

# **Ulster County Substance Abuse Policy UCAT**



**This policy covers Ulster County Employees regulated by the U.S. DOT Federal Transit Administration Title 49 Part 655 and are subject to all testing outlined in this policy.**

# Ulster County Substance Abuse Policy

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## **Purpose**

The purpose of the Ulster County Substance Abuse Policy is to establish rules, regulations and programs to ensure that the Ulster County workplace and its employees are free from the detrimental effects of drugs and alcohol. The Policy is in compliance with the mandates contained in Title 49 Code of Federal Regulations (CFR) Part 40 (Testing Procedures) and Title 49 CFR Part 655 (U.C. DOT Federal Transit Administration) and other applicable laws, rules, and regulations.

## **Policy Applicability**

**Ulster County Area Transit fulltime employees, part time employees and volunteers who:**

- 1) are required to hold a CDL (Commercial Driver's License) for use in the performance of their job;**
- 2) perform a safety sensitive function in regards to:**
  - a. controlling dispatch or movement of a revenue service vehicle;**
  - b. maintaining, including repairs, overhauls, rebuilding, servicing of a revenue service vehicle;**

**shall be subjected to all types of testing as outlined in Title 49 Part 655, (pre-employment / pre-assignment, random, post-accident, reasonable cause / suspicion, return-to-duty and follow-up).**

**The following UCAT positions identified below currently meet the criteria above:**

- 1) Director of Public Transportation
- 2) Deputy Director of Public Transportation
- 3) Public Transit Maintenance and Safety Coordinator
- 4) Public Transit Dispatch and Operations Assistant Coordinator
- 5) Public Transit Dispatcher / Trainer
- 6) Bus Driver
- 7) Bus Dispatcher
- 8) Senior Bus Dispatcher
- 9) Automotive Mechanic II
- 10) Lead Automotive Mechanic

**Any new positions created will be reviewed using the criteria above and if meeting the criteria, they will be added to the list subjected to all testing under Title 49 Part 655.**

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**All Ulster County employees who are CSEA bargaining unit members and non-union management positions are subject to "Reasonable Cause / Suspicion" testing, as outlined under Reasonable Cause / Suspicion testing in this policy.**

## **Testing Procedures**

All testing procedures will be conducted pursuant to Title 49 Part 40, Procedures for Transportation Workplace Drug and Alcohol testing. All testing analysis shall be performed at a federally certified laboratory.

Sample specimens shall be collected by a contracted agency following Title 49 Part 40 and all random selection will be conducted by the contracted agency utilizing software for random selection, ex. Randomware, JJKeller, etc. **No random selection shall be made internally by Ulster County.**

## **Employee Responsibility**

Each employee must be knowledgeable of and fully comply with the requirements of this policy.

An employee must notify their supervisor of any drug related criminal arrest immediately and of any conviction within five days thereafter.

Any employee who takes any drug prescribed by a licensed physician, any self-prescribed substance, or a substance for any therapeutic use, must notify his / her supervisor when such use may impact the employee's ability to perform his / her duties so that they may be removed from any safety sensitive function.

## **Prohibited Drug and Alcohol**

No employee shall use, sell, possess, distribute, or manufacture any alcoholic beverage or illegal drug or any other intoxicating substance at any time on County property, while on duty; or in a County vehicle, a vehicle leased for County business, or a privately owned vehicle being used for County business during the employees work hours.

No employee shall report to work at the beginning of a shift or upon returning from any break, lunch or rest period under the influence of alcohol, illegal drugs or other intoxicating substance.

No employee shall possess alcohol during work hours, perform any duties of his/her job with Ulster County within four (4) hours after using alcohol or for eight (8) hours following an accident (as defined in this Policy) or until he/she undergoes a Post-Accident alcohol test. (All County Employees)

This Ulster County Substance Abuse Policy supersedes any other policies and procedures pertaining to alcohol and prohibited substances, as they pertain to Ulster County employee's that are CSEA Bargaining Unit Members and Non-Union Management employees.

## **Background**

The catalyst for this Ulster County Substance Abuse Policy is Title 49 CFR Part 655 which requires employers to test their employees who maintain a Commercial Drivers License (CDL) in the performance of their duties for prohibited drugs and alcohol under the following work-related conditions:

- a) Pre-employment / Pre-assignment
- b) Post-accident
- c) Random
- d) Reasonable cause / Suspicion
- e) Return-to-Duty
- f) Follow-up

## **Definitions**

For purposes of this Ulster County Substance Abuse Policy the following definitions apply:

**Alcohol** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

**Alcohol Concentration** – (or content) The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

**Alcohol Screening Test** – An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in his/her blood, as indicated by a reading of a breath or saliva specimen.

**Alcohol Use** – The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

## **Definitions - continued**

**Assistant Substance Abuse Program Manager (ASAPM)** – Person responsible for the preparation and administration of this Policy.

**Blind Specimen or Blind Performance Test Specimen** – A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

**Breath Alcohol Technician (BAT)** – A person who administers, instructs and assists employees in the alcohol testing process and operates an evidential breath-testing device.

**Chain of Custody** – The procedure used to document the handling of an employee's urine specimen from the time of collection until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form. (CCF), Title 49 CFR Part 40.

**Collection Site** – A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug/alcohol test.

**Collection Site Person** – A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

**Confirmatory Alcohol Test** – For alcohol testing, this is defined as a second test, following a screening test that provides quantitative data of alcohol concentration, resulting in a reading of 0.02 BAC or greater. If the results of the initial alcohol screening result differ from the confirmation test, the value of the confirmation test shall be the final result.

**Confirmatory Drug Test** – A second analytical procedure used to identify the presence of a specific drug or metabolite, which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test. (Gas chromatography / mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

**Covered Employee** – A covered employee for the purposes of this Policy is an employee of Ulster County who is a Bargaining Unit Member of CSEA or a Non-Union Management employee under Reasonable Cause / Suspicion Testing and an employee of Ulster County who requires a CDL license in the performance of his / her job or is in a safety sensitive position as outlined in this policy.

**Cut Off Levels** – The minimum value established for designating a test result as positive. These levels are set by the Department of Health and Human Services (Federal).

**Dilute Specimen** - A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Disabling Damage** – Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

1) Inclusion – Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

2) Exclusions

- i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
- ii) Tire disablement without other damage even if no spare tire is available.
- iii) Headlight or tail light damage.
- iv) Damage to turn signals, horn, or windshield wipers, which make the vehicle inoperable.

**Drugs Prohibited** – Alcohol, Amphetamines, Cocaine, Ecstasy, Heroin, Marijuana, Opiates, and Phencyclidine.

**Employee Assistance Program (EAP)** – Ulster County provides all employees with a means of obtaining confidential professional assistance in handling personal problems, which may adversely affect job performance. EAP shall function as a means to provide a Substance Abuse Professional (SAP).

**Evidential Breath Testing Device (EBT)** – A device approved by National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath.

**Fail an Alcohol Test or Test Positive** – A confirmation test for alcohol that shows the presence of alcohol in the employee's specimen of 0.02 BAC or greater.

**Fail a Drug Test or Test Positive** – A confirmation test result shows the presence of drug metabolites in the employee's / applicants specimen over the established cut-off levels detailed in Title 49 CFR Part 40.

**Federal Transit Administration (FTA)** – federal governing agency for Title 49 Part 655.

**Initial Drug or Alcohol Test (also known as a Screening test)** – In a drug-screening test it is an immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing. In an alcohol screening test it means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system.

**Medical Review Officer (MRO)** – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other biomedical information.

**Pass an Alcohol Test or Test Negative** – A result less than 0.02 BAC in an alcohol-screening test.

**Pass a Drug Test or Test Negative** – A result where the initial testing and/or confirmation testing does not show evidence of any prohibited drug metabolites above the established cut-off levels in the employee or applicant's system.

**Oxidizing Adulterant** - A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

**Refusal to Submit (to an alcohol or controlled substances test)** – An employee will be deemed to have refused to take a drug test, which will result in an automatic positive, if the employee:

- (1) Failed to appear at the collections site for any test (except a pre-employment test) immediately or within 30 minutes, plus travel time dependent on work location.
- (2) Fails to remain at the testing site until the testing process is complete. An applicant who leaves the testing site before the process commences for a pre-employment test shall not be deemed to have refused to test.
- (3) Fails to provide a urine specimen for any drug or alcohol test requested under this Policy and/or applicable regulations. An applicant who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- (4) In the case of a directly observed or monitored collection in a drug test, the employee's failure to permit the observation or monitoring of his/her provision of a specimen.
- (5) Fails to provide a sufficient amount of urine when directed and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- (6) Fails or declines to take an additional drug test the employer or collector has directed the employee to take.

### **Refusal to Submit - continued**

- (7) Fails to undergo a medical examination or evaluation as part of the verification process, as directed by the MRO, the SAPM or ASAPM. In the case of a pre-employment drug test, the applicant shall be deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there is no contingent offer of employment, the MRO will cancel the test.
- (8) Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector).
- (9) For an observed collection, fails to follow the observer's instructions to raise employee's clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process.
- (10) Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- (11) Admits to the collector or MRO that the employee has adulterated or substituted the specimen.
  - a. If the MRO reports that the employee has a verified adulterated or substituted test result, the employee will be deemed to have refused to take a drug test.

### **As an employee who refuses to take a drug or alcohol test, he or she shall incur the consequences of a Positive Test under this Policy.**

**Substance Abuse Program Manager (SAPM)** – Individual who is responsible for the preparation and administration of this Policy.

**Split Specimen** – In drug testing, a part of the urine specimen that is retained unopened, sent to a first laboratory and transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of a primary specimen or a verified adulterated or substituted test result.

**Substance Abuse Professional (SAP)** – A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) who has knowledge of alcohol and controlled substance related disorders.

**Verified Test** – A drug test result or validity testing result from a certified laboratory that has undergone review and received a final determination by the MRO.

## **Responsibilities**

**Substance Abuse Program Manager (SAPM) and Assistant Manager (ASAPM)** – The SAPM / ASAPM shall be responsible for the administration of the testing program described in this Policy, which complies with Title 49 CFR Part 40, including the scheduling of all drug and alcohol testing associated with this policy. The SAPM/ASAPM shall be responsible for oversight and evaluation of the policy, including the provision of guidance and counseling to employees. This individual shall also review all disciplinary actions applied under the policy for consistency and conformance to applicable local, state, and federal policies and procedures. The SAPM/ASAPM shall also maintain a secure file system on the test results, keep all necessary records, and oversee the Employee Assistance Program (EAP) as it relates to this policy.

**Medical Review Officer (MRO)** – The MRO shall review the laboratory results to verify and validate tests administered under this policy. This individual shall be a licensed physician who has knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate an employee's confirmed positive test result together with his or her medical history and any relevant biomedical information. The MRO shall follow all procedures set forth in Title 49 CFR Part 40, as amended. The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions, in order to prevent any appearance of a conflict of interest, including providing assurance that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory. The MRO shall review all medical records made available by the tested employee when it is alleged that a confirmed positive test could have resulted from a legally prescribed medication. The MRO shall not disclose to any third party medical information provided by the employee to the MRO as a part of the testing verification process. This review shall be performed by the MRO prior to the transmission of results to the SAPM or ASAPM. The duties of the MRO with respect to negative results are purely administrative.

**Substance Abuse Professional (SAP)** – The SAP may be a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional, who has knowledge of and clinical experience with the diagnosis and treatment of drug and alcohol related disorders, or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission. The SAP shall evaluate any employee who may have refused to submit to a drug or alcohol test or who has received a verified positive drug or alcohol test and as such, requires assistance in addressing problems associated with prohibited drug and alcohol use. The SAP shall evaluate an employee who has a verified positive drug or alcohol test result if he or she has complied with the SAP recommendations. The SAP shall determine when return-to-duty testing is appropriate. The SAP shall set the length and schedule of testing, a minimum of six (6) tests during the first twelve (12) months, which may continue for a period up to five (5) years or sixty (60) months after returning to duty. The SAP may not refer the employee to the SAP's private practice from which the SAP receives remuneration or to a person or organization in which the SAP has a financial interest. The SAP shall follow the procedures and regulations as set forth in Title 49 CFR Part 40.

**Supervisors** – Those supervisors that have been specifically trained to and are responsible for the observation of employee's performance and behavior. Supervisors shall document events which suggest the appropriateness of reasonable cause testing. When applicable, Supervisors shall request that a second supervisor substantiate and concur that reasonable cause testing is warranted under the circumstances presented. **A final determination of testing is made by the Substance Abuse Program Manager or Assistant Manager.**



## **Drug and Alcohol Testing**

**Employees Subject to Drug and Alcohol Testing:** All employees of Ulster County who are members of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Ulster County Unit # 8950 or non-represented management are subject to drug and alcohol testing.

- 1) Procedure for Notifying Employees:** All employee members of the Ulster County Civil Service Employees Association (Unit 8950) and non-represented management shall receive a copy of the Ulster County Substance Abuse Policy and shall be held responsible for knowing and abiding by the content of this Policy. Each employee subject to the Policy shall sign a form acknowledging receipt of and agreeing to abide by this Policy (Appendix A). Any request for clarification or question regarding the content of this Policy shall be directed to the SAPM or ASAPM. All newly hired employees shall receive a copy of the Policy and shall review the Policy with the SAPM or ASAPM on the day of his/her orientation with Ulster County.
- 2) Substances for Which Testing Shall Be Conducted:** The cutoff levels for detecting these drugs / alcohol are as follows:

<b>Drug Name</b>	<b>Initial Cut-off Levels (ng/ml)</b>	<b>Confirmatory Cut-off Levels (ng/ml)</b>
<b>Alcohol</b>	<b>0.02 (gr/lt)</b>	<b>0.02 (gr/lt)</b>
<b>Amphetamines</b>	<b>1000 (ng/ml)</b>	<b>500 (ng/ml)</b>
<b>Cocaine metabolites</b>	<b>300 (ng/ml)</b>	<b>150 (ng/ml)</b>
<b>Marijuana metabolites</b>	<b>50 (ng/ml)</b>	<b>15 (ng/ml)</b>
<b>Opiates – Morphine / Codeine</b>	<b>2000 (ng/ml)</b>	<b>2000 (ng/ml)</b>
<b>PCP – Phencyclidine</b>	<b>25 (ng/ml)</b>	<b>25 (ng/ml)</b>

(Heroin and Ecstasy are identified in a confirmatory result)

**1. Pre-employment / Pre – assignment** – A pre-employment drug and alcohol test shall be performed and a negative test result received, before an individual is offered employment with Ulster County Area Transportation for positions required to be in the random pool. A pre-assignment test shall be performed and a negative test result received before an employee who has been out on a leave of absence, or a medical disability, or absent from work 90 days or more for any reason and has been removed from the random pool..

**2. Random Testing** – All employees whose positions are covered under the Federal Transit Administration shall be subject to drug and alcohol testing on an unannounced and random basis. The County shall conduct a number of drug tests on these employees equal to at least fifty (50) percent of the average number of covered employees each calendar year, spread reasonably over a twelve (12) month period. In addition, the County shall conduct a number of alcohol tests on these employees equal to at least ten (10) percent of the number of such covered employees each calendar year, spread reasonably over a twelve (12) month period. These rates will be reviewed annually and may be adjusted. (Ulster County adheres to the percentage that is more stringent of the two percentages set by the Federal Transit Administration and Federal Highway Administration as current)

The following is an outline of the key aspects of the random testing selection process.

- a) Employees shall be selected for testing using a computer-based random number generator or equivalent random selection method owned/licensed and operated by the testing site. The numbers generated on the random basis will then be matched with a covered employees social security number or County employee number.
- b) Employees shall remain in the random selection pool at all times regardless of whether or not they have been previously selected for testing.
- c) The testing and collection process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of collection. The time may be at any time the covered employee is working.

### **Random Testing – continued**

- d) Employees will be selected for random testing based on the number of covered employees at the time and the necessary testing rate.
- e) Specimen collection shall be conducted on different days of the week throughout the annual cycle.
- f) The SAPM or ASAPM, on a pre-determined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
- g) On the day of the test, the appropriate supervisor shall be contacted with the covered employees' names provided by the random selection process. Once the supervisor notifies the covered employee that he / she has been chosen for the random testing, he / she shall report immediately to the collection site or within 30 minutes, plus travel time dependent on work location.
- h) If an employee, once directed to report for testing, refuses or fails to appear at the collection site within the allotted time, this shall be considered a "refusal to test", and will be treated under the Policy as a positive test result.
- i) Upon arrival at the collection site, the employee shall identify him / herself to the collection site personnel by presenting photo identification (i.e. County photo identification, or driver's license).
- j) The employee shall provide his / her urine specimen as directed, and, if applicable, a breath sample, in accordance with the procedures set forth in Title 49 CFR Part 40.
- k) Upon receipt of a documented, formal, written request for a covered employee's test result, made to the SAPM or ASAPM, that employee shall be furnished with a copy of his/her test result.
- l) Random testing shall include drug test screening for alcohol, amphetamines, cocaine metabolites, ecstasy, heroin, marijuana metabolites, opiates – morphine / codeine, and PCP phencyclidine.

**3. Post-Accident Testing** –The term “Post-Accident Testing” and its determined guidelines for testing listed below, apply to employees who utilize a CDL driver’s license in the performance of their job or perform an identified safety sensitive job

If an accident involves the operation of a Commercial Motor Vehicle governed by the FTA and the specifics of the accident fall within the parameters for testing below, an employee involved in such accident shall be drug tested as soon as possible but no later than thirty-two (32) hours after the accident. Alcohol testing shall be performed as soon as possible, but no later than eight (8) hours after the accident occurs.

**The following procedure involving Post Accident Testing shall be followed:**

1. The employee involved in the accident must immediately notify the shift supervisor
2. A supervisor shall be dispatched to the scene of the accident. They will evaluate the accident against the policy parameters to test under post- accident. If a test is warranted or if they are not sure, the supervisor may contact the SAPM or ASAPM.
3. **Policy parameters for post-accident testing:**
  - a. **Fatality** - If there is a fatality in the accident, in either vehicle or a pedestrian has been killed, the driver shall be tested. Any covered employee whose performance may have contributed to the accident shall also be tested. They shall be tested for alcohol and drugs.
  - b. **Non-fatal accidents:** As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle is involved, the employer shall drug and alcohol test each covered employee operating the public transportation vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee’s performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision. It is the County’s policy to test our employee, if any of the vehicles involved in non-fatal accidents sustained **disabling damage** (*refer to definition of disabling damage in definitions*) requiring either vehicle to be towed from the scene of the accident. If a test occurs the employee shall be drug and alcohol tested.
  - c. **Non-fatal accidents:** It is the County’s policy to test the employee for drugs and alcohol if anyone involved in the accident sustains injuries that require an ambulance to the scene to transport.
4. A supervisor finding that the accident meets the parameters above shall contact the SAPM or ASAPM immediately so that a test may be setup.
5. When the supervisor makes contact with the SAPM or ASAPM, together they will arrange transport of the driver or employee involved to the testing site.
6. When testing is complete arrangements to transport the employee to their residence will be made. The employee shall not drive his or her vehicle home, for the employee maybe under the influence of alcohol or a controlled substance. They shall be told that they will have to pick-up the vehicle at a later time.
7. The employee shall be placed on paid administrative leave pending the result of the test. They will only be paid for the scheduled days of work they are being held from.
8. The result of the test shall dictate the next step, either return to work or be subject to the consequences of a positive test.

**An accident where or driver or employee has been injured:**

1. If the employee is being treated at the hospital as a result of the accident, the supervisor shall contact the SAPM or ASAPM to inform him/her of the situation. When medical treatment allows, drug and/or alcohol testing shall be performed at the hospital or the collection site within the timeframe generally allotted for testing under this policy. Alcohol testing shall occur first. If an alcohol test is not administered within two (2) hours following the accident, documentation must be provided by the supervisor to the SAPM or ASAPM and maintained on file, stating the reasons why the test was not promptly administered. If the employee has not been tested within eight (8) hours following the accident, all attempts to test for alcohol must cease. If an alcohol test is not performed, the supervisor shall prepare and produce documentation to be given to the SAPM or ASAPM for the file, stating the reasons why the test was not performed. If an initial alcohol test results in a reading of 0.02 BAC or greater, a confirmatory test shall take place no more than thirty (30) minutes after the initial test. If the confirmation test is greater than 0.02 BAC, the BAT must notify the SAPM or ASAPM immediately. The SAPM or ASAPM will then notify the supervisor of the test results. Urine collection for the drug test shall be performed within 32 hours.
2. After testing is completed, the employee will not be allowed to return to his / her position until a negative test result is received by the SAPM or ASAPM. The employee shall be placed on paid administrative leave pending the result of the test and only paid for the days they had been scheduled to work but were held out pending the results of the test.
3. **The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.**

Any employee who is involved in an accident that triggers drug and alcohol testing under this policy must remain readily available for testing. If the employee does not do so, the employer can treat such behavior as a refusal to test, which will result in a positive test consequence. However, the employee shall be permitted to leave the scene of the accident to obtain emergency medical assistance or to receive any necessary medical attention.

**4. Reasonable Cause / Suspicion Testing** – Reasonable cause / suspicion testing is designed to provide supervisors with a tool to identify drug / alcohol affected employees who may pose a danger to themselves and/or others in their job performance. A supervisor may have reason to believe that an employee may be at work in a condition that raises concern regarding his/her safety or productivity or the safety of others. A supervisor must then make a decision as to whether there is reasonable cause to initiate the process to request a reasonable cause / suspicion test to be performed.

The test “Reasonable Cause / Suspicion” has always been a test associated with drug and alcohol testing for employees covered under FMCSA and FTA since 1995. **In 2009 when Ulster County began to be governed by a County Executive, it became policy subjecting all CSEA bargaining unit members (employees) and non-union management to be tested, if warranted under reasonable cause / suspicion testing.**

**In a Reasonable Cause / Suspicion test, all substances, Alcohol, Amphetamines, Cocaine Metabolites, Ecstasy (MDMA), Heroin, Marijuana Metabolites, Opiates – Morphine / Codeine, PCP – Phencyclidine, will be tested for.** (Ecstasy and Heroin are identified in a confirmatory result)

## Procedure for Utilizing “Reasonable Cause / Suspicion Testing

- 1) In order for a supervisor to utilize reasonable cause / suspicion testing, the supervisor shall receive two (2) hours of training every three (3) years on the physical, behavioral, speech and performance indicators of probable misuse of alcohol or use of prohibited drugs.
- 2) The supervisor executing reasonable cause / suspicion must have **current** training. The training for a supervisor shall be every three years as agreed upon with the CSEA union. Should a supervisor who is not up to date with training or a supervisor who has not had the training encounters a situation where they think an employee may be under the influence of a controlled substance or alcohol, that supervisor may contact the SAPM or ASAPM for assistance. They may also find another supervisor in the area who has current training and ask for their assistance. Most important is that the supervisor who has observed the situation or problem acts immediately.
- 3) Once an observation of an employee has been made by the supervisor or it has been brought to the attention of a supervisor, that an employee is exhibiting signs of being under the influence of a prohibited substance as outlined in this policy, the supervisor is obligated to investigate the situation, or occurrence. **The occurrence must be directly observed by the initiating supervisor, it cannot be decided on hearsay.**
- 4) The supervisor is advised to obtain assistance from another trained supervisor or appropriate employee to assist and witness the situation and provide additional documentation.
- 5) The supervisor shall instruct their assistant to initiate contact with the Substance Abuse Program Manager (SAPM) or the Assistant Substance Abuse Program Manager (ASAPM) through the provided contact information. During regular business hours they may be contacted through the Safety Office at 340-3410. If it is after normal business hours, the SAPM or ASAPM may be contacted through the County’s Emergency Management Center (911), at 338-1440. Inform the management center dispatcher of your situation and tell them you are trying to reach the Safety Officer or Deputy. They will page us and inform us of the situation. Be sure to provide an exact location and contact number. When contact of the SAPM or ASAPM is made they will respond and provide setup for the test.
- 6) The supervisor shall use the County’s “Reasonable Suspicion / Supervisor’s Observation” form.
- 7) The supervisor with assistance shall approach the employee and remove him / her from their work area and bring the employee to a private location in order to review the circumstances that initiated this pending reasonable cause test.
- 8) After informing the employee of their undesirable actions or unsafe actions, the supervisor shall ask the employee if they are willing to test. The supervisor shall inform the employee that if they refuse to test it will count as an automatic positive test.
- 9) The supervisor shall inform the employee that with a refusal they will have to be transported to their residence (gender specific) and that someone may pickup their car later. At this point the employee will be an automatic positive for their refusal to test. But, since the supervisor has reason to believe the employee is under the influence and the employee refuses to test, there is liability in allowing this employee to drive his or herself home if they were to have an accident.
- 10) If the employee becomes unmanageable or belligerent and tries to leave of his or her own accord, the supervisor shall inform the employee that they will be forced to contact Law Enforcement (Sheriff’s Dispatch 338-3640) because they are suspected to be driving while under the influence.

## Procedure for Utilizing “Reasonable Cause / Suspicion Testing - continued

- 11) If the employee decides to cooperate with the testing process, the supervisor will inform the employee, that they may contact counsel or have a Union representative present, as long as such attempts do not result in undue delay in the testing process. Reasonable efforts shall be made, without delaying the testing process, to assist the employee in contacting legal counsel or a Union representative if requested by the employee.
- 12) The “Reasonable Cause / Suspicion form should be complete with narratives and signatures upon arrival of the Program Manager or Assistant in order to expedite a test.
- 13) Upon arrival of the Program Manager or Assistant, the form will be reviewed, and an assessment and observation shall be made of the employee.
- 14) If the test is to proceed the employee shall be transported to the testing site, by appropriate gender or accompanying supervisor.
- 15) When the test is complete the employee shall be transported to their residence and shall be placed on paid administrative leave (dependent on work schedule and time of test) until a test result has been received. The paid leave is for days the employee would have worked if not being held out of work pending a test.
- 16) If the test is negative the supervisor will be contacted by the SAPM or ASAPM in order to return the employee to work.
- 17) **If the test is positive, the employee shall incur the consequences of a positive test, as outlined in this policy and will be required to contact EAP for counseling, If the employee refuses counseling, dismissal proceedings shall be initiated immediately for failure to adhere to the policy.**

**5. Return-to-Duty Testing** – If an employee is on suspension from his/her position as result of a positive test and is in treatment with a SAP, the employee shall be subject to return-to-duty testing. The return-to-duty test will be setup after the SAP contacts the SAPM or ASAPM to inform them that the employee is ready to return to work. County policy for return-to-duty testing shall be a comprehensive test for alcohol and drugs. Before an employee can return-to-duty he/she shall have a negative test result for drugs and alcohol. The employee shall test for alcohol and have a reading of less than 0.02 BAC before being allowed to return to duty. When the test results are received by the SAPM or ASAPM and confirmed negative, the department head or supervisor will be contacted. **If the employee’s return-to-duty test is positive, this counts as the employee’s second positive test with their career with Ulster County and would result in dismissal through section 75 proceedings.**

**6. Follow-up Testing** – Based on the SAP’s recommendation, an employee who has a negative return-to-duty test, and has returned to work, the employee shall be subject to unannounced follow-up testing. The SAP will determine the frequency and duration. There shall be a minimum of six (6) tests in the first twelve (12) months of the employees return. Follow-up testing may continue up to period of five (5) years following the employee’s return to duty. The frequency of the tests, are set by the SAP. In addition to follow-up testing, employees remain in the random pool, and are subject to normal random testing under this policy.

## **Review of Drug Testing Results and Consequences**

**1. Negative Results** – Negative test results are given directly to the SAPM or ASAPM from the MRO and collection site.

**2. Positive Results** – The Medical Review Officer (MRO) shall review confirmed positive test results. A positive test result does not automatically indicate that an employee/applicant has used drugs in violation of this policy. The MRO shall review the results for possible alternate medical explanations when necessary.

a) Following the MRO's review of a positive test result, the MRO shall contact the tested employee, review all medical and prescription history of the employee, and question the employee about the test results. **The MRO shall not disclose to any third party, medical information provided by the employee to the MRO as part of the testing verification.** The MRO will use all available information to verify a laboratory positive test. After the complete review of all information by the MRO, the MRO will verify the test result. After making a good faith effort to contact the subject employee using contact information provided by the employee, the MRO shall contact the SAPM or ASAPM to notify them of the employee's verified positive test result.

b) **If the employee disagrees with the test results, following notification of the confirmed verified positive test, the employee shall have seventy-two (72) hours from the notification of the positive by the MRO in which to request the MRO to authorize a test of the split specimen.** Upon request, the MRO shall have the split sample analyzed at a different certified laboratory. If the analysis of the split sample fails to confirm the presence of the drug(s) found in the primary specimen, is unavailable, inadequate for testing, or un-testable, the MRO shall cancel the test and report the cancellation and reasons for it to the SAPM or ASAPM and employee.

**This split sample test has to be requested by the employee and the employee shall be responsible for payment of the testing of the split sample, if the split sample is found to be positive. If the split sample test comes back negative, the County will reimburse the employee for the costs incurred for the reanalysis.**

c) Following the MRO's review with the employee and verification of a positive test result, the MRO will then contact the SAPM or ASAPM to notify them of the confirmed verified positive test result.

d) Following notification of a confirmed verified positive test of an employee, the SAPM or ASAPM shall contact the supervisor with that information. The SAPM or ASAPM will then begin to process the necessary paperwork for the supervisor / employee punitive review meeting.

## **3. Punitive Review with Employees**

**The employee shall be given a reasonable opportunity to contact counsel or a union representative, as long as such attempts do not result in undue delay in the review process. Reasonable efforts shall be made, without delaying the review process, to assist the employee in contacting legal counsel or a Union representative, if requested by the employee.**

**The punitive review process shall include the following:**

- 1) Immediate suspension without pay following the conclusion of the punitive review. This begins the suspension period.**
- 2) Review and completion of the employee information disclosure form; this form authorizes the release of information regarding the progress of the treatment with the SAP to be released to the SAPM or ASAPM.**

### **3. Punitive Review with Employees - continued**

- 3) In this review the employee shall be provided with the phone number in order to contact EAP. The employee is told they have 48 hours following the end of the review to contact EAP to setup counseling. The time is documented by the SAPM or ASAPM.
- 4) EAP shall be contacted by the SAPM or ASAPM following the end of the punitive review. EAP is given the time of the end of the punitive review and are told to expect a call from the employee in order to setup mandatory counseling. Should the employee fail the 48 hours allotted to call EAP, the employer shall begin dismissal proceedings immediately for failure to comply to the policy, **EVEN IF IT IS THE EMPLOYEE'S FIRST POSITIVE TEST.**
- 5) **Shall the employee complete EAP counseling after their first positive and has returned to work after a negative return to work test, then any second positive test for alcohol or drugs in an employee's career with Ulster County, including the first return-to-work test, if positive, shall result in immediate termination of employment.**

### **4. Punitive Suspension Details**

- 1) **30 Day Suspension** (consecutive days including weekends)
  - a) A positive test for drugs; or
  - b) A positive alcohol test at a level of 0.04 BAC or greater.
- 2) A positive alcohol test at a level of 0.02 BAC up to a level of 0.04 but not to include 0.04 BAC.
  - a) 1<sup>st</sup> occasion- 5 day suspension without pay (no treatment plan required)
  - b) 2<sup>nd</sup> occasion- 10 day suspension without pay (no treatment plan required)
  - c) 3<sup>rd</sup> occasion- 15 day suspension without pay (no treatment plan required)
  - d) 4<sup>th</sup> occasion- 30 day suspension without pay (**EAP Counseling Required**)
- 3) Suspension begins the day of the punitive review process.
- 4) An employee **may not** use his/her accrued/earned leave time to substitute for the unpaid suspension.
- 5) **Completion of a thirty (30) day suspension does not mean the employee has been cleared to return-to-duty.** At this point, the employee should be in treatment with his/her SAP. The SAP shall have the authority to decide when the employee is ready a for return-to-duty test. When the SAP decides that the employee is eligible to return to work, the SAP shall contact the SAPM or ASAPM in order to inform them that return-to-duty testing should occur.
- 6) **If an employee has completed an unpaid thirty (30) day suspension and has not been cleared by the SAP for a return-to-duty test, the employee may then begin to use any accrued/earned leave time he/she might have.** If their accrued/earned leave time is depleted, the employee shall remain on unpaid leave until such time as his/her SAP has cleared the employee for a return-to-duty test. The test shall be setup by the SAPM or ASAPM and a negative test result received by the SAPM or ASAPM, before any employee shall be called back to work..



## **Retention of Specimens**

**A. General** – Specimens that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term storage for at least 365 days.

### **B. Retention Period**

- 1) Within this 365 day period, the employee or his/her designated representative, or other state agencies with jurisdiction, or the County may request in writing that the specimen be retained for an additional period extending beyond this time.
- 2) If the laboratory does not receive the request to retain the sample within the 365 day period, the sample may be discarded.
- 3) Because some analytes deteriorate or are lost during freezing and / or storage, quantitation for a retest is not subject to specific cutoff requirements but must provide data sufficient to confirm the presence of the drug or metabolite.

## **Record-keeping Procedures**

### **A. General**

- 1) The SAPM or ASAPM shall maintain a confidential, double locked file system for drug and alcohol test results.
- 2) Drug / Alcohol test results shall not be included in personnel files. Information regarding an individual's drug and alcohol testing results or rehabilitation may be released only upon written consent of the affected employee, except:
  - a) such information must be released regardless of consent to a government agency as a part of an accident investigation; or
  - b) such information may be disclosed regardless of consent in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug or alcohol test.

**B. Statistical Data** – Statistical data related to drug and alcohol testing and rehabilitation that are non-name specified, along with supervisory training records may be released to governmental agencies upon request.

**C. Record Retention** – The County shall maintain records relating to the administration of this policy in a confidential, double-locked file system. All records of an employee's drug and alcohol testing shall be maintained, at a minimum, for the length of an employee's employment with the County.

**D. Employee Access** – Any employee is entitled, upon written request, to obtain copies of any records pertaining to that employee's drug and alcohol file.

## **Substance Abuse Policy Personnel and Services**

### **1. Ulster County Safety Office**

**Office Hours: Monday – Friday 8am – 4:00 pm (845) 340-3410**

**After business hours: the SAPM or ASAPM may be contacted through 911 at 338-1440.**

**Physical Address:** 380 Boulevard, Kingston, NY, 12401

**Mailing Address:** P.O. Box 1800, Kingston, N.Y. 12402

#### **Substance Abuse Program Manager (SAPM)**

Diane K. Beitzl – U.C. Safety Officer

#### **Assistant Substance Abuse Program Manager (ASAPM)**

Emmett L. Vedder – U.C. Deputy Safety Officer

### **2. Collection Site:**

Emergency One, 40 Hurley Ave., Kingston, N.Y. 12401 (845) 338-5600

### **3. Medical Review Officer (MRO)**

Emergency One, 40 Hurley Ave., Kingston, N.Y. 12401 (845) 338-5600

### **4. Employee Assistance Program (EAP)**

Emergency One, 40 Hurley Ave., Kingston, N.Y. 12401 – (845) 338-5600

## Employee Receipt of the Ulster County Substance Abuse Policy

Return this completed form to the Substance Abuse Program Manager or the Assistant Substance Abuse Program Manager.

Print Employee Name: \_\_\_\_\_

I have received and will read the Ulster County Substance Abuse Policy. I understand that I will be held responsible for the content of this Policy and I agree to abide by the Policy. If I need any clarification or if I have any questions regarding the content of this Policy, I will address them with the Substance Abuse Program Manager or the Assistant Substance Abuse Program Manager.

I understand that a violation of this Policy may be grounds for immediate termination of my employment.

Employee Name (please print): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

# UCAT - Non-Union Mgmt.



## REASONABLE SUSPICION – SUPERVISOR’S OBSERVATION

Complete this checklist when you have reasonable suspicion that an employee is under the influence of a prohibited drug or alcohol.

<b>Employee Name:</b>	<b>Social Security # :</b>	<b>Day / Time of Incident or Observation:</b>
<b>Immediate Supervisor:</b>		<b>Telephone:</b>
<b>Senior Supervisor:</b>		<b>Telephone:</b>

Check those behaviors and symptoms that led to your decision to request a drug or alcohol test.  
Check any category and circle the appropriate symptom(s).

Nature of Incident / Cause for Suspicion	Behavioral Indicators Noted
<input type="checkbox"/> <b>1. Illicit Behavior</b> (observed) or (reported) possession, use, transaction or "under the influence" behavior of a prohibited substance.	<input type="checkbox"/> <b>1. Speech Behavior</b> (verbally abusive),(rambling and nonsensical). Specify: _____
<input type="checkbox"/> <b>2. Under Influence</b> (observed) or (reported) apparent "under the influence" behavior.	<input type="checkbox"/> <b>2. Physical Behavior</b> (extreme aggressiveness) (agitation) (physical abusiveness). Specify: _____
<input type="checkbox"/> <b>3. Erratic Behavior</b> (observed) or (reported) abnormal or erratic behavior.	<input type="checkbox"/> <b>3. Attitude</b> (withdrawn) (depressed) (tearful) (secretive) (unresponsive). Specify: _____
<input type="checkbox"/> <b>4. Other</b> (e.g., flagrant violation of safety or serious misconduct, accident or "near miss" fighting or argumentative abusive language, unauthorized absence from the job). Specify: _____ _____	<input type="checkbox"/> <b>4. Other</b> Erratic or inappropriate behavior (e.g., hallucinating, disoriented, excessive euphoria, talkativeness, confused, frequent absences). Specify: _____ _____

Physical Signs or Symptoms	
<input type="checkbox"/> <b>1. Eyes</b> (red) (pupils dilated) (pupils constricted).	<input type="checkbox"/> <b>6. Physical Control</b> (gait unsteady) (poor coordination) (tremors) (twitching).
<input type="checkbox"/> <b>2. Nose</b> (runny) (sores in or on nostrils) (red and inflamed).	<input type="checkbox"/> <b>7. Muscle Tone</b> (rigid) (shakes and tremors) (limp).
<input type="checkbox"/> <b>3. Skin</b> (flushed and sweating) (pale) (blood spots and needle marks).	<input type="checkbox"/> <b>8. Speech</b> (rapid) (slurred).
<input type="checkbox"/> <b>4. Breath</b> (odor of alcohol) (solvents) (marijuana).	<input type="checkbox"/> <b>9. Mental State</b> (confusion) (hyperactive) (lackadaisical).
<input type="checkbox"/> <b>5. Breathing Rate</b> (rapid) (shallow)	<input type="checkbox"/> <b>10. Other</b> Please specify: _____ _____

### LONG TERM INDICATOR CHECK LIST (Circle what applies)

<b>Quality and Quantity of Work</b>
<ul style="list-style-type: none"> <li>* Clear refusal to do assigned tasks</li> <li>* Significant increase in errors</li> <li>* Repeated errors in spite of increased guidance</li> <li>* Reduced quantity of work</li> <li>* Inconsistent, "up and down" quality and quantity of work</li> <li>* Behavior that disrupts work flow</li> <li>* Procrastination on significant decisions or tasks</li> </ul>
<ul style="list-style-type: none"> <li>* More than usual supervision necessary</li> <li>* Frequent, unsupported explanations for poor work performance</li> <li>* Noticeable change in written or verbal communication</li> <li>* Other (please specify): _____</li> </ul>

**Continued - LONG TERM INDICATOR CHECK LIST (Circle what applies)**

**Interpersonal Work Relationships**

- \* Significant changes in relationships with co-workers, supervisors.
- \* Major change in physical health
- \* Concerns about sexual behavior or sexual harassment
- \* Frequent or intense arguments
- \* Verbal abusiveness
- \* Physical abusiveness
- \* Passive-aggressive attitude or behavior, doing things "behind your back"
- \* Intentional avoidance of supervisor
- \* Expressions of frustration or discontent
- \* Change in frequency or nature of complaints
- \* Cynical "distrustful of human nature" comments
- \* Unusual sensitivity to advice or critique of work
- \* Unpredictable response to supervision
- \* Persistently withdrawn or less involved with people

**General Job Performance**

- \* Excessive number of unauthorized absences in last 12 months
- \* Excessive authorized absences in last 12 months
- \* Excessive used of sick leave in last 12 months
- \* Frequent Monday / Friday absence or other patterns
- \* Excessive "extensions" of breaks or lunches
- \* Frequently left work early
- \* Increased concern about, or actual incidents of, safety offenses involving the employee
- \* Experienced or caused job accidents
- \* Major change in duties or responsibilities
- \* Interfered with or ignored established procedures
- \* Inability to follow through on job performance

**Personal Matters**

- \* Changes in or unusual personal appearances (dress, hygiene)
- \* Changes in or unusual speech (incoherent, stuttering, loud)
- \* Changes in or unusual topics of conversation
- \* Changes in or unusual facial expressions
- \* Concerns about sexual behavior or sexual harassment
- \* Demanding, rigid, inflexible
- \* Increasingly irritable or tearful
- \* Excessive fatigue
- \* Frequent colds, flu, or other illness
- \* Major change in physical health
- \* Temper tantrums or angry outbursts
- \* Persistently boisterous or rambunctious
- \* Unpredictable or out-of-context displays of emotion or fears
- \* Lack appropriate caution
- \* Secretive or furtive
- \* Makes unreliable or false statements
- \* Unrealistic self-appraisal or grandiose statements
- \* Engages in detailed discussions about death, suicide, or harming someone
- \* Has personal relationship problems
- \* Has received professional assistance for emotional or physical problems
- \* Makes unfounded accusations toward others; i.e., has feelings of persecution
- \* Changes in or unusual level of activity – significantly reduced or increased

**WRITTEN SUMMARY**

Please summarize the facts and circumstances of the incident, employee response, supervisor actions taken, and any other pertinent information not previously noted. Please note the date, time, and location of reasonable cause testing or note if employee refused the test. Attach additional sheets as needed.

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Witness Signatures (If Applicable)			
Witness 1:	Date / Time	Witness 2:	Date / Time

Signature of Immediate Supervisor	Date / Time	Signature of Next Supervisor in Line	Date / Time

## Appendix C

**MEMORANDUM OF AGREEMENT**  
**Between**  
**COUNTY OF ULSTER**  
**and the**  
**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.**  
**LOCAL 1000, AFSCME, AFL-CIO**

The County of Ulster, hereinafter referred to as the "Employer", and Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO for Ulster County Unit #8950, hereinafter referred to as the "Union" are parties to a collective bargaining agreement. In accordance with Section 204 of the New York State Public Employee's Fair Employment Act, the parties hereby agree to the following alcohol and drug testing procedure:

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### **ALCOHOL AND DRUG TESTING PROCEDURE**

#### Section 1. Regulations

- 1.1 All Alcohol and Drug Testing Procedures shall be conducted pursuant to Federal Regulations Title 49 CFR Part 40. The Employer shall additionally comply with Title 49 CFR Part 382 of Department of Transportation Federal Highway Administration in regards to all Employees requiring a "CDL" (Commercial Drivers License) in the performance of their duties.

#### Section 2. Notice Requirements

- 2.1 Employer's Policy: The employer shall promulgate a policy on the misuse of alcohol and use of prohibited drugs and shall provide a copy of the policy and procedures to each covered employee and the union. The term "prohibited drugs," means amphetamines, cocaine, ecstasy, heroin, marijuana, opiates, and phencyclidine. At a minimum, the policy shall include detailed provisions on alcohol concentration, alcohol possession, on-duty use of alcohol, pre-duty use of alcohol, use of alcohol following an accident, drug use, drug testing, and refusal to submit to a required alcohol or drug test.
- 2.2 Alcohol and Drug information: The Employer shall explain the requirements of the program. At a minimum, the topics shall include detailed information regarding, but not limited to:
- 1) The employees subject to the procedures and regulations of the policy.
  - 2) The conduct that is prohibited by the employees covered by the policy.
  - 3) The circumstances under which an employee shall be tested.
  - 4) The period of the workday an employee is required to be in compliance with the policy and regulations of the policy.
  - 5) The requirement that an employee submits to alcohol and controlled drug testing.
  - 6) An explanation of what constitutes a "refusal to submit" to an alcohol or controlled drug test and the attendant consequences.
  - 7) When the employee shall be removed from duty under the provisions of the policy.
  - 8) The provisions of treatment in regards to referral, evaluation, and treatment.
  - 9) The consequences of a confirmed positive alcohol or drug test.
  - 10) The procedure of testing for drugs and alcohol.
  - 11) The procedure to protect the employee and the integrity and validity of the test.
  - 12) The person(s) designated by the employer to be contacted for questions and / or additional information.

## Section 2 Notice Requirements – continued

- 2.3 Required Tests: The Employer shall provide a detailed description of alcohol and drug testing requirements to each covered employee which explains the requirements as they pertain to pre-employment testing, random, post-accident, reasonable cause / suspicion, return-to-duty and follow-up testing.
- 2.4 Requirement for Notice: The Employer shall notify the employee covered by the policy that the alcohol or drug test is required under the policy regulations.

## Section 3. Testing Procedures

### 3.1 Tests for Alcohol:

3.1.1 Tests for alcohol shall only be conducted by a breath alcohol technician using an evidential breath-testing device.

3.1.2 The supervisor of an employee who is to be tested shall not administer the test.

3.1.3 An employee shall be paid for all time pertaining to an alcohol test including providing a breath sample and travel time to and from the test site. Such time shall be considered as time worked for the purpose of computing overtime and employee benefits.

3.1.4 Each alcohol test shall be reviewed by the Substance Abuse Program Manager (SAPM), or Assistant Substance Abuse Program Manager (ASAPM) to ensure compliance with all procedures set forth in this MOA as well as all Agency regulations, including the validity of the test. Any employee adversely affected by an invalid test will be made whole for all losses by the Employer.

### 3.2 Test for Prohibited Drugs:

3.2.1 Tests for prohibited drugs shall be conducted only by urinalysis and shall be performed only by the U.S. Department of Health and Human Services certified laboratories.

3.2.2 A specimen may be tested only for amphetamines, cocaine, marijuana, opiates, and phencyclidine. A specimen may not be used to conduct any other analysis or test.

3.2.3 If the test result of the primary specimen is positive, the employee may request that the Medical Review Officer (MRO) direct that the split specimen be re-tested within 72 hours of notification by the MRO, and if the second test is negative, the Employer will pay the cost of the second test.

3.2.4 Visual observation of urination shall be required under the requirements of Title 49 CFR Part 40. When visual observation is required, the observer shall be of the same gender as the employee being tested.

3.2.5 The employee shall be permitted to be present to observe the sealing and tagging of the specimen containers.

3.2.6 An employee shall be paid for all time pertaining to a drug test including providing a urine sample and travel time to and from the collection site. Such time shall be considered as time worked for the purpose of calculating overtime and employee benefits.

### Section 3 Test for Prohibited Drugs: continued

3.2.7 Each drug test shall be reviewed by the Substance Abuse Program Manager (SAPM), or Assistant Substance Abuse Program Manager (ASAPM) to ensure compliance with all procedures set forth in this MOA as well as all Agency regulations, including the validity of the test. Any employee adversely affected by an invalid test will be made whole for all losses by the employer.

### Section 4 Random Testing

- 4.1 Random Alcohol Tests: The Employer shall test 10% (ten percent) of the pool of covered employees spread reasonably over a 12-month period. The rate will be reviewed annually and may be adjusted after review of the rate of positive tests.
- 4.2 Random Drug Tests: The Employer shall test 50% (fifty percent) of the pool of covered employees spread reasonably over a 12-month period. The rate will be reviewed annually and may be adjusted after review of the rate of positive tests.
- 4.3 Selection of Employees: The Employer shall select employees for testing only through a computer based random number generator utilizing an appropriate employee identification number. Lists for random testing must be generated by an independent agency.

### Section 5 Reasonable Cause / Suspicion Testing

- 5.1 Determination of Reasonable Cause / Suspicion Testing: The decision to test must be based on a reasonable and articulate belief that the employee is demonstrating signs and symptoms of prohibited drug and / or alcohol use as a result of specific, contemporaneous physical, behavioral or performance indicators. Supervisors shall utilize a Reasonable Cause / Suspicion Testing form available through the Ulster County Safety Office, which documents witnesses (if any), behavior, appearance, and other indicators that would cause testing. When a reasonable cause / suspicion test is required, the employee shall be given a reasonable opportunity to contact counsel or a Union representative, as long as such attempts do not result in undue delay in the testing process. Reasonable efforts shall be made, without delaying the testing process, to assist the employee in contacting legal counsel or a union representative, if requested by the employee.
- 5.2 Reasonable Cause / Suspicion Training for Supervisors: Supervisors who utilize reasonable cause / suspicion testing shall receive two (2) hours of formal training every three (3) years on the physical, behavioral, speech and performance indicators of probable misuse of alcohol or use of prohibited drugs. Such training must be completed before the supervisor can require an employee to undergo a test.

### Section 6 Post-Accident Testing

- 6.1 If alcohol testing is not performed within two (2) hours of the time of the accident, documentation shall be on file with the SAPM or ASAPM of reasons the test was not completed. If the employee has not been tested within eight (8) hours of the time of accident, all testing for alcohol shall cease. Urine collection for drug testing shall occur within 32 hours of the time of the accident.

### Section 7 Call-in Procedure

- 7.1 In the event an employee is called for overtime, the employee will have opportunity to acknowledge unavailability for work.



## Section 8 Consequences of a Positive Test

- 8.1 When an employee tests positive for drugs, the MRO will contact the said employee. If, after a good faith effort, the MRO cannot locate or contact the employee to come for a private discussion, the MRO will contact the SAPM or ASAPM to notify them of the employee with the positive test result.
- 8.2 An employee who tests positive for prohibited drugs or tests positive for alcohol with a level of 0.04 or greater will incur a 30 day suspension without pay. The employee may not use their accrued leave time to substitute for suspensions without pay. An employee who tests positive is required to contact a SAP through the Employee Assistance Program for evaluation and treatment. For any employee who fails to contact the Employee Assistance Program within 48 hours, the Employer will seek to terminate the employee pursuant to Section 75 of the New York State Civil Service Law (NYSCSL).
- 8.3 An employee who has tested positive for alcohol at a level of 0.02 or between 0.02 and 0.04 will incur the following penalties:
- 1) 1<sup>st</sup> occasion – 5 day suspension without pay (no treatment plan required)
  - 2) 2<sup>nd</sup> occasion – 10 day suspension without pay (no treatment plan required)
  - 3) 3<sup>rd</sup> occasion – 15 day suspension without pay (no treatment plan required)
  - 4) 4<sup>th</sup> occasion – 30 day suspension without pay (referral to EAP required)
- 8.4 For any employee who does not contact the Employee Assistance Program within 48 hours, the Employer will seek to terminate the employee pursuant to Section 75 of the New York State Civil Service Law (NYSCSL).
- 8.5 After two occasions of a positive test for drugs or alcohol at a level of 0.04 or greater, the Employer will seek to terminate the employee pursuant to Section 75 of the New York State Civil Service Law (NYSCSL).

## Section 9 Referral, Evaluation and Treatment

- 9.1 Designation of Substance Abuse Professional (SAP) – The SAP shall be a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, or employee assistance professional with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.
- 9.2 Employee Assistance Program (EAP) – The Employer shall make available and adequately fund an Employee Assistance Program capable of evaluating and resolving problems associated with the misuses of alcohol and the use of prohibited drugs.
- 9.3 Rehabilitation Program – The Employer shall make available a rehabilitation program through established health insurance programs. If such a program is not available through the employee's insurance, the Employer shall cover the costs of a rehabilitation program comparable to that provided through the New York State Health Insurance Program. The employee shall be responsible for any additional costs associated with any treatment program in which the employee participates.
- 9.4 Any costs involving the use of a SAP under the regulations shall be borne by the employee's health insurance.
- 9.5 Leave of Absence – A leave of absence beyond the punitive period of the 30 day suspension will be allowed for treatment on an in-patient or out-patient basis. While on a leave of absence, the employee may use accumulated sick leave credit, vacation leave credits, holidays and other accrued leave time up to the limits set forth in the Collective Bargaining Agreement or other applicable laws, rules or

regulations, including any discretionary leave rights. Otherwise, the leave of absence shall be without pay. Nothing herein shall be construed to diminish any rights, which may apply under the Americans with Disabilities Act, Family Medical Leave Act, or other relevant laws.

- 9.6 Return to Work – Reinstatement to the employee’s position after completion of a rehabilitation program may only occur upon certification from the program that the employee has satisfactorily participated in the program and the program recommends return to regular duty assignment. The final decision as to whether to permit an employee to return to full duties in the employee’s position or an equivalent position shall be made after consultation with the Substance Abuse Professional and the SAPM or ASAPM.

#### Section 10 Follow-up Testing

- 10.1 Frequency – The SAP shall set the length and schedule of testing (a minimum of six (6) tests during the first twelve (12) months, which may continue for a period up to five (5) years or sixty (60) months after returning to duty) and indicate whether such testing will be for drugs and/or alcohol.

#### Section 11 Previous Policies and Procedures

- 11.1 Any policies and procedures pertaining to alcohol and prohibited drugs, as they pertain to the employees shall be superseded by the procedures set forth by this Memorandum of Agreement, and the Ulster County Substance Abuse Policy. Ulster County and the Union will meet as necessary in order to resolve unanticipated or unexpected problems related to the drug and alcohol testing. This updated Memorandum of Agreement will take effect concurrently with the Ulster County Substance Abuse Policy.

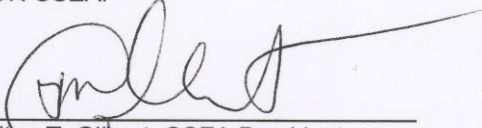
#### Section 12 Copies of Agreement

- 12.1 The Employer shall provide the union(s) with sufficient copies of the Memorandum of Agreement, at no cost, for distribution to current members of the bargaining unit.
- 12.2 The Employer shall provide each new affected employee with a copy of this Memorandum of Agreement, at no cost, on the employee’s first day of employment.

#### Section 13 Savings Clause

- 13.1 In the event that any portion of this Memorandum of Agreement should be found to be invalid by a decision of a tribunal of competent jurisdiction, then such specific portion specified in such decision shall be of no force and effect, unless that would lead to unjust or impractical results.
- 13.2 Upon the issuance of such a decision, then either party shall have the right immediately to reopen negotiations with respect to a substitute for such portion of this Memorandum of Agreement involved.

FOR CSEA:

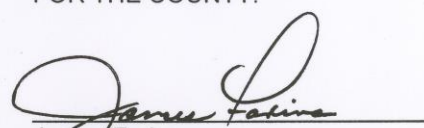


Milton T. Gilbert, CSEA President



Howard Baul, Labor Relations Specialist

FOR THE COUNTY:



James Farina  
Director of Employee Relations

Dated: April 29, 2009