus) currently employed for use by members of the Fire Department covered by this Agreement shall receive an annual safety and function test by an independent service facility or inspection point chosen by the City. All manufacturers' guidelines with respect to safe operation will be adhered to.

All general maintenance shall be performed in accordance with manufacturers' guidelines and shall be by qualified people chosen by the City.

Article 35

Sanitation Supply and Upkeep

The Employer agrees to supply a annual sanitary fee of \$500.00 to the Fire Department for all necessary supplies needed to maintain the satisfactory sanitary upkeep of all quarters within all fire houses.

Article 36

Education

Effective 8/1/99, the employer agrees to budget money to be available to a firefighter/ fire driver for educational courses, as follows:

- a. The educational course cannot be in pursuit of a college degree.
- b. A request for a course must be in writing to the Chief and copied to the Chairman of the Board of Public Safety.
- c. The course must be pre-approved by the Chief.
- d. The firefighter/ fire driver must prove satisfactory completion of the course.
- e. The courses taken by the firefighter/ fire driver must pertain to work as a firefighter.
- f. The firefighter/ fire driver must take the course on his own time.
- g. The employer shall budget \$1,000.00 annually for the purpose of paying tuition fees only. Any monies not used do not get carried over to the next year.
- h. When the money is exhausted, such request to take courses shall be denied, and the firefighter/ fire driver shall have no recourse.
- i. This Article does not apply to EMT certification.

Article 37
Procedure for the Administration of 207-a of the General Municipal Law
for the City of Rensselaer

Section 1. Intent

(a) In order to insure that determination arising by virtue of the administration of the provisions of Section 207-a of the General Municipal Law satisfy the interest of those potentially eligible for its benefit, the City of Rensselaer, and the public, the following procedure shall be utilized to make determinations in regard to benefits authorized by Section 207-a.

(b) This procedure is intended to be a supplement to the express language of Section 207-a of the General Municipal Law and it is not intended to reduce any benefits pursuant to Section 207-a of the General Municipal Law.

(c) The term "Firefighter/ fire driver" as used herein, shall include all sworn members of the Fire Department who perform firefighter duties.

Section 2. Notice of Disability or Need for Medical or Hospital Treatment

(a) A Firefighter/ fire driver who claims a right to benefits under Section 207-a of the General Municipal Law, either because of a new illness or injury or the recurrence of a prior illness or injury, shall make written notice and application for those benefits to the Chief or his designee, within ten (10) working days of when the Firefighter/ fire driver reasonably should have known that the illness or injury would give rise to the claim on the form which is made a part of this procedure.

(b) The Firefighter/ fire driver shall provide authorization for the employer to obtain copies of his medical records from his treating physician or health care provider and the employer will provide the Firefighter/ fire driver, without cost, a copy of the records and reports produced by any physicians or other experts who examine the Firefighter/ fire driver on behalf of the employer.

Article 37

Procedure for the Administration of 207-a of the General Municipal Law for the City of Rensselaer (cont'd.)

Section 3. Status Pending Determination of Eligibility for Benefits

(a) The Firefighter/ fire driver shall be placed on sick leave pending determination of his eligibility for Section 207-a benefits. The determination shall be made within the time provided in Section 4 of this procedure. If the Firefighter/ fire driver has no available sick leave he may use vacation, personal leave, or compensatory time to remain on the payroll. In the event that a timely determination is not made, the Firefighter/ fire driver shall be continued in pay status until a determination is made. Time spent on the payroll beyond the initial date for making a determination shall not be charged to the firefighter/ fire driver if it is determined that he is ineligible for the 207-a benefit.

(b) In the event that it is determined that the Firefighter/ fire driver is entitled to Section 207-a benefits, the employer shall credit back to him all leave which he expended prior to the determination.

(c) In the event that it is determined that the Firefighter/ fire driver is not entitled to Section 207-a benefits, he will be permitted to use sick leave, vacation, personal leave, and compensatory time provided he remains medically unable to perform the duties of his position.

Section 4. Benefit Determinations

(a) The employer shall promptly review a Firefighter/ fire driver's application for Section 207-a benefits and shall determine his eligibility within fifteen (15) working days after the Chief receives the application.

(b) In determining the application the employer may require a more detailed statement from the Firefighter/ fire driver than that contained on the application. The employer may take statements from witnesses and may send the Firefighter/ fire driver to an industrial/occupational physician or physicians of its choice for examination at the employer's expense.

Article 37
Procedure for the Administration of 207-a of the General Municipal Law for the City of
Rensselaer

Section 4. Benefit Determinations (cont'd.)

(c) The determination of the employer will be made in writing to the Firefighter/ fire driver, setting forth the basis for the determination. In the event that the application is denied, the employer will simultaneously provide the Firefighter/ fire driver, without cost, a copy of all medical information produced or acquired by it, in connection with the Firefighter/ fire driver's application and determination for Section 207-a benefits. The employer will continue to provide the Firefighter/ fire driver with additional medical information subsequently produced or required.

Section 5. Assignment to Light Duty

As authorized by the provisions of Subdivision 3 of Section 207-a, the Department, acting through the Chief or his designee, may assign a disabled Firefighter/ fire driver specified light duties, consistent with his/her status as a Firefighter/ fire driver. The Chief or his designee, prior to making a light duty assignment, shall advise the Firefighter/ fire driver receiving benefits under Section 207-a that his/her availability to perform light duty assignment is being reviewed. Such a Firefighter/ fire driver may submit to the Chief or his designee, any document or other evidence in regard to the extent of his/her disability. The Chief or his designee, may cause a medical examination or examinations of the Firefighter/ fire driver, to be made at the expense of the employer. The physician selected shall be provided with the list of types of duties and activities associated with a proposed light duty assignment and shall make an evaluation as to the ability of the disabled Firefighter/ fire driver to perform certain duties or activities, given the nature and extent of the disability. Upon review of the medical assessment of the Firefighter/ fire driver's ability to perform a proposed light duty assignment and other pertinent information, the Chief or his designee, may make a light duty assignment which must be consistent with medical opinion and such other information as he or she may possess. A Firefighter/ fire driver ordered to light duty shall either comply with the order or have the benefits of Section 207-a temporarily discontinued until a determination is made pursuant to Section 7 of this procedure with regard to the Firefighter/ fire driver's physical ability to perform the light duty assignment.

Article 37
Procedure for the Administration of 207-a of the General Municipal Law for the City of Rensselaer

Section 5. Assignment to Light Duty (cont'd.)

It is understood that assignment to light duty is in the nature of a "make work" assignment and that a Firefighter/ fire driver so assigned does not have any entitlement to a continued light duty assignment for an indefinite duration of time.

Nothing contained herein shall require the City of Rensselaer or its Fire Department to create light duty assignments.

Section 6. Termination of Benefits

(a) Benefits provided by Section 207-a of the General Municipal Law shall terminate upon the Firefighter/ fire driver being retired pursuant to a service retirement, an accidental disability retirement, or a performance of duty disability retirement, as set forth in the Retirement and Social Security Law.

(b) Any other termination will be subject to review pursuant to Section 7 of this Procedure. Such other termination includes termination pursuant to law, i.e., the injury ceases, the firefighter/ fire driver refuses light duty, the firefighter/ fire driver has outside employment, etc.

Section 7. Dispute Resolution Procedure

In the event that the employer denies an application for Section 207-a benefits, seeks to discontinue Section 207-a benefits, or there is a dispute about whether a Firefighter/ fire driver is capable of performing a specific light duty assignment, the matter will be submitted directly to arbitration pursuant to the rules of the Public Employment Relations Board. The party seeking to utilize this Dispute Resolution Procedure shall file a demand for Arbitration. The determination of the arbitrator shall be final and binding on the employer and the Firefighter/ fire driver, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information. The parties will divide the cost of the arbitration equally.

Article 37
Procedure for the Administration of 207-a of the General Municipal Law for the City of
Rensselaer (cont'd.)

Section 8. Disability Retirement

Consistent with Section 207-a, the employer may file an application on the Firefighter/ fire driver's behalf for retirement under Sections 363 or 363-c of the New York State Retirement and Social Security Law. Any injured or sick Firefighter/ fire driver who shall refuse to permit a medical inspection in connection with such an application for accidental disability retirement or performance of duty disability retirement shall be deemed to have waived his rights under Section 207-a with respect to expenses for medical treatment or hospital care or salary or wages payable after such refusal.

Section 9. Continuation of Contract Benefits

While on leave pursuant to Section 207-a, for a period of 90 days or less, a Firefighter/ fire driver shall continue to accrue all economic fringe benefits provided by the Collective Bargaining Agreement. After 90 days in any calendar year or continuous period of time, the Firefighter/ fire driver receiving 207-a benefits shall be entitled to the payment of salary and longevity.

Medical Release

I do hereby authorize any physician, nurse, or other health care provider who has attended, examined or treated me, or any hospital at which I have been examined or treated, to furnish the City of Rensselaer, New York, or its duly authorized representative, with any and all medical and billing information which may be requested regarding my past or present physical condition related to [specific injury, illness or body part] and treatment rendered therefore.

Signature of Firefighter

Printed name of Firefighter

Date

City of Rensselaer Fire Department
General Municipal Law Section 207-a

Application

- 1. _____
Name of Firefighter
- 2. _____
Address
- 3. _____ 4. _____
Telephone Age
- 5. _____
Name of supervisor
- 6. _____
Current job title
- 7. _____
Occupation at time of injury/illness
- 8. _____
Length of employment
- 9. _____ 10. _____ 11. _____
Date of incident Day of week Time
- 12.a. _____
Name of witness(es)
- b. _____
- c. _____
- 13.a. _____
- b. _____
- c. _____

14. Describe what the firefighter was doing when the incident occurred. (Provide as many details as possible. Use additional sheets if necessary.)

15. Where did the incident occur? Specify. _____

16. How was the claimed injury or illness sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed. Use additional sheets if necessary.) _____

17. When was the incident first reported? _____

To whom? _____ Time _____

Witness (if any) _____

18. Was first aid or medical treatment authorized? _____

By whom? _____ Time _____

19. Name and address of attending physician _____

20. Name of hospital _____

21. State nature of injury and part or parts of body affected _____

22. Will the firefighter be returning to duty? _____

When? _____

Date of report

_____, New York _____

cc: Board of Public Safety & Common Council

State of New York:

: ss.:

County of Rensselaer:

_____, being duly sworn, deposes and says that he/she has read the foregoing notice and knows the contents thereof; that the same is true to the knowledge of deponent except as the matters therein stated to be alleged upon information and belief; and that as to those matters he/she believes to be true; any false statements herein may subject the deponent to the penalties of perjury.

Sworn to before me this _____ day of _____, 20____

Notary Public-Commissioner of Deeds

Article 38

Medical Evaluations

Purpose:

The following policy is promulgated pursuant to section 1910.134 of the Occupational Safety & Health Administration (OSHA) regulations. {A copy of all applicable OSHA regulations is appended hereto as Exhibit A.} Its purpose is to establish and implement a written respiratory protection program for all firefighting personnel employed by and with the City of Rensselaer Fire Department ("Department").

Employees covered:

Pursuant to sections 1910.134(e), 1910.156(b)(2) and 1910.120(f)(2) of the OSHA regulations (see Exhibit A.), all uniformed employees of the Department will be required to complete a medical evaluation form to determine their physical ability to use a respirator. (See exhibit B.). Employees exempt from this requirement are:

- A. Those out of work pursuant to General Municipal Law 207-a: or
- B. Those out of work for an extended sick leave period (30 days or more),
- C. Those out of work due to Workers Compensation Disability.

The above-referenced employees must complete a medical evaluation prior to their return to work if the Fire Chief feels it is necessary.

Medical Evaluation:

The Department will provide a medical evaluation to determine a firefighter's ability to use a respirator prior to being fit tested or required to use a respirator. Prior to any such medical evaluation being administered all employees, as referenced under the Purpose section of this policy, will complete the OSHA respirator medical evaluation questionnaire attached hereto. (Exhibit B.) [Section 1910.134(e)(1)].

Article 38

Medical Evaluations (cont'd.)

Administration and Procedure:

- A. At the time this Policy is being adopted, parties have agreed that the City's Physician will perform the medical evaluations using the medical questionnaire referenced in the medical evaluation section, above, and/or by an initial medical examination.
- B. The medical questionnaire (Part A only), and/or examination shall be administered confidentially during the employee's normal working hours. No employee shall be required to complete a medical questionnaire or submit to an examination while not on active duty. The medical questionnaire shall be administered in a manner that ensures that the employee understands its content. [Section 1910.134(e)(4)(i) and (ii)].
- C. The employee will deliver his/her completed evaluation form to the office of the City Physician, who will then schedule an initial examination.
- D. The City Physician may/will perform a follow-up medical examination on any employee who responds to the positive to any of the questions 1 through 8 in Section 2, Part A of the questionnaire or whose initial medical examination demonstrates the need for a follow-up medical examination. The follow-up medical examination shall include any medical test, consultation or diagnostic procedure that the City Physician deems necessary to make a final determination as to the employee's ability to use a respirator. [Section 1910.134(e)(3)(i) and (ii)].
- E. In the event that a firefighter or fire officer is contacted for a follow-up medical examination, the employee will make an appointment with the City Physician without delay. The appointment with the City Physician will be scheduled during the employee's regular duty time. Notwithstanding, the confidential nature of the follow-up examination, the employee must notify the Department of the appointment to maintain staffing requirements.

Article 38

Medical Evaluations (cont'd.)

Costs:

A. The City will pay for the initial medical evaluation and any follow-up examinations performed by the City Physician.

B. The City is responsible only for the initial evaluation and follow-up examination, unless it is determined that the condition is covered by 207-a, workers compensation or other legal or contractual obligation of the City.

Determination:

In determining a firefighter's ability to use a respirator, the Department shall obtain a written recommendation from the City (see Exhibit C) which shall provide the following information only:

[Section 1910.134(e)(6), (i), (i)(a), (i)(b), and (i)(c).

A. That the employee is medically able to perform his or her duties while wearing a respirator,

B. Any limitations on respirator use related to the condition of the employee, including whether or not the employee is medically able to use the respirator,

C. The need, if any, for follow-up medical evaluation(s); and

D. A statement that the City Physician has provided the employee with a written copy of their recommendation.

Re-examination:

If the examination by the City Physician reveals that a firefighter is medically unable to perform firefighting duties with a respirator, then he/she will be subject to re-examination by the City Physician or a physician selected by the employee. All re-examinations will be scheduled within ten working days from the receipt by the City of the firefighter's results. The City may extend this period. It is the responsibility of the employee to keep the Department aware of all scheduled appointments, examinations and tests.

Article 38

Medical Evaluations (cont'd.)

Re-examination (cont'd):

In the event that the employee's physician disagrees with the findings of the City Physician concerning the employee's ability to perform his/her duties with a respirator, the employer and employee will agree on a third physician to perform a retest, and the physician's conclusions will be binding upon the parties.

Examination Failure:

In the event a firefighter fails the medical examination, he/she will be temporarily relieved of his/her duties and have available to him/her, or the designated Union representative, the following nonexclusive precluded options:

A. Use accrued, paid leave time, including sick leave and other paid leave until he/she can successfully pass a follow-up examination.

B. Apply for 207-a leave and/or Workers Compensation and/or retirement, per the Department's policy regarding administration of the same,

C. If all paid leave time (Sick leave, Longevity, Personal Leave, Vacation, etc) has been exhausted, a request to the Board of Public Safety may be made for a one time extension of paid leave time not to exceed three months; such request shall not be unreasonably denied.

** D. If all paid and unpaid leave has been exhausted, and the employee remains unable to pass the second medical examination, the City shall have the right to pursue a proceeding under Section 72 of the Civil Service Law in compliance with the law. The employee shall have the right to have this decision reviewed by a judicial review.

E. At the City's option, and if the employee is medically capable, he or she may be offered a modified assignment, consistent with his/her status as a firefighter/ fire driver. The employee will be provided a duty statement.

Article 38

Medical Evaluations (cont'd.)

Confidentiality of Medical Records:

All medical records/information will remain with the City's Physician or the employee's personal physician, and will be kept confidential in accordance with OSHA regulations and other applicable laws. The only information that will be made to the Department will be the recommendations as listed in the Determination paragraph above.

The medical reasons for not certifying a firefighter as medically Able to use a respirator will not be communicated to the Department. The City Physician or the personal physician of an employee will not disclose or disseminate any information regarding a firefighter's medical evaluation, medical examination or follow-up medical examination to any individual without first obtaining a written release form from the affected employee.

The Department will be entitled to and maintain two form letters, as identified by Exhibits 3 and 4, as well as documentation referenced in the Determination paragraph above. These records will be maintained in a confidential manner and only the Chief or his designee will have access to them. Employees covered under this policy will have access to their own records.

Employees who have utilized the City Physician may at their request, receive a copy of their medical evaluation, at no cost to the employee.

Periodic Evaluations:

The City Physician or an employee's physician will make the determination as to when the next evaluation will take place. The time frame may be up to three years, but in no circumstances will it be longer than three years.

Amendments:

The exhibits made hereto and made part of this procedure may from time to time be modified and/or amended pursuant to current OSHA regulations, provided, however, that before any changes or amendments are made, the Department and Union will discuss and agree to same in writing.

Notification and Time Frame:

The initial evaluations required by this Policy will be scheduled as soon as reasonably possible.

Refusal:

Any member of the Department who refuses to complete the medical examination, or submit to any follow-up exams may be subject to discipline, up to and including discharge, for "refusing a direct order."

**CITY OF RENSSELAER FIREFIGHTERS'
DRUG AND ALCOHOL POLICY**

PURPOSE:

1.1. The purpose of this policy is to establish the fire department policy regarding rules governing drug and alcohol testing for firefighters in the City of Rensselaer ("City"). As an employer, the City maintains a strong commitment to provide a safe, efficient work environment for its firefighters and the public they serve. This policy is based upon the City's policy and practice of prohibiting the use of alcohol and drugs on the job.

PROGRAM REQUIREMENTS:

2.1. Participation as a Condition of Employment:

All current City firefighters must participate in the drug and alcohol-testing program described herein. Failure to participate in, and comply with, any and all program requirements may result in disciplinary action by the City up to, and including, termination of employment.

2.2. Prohibited Behavior:

It is the policy of the City that:

a.) No firefighter shall use, sell, distribute, dispense, possess, or manufacture any alcoholic beverages, illegal drugs or any other intoxicating or controlled substance on a job site or on City property while on duty;

b.) No firefighter shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch, or rest period as a result of consuming alcohol, illegal drugs, or any other intoxicant or controlled substance.

2.3. Circumstances for Testing:

This policy requires that drug and alcohol tests be given to City firefighters in the following manner:

supported by the purchase, sale or possession of alcohol or drugs, unexplained changes in the firefighter's behavior or work influence of alcohol or drugs. Reasonable suspicion must be performance, an observed impairment of the firefighter's ability to perform his/her duties, or other objective criteria such as the odor of alcohol, slurred speech, staggering or impaired gait or other behavioral indicators as taught to the Chief.

2.3 Circumstances for Testing (Cont'd.)

a.) Reasonable Suspicion Testing:

Reasonable suspicion that a firefighter may be abusing drugs and alcohol exists when objective facts and observations are brought to the attention of the Fire Chief by City personnel and, based upon the reliability and weight of such information, as well as the Chief's own observations he can reasonably infer or suspect that a firefighter may be under the

2.4. Behavior that Constitutes a Refusal to Submit to a Test:

The following actions or behaviors shall constitute a refusal to submit to a required test:

- a.) Refusal to take the test;
- b.) Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
- c.) Tampering with, or attempting to adulterate the specimen or collection procedure;
- d.) Failure to report to the collection site without reasonable excuse;

2.5. Testing Procedures:

a.) Drug Testing:

Drug testing is conducted by analyzing the firefighter's urine specimen. Specimens are collected in an off-site facility that must meet the requirements of Appendix "A", and must be certified by the National Institute on Drug Abuse (NIDA) and Department of Health and Human Services, to assure privacy and the integrity of the specimen collection process. The firefighter provides a urine specimen, which is sealed and labeled by an authorized agent of the testing organization. A chain of custody document is completed and the specimen is shipped to a certified laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised.

2.5 Testing Procedures (Cont'd.)

This policy expressly provides that collection protocol will include split specimen techniques. Each urine specimen is sub-divided into two (2) containers labeled as primary and split specimen. Both specimens are forwarded to a laboratory that is certified by both the National Institute on Drug Abuse (NIDA) and the Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless, and until, it is required for confirmation of a positive test.

An initial screening test is performed. If the test is positive for one or more drugs, then a confirmation test is performed for each identified drug using a gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications are not reported as positive results.

If the analysis of the primary specimen confirms the presence of controlled substances, then the firefighter has seventy-two (72) hours to request that the split specimen be sent to another National Institute on Drug Abuse (NIDA) and Department of Health and Human Services (DHHS) certified laboratory for analysis. The split specimen procedure may provide the employee with an opportunity for a second opinion. All drug test results are reviewed and interpreted by the City Physician medical review officer, (MRO), before they are reported to the City.

If the laboratory reports a positive result to the MRO, then the MRO contacts the firefighter and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen. If the firefighter provides appropriate documentation and/or the MRO determines that there is a legitimate medical use of the prohibited drug, then the test result is reported to the City as a negative.

Urine specimens are analyzed for the following drugs:

Marijuana (THC metabolite)
Cocaine
Amphetamines
Opiates (including heroin)
Phencyclidine (PCP)

2.5 Testing Procedures (Cont'd.)

b.) Alcohol Testing:

Alcohol testing is conducted using evidential breath testing ("EBT") devices approved by the National Highway Traffic Safety Administration ("NHTSA"). A breath alcohol technician ("BAT") trained in the operation of the EBT and in the alcohol testing procedure prescribed by the rules must perform the breath test. Two (2) breath tests are required to determine if a person has a prohibited alcohol concentration. Any result from the screening test is considered negative if the alcohol concentration is less than 0.04. If the alcohol concentration is 0.04 or greater, then a confirmation test must be conducted. The firefighter and the BAT complete the alcohol testing form to ensure that the results are properly recorded.

The confirmation test must be conducted using an EBT that prints the results, date, time, in sequential test numbers, and the name and serial number of the EBT to ensure the reliability of the results. BAT's shall conduct the EBT employed by drug and alcohol testing organization under contract with the City. Agents of the City shall not perform the breath alcohol test.

Initial alcohol screening shall be conducted by a breath alcohol technician using an individually-sealed mouthpiece opened and attached to the EBT. The employee will be asked to blow forcefully into the mouth piece for at least six seconds, or until the EBT indicates that an adequate amount of breath has been obtained. If the employee states that he/she does not have sufficient air capacity, he/she shall be sent immediately for a medical evaluation for verification of the claim. Absence of verification shall be considered a refusal. If the result of the screening is an alcohol concentration of greater than 0.04, a confirmation test will be performed between 15 and 20 minutes after the completion of the screening test. Prior to the confirmation test, the EBT will be cleaned and a new mouthpiece will be used.

c.) Confidentiality of Test Results:

The City, the drug-testing laboratory, the alcohol testing facility, and the medical review officer ("MRO"), shall maintain the firefighter's alcohol and drug testing results and records under strict confidentiality. The results cannot be released to any other party, except a substance abuse professional, without written consent of said firefighter.

d.) Testing Program Costs:

The employer shall pay for all costs involving drug and alcohol testing as well as the expenses involved for the MRO. The employer shall reimburse each employee for their time and expenses including travel incurred involved in the testing procedure only.

2.6. Positive Test Results:

A.) All positive test results will be reviewed and verified by the MRO. The MRO shall examine alternate medical explanations for a positive test result. Pursuant to this responsibility, he/she may conduct a medical interview with the individual who may be accompanied to the interview by an attorney and/or a union representative, review the individual's medical history or review any other relevant biomedical factors. Members of the department who test positive for the use of drugs and alcohol, and after being interviewed by the MRO, shall be relieved of duty, upon the recommendation of the MRO, and will be directly referred to the Employee Assistance Program ("EAP") as described in Appendix "B", in lieu of disciplinary actions being taken.

a) Duty assignment after treatment:

Once an employee successfully completes rehabilitation they shall be returned to their regular duty assignment. Once treatment and follow-up care is completed, and three (3) years have passed since the employee entered the program, the employee's personnel file shall be purged of any reference to his/her drug or alcohol problem.

b.) Voluntarily treatment:

Employees who voluntarily seek treatment for substance abuse under the auspices of the Employee Assistance Program shall notify the EAP of their desire to participate in the program. The employee and the representative of the EAP shall ensure as soon as possible entrance into the program. Any employee who voluntarily seeks treatment shall not be subject to any disciplinary actions.

2.7. Managements Responsibilities:

It is the policy of the City that:

- a.) A drug and alcohol free workplace shall be maintained through the efforts and personal example of management;
- b.) The Rules of Conduct set forth in this Alcohol and Drug Policy shall apply to non-union members, union members and appointed officials;

2.7 Managements Responsibilities (cont'd):

- c.) The Fire Chief is responsible for determining through direct observation whether a firefighter is capable of performing his or her assigned duties. Determinations shall be based on specific, contemporaneous, articulable, reliable observations concerning the appearance, behavior, speech, or body odor of the employee;
- d.) Firefighters who are suspected of being unfit for duty as a result of alcohol or drug use shall be required to undergo reasonable suspicion drug and/or alcohol testing in accordance with this policy;
- e.) Incidents and behavior described above must be witnessed and documented immediately. The Chief should be consulted and advised of the incident. A firefighter who is impaired should not be allowed to drive home from the work place or the test site. The Chief should arrange to send the unfit firefighter home with a member of the employee's family or friend of the firefighter or in a taxi at the firefighter's expense. If all other alternatives are exhausted, the Chief may allow a firefighter who is unfit for duty to then be driven home in a City vehicle;
- f.) When the employee is removed from the work place, the position will be filled with additional personnel so as not to decrease the on-duty staffing. The fact that an unfit firefighter engaged in prohibited behavior as defined in Section 2.2 above and was not allowed to remain at work or was tested is not considered a disciplinary suspension;
- g.) The Chief is encouraged to discuss with firefighters any behavior or job performance factors that may indicate the use of drugs, alcohol, or other violations of this policy and to suggest, when appropriate, that a firefighter seek assistance through the City EAP;
- h.) Firefighters who make reasonable suspicion determinations must receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol abuse. Such training shall be conducted by the staff of the City's EAP.

2.8. Work-Related Exposure:

The purpose of this section is to protect the firefighters of the City from wrongful action as a result of exposure to illicit drugs and/or controlled substances during the course of their duties. As emergency personnel, firefighters and firefighter/EMTs are sometimes called to emergency scenes where they may inadvertently or unavoidably become exposed to substances, vapors, and/or smoke of a controlled substance (controlled or otherwise) and illicit drugs. In order to protect those employees who are exposed to substances that may or may not show a positive test for drug use, a log book will be maintained at headquarters to properly document such exposures.

2.8 Work Related Exposures (Cont'd.)

This log will document the employees name, date, time, location of exposure, a brief narrative of how the exposure occurred (i.e. inhalation, absorption, etc.). and whether or not medical attention was sought. This log will be utilized to rule out positive test results due to exposure from employment. The employee is responsible for making such notification and documentation at the earliest opportunity of becoming aware of his potential exposure to such substances. The log book will be kept by the Fire Chief and for each notification made to him a numerical exposure number will be given for that incident. Both the Fire Chief and the employee will sign the log after each entry to insure that the integrity of the log is not compromised.

2.9. Union Held Harmless:

This drug and alcohol testing program was initiated at the request of the Employer. The City assumes sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this collective bargaining agreement relating to drug and alcohol testing. The Union shall be held harmless for the violation of any workers' rights arising from the administration of the drug and alcohol testing program.

2.10. Changes in Testing Procedures:

The parties recognize that during the life of this agreement, there may be improvements in the technology of testing procedures which provide more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree on the amendments they will be submitted to impasse procedures as outlined in the Grievance Procedure of this Contract.

APPENDIX "A"

UNITED OCCUPATIONAL MEDICINE

PROCEDURE FOR DOT URINE DRUG COLLECTION

1. Upon arrival at the collection site the collector shall request the donor to present photo identification ("ID"). If no photo ID is available, a Company Representative must verify ID.
2. The donor will be asked to remove any unnecessary outer garments (e.g. coat, jacket) that might conceal items or substances that could be used to tamper with or adulterate his/her urine specimen. Also, all personal belongings (e.g. purse, briefcase) must remain with outer garments.
3. Each donor will be required to sign a VHS Hospital "Consent for Urine Drug Testing."
4. The donor will be instructed to wash and dry.
5. After washing hands, the donor will remain in the presence of the collector and not have access to water fountains, faucets or cleaning agents.
6. At the collection site, toilet bluing agents will be placed in the toilet water, so the reservoir of water is always blue. The water supply to the sink will be shut off prior to the collection.
7. The donor may provide a specimen in the privacy of the bathroom.
8. Upon receipt of the specimen, the collector will determine the contents to be at least 45 milliliters to produce a split specimen.
9. Within four (4) minutes after collection, the collector will measure the temperature of the specimen and conduct an inspection to determine the specimen's color and signs of contaminants. Any unusual findings resulting from inspection must be included on the chain of custody form.
10. If the temperature of the specimen is outside the range of 32.5 - 37.5c/ 90.5 - 99.5 F, the specimen may be re-collected under direct observation and both specimens sent to the laboratory. (A donor may volunteer to have an oral temperature taken to provide evidence of fever or abnormally low body temperature). Under direct observation, the individual will have the right to request an observer of the same gender.
11. If a collection bottle was used, the collector, in the presence of the donor, will pour the urine into two specimen bottles. Thirty (30) milliliters shall be poured into one bottle, to be used as the primary specimen. At least 15 milliliters will be poured into a second bottle to be used as the split specimen.
12. Both bottles will be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form.
13. If the individual is unable to provide 45 milliliters of urine, the collector will instruct the donor to drink not more than 40 ounces of fluids and, after a period of up to three hours, again attempt to provide a complete sample in a fresh container. The original insufficient specimen will be discarded. If the donor is still unable to provide an adequate specimen, the testing will be discontinued and the employer notified.
14. The donor and the collector will keep the specimen in view at all times prior to sealing and labeling. If for any reason the specimen is transferred to a second container, the collector shall request the donor to observe the transfer of the specimen and placement of the tamper-proof seal over the bottle cap and down the sides of the bottle. The donor must initial the tamper-proof seal.
15. The specimen(s) will be identified by bar code and social security number.
16. The collector will be entered the identification information on the chain of custody form. Both the collector and the donor will sign the form with the identifying information. The specimen will be placed in locked box for storage until courier transport takes place. The collector copy of the chain of custody form will remain at the collection site.

APPENDIX "B" CITY OF RENSSELAER EMPLOYEE ASSISTANCE PROGRAM

POLICY STATEMENT

Many influences may detract from an employee's ability to perform. The City recognizes that virtually all personal concerns can be successfully dealt with and resolved provided that they are identified at an early stage. These concerns may be caused by physical illness, excessive use of alcohol, drug abuse, family and personal concerns, financial or legal problems, or other behavioral/medical disorders which can result in poor job performance and/or excessive absenteeism.

Therefore, the City has made available to all its employees an Employee Assistance Program ("EAP") that offers counseling and referral services to employees at no charge. The objective of this program is to benefit both the employee and the City by providing professional assistance in a confidential manner to employees who are experiencing any type of personal concern. The on-the-job effects of personal concerns can be minimized and employees can receive meaningful help in improving their personal life.

This program is part of the City's continuing interest in the well-being of its employees. There are positive workable solutions to the above-mentioned concerns. Successfully EAPs can help restore troubled employees to better physical and mental health. The City and Firefighter's Union agree that providing the means whereby employees are motivated to seek solutions to their personal concerns is not only in their mutual interest as employer and employee representative, but is also a direct benefit to the employees involved, their families, the community, and ultimately to the people we serve.

A.) The EAP has been initiated in order to:

- 1.) Identify the aforementioned conditions at the earliest possible stage.
- 2.) Motivate employees and their families to seek help.
- 3.) Provide for employees to receive the best possible assistance available.

An EAP Coordinating Committee, with broad employee representation, will be established to review, monitor and assess the program's overall effectiveness.

B.) The EAP is provided within the following framework:

- 1.) All records pertaining to the EAP will be kept confidential. No information obtained from or about an employee as a result of his or her participation in the program shall be made available to be used for any purpose unless a "Consent to Release Information" form has been signed by the employee and acknowledged.
- 2.) The City assures that the decision to seek or not seek assistance through the EAP will in no way be detrimental to an employee's job security or advancement opportunities.
- 3.) The City's sole interest in personal concerns is strictly limited to the effect of the problems on employee's work performance standards.
- 4.) It is the responsibility of the employee to meet acceptable work performance standards.
- 5.) It is the responsibility of supervisors at all levels to implement this policy by remaining alert to all instances of substandard work performance and to bring these to the attention of the employee, along with an offer of assistance, at the earliest indication of a recurrent pattern. Supervisors are not to attempt to diagnose or even discuss the nature of the personal concern responsible for the pattern of poor performance. The EAP will not be used for disciplinary action of any kind against the employee. It is the supervisor's responsibility to evaluate the employee only in terms of work performance.
- 6.) Sick leave or salary continuance will be provided in accordance with the existing "contract" between the City and the career firefighters' bargaining unit.


Nothing in the Policy Statement or in the EAP is to be interpreted as a waiver of management's responsibility to maintain discipline or the right to invoke disciplinary measures.

Duration Clause

This Agreement shall be effective as of August 1, 2006 and shall remain in full force and effect until July 31, 2009. Except, however, that on or after February 1st, 2009 either party may serve notice upon the other party of an intent to commence negotiations for a new Agreement. The parties shall make every effort, after notice is served, to promptly commence negotiations. The terms and conditions of this Agreement shall continue in full force and effect so long as both parties continue to negotiate in good faith for a new Agreement.

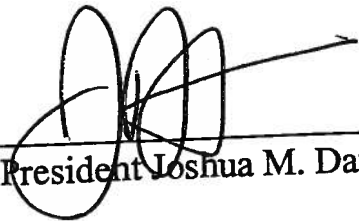
Nothing in this Agreement is intended or shall be construed to diminish, reduce, impair, or jeopardize any existing benefits, rights or privileges of any firefighter/ fire driver or member pursuant to individual contracts entered into in 1992 between the employer and its firefighters/ fire drivers. Each and every such individual contract shall survive the within Agreement. These lifetime contracts are not applicable to anyone other than those who have them in May of 1995.

Representing the employer-
The City of Rensselaer, NY



Mayor Daniel Dwyer

Representing the employee-
Rensselaer I.A.F.F. Local 2643



President Joshua M. Davenport

Appendix A

Sample Lifetime Contract Agreement

In addition to the Collective Bargaining Agreement, the individual stated, shall enjoy the benefits of a separate individual agreement contained herein. The duration of this Agreement is in effect with the individual stated until such employee shall have attained twenty-five (25) years of permanent service and subject to the following:

1.) The employer shall not lay-off, suspend, or terminate the employee stated due to budgetary or financial reasons or due to the abolition or consolidation of programs or positions or for any other reasons except as allowed by sections 75 or 73 of the Civil Service Law.

2.) The employee may, at his option, retire or otherwise leave his employment with the employer as provided by law and subject to the Collective Bargaining Agreement in effect at time of ratification or as it may be amended or superseded in the future.

This Agreement is independent of and shall survive the expiration and or termination of the Collective Bargaining Agreement between the Rensselaer Professional Firefighters, I.A.F.F. Local 2643 and the City of Rensselaer, New York in effect at the ratification of this Agreement, and any subsequent modifications superseding said Collective Bargaining Agreement.

In the event the employer elects to terminate the employment of the employee stated contrary to the terms of this Agreement, or if the employer or another successfully petitions or joins in a petition to a Court of competent jurisdiction to render a final determination that the provisions for employment for the term hereunder are unenforceable and the employer subsequently terminates the employee, then the employer shall pay the employee stated an amount equal to ninety (90%) percent of the base salary at the time of said termination multiplied by the number of years remaining until such time as the employee would have attained the mandatory retirement age applicable to him or would have attained the age or performed the period of services specified by law for the termination of his service if employment had continued. For the purposes of this paragraph, any portion of a year of the remaining term of the employee's employment shall be prorated. The employee and the employer agree that payments set forth herein are reasonable, and not a penalty, based upon the facts and circumstances of the parties at the time of entering this agreement, and with due regard to future expectations.

Insofar as any provision of this Agreement conflicts with Local Law, ordinance or resolution of the City of Rensselaer, New York, appropriate Common Council action shall be taken to render such Local Law, ordinance, or resolution compatible with the terms of this Agreement. Upon the execution of this Agreement by the parties, appropriate Common Council action will be taken to approve and ratify the terms and conditions of this Agreement. This individual Agreement is given in consideration for the sum of \$1.00 paid to the City of Rensselaer by the above referenced firefighter/fire driver.

Dated:

Employee

For the City of Rensselaer, New York

Exhibit A

Code of Federal Regulations
Title 29 – Labor
Subtitle B- Regulations Relating to Labor
Chapter XVII- Occupational Safety and Health Administration,
Department of Labor
Part 1910- Occupational Safety and Health Standards
Subpart 1- Personal Protective Equipment
Current through December 19, 2002, 67 FR 77697

Appendix A to 1910.134: Fit Testing Procedures (Mandatory)

Part 1. OSHA- Accepted Fit Test Protocols

A. Fit Testing Procedures- General Requirements

The employer shall conduct fit testing using the following procedures. The requirements in this appendix apply to all OSHA accepted fit test methods, both QLFT and QNFT.

1. The test subject shall be allowed to pick the most acceptable respirator from a sufficient number of respirator models and sizes so that the respirator is acceptable to, and correctly fits, the user.
2. Prior to the selection process, the test subject shall be shown how to put on the respirator, how it should be positioned on the face, how to set strap tension and how to determine an acceptable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, because it is only a review.
3. The test subject shall be informed that he/she is being asked to select the respirator that provides the most acceptable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.
4. The test subject shall be instructed to hold each chosen facepiece up to the face and eliminate those that obviously do not give an acceptable fit.
5. The more acceptable facepieces are noted in case the one selected proves unacceptable; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in the following item A.6. If the test subject is not familiar with using a particular respirator, the test subject shall be asked to don the mask several times and adjust the straps each time to become adept at setting the proper tension on the straps.
6. Assessment of comfort shall include a review of the following points with the test subject and allow the test subject adequate time to determine the comfort of the respirator:
 - (a) Position of the mask on the nose
 - (b) Room for eye protection
 - (c) Room to talk
 - (d) Position of mask on face and cheeks
7. The following criteria shall be used to help determine the adequacy of the respirator fit:
 - (a) Chin properly placed;
 - (b) Adequate strap tension, not overly tightened;
 - (c) Fit across nose bridge;
 - (d) Respirator of proper size to span distance from nose to chin;
 - (e) Tendency of respirator to slip;
 - (f) Self-observation in mirror to evaluate fit and respirator position.
8. The test subject shall conduct a user seal check, either the negative and positive pressure seal checks described in Appendix B-1 of this section or those recommended by the respirator manufacturer which provide equivalent protection to the procedures in Appendix B-1. Before conducting the negative and positive pressure checks, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the user seal check tests.
9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, mustache or sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.
10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician or other licensed health care professional, as appropriate, to determine whether the test subject can wear a respirator while performing her or his duties.
11. If the employee finds the fit of the respirator unacceptable, the test subject shall be given the opportunity to select a different respirator and to be retested.

12. Exercise regimen. Prior to commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

13. The fit test shall be performed while the test subject is wearing any applicable safety equipment that may be worn during actual respirator use that could interfere with respirator fit.

14. Test exercises. (a) The following test exercises are to be performed for all fit testing methods prescribed in this appendix, except for the CNP method. A separate fit testing exercise regimen is contained in the CNP protocol. The test subject shall perform exercises, in the test environment, in the following manner:

- (1) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.
- (2) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as not to hyperventilate.
- (3) Turning head side to side. Standing in place, the subject shall slowly turn his./her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.
- (4) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale at the up position (i.e., when looking toward the ceiling).
- (5) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a poem or song.

Rainbow Passage

When 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 one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

(6) Grimace. The test subject shall grimace by smiling or frowning. (This applies only to QNFT testing, it is not performed for QLFT).

(7) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT or QLFT units that do not permit bending over at the waist.

(8) Normal breathing. Same as exercise (1).

(b) Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds. The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become unacceptable, another model of respirator shall be tried. The respirator shall not be adjusted once the fit test exercises begin. Any adjustment voids the test, and the fit test must be repeated.

B. Qualitative Fit Test (QLFT) Protocols

1. General

- (a) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and ensure that test equipment is in proper working order.
- (b) The employer shall ensure that QLFT equipment is kept clean and well maintained so as to operate within the parameters for which it was designed.

2. Isoamyl Acetate Protocol

Note: This protocol is not appropriate to use for the fit testing of particulate respirators. If used to fit test particulate respirators, the respirator must be equipped with an organic vapor filter.

(a) Odor Threshold Screening

Odor threshold screening, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate at low levels.

- (1) Three 1 liter glass jars with metal lids are required.
- (2) Odor-free water (e.g., distilled or spring water) at approximately 25 degrees Celsius (77 FF) shall be used for the solutions.
- (3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 ml. of pure IAA to 80 ml. of odor-free water in a 1 liter jar, closing the lid and shaking for 30 seconds. A new solution shall be prepared at least weekly.
- (4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well-ventilated to prevent the odor of IAA from becoming evident in the general room air where testing takes place.

- (5) The odor test solution is prepared in a second jar by placing 0.4 ml. of the stock solution into 500 ml. of odor-free water using a dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.
- (6) A test blank shall be prepared in a third jar by adding 500 cc of odor-free water.
- (7) The odor test and test blank jar lids shall be labeled (e.g., 1 and 2) for jar identification. Labels shall be placed on the lids so that they can be peeled off periodically and switched to maintain the integrity of the test.
- (8) The following instruction shall be typed on a card and placed in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."
- (9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.
- (10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.
- (11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) Isoamyl Acetate Fit Test

- (1) The fit test chamber shall be a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. If no drum liner is available, a similar chamber shall be constructed using plastic sheeting. The inside top center of the chamber shall have a small hook attached.
- (2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors.
- (3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well-ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.
- (4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.
- (5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 ml. of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber. An IAA test swab or ampule may be substituted for the IAA wetted paper towel provided it has been demonstrated that the alternative IAA source will generate an IAA test atmosphere with a concentration equivalent to that generated by the paper towel method.
- (6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk to the test subject, to explain the fit test, the importance of his/her cooperation, and the purpose of the test exercises; or to demonstrate some of the exercises.
- (7) If at any time during the test, the subject detects the banana-like odor of IAA, the test is failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.
- (8) If the test is failed, the subject shall return to the selection room and remove the respirator. The test subject shall repeat the odor sensitivity test, select and put on another respirator, return to the test area and again begin the fit test procedure described in (b) (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait at least 5 minutes before retesting. Odor sensitivity will usually have returned by this time.
- (9) If the subject passes the test, the efficiency of the test procedure shall be demonstrated by having the test subject break the respirator face seal and take a deep breath before exiting the chamber.
- (10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test, so that there is no significant IAA concentration buildup in the chamber during subsequent tests. The used towels shall be kept in a self-sealing plastic bag to keep the test area from being contaminated.

3. Saccharin Solution Aerosol Protocol

The entire screening and testing procedures shall be explained to the test subject prior to the conduct of the screening test.

- (a) Taste threshold screening. The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.
- (1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the

- head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.
- (2) The test enclosure shall have a 3/4 -inch (1.9 cm) hole in the front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.
 - (3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her slightly opened mouth with the tongue extended. The subject is instructed to report when he/she detects a sweet taste.
 - (4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. The nozzle is directed away from the nose and mouth of the person. The nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.
 - (5) The threshold check solution is prepared by dissolving 0.83 grams of sodium saccharin USP in 100 ml. of warm water. It can be prepared by putting 1 ml. of the fit test solution (see (b)(5) below) in 100 ml. of distilled water.
 - (6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.
 - (7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted. If the test subject reports tasting the sweet taste during the ten squeezes, the screening test is completed. The taste threshold is noted as ten regardless of the number of squeezes actually completed.
 - (8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted. If the test subject reports tasting the sweet taste during the second ten squeezes, the screening test is completed. The taste threshold is noted as twenty regardless of the number of squeezes actually completed.
 - (9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted. If the test subject reports tasting the sweet taste during the third set of ten squeezes, the screening test is completed. The taste threshold is noted as thirty regardless of the number of squeezes actually completed.
 - (10) The test conductor will take note of the number of squeezes required to solicit a taste response.
 - (11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject is unable to taste saccharin and may not perform the saccharin fit test.

Note to paragraph 3. (a): If the test subject eats or drinks something sweet before the screening test, he/she may be unable to taste the weak saccharin solution.

- (12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.
 - (13) Correct use of the nebulizer means that approximately 1 ml. of liquid is used at a time in the nebulizer body.
 - (14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.
- (b) Saccharin solution aerosol fit test procedure.
- (1) The test subject may not eat, drink (except plain water), smoke, or chew gum for 15 minutes before the test.
 - (2) The fit test uses the same enclosure described in 3 (a) above.
 - (3) The test subject shall don the enclosure while wearing the respirator selected in section 1. A of this appendix. The respirator shall be properly adjusted and equipped with a particulate filter (s).
 - (4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.
 - (5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 ml. of warm water.
 - (6) As before, the test subject shall breathe through the slightly opened mouth with tongue extended, and report if he/she tastes the sweet taste of saccharin.
 - (7) The nebulizer is inserted into the hole in front of the enclosure and an initial concentration of saccharin fit test solution is sprayed into the enclosure using the same amount of squeezes (either 10, 20 or 30 squeezes) based on the number of squeezes required to elicit a taste response noted during the screening test. A minimum of 10 squeezes is required.
 - (8) After generating the aerosol, the test subject shall be instructed to perform the exercises in section 1.A. 14, of this appendix.
 - (9) Every 30 seconds the aerosol concentration shall be replenished using one half the original number of squeezes used initially (e.g., 5, 10 or 15).
 - (10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected. If the test subject does not report tasting the saccharin, the test is passed.
 - (11) If the taste of saccharin is detected, the fit test is deemed unsatisfactory and the test is failed. A different respirator shall be tried and the entire test procedure is repeated (taste threshold screening and fit testing).
 - (12) Since the nebulizer has a tendency to clog during use, the test operator must make periodic checks of the nebulizer to ensure that it is not clogged. If clogging is found at the end of the test session, the test is invalid.

4. Bitrex (Denatonium Benzoate) Solution Aerosol Qualitative Fit Test Protocol

The Bitrex (Denatonium benzoate) solution aerosol QLFT protocol uses the published saccharin test protocol because that protocol is widely accepted. Bitrex is routinely used as a taste aversion agent in household liquids which children should not be drinking and is endorsed by the American Medical Association, the National Safety Council, and the American Association of

Poison Control Centers. The entire testing and screening procedure shall be explained to the test subject prior to the conduct of the screening test.

- (a) Taste Threshold Screening. The Bitrex taste threshold screening, performed without using a respirator, is intended to determine whether the individual being tested can detect the taste of Bitrex.
- (1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches (30.5 cm.) in diameter by 14 inches (35.6 cm.) tall. The front portion of the enclosure shall be clear from the respirator and shall allow free movement of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.
 - (2) The test enclosure shall have a ¼ inch (1.9 cm.) hole in the front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.
 - (3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his or her slightly open mouth with tongue extended. The subject is instructed to report when he/she detects a better taste.
 - (4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the Threshold Check Solution into the enclosure. This Nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.
 - (5) The Threshold Check Solution is prepared by adding 13.5 milligrams of Bitrex to 100 ml. of 5% salt (NaCl) solution in distilled water.
 - (6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that the bulb collapses completely, and is then released and allowed to fully expand.
 - (7) An initial ten squeezes are repeated rapidly and then the test subject is asked whether the Bitrex can be tasted. If the test subject reports tasting the bitter taste during the ten squeezes, the screening test is completed. The taste threshold is noted as ten regardless of the number of squeezes actually completed.
 - (8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the Bitrex is tasted. If the test subject reports tasting the bitter taste during the second ten squeezes, the screening test is completed. The taste threshold is noted as twenty regardless of the number of squeezes actually completed.
 - (9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the Bitrex is tasted. If the test subject reports tasting the bitter taste during the third set of ten squeezes, the screening test is completed. The taste threshold is noted as thirty regardless of the number of squeezes actually completed.
 - (10) The test conductor will take note of the number of squeezes required to solicit a taste response.
 - (11) If the Bitrex is not tasted after 30 squeezes (step 10), the test subject is unable to taste Bitrex and may not perform the Bitrex fit test.
 - (12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.
 - (13) Correct use of the nebulizer means that approximately 1 ml. of liquid is used at a time in the nebulizer body.
 - (14) The nebulizer shall be thoroughly rinsed in water, shaken to dry, and refilled at least every morning and afternoon or at least every four hours.
- (b) Bitrex Solution Aerosol Fit Test Procedure.
- (1) The test subject may not eat, drink (except plain water), smoke, or chew gum for 15 minutes before the test.
 - (2) The fit test uses the same enclosure as that described in 4. (a) above.
 - (3) The test subject shall don the enclosure while wearing a respirator selected according to section 1.A. of this appendix. The respirator shall be properly adjusted and equipped with any type particulate filter(s).
 - (4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.
 - (5) The fit test solution is prepared by adding 337.5 mg. of Bitrex to 200 ml. of a 5% salt (NaCl) solution in warm water.
 - (6) As before, the test subject shall breathe through his or her slightly open mouth with tongue extended, and be instructed to report if he/she tastes the bitter taste of Bitrex.
 - (7) The nebulizer is inserted into the hole in front of the enclosure and an initial concentration of the fit test solution is sprayed into the enclosure using the same number of squeezes (either 10, 20 or 30 squeezes) based on the number of squeezes required to elicit a taste response as noted during the screening test.
 - (8) After generating the aerosol, the test subject shall be instructed to perform the exercises in section 1.A. 14. of this appendix.
 - (9) Every 30 seconds, the aerosol concentration shall be replenished using one half the number of squeezes used initially (e.g., 5, 10 or 15).
 - (10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of Bitrex is detected. If the test subject does not report tasting the Bitrex, the test is passed.
 - (11) If the taste of Bitrex is detected, the fit is deemed unsatisfactory and the test is failed. A different respirator shall be tried and the entire test procedure is repeated (taste threshold screening and fit testing).

5. Irritant Smoke (Stannic Chloride) Protocol

This qualitative fit test uses a person's response to the irritating chemicals released in the "smoke" produced by a stannic chloride ventilation smoke tube to detect leakage into the respirator.

(a) General Requirements and Precautions

- (1) The respirator to be tested shall be equipped with high efficiency particulate air (HEPA) or P100 series filter(s).
- (2) Only stannic chloride smoke tubes shall be used for the protocol.
- (3) No form of test enclosure or hood for the test subject shall be used.
- (4) The smoke can be irritating to the eyes, lungs and nasal passages. The test conductor shall take precautions to minimize the test subject's exposure to irritant smoke. Sensitivity varies, and certain individuals may respond to a greater irritant smoke. Care shall be taken when performing the sensitivity screening checks that determine whether the test subject can detect irritant smoke to use only the minimum amount of smoke necessary to elicit a response from the test subject.
- (5) The fit test shall be performed in an area with adequate ventilation to prevent exposure of the person conducting the fit test or build-up of irritant smoke in the general atmosphere.

(b) Sensitivity Screening Check

The person to be tested must demonstrate his or her ability to detect a weak concentration of the irritant smoke.

- (1) The test operator shall break both ends of a ventilation smoke tube containing stannic chloride and attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute, or an aspirator squeeze bulb. The test operator shall cover the other end of the smoke tube with a short piece of tubing to prevent potential injury from the jagged end of the smoke tube.
- (2) The test operator shall advise the test subject that the smoke can be irritating to the eyes, lungs, and nasal passages and instruct the subject to keep his/her eyes closed while the test is performed.
- (3) The test subject shall be allowed to smell a weak concentration of irritant smoke before the respirator is donned to become familiar with its irritating properties and to determine if he/she can detect the irritating properties of the smoke. The test operator shall carefully direct a small amount of the irritant smoke in the test subject's direction to determine that he/she can detect it.

(c) Irritant Smoke Fit Test Procedure

- (1) The person being fit tested shall don the respirator without assistance, and perform the required seal check(s).
- (2) The test subject shall be instructed to keep his/her eyes closed.
- (3) The test operator shall direct the stream of irritant smoke from the smoke tube toward the face seal area of the test subject, using the low flow pump or the squeeze bulb. The test operator shall begin at least 12 inches from the facepiece and move the smoke stream around the whole perimeter of the mask. The operator shall gradually make two more passes around the perimeter of the mask, moving to within six inches of the respirator.
- (4) If the person being tested has not had an involuntary response and/or detected the irritant smoke, proceed with the test exercises.
- (5) The exercises identified in Section 1.A. 14. of this appendix shall be performed by the test subject while the respirator seal is being continually challenged by the smoke, directed around the perimeter of the respirator at a distance of six inches.
- (6) If the person being fit tested reports detecting the irritant smoke at any time, the test is failed. The person being retested must repeat the entire sensitivity check and fit test procedure.
- (7) Each test subject passing the irritant smoke test without evidence of a response (involuntary cough, irritation) shall be given a second sensitivity screening check, with the smoke from the same smoke tube used during the fit test, once the respirator has been removed, to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.
- (8) If a response is produced during this second sensitivity check, then the fit test is passed.

C. Quantitative Fit Test (QNFT) Protocols

The following quantitative fit test procedures have been demonstrated to be acceptable: Quantitative fit testing using a non-hazardous test aerosol (such as corn oil, polyethylene glycol 400 [PEG 400], di-2-ethyl hexyl sebacate [DEHS], or sodium chloride) generated in a test chamber, and employing instrumentation to quantify the fit of the respirator; Quantitative fit testing using ambient aerosol as the test agent and appropriate instrumentation (condensation nuclei counter) to quantify the respirator fit; Quantitative fit testing using controlled negative pressure and appropriate instrumentation to measure the volumetric leak rate of a facepiece to quantify the respirator fit.

1. General

- (a) The employer shall ensure that the persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and ensure that the test equipment is in proper working order.
- (b) The employer shall ensure that the QNFT equipment is kept clean, and is maintained and calibrated to the manufacturer's instructions so as to operate at the parameters for which it was designed.

2. General Aerosol Quantitative Fit Testing Protocol

- (a) Apparatus
 - (1) Instrumentation. Aerosol generation, dilution, and measurement systems using particulates (corn oil, polyethylene glycol 400 [PEG 400], di-2-ethyl hexyl sebacate [DEHS], or sodium chloride) as test aerosols shall be used for quantitative fit testing.
 - (2) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the test agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the test agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.
 - (3) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high efficiency particulate air (HEPA) or P100 series filter supplied by the same manufacturer.
 - (4) The sampling instrument shall be selected so that a computer record or strip chart record may be made of the test showing the rise and fall of the test agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers that integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record for the readings is made.
 - (5) The combination of substitute air-purifying elements, test agent and test agent concentration shall be such that the test subject is not exposed in excess of an established exposure limit for the test agent at any time during the testing process, based upon the length of the exposure and the exposure limit duration.
 - (6) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g., where the respirator is probed), a free air flow is allowed into the sampling line at all times, and there is no interference with the fit or performance of the respirator. The in-mask sampling device (probe) shall be designed and used so that the air sample is drawn from the breathing zone of the test subject, midway between the nose and mouth and with the probe extending into the facepiece cavity at least ¼ inch.
 - (7) The test setup shall permit the person administering the test to observe the test subject inside the chamber during the test.
 - (8) The equipment generating the test atmosphere shall maintain the concentration of test agent constant to within a 10 percent variation for the duration of the test.
 - (9) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of the event and its being recorded.
 - (10) The sampling line tube for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.
 - (11) The exhaust flow from the test chamber shall pass through an appropriate filter (i.e., high efficiency particulate filter) before release.
 - (12) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.
 - (13) The limitations of instrument detection shall be taken into account when determining the fit factor.
 - (14) Test respirators shall be maintained in proper working order and inspected regularly for deficiencies such as cracks or missing valves and gaskets.
- (b) Procedural Requirements
 - (1) When performing the initial user seal check using a positive or negative pressure check, the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these pressure checks.
 - (2) The use of an abbreviated screening QLFT test is optional. Such a test may be utilized in order to quickly identify poor fitting respirators that passed the positive and/or negative pressure test and reduce the amount of QNFT time. The use of CNC QNFT instrument in the count mode is another optional method to obtain a quick estimate of fit and eliminate poor fitting respirators before going on to perform a full QNFT.
 - (3) A reasonably stable test agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain types of test units, the determination of the test agent's stability may be established after the test subject has entered the test environment.
 - (4) Immediately after the subject enters the test chamber, the test agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.
 - (5) A stable test agent concentration shall be obtained prior to the actual start of testing.

(6) Respirator restraining straps shall not be over-tightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonably comfortable fit typical of normal use. The respirator shall not be adjusted once the fit test exercises begin.

(7) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested.

(8) Calculation of fit factors.

(i) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration measured inside the respirator for each test exercise except the grimace exercise.

(ii) The average test chamber calculation shall be calculated as the arithmetic average of the concentration measured before and after each test (i.e., 7 exercises) or the arithmetic average of the concentration measured before and after each exercise or the true average measured continuously during the respirator sample.

(iii) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(A) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers that calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(B) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(C) Integration by calculation of the area under the individual peak for each exercise except the grimace exercise. This includes computerized integration.

(D) The calculation of the overall fit factor using individual exercise fit factors involves first converting the exercise fit factors to penetration values, determining the average, and then converting that result back to a fit factor.

(9) The test subject shall not be permitted to wear a half mask or quarter facepiece respirator unless a minimum fit factor of 100 is obtained, or a full facepiece respirator unless a minimum fit factor of 500 is obtained.

(10) Filters used for quantitative fit testing shall be replaced whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media.

3. Ambient aerosol condensation nuclei counter (CNC) quantitative fit testing (Portacount) protocol quantitatively fit tests respirators with the use of a probe. The probed respirator is only used for quantitative fit tests. A probed respirator has a special sampling device, installed on the respirator, that allows the probe to sample the air from inside the mask. A probed respirator is required for each make, style, model, and size that the employer uses and can be obtained from the respirator manufacturer or distributor. The CNC instrument manufacturer, TSI Inc., also provides probe attachments (TSI sampling adapters) that permit fit testing in an employee's own respirator. A minimum fit factor pass level of at least 100 is necessary for a half-mask respirator and a minimum fit factor pass level of at least 500 is required for a full facepiece negative pressure respirator. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Portacount Fit Test Requirements.

(1) Check the respirator to make sure the sampling probe and line are properly attached to the facepiece and that the respirator is fitted with a particulate filter capable of preventing significant penetration by the ambient particles used for the fit test (e.g., NIOSH 42 CFR 84 Series 100, series 99, or series 95 particulate filter) per manufacturer's instruction.

(2) Instruct the person to be tested to don the respirator for five minutes before the fit test starts. This purges the ambient particles trapped inside the respirator and permits the wearer to make certain the respirator is comfortable. This individual shall already have been trained on how to wear the respirator properly.

(3) Check the following conditions for the adequacy of the respirator fit: Chin properly placed; distance from nose to chin; Tendency of the respirator to slip; Self-observation in mirror to evaluate fit and respirator position.

(4) Have the person wearing the respirator do a user seal check. If leakage is detected, determine the cause. If leakage is from poorly fitting facepiece, try another size of the same model respirator, or another model of respirator.

(5) Follow the manufacturer's instructions for operating the Portacount and proceed with the test.

(6) The test subject shall be instructed to perform the exercises in section 1.A.14. of this appendix.

(7) After the test exercises, the test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become unacceptable, another model of respirator shall be tried.

(b) Portacount Test Instrument.

(1) The Portacount will automatically stop and calculate the overall fit factor for the entire set of exercises. The overall fit factor is what counts. The Pass or Fail message will indicate whether or not the test was successful. If a test was a Pass, the fit test is over.

(2) Since the pass or fail criterion of the Portacount is user programmable, the test operator shall ensure that the pass or fail criterion meet the requirements for minimum respirator performance in this Appendix.

(3) A record of the test needs to be kept on file, assuming the fit test was successful. The record must contain the test subject's name; overall fit factor, make, model, style, and size of respirator used, and date tested.

4. Controlled negative pressure (CNP) quantitative fit testing protocol.

The CNP protocol provides an alternative to aerosol fit test methods. The CNP fit test method technology is based on exhausting air from a temporarily sealed respirator facepiece to generate and then maintain a constant negative pressure inside the facepiece. The rate of air exhaust is controlled so that a constant negative pressure is maintained in the respirator during the fit test. The level of pressure is selected to replicate the mean inspiratory pressure that causes leakage into the respirator under normal use conditions. With pressure held constant, air flow out of the respirator is equal to air flow into the respirator. Therefore, measurement of the exhaust stream that is required to hold the pressure in the temporarily sealed respirator constant yields a direct measure of leakage air flow into the respirator. The CNP fit test method measures leak rates through the facepiece as a method for the determining the facepiece fit for negative pressure respirators. The CNP instrument manufacturer Dynatech Nevada also provides attachments (sampling manifolds) that replace the filter cartridges to permit fit testing an employee's own respirator. To perform the test, the test subject closes his or her mouth and holds his/her breath, after which an air pump removes air from the respirator facepiece at a pre-selected constant pressure. The facepiece fit is expressed as the leak rate through the facepiece, expressed a milliliters per minute. The quality and validity of the CNP fit tests are determined by the degree to which the in-mask pressure tracks the test pressure during the system measurement time of approximately five seconds. Instantaneous feedback in the form of a real-time pressure trace of the in-mask pressure is provided and used to determine test validity and quality. A minimum fit factor pass level of 100 is necessary for a half-mask respirator and a minimum fit factor of 500 is required for a full facepiece respirator. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) CNP Fit Test Requirements.

(1) The instrument shall have a non-adjustable test pressure of 15.0 mm water pressure.

(2) The CNP system defaults selected for test pressure shall be set at -15 mm of water (-0.58 inches of water) and the modeled inspiratory flow rate shall be 53.8 liters per minute for performing fit tests.

(Note: CNP systems have built-in capability to conduct fit testing that is specific to unique work rate, mask, and gender situations that might apply in a specific workplace. Use of system default values, which were selected to represent respirator wear with medium cartridge resistance at a low-moderate work rate, will allow inter-test comparison of the respirator fit.)

(3) The individual who conducts the CNP fit test shall be thoroughly trained to perform the test.

(4) The respirator filter or cartridge needs to be replaced with the CNP test manifold. The inhalation valve downstream from the manifold either needs to be temporarily removed or propped open.

(5) The test subject shall be trained to hold his or her breath for at least 20 seconds.

(6) The test subject shall don the test respirator without any assistance from the individual who conducts the CNP fit test.

(7) The QNFT protocol shall be followed according to section 1.C.1. of this appendix with an exception for the CNP test exercises.

(b) CNP Test Exercises.

(1) Normal breathing. In a normal standing position, without talking,, the subject shall breathe normally for 1 minute. After the normal breathing exercise, the subject needs to hold head straight ahead and hold his breath for 10 seconds during the test measurement.

(2) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply for 1 minute, being careful no to hyperventilate. After the deep breathing exercise, the subject shall hold his or her head straight ahead and hold his breath for 10 seconds during test measurement.

(3) Turning head side to side. Standing in place, the subject shall slowly turn his head from side to side between the extreme position on each side for 1 minute. The head shall be held at each extreme momentarily so the subject can inhale at each side. After turning head side to side exercise, the subject needs to hold head full left and hold his or her breath for 10 seconds during test measurement. Next, the subject needs to hold head full right and hold his breath for 10 seconds during test measurement.

(4) Moving head up and down. Standing in place, the subject shall slowly move his or head up and down for 1 minute. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling). After moving the head up and down exercise, the subject shall hold his or her head full up and hold his or her breath for 10 seconds during test measurement. Next the subject shall hold his or her head full down and hold his or her breath for 10 seconds during test measurement.

(5) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song for 1 minute. After the talking exercise, the subject shall hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement.

(6) Grimace. The test subject shall grimace by smiling or frowning for 15 seconds.

(7) Bending over. The test subject shall bend at the waist as if he or she were to touch his or her toes for 1 minute. Jogging in place shall be substituted for this exercise whose test environments such as shroud-type QNFT units that prohibit bending at the waist. After the bending over exercise, the subject shall hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement.

(8) Normal breathing. The test subject shall remove and re-don the respirator within a one-minute period. Then, in a normal standing position, without talking, the subject shall breathe normally for 1 minute. After the normal breathing exercise, the subject shall hold his or her head straight ahead and hold his or her breath for 10 seconds during the test measurement. After the

test exercises, the test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become unacceptable, another model of respirator shall be tried.

(c) CNP Test Instrument

(1) The test instrument shall have an effective audio warning device when the test subject fails to hold his or her breath during the test. The test shall be terminated whenever the test subject failed to hold his or her breath. The test subject may be refitted and retested.

(2) A record of the test shall be kept on file, assuming the fit test was successful. The record must contain the test subject's name; overall fit factor, make, model, style and size of respirator used; and date tested.

Part II. New Fit Test Protocols

A. Any person may submit to OSHA an application for approval of a new fit test protocol. If the application meets the following criteria, OSHA will initiate a rulemaking procedure under section 6 (b)(7) of the OSH Act to determine whether to list the new protocol as an approved protocol in this appendix A.

B. The application must include a detailed description of the proposed new fit protocol. This application must be supported by either:

1. A test report prepared by an independent government research laboratory (e.g., Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory has tested the protocol and had found it to be accurate and reliable; or

2. An article that has been published in a peer-reviewed industrial hygiene journal describing the protocol and explaining how test data support the protocol's accuracy and reliability.

C. If OSHA determines that additional information is required before the Agency commences a rulemaking proceeding under this section, OSHA will so notify the applicant and afford the applicant the opportunity to submit supplemental information. Initiation of a rulemaking proceeding will be deferred until OSHA has received and evaluated the supplemental information.

[63 FR 1270, 1276, Jan. 8, 1998; 63 FR 20098, 20099, April 23, 1998]

<General Materials (GM)- References, Annotations, or Tables>

29 C.F.R. 1910.134, App. A

CODE OF FEDERAL REGULATIONS
TITLE 29- LABOR
SUBTITLE B- REGULATIONS RELATING TO LABOR
CHAPTER XVII- OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
DEPARTMENT OF
LABOR
PART 1910- OCCUPATIONAL SAFETY AND HEALTH STANDARDS
SUBPART 1- PERSONAL PROTECTIVE EQUIPMENT
Current through December 19, 2002; 67 FR 77697

Appendix B-1 to 1910.134: User Seal Check Procedures (Mandatory)

The individual who uses a tight-fitting respirator is to perform a user seal check to ensure that an adequate seal is achieved each time the respirator is put on. Either the positive and negative pressure checks listed in this appendix, or the respirator manufacturer's recommended user seal check method shall be used. User seal checks are not substitutes for qualitative or quantitative fit tests.

I. Facepiece Positive and/or Negative Pressure Checks

A. Positive pressure check. Close off the exhalation valve and exhale gently into the facepiece. The face fit is considered satisfactory if a slight pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

B. Negative pressure check. Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold breath for ten seconds. The design of the inlet opening of some cartridges cannot be effectively covered with the palm of the hand. The test can be performed by covering the inlet opening of the cartridge with a thin latex or nitrile glove. If the facepiece remains in a slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

II. Manufacturer's Recommended User Seal Check Procedures

The respirator manufacturer's recommended procedures for performing a user seal check may be used instead of the positive and/or negative pressure check procedures provided that the employer demonstrates that the manufacturer's procedures are equally effective.

[63 FR 1270, 1282, Jan. 8, 1998]

<General Materials (GM)- References, Annotations, or Tables>

29 C.F.R. 1910.134, App. B-1

CODE OF FEDERAL REGULATIONS
TITLE 29- LABOR
SUBTITLE B- REGULATIONS RELATING TO LABOR
CHAPTER XVII- OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
DEPARTMENT OF
LABOR
PART 1910- OCCUPATIONAL SAFETY AND HEALTH STANDARDS
SUBPART I- PERSONAL PROTECTIVE EQUIPMENT
Current through December 19, 2002; 67 FR 77697

Appendix B-2 to 1910.134: Respirator Cleaning Procedures (Mandatory)

These procedures are provided for employer use when cleaning respirators. They are general in nature, and the employer as an alternative may use the cleaning recommendations provided by the manufacturer of the respirators used by their employees, provided such procedures are as effective as those listed here in Appendix B-2. Equivalent effectiveness simply means that the procedures used must accomplish the objectives as set forth in Appendix B-2, i.e., must ensure that the respirator is properly cleaned and disinfected in a manner that prevents damage to the respirator and does not harm the user.

I. Procedures for Cleaning Respirators

- A. Remove filters, cartridges, or canisters. Disassemble facepieces by removing speaking diaphragms, demand and pressure-demand valve assemblies, hoses, or any components recommended by the manufacturer. Discard or repair any defective parts.
- B. Wash components in warm (43 C (110 F) maximum) water with a mild detergent or with a cleaner recommended by the manufacturer. A stiff bristle (not wire) brush may be used to facilitate the removal of dirt.
- C. Rinse components thoroughly in clean, warm (43 C (110 F) maximum), preferably running water. Drain.
- D. When the cleaner used does not contain a disinfecting agent, respirator components should be immersed for two minutes in one of the following:
 1. Hypochlorite solution (50 ppm of chlorine) made by adding approximately one milliliter of laundry bleach to one liter of water at 43 C (110 F) or,
 2. Aqueous solution of iodine (50 ppm iodine) made by adding approximately 0.8 milliliters of tincture of iodine (6-8 grams ammonium and/or potassium iodide/100 cc of 45% alcohol) to one liter of water at 43 C (110 F) or,
 3. Other commercially available cleansers of equivalent disinfectant quality when used as directed, if their use is recommended or approved by the respirator manufacturer.
- E. Rinse components thoroughly in clean, warm (43 C (110 F) maximum), preferably running water. Drain. The importance of thoroughly rinsing cannot be overemphasized. Detergents or disinfectants that dry on facepieces may cause dermatitis. In addition, some disinfectants cause deterioration of rubber or corrosion of metal parts if not completely removed.
- F. Components should be hand-dried with a clean lint-free cloth or air-dried.
- G. Reassemble facepiece, replacing filters, cartridges, and canisters where necessary.
- H. Test the respirator to ensure that all components work properly.

CODE OF FEDERAL REGULATIONS
TITLE 29- LABOR
SUBTITLE B- REGULATIONS RELATING TO LABOR
CHAPTER XVII- OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
DEPARTMENT OF
LABOR
PART 1910- OCCUPATIONAL SAFETY AND HEALTH STANDARDS
SUBPART I- PERSONAL PROTECTIVE EQUIPMENT
Current through December 19, 2002; 67 FR 77697

Appendix D to 1910.134 (Mandatory). Information for Employees Using Respirators When Not Required Under the Standard

Respirators are an effective method of protection against designated hazards when properly selected and worn. Respirator use is encouraged, even when exposures are below the exposure limit, to provide an additional level of comfort and protection for workers. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. Sometimes, workers may wear respirators to avoid exposures to hazards, even if the amount of hazardous substance does not exceed the limits set by OSHA standards. If the employer provides respirators for your voluntary use, or if you provide your own respirator, you need to take certain precautions to be sure the respirator itself does not present a hazard.

You should do the following:

1. Read and heed all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirators limitations.
2. Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and how much it will protect you.
3. Do not wear your respirator into atmospheres containing contaminants for which your respirator is not designed to protect you against. For example, a respirator designed to filter dust particles will not protect you against gases, vapors, or very small solid particles of fumes or smoke.
4. Keep track of your respirator so that you do not mistakenly use someone else's respirator.

[63 FR 1270, 1284, Jan. 8, 1998; 63 FR 20099, April 23, 1998]

<General Materials (GM)- References, Annotations, or Tables>

29 C.F.R. 1910.134, App. D

Exhibit B

1910.134: OSHA RESPIRATORY MEDICAL EVALUATION QUESTIONNAIRE (MANDATORY)

Your employer must allow you to answer this questionnaire during normal working hours, or at a time and place that is convenient to you. To maintain your confidentiality, your employer or supervisor must not look at or review your answers, and your employer must tell you how to deliver or send this questionnaire to the health care professional who will review it.

Part A. Section 1. (Mandatory) The following information must be provided by every employee who has been selected to use any type of respirator (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 the Area Code): _____
9. The best time to reach you at this number: _____
10. Has your employer told you how to contact the health care professional who will review this questionnaire (circle one) Yes No
11. Check the type of respirator you will use (you can check more than one category):
 - a. _____ N.R. or P disposable respirator (filter mask, non-cartridge type only).
 - b. _____ Other type (for example, half or full facepiece type, powered-air purifying, supplied-air, self-contained breathing apparatus).
12. Have you worn a respirator (circle one): Yes No
If "yes", which type(s): _____

Part A. Section 2. (Mandatory) Questions 1 through 9 below must be answered by every employee who has been selected to use any type of respirator (please circle "yes" or "no").

1. Do you *currently* smoke tobacco, or have you smoked tobacco in the last month? Yes No
2. Have you ever *had* 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 ever *had* 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: | Yes | No |
| i. Lung Cancer: | Yes | No |
| j. Broken Ribs: | Yes | No |
| k. Any chest injuries or surgeries: | Yes | No |
| l. Any other lung problems you've been told about: | Yes | No |

4. Do you *currently* have any of the following symptoms of pulmonary or lung illness?

- | | Yes | No |
|--|-----|----|
| a. Shortness of breath: | | |
| 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 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 may think may be related to lung disease: | Yes | No |
| 5. Have you <i>ever</i> had any of the following cardiovascular or heart problems? | | |
| 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 problems that you have been told about: | Yes | No |
| 6. Have you ever had 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 two 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? | | |
| a. Breathing or lung problems: | Yes | No |
| b. Heart trouble: | Yes | No |
| c. Blood pressure: | Yes | No |
| d. Seizures: | Yes | No |
| 8. If you've used a respirator, have you ever <i>had</i> any of the following problems? (If you've 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 your questionnaire about your answers to this questionnaire: | | |
| | Yes | No |

Questions 10 through 15 below must be answered by every employee who has been selected to use either a full-face piece respirator or a self-contained breathing apparatus (SCBA). For employees who have been selected to use other types of respirators, answering these questions is voluntary.

- | | | |
|---|-----|----|
| 10. Have you <i>ever lost</i> vision in either eye (temporarily or permanently): | Yes | No |
| 11. Do you <i>currently</i> have any of the following vision problems? | Yes | No |
| a. Wear contact lenses: | Yes | No |
| b. Wear glasses: | Yes | No |
| c. Color blind: | Yes | No |
| d. Any other eye or vision problems: | Yes | No |
| 12. Have you <i>ever had</i> any injury to your ears, including a broken eardrum? | Yes | No |
| 13. Do you <i>currently</i> have any of the following hearing problems? | Yes | No |
| a. Difficulty hearing: | Yes | No |
| b. Wear a hearing aid: | Yes | No |
| c. Any other hearing or ear problem: | Yes | No |
| 14. Have you <i>ever had</i> a back injury? | Yes | No |
| 15. Do you <i>currently</i> have any of the following musculoskeletal problems? | Yes | No |
| 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 and 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 problems that interferes with using a respirator: | Yes | No |

Part B Any of the following questions, and other questions not listed, may be added to the questionnaire at the discretion of the health care professional who will review the questionnaire.

- | | | |
|---|-----|----|
| 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 your working under these conditions. | Yes | No |

- | | | |
|--|-----|----|
| 2. At work or at home, have you ever been exposed to hazardous solvents, hazardous airborne chemicals (e.g.) 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: | Yes | No |
| a. Asbestos: | Yes | No |
| b. Silica (e.g. in sandblasting): | Yes | No |
| c. Tungsten/cobalt (e.g. 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 occupation: _____

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) (circle "yes" or "no" for all answers that apply to you):

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:

Yes No

a. *Light* (less than 200 kcal per hour)

If "yes", how long does this period last during the average

Shift _____ hrs.: _____ min.

Examples of 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.: _____ min.

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.: _____ min.

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 above 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're 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 you're using your respirator(s): _____

17. Describe any special or hazardous conditions you might encounter when you're using your respirator(s): _____

18. Provide the following information. If you know it, for each toxic substances that you'll be exposed to when you're using your respirator(s):
Name of 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 third toxic substance: _____
Estimated maximum exposure level per shift: _____
Duration of exposure per shift: _____
The name of any other toxic substances that you'll be exposed to while using your respirator: _____

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

If you would like to provide any additional information regarding the answers above, please use the space below.

Exhibit C:

I _____ am the physician of record for _____ whom is an employee of the City of Rensselaer Fire Department.

I have given a physical to the above stated Fire Department employee and found him/her to be able to pass the required OSHA physical

Physician's Name

Date: _____

I _____ am the physician of record for _____ whom is an employee of the City of Rensselaer Fire Department.

I have given the above stated employee a physical and found him/her unable to pass the OSHA required physical.

Physician's Name

Date: _____