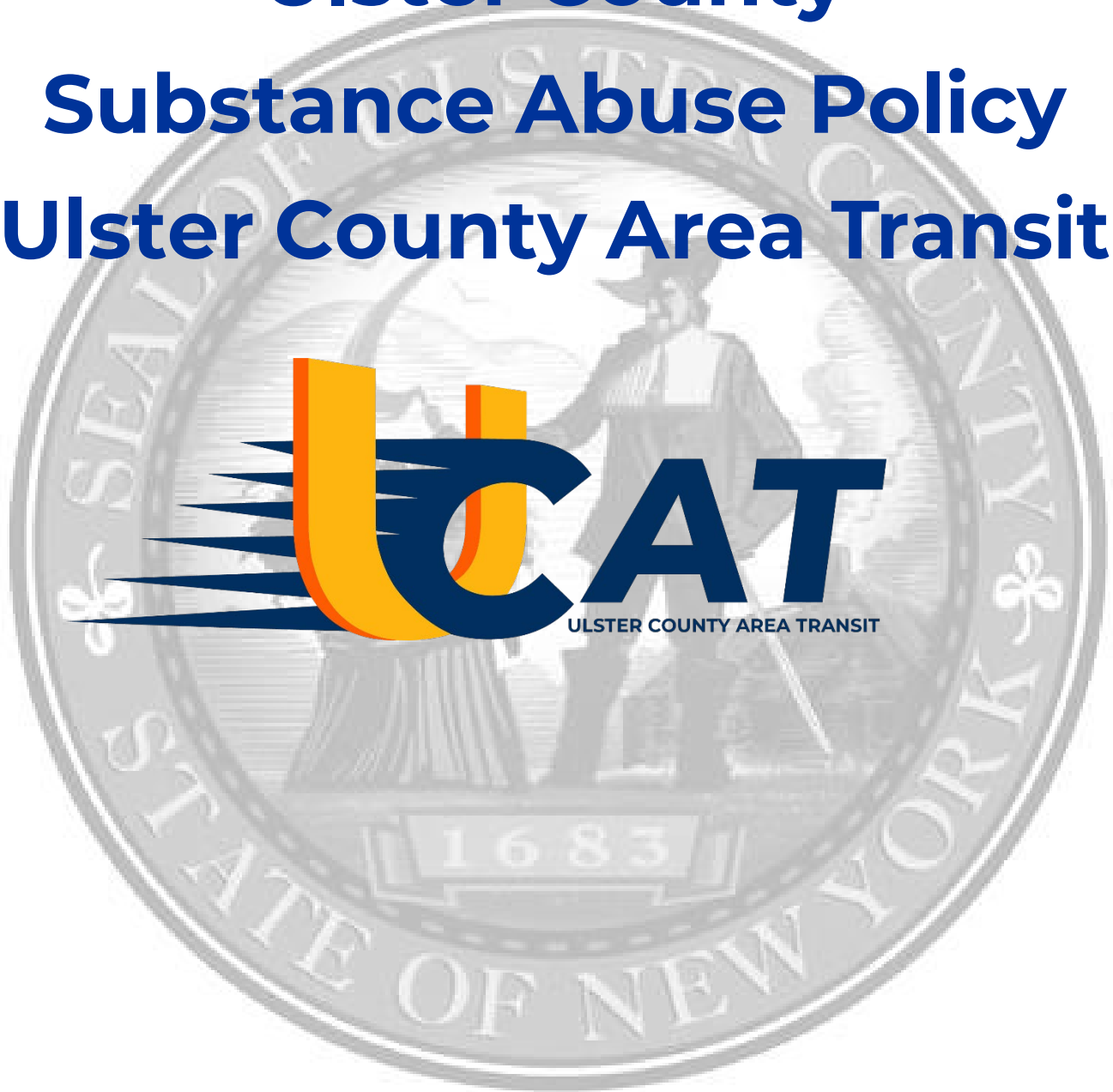


Ulster County Substance Abuse Policy Ulster County Area Transit



Note: All provisions set forth in **bold** face print are included consistent with requirements specifically set forth in 49 CFR Part 655, or Part 40, as amended. Provisions set forth in the Drug-Free Workplace Act (49 CFR Part 32) are delineated in *italics*. All transit-related employees are covered by the provisions of the Drug-Free Workplace Act. All other provisions are set forth under the authority of the transit system. County policy is plain text.

Ulster County Area Transit Substance Abuse Policy

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Section I: POLICY

Ulster County Area Transit (UCAT) is dedicated to providing safe, dependable and economical transportation services to our transit system passengers. UCAT's employees are our most valuable resource, and it is our goal to provide a safe, satisfying working environment, which promotes personal opportunities for growth. In meeting this goal it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; (3) Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

UCAT's Substance Abuse Policy was approved and adopted by resolution of the Ulster County Legislature on September 9, 2004 and became effective on said date. A copy of the signed adoption by the Legislature is attached to this policy. Anytime this policy is substantively amended or updated due to changes in Federal regulations in the future, the policy will contain the date, proof of adoption of the amended policy by the Ulster County Legislature and the date the amended policy, or portion thereof, became effective.

Section II: PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posed by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. **The Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, which mandates drug and alcohol testing for safety-sensitive positions and which prohibit performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (DOT) has also published 49 CFR Part 40, as amended, which sets standards for the collection, testing and reporting of drug and alcohol specimens. In addition, the Federal government published 49 CFR Part 32, "The Drug- Free Workplace Act of 1988." This policy incorporates those requirements for safety- sensitive employees and others when so noted.**

Section III: APPLICABILITY

This policy applies to all transit system employees; paid part-time employees; contract employees and contractors when performing any transit-related safety-sensitive duties or when they are on transit property. This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors, and contract employees are governed by this policy while on transit

premises and will not be permitted to conduct safety-sensitive transit business if found to be in violation of this policy.

A safety-sensitive function is operation of public transportation service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, persons controlling the dispatch or movement of revenue service vehicles and any transit employee who operates a non-revenue vehicle that requires a Commercial Driver's License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions that perform one or more of the above-mentioned duties is provided below. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL or receive remuneration for service in excess of actual expense.

All positions at UCAT were reviewed for safety-sensitive duties to determine the safety-sensitive positions. Additionally, existing positions and any new positions created in the future will be reviewed for safety-sensitive duties. The following positions were determined to be safety-sensitive under the authority of the FTA:

Director of Public Transportation
Deputy Director of Public
Transportation
Public Transit Maintenance and Safety Coordinator
Public Transit Dispatch and Operations Assistant Coordinator
Public Transit Dispatcher/Trainer
Bus Driver
Bus Dispatcher
Bus Driver/Dispatcher
Senior Bus Dispatcher
Automotive Mechanic II
Lead Automotive
Mechanic

Section IV: PROHIBITED SUBSTANCES

"Prohibited substances" addressed by this policy include the following:

A. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988

Any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription

has been written for the substance. This includes, but is not limited to: **marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine**, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

USDOT Agency drug testing regulations require that all employees covered under USDOT authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

It is important to note that the use of marijuana in any circumstances remains completely prohibited for any safety-sensitive employee subject to drug testing under USDOT regulations. The use of marijuana in any circumstance (including under state recreational and/or medical marijuana laws) by a safety-sensitive employee is a violation of this policy and a violation of the USDOT regulation 49 CFR Part 40, as amended.

B. Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates the mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

A legally prescribed drug means that the individual has a prescription or other written approval from a physician for the use of the drug in the course of medical treatment. It must include the patient's name, the name of the substance and quantity/amount to be taken. The misuse or abuse of legal drugs while performing transit business is prohibited.

C. Alcohol

The use of beverages containing alcohol (including mouthwash, medication, food, candy) or any other substances containing alcohol in a manner which violates the conduct listed in this policy is prohibited.

An employer may direct a covered employee to undergo random, reasonable suspicion, or follow-up testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

Section V: PROHIBITED CONDUCT

The consumption of illegal drugs is prohibited at all times. Covered employees may be tested anytime they are on duty. Off duty use may result in an on duty positive.

Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, no covered employee can perform or continue to perform a safety-sensitive function with a BAC of 0.02 up to but less than 0.04. The employee shall be immediately removed from service for at least eight hours unless a retest results in the employee's concentration being less than 0.02 per FTA. UCAT's authority exceeds FTA and requires an employee to be removed for an initial minimum of 5 days and an alcohol test result below 0.02 BAC. An alcohol test of 0.02 BAC or greater, but less than 0.04 BAC, will result in disciplinary action in accordance with the provisions of the Memorandum of Agreement with the CSEA, available in Attachment B to this policy.

A. Manufacture, Trafficking, Possession, and Use

Transit System employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances on transit authority premises, in transit vehicles, in uniform, or while on transit authority business. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

B. Intoxication/Under the Influence

Any safety sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition. **Employees who have a positive drug test, an alcohol test at or above 0.04, or who refuse to test shall be removed from duty immediately, informed of educational and rehabilitation programs available, and be provided with a list of USDOT qualified Substance Abuse Professionals (SAPs) and subject to disciplinary action in accordance with the provisions of the Memorandum of Agreement for Alcohol and Drug Testing Procedure between the County of Ulster and the Civil Service Employee's Association (CSEA). A copy of this agreement is available in Attachment B to this policy. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body at or above the minimum thresholds defined in 49 CFR Part 40, as amended.**

C. Alcohol Use

All safety-sensitive employees are prohibited to consume alcohol for the specified on-call hours of each employee who is on-call. If there is actual knowledge that an employee is using alcohol while performing safety-sensitive functions, that employee shall not be permitted to perform those safety sensitive duties. An employee is not permitted to consume alcohol 4 hours prior to performing safety sensitive duties. All covered employees are given the opportunity to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function. The requirement provides a covered employee take an alcohol test if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

No safety sensitive employee shall use alcohol while on duty, in uniform, while performing safety-sensitive functions, or just before or just after performing a safety-sensitive function. No safety-sensitive employee shall use alcohol within four hours of reporting for duty or for eight hours following involvement in an accident or until he submits to a post-accident test, whichever occurs first.

Violation of these provisions is prohibited and punishable by disciplinary action in accordance with the provisions of the Memorandum of Agreement with the CSEA, available in Attachment B to this policy.

Section VI: COMPLIANCE WITH TESTING REQUIREMENTS

All safety-sensitive employees will be subject to drug testing anytime while on duty and alcohol testing only just prior, during and just after the performance of safety-sensitive duties. All tests for alcohol must be done in accordance with 49 CFR Part 40, as amended. Any safety sensitive employee who refuses to test shall be removed from duty immediately, informed of educational and rehabilitation programs available, and referred to a SAP.

A. Refusal to Test

The following are considered a refusal to test if the employee:

- (1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer.
- (2) Fails to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fails to attempt to provide a specimen for a drug or alcohol test required by Part 40 or DOT agency regulations. An employee who does not provide a specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly observed or monitored urine collection in a

drug test, fails to permit monitoring or observation of your provision of a specimen.

- (5) Fails to provide a sufficient specimen for a drug or alcohol test without a valid medical explanation.
- (6) Fails or declines to take an additional drug test as directed by the collector or the employer.
- (7) Fails to undergo a medical evaluation, as required by the MRO or by the employer.
- (8) Fails to cooperate with any part of the testing process.
- (9) Fails to follow an observer's instructions to raise and lower clothing and turn around during a directly observed urine collection.
- (10) Possess or wear a prosthetic or other device that could be used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or the MRO.
- (12) Refuses to sign Step 2 of the alcohol testing form.
- (13) Failure to remain steadily available for testing following an accident.
- (14) If the MRO reports that there is a verified adulterated or substituted test result.

Refusal to test is considered equivalent to a positive test and will result in immediate removal from a safety sensitive function and referral to a list of USDOT qualified SAPs.

Section VII: TREATMENT REQUIREMENTS

Any covered employee that has a verified positive drug or alcohol test (BAC 0.04 or higher), or test refusal, will be immediately removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to a list of USDOT qualified Substance Abuse Professionals (SAPs) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer. Any employee who refuses or fails to comply with UCAT's requirements for treatment, after-care, or return- to-duty shall be subject to disciplinary action, up to and including termination. The cost of any treatment or rehabilitation services will be paid for directly by the employee or their insurance provider. Eligible employees will be allowed to take accumulated sick leave, vacation leave, holidays and other accrued leave time up to the limits set forth in the CSEA Collective Bargaining Agreement to participate in the prescribed rehabilitation program.

Section VIII: NOTIFICATION OF CRIMINAL DRUG CONVICTION

All employees are required to notify the transit system in writing of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction.

Section IX: PROPER APPLICATION OF THE POLICY

UCAT is dedicated to ensuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action.

Section X: TRAINING FOR SAFETY-SENSITIVE EMPLOYEES & SUPERVISORS

All safety-sensitive employees shall receive a minimum of 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment and indicators of prohibited drug use. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

Supervisors responsible for making the decision to reasonable suspicion test must receive a minimum of 60 minutes of training on drug and 60 minutes of training on alcohol information regarding the physical, behavioral, speech and performance indicators of probable drug and alcohol use.

Section XI: TESTING PROCEDURES

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

A. Drug Testing

The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary specimen. The test will be considered positive if the amounts of the drug(s) and/or its metabolites are at or above the minimum thresholds established in 49 CFR Part 40, as amended.

B. Alcohol Testing

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in this policy. Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety sensitive duties and be referred to a Substance Abuse Professional (SAP). Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety sensitive duties for at least 8 hours unless a retest results in an employee's alcohol concentration being less than 0.02. A positive alcohol test of 0.02 BAC or greater, but less than 0.04 BAC will result in disciplinary action in accordance with the provisions of the Memorandum of Agreement with the CSEA, available in Attachment B to this policy.

C. Positive Test Result

Any safety-sensitive employee that has a verified positive drug test, an alcohol test result of 0.04 BAC or higher, or who refuses to test will be immediately removed from their duties, informed of educational and rehabilitation programs available and referred to a list of USDOT qualified Substance Abuse Professionals (SAPs) for an evaluation and assessment. A positive drug and/or alcohol test will result in disciplinary action in accordance with the provisions of the Memorandum of Agreement with the CSEA, available in Attachment B to this policy.

D. Dilute Specimen

A dilute specimen is a specimen with creatinine and specific gravity values that are lower than expected for human urine. If a specimen result is a positive dilute, then it will be treated as a positive test. If a specimen result is negative dilute, UCAT will retest each negative dilute in accordance with 49 CFR Part 40.197(b)(2)(ii) or as directed to do so by the MRO in accordance with 49 CFR Part 40.197(b)(1)

E. Specimen Validity Testing

Specimen validity testing will be conducted on all specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine or oral fluid. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the specimen, if the specimen was diluted, or if the specimen was altered.

Section XII: EMPLOYEE REQUESTED TESTING

Any safety-sensitive employee who questions the results of a required drug test may request that an additional test be conducted. This test must be conducted at a different DHHS certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the original sample. The employee pays all costs for such testing unless the result of the split sample test invalidates the result of the original test. UCAT guarantees that the split specimen test will be conducted in a timely fashion. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for split sample testing must be made to the Medical Review Officer (MRO) within 72 hours of notice of the original sample verified test result. The MRO must direct the laboratory in writing to send the split sample with appropriate copies of the custody and control form and a copy of the MRO's request for testing to another DHHS certified laboratory. Requests after 72 hours will only be accepted if the delay was due to documented facts that were beyond the control of the employee.

Split Specimen Testing is not authorized for test results reported by the MRO as "Invalid".

Section XIII: TYPES OF DRUG & ALCOHOL TESTING EVENTS

A. Pre-Employment Drug Testing

All safety-sensitive position applicants shall undergo drug testing immediately following the offer of employment into a safety-sensitive position or before transferring into a safety-sensitive position. Receipt by UCAT of a verified

negative drug test result is required prior to performing safety-sensitive duties.

If the test is cancelled the applicant must retake and pass a drug test before performing safety-sensitive duties.

Before resuming safety-sensitive duties, an employee, who has not performed a safety-sensitive function for 90 days or more and has not remained in the random pool during that time, will be subject to Pre-Employment drug testing.

When a covered employee or applicant has previously failed a pre-employment drug test, he/she must present to the employer proof of successfully having completed a referral, evaluation and treatment plan as described in Sec. 655.62

If otherwise qualified, an individual with permanent or long-term disabilities that directly render him/her unable to provide an adequate specimen will be allowed to perform safety-sensitive duties, despite his/her inability to provide a specimen during a pre-employment test. The MRO will determine long term inability to provide a specimen by medical examination and consultation with the employee's physician.

B. Pre-Employment Alcohol Testing

All safety-sensitive position applicants shall undergo alcohol testing immediately following the offer of employment into a safety-sensitive position or before transferring into a safety-sensitive position. Receipt by UCAT of a verified negative alcohol test result (less than 0.02) is required prior to performing safety-sensitive duties.

Pre-employment alcohol tests are conducted after making a contingent offer of employment or transfer. All pre-employment alcohol tests will be conducted using the set forth in 49 CFR Part 40.

An employee will not be allowed to begin performing safety sensitive functions unless the result of the employee's test indicates and alcohol concentration of less than 0.02 and has an MRO verified negative drug test.

C. Reasonable Cause/Suspicion Testing

All safety-sensitive employees may be subject to reasonable suspicion drug and/or alcohol testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral must be made by a supervisor, trained in the signs and symptoms of drug and alcohol use, who has personally observed and documented objective facts and circumstances which are consistent with the short-term effects of substance abuse. The criteria for a reasonable suspicion test must be based on contemporaneous, articulable, observations concerning the appearance, behavior, speech or body odor of the safety-sensitive employee. A supervisor making the decision to reasonable

suspicion test may not act as the STT or BAT for that test. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

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. A supervisor must then make a decision as to whether there is reasonable suspicion/cause to believe an employee is using or has used a prohibited drug and/or alcohol.

- a) **Any supervisor who utilizes reasonable cause / suspicion testing shall receive one (1) hour of training on the physical, behavioral, speech and performance indicators of probable misuse of alcohol and an additional one (1) hour of training on the physical behavioral and performance indicators of prohibited drugs use.** Under the authority of Ulster County, supervisors must undergo this training every three (3) years. The supervisor shall use the County's "Reasonable Suspicion / Supervisor Observation" form. Once completed, the supervisor will contact the DAPM/DER or ADAPM/ADER to review the information contained therein.
- b) **The decision to test must be based on a reasonable and articulate belief that the employee is demonstrating signs and/or symptoms of prohibited drug and/or alcohol use as a result of specific, contemporaneous, and articulable observations concerning an employees appearance, behavior, speech and /or body odor.**
- c) **Reasonable Cause / Suspicion Testing shall include screening for alcohol, amphetamines, cocaine metabolites, marijuana metabolites, opioids, and phencyclidine.**
- d) In making a determination of reasonable cause UCAT exceeds FTA and includes the below factors to be considered which may include both FTA and Ulster County regulations/guidelines for a non-DOT reasonable cause / suspicion test, but are not limited to, the following:
 - 1) Adequately document pattern of unsatisfactory work performance, for which no apparent non-impairment related reason exists or a change an employee's prior pattern of work performance.
 - 2) Physical signs and symptoms consistent with substance abuse.
 - 3) Evidence of illegal drug or alcohol use, possession, sale, or delivery while on duty.
 - 4) Occurrence of a serious or potentially serious, without delay accident that may have been caused by human error or flagrant violations of established safety, security, or other operational procedures.

Once the decision to reasonable suspicion test is made, the employee will be removed from safety-sensitive duties until the results are received. 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.

Whenever an employee is tested under Reasonable Cause/ Suspicion, or Post Accident testing, the employee shall be transported by a supervisor to the collection site for testing. If the employee tests positive for alcohol, he/she shall be transported to his/her residence. If the employee had been drug tested, the employee shall be suspended from duty pending the results of the drug test.

D. Return- to Duty- Testing

Before any safety-sensitive employee is allowed to return to duty following a verified positive drug or alcohol test, or test refusal, they must be evaluated by a SAP, complete any recommended treatment and provide a negative return to duty test. Return to duty testing is done at the recommendation of the SAP and cannot be accomplished until the SAP has stated that the employee has complied with the prescribed education and/or treatment. The results of a return duty test shall be a verified negative drug and/or the alcohol test must be less than 0.02 prior to the employee returning to safety sensitive duties.

- a) When an employee is in treatment with a SAP as a result of a positive test, he/she shall be tested under Return to Duty testing when the SAP has contacted the DAPM/DER or ADAPM/ADER and recommend that the test be given. This test does not necessarily indicate the end of treatment with the SAP

E. Post Accident Testing

Post Accident testing of safety-sensitive employees involved in an accident/ incident with a UCAT vehicle (regardless of whether or not the vehicle is in revenue service) is mandatory for accidents where there is loss of life and for nonfatal accidents if, 1) an individual involved in the accident is immediately transported away from the scene for medical treatment, or 2) one or more vehicles involved in the accident incurs disabling damage (damage which precludes the departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repair) requiring transportation from the scene by tow truck or other vehicle.

When there is loss of human life, the safety-sensitive employee operating the public transportation vehicle at the time of the accident must be tested. Other safety-sensitive employees (e.g. maintenance, dispatch personnel), whose performance could have contributed to the accident (as determined by UCAT using the best information available at the time of the accident) must also be tested.

Safety-sensitive employees operating the public transit vehicle at the time of a nonfatal accident (fitting the criteria above) must be tested, unless their behavior

can be completely discounted as a contributing factor in the accident. Other safety-sensitive employees whose performance could have contributed to the accident, as determined by UCAT using the best information available at the time of the accident shall also be tested after a non-fatal accident .

Following an accident, safety-sensitive employees will be tested as soon as practicable, but not to exceed 32 hours for drug testing. If alcohol testing is not done within 2 hours of the accident, the reason for not testing must be documented in a report and attempts to alcohol test must continue for up to 8 hours after the accident. If alcohol testing is not completed within 8 hours or drug testing is not completed within 32 hours following the accident all attempts to test must stop and, the reasons for not testing must be updated on the written report. Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight hours following an accident or until they undergo a post-accident alcohol test.

The results of a blood, urine, or breath test conducted by Federal, State, or local officials shall be considered to meet the requirements of this section, provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results can be obtained by the employer.

The requirements to test for drugs and alcohol following an accident should in no way delay necessary medical attention for injured people or prohibit a safety-sensitive employee from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. However, the safety-sensitive employee must remain readily available, which means UCAT knows the location of the safety-sensitive employee. Any safety-sensitive employee who leaves the scene of the accident, without a justifiable explanation, prior to submission to drug and alcohol testing will be considered to have refused the test. Refusal to test is considered equivalent to a positive test and will result in disciplinary action in accordance with the provisions of the Memorandum of Agreement with the CSEA, available in Attachment B to this policy.

F. Random Testing

All safety-sensitive employees shall be subject to random, unannounced testing. The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the USDOT Agency administrator. The current year testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>. Per County policy, UCAT conducts random drug testing at the current higher rate each year of either FTA or FMSCA. The selection of safety-sensitive employees for random drug and alcohol testing shall be made using a scientifically valid method such as a random number table or a computer-based random number generator that ensures each safety-sensitive employee that they will have an equal chance of being selected each time selections are made. Random tests will be

unannounced and spread throughout all days and all hours of all shifts UCAT is in operation during the year. Employees are to proceed to the testing site immediately upon notification of a random test.

Section XIV: SECOND CHANCE POLICY

It is UCAT policy to offer safety-sensitive employees who produce a positive drug or alcohol test a second chance, depending on the results of the Return to Duty Testing and Follow-up Testing as outlined below.

A. Return to Duty Testing

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual.

The SAP will recommend the return-to-duty test only when the employee has successfully completed the educational/treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety.

The SAP will determine whether the employee will require a return-to-duty drug test, alcohol test, or both.

B. Follow-up Testing

Once a safety-sensitive employee is allowed to return to duty, he/she shall be subjected to unannounced follow-up testing for at least 12 months, but not more than 60 months with a minimum of 6 tests being done during the first 12 months. The SAP will determine the frequency and duration of the follow-up testing. Follow-up testing is separate from and in addition to the regular random testing program. Employees subject to follow-up testing must also remain in the standard random pool and must be tested whenever their name comes up for random testing, even if this means being tested twice in the same day, week, or month.

C. Directly Observed Collections

Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

1. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Ulster County Area Transit that there was not an adequate medical explanation for the result;

2. The MRO reports to Ulster County Area Transit that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
3. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
4. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
5. The temperature on the original specimen was out of range;
6. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
7. All follow-up-tests; or
8. All return-to-duty tests

See the Observed Collection Section of Attachment A of this policy for a description of direct observation collection procedures.

Section XV: DRUG SPECIMEN COLLECTION AND ALCOHOL TESTING PROCEDURES

A. Specimen Collection Procedures:

Specimen collections will be performed to the standards set in 49 CFR Part 40 as amended. An overview of the procedures is available in Attachment A to this policy.

B. Alcohol Testing Procedures:

All alcohol testing procedures will be done according to the standards set forth in 49 CFR Part 40 as amended. An overview of the procedures is available in Attachment A.

Section XVI: MEDICAL REVIEW OFFICER (MRO)

The laboratory results must be reviewed by a qualified MRO. The purpose of this review is to verify and validate test results. The laboratory shall report all results to the MRO in a confidential manner.

A qualified MRO is a licensed physician 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 or her medical history and any other relevant biomedical information.

The MRO shall follow all procedures set forth in 49CFR part 40 as amended.

Section XVII: SUBSTANCE ABUSE PROFESSIONAL (SAP)

Any individual who has a verified positive drug or alcohol test shall be removed from safety-sensitive duties immediately, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP). A SAP can be a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

The responsibilities of the SAP include:

- (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use.
- (2) Referring the employee to an appropriate education and/or treatment program.
- (3) Conducting a follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations.
- (4) Determine when return-to-duty testing is appropriate and whether it should be for drugs and/or alcohol.
- (5) Providing the DAPM/DER with a follow-up drug and/or alcohol testing plan for the employee; and recommend the number of months the returning safety-sensitive employee will be subject to follow-up testing (after the minimum six tests during the first 12 months and a maximum of 60 months) and whether it will be for drugs and/or alcohol.

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 must follow the procedures and responsibilities set forth in 49 CFR Part 40.

Section XVIII: EMPLOYEE ACCESS TO RECORD

Drug testing records must be kept in a secure location with controlled access. Drug and alcohol test results may be released only under the following circumstances:

- 1) Drug/alcohol testing records shall be maintained by the Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.**
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.**
- 3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need-to-know basis.**
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.**
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.**
- 6) Records will be released to the National Transportation Safety Board during an accident investigation.**
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.**
- 8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.**
- 9) Records will be released if requested by a Federal, state, or local safety agency with regulatory authority over UCAT or the employee.**

- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

Section XIX: SYSTEM CONTACTS

A. Program Manager / Designated Employer Representative (DAPM/DER):

Name: Diane K. Beitzl
Address: PO Box 1800
Kingston NY 12402
Telephone: (845) 340-3414

B. Assistant Program Manager / Designated Employer Representative (ADER):

Name: Adam M. Sessler
Address: PO Box 1800
Kingston NY 12402
Telephone: (845) 340-3413

C. Medical Review Officer (MRO):

Name: Brian N. Heinen, Sr., MD
Address: 151 Leon St.
Eunice, LA 70535
Telephone: (888) 382-2281

D. Substance Abuse Professional (SAP):

Name: Michael B. Goldman or as assigned by Ulster County SAP provider, Curalinc Healthcare
Address: 314 West Superior Street
Suite 601
Chicago, IL 60654
Telephone: (312) 741-8258

E. DHHS Certified Laboratories:

Primary Lab: Alere
Address: 450 Southlake Blvd.
Richmond, VA 23236
Telephone: 800-433-3823

Secondary Lab: MedTox Laboratories, Inc.
Address: 402 W. County Road D
St. Paul, MN 55112
Telephone: 800-832-3244

F. Collection Sites:

Name: Emergency One Urgent Care & Diagnostic Center
Address: 40 Hurley Ave, Suite 4
Kingston, NY 12401
Telephone: (845) 338-5600

Or

Address: 4274 Albany Post Rd
Hyde Park, NY 12538
Telephone: (845) 229-2602

Or

Address: 306 Windsor Hwy
New Windsor, NY 12553
Telephone: (845) 787-1400

Or

Address: 2555 South Rd
Poughkeepsie, NY 12601
Telephone: (845) 240-1849

After business hours: the DAPM/DER or ADAPM/ADER may be contacted through E911 at 845-338-1440 request UC Safety to be paged (Give name and telephone number) and SAPM or ASAPM will return the call and page an Emergency One designated employee to meet at their facility to perform the required tests.

G. Employee Assistance Program (EAP)

Name: SupportLinc provided by Curalinc Healthcare
Address: 314 West Superior Street
Chicago, IL 60654
Telephone: (888) 881-5462

The number to call for
Substance Abuse Assistance is:

(888) 881-5462

SupportLinc Employee Assistance Program

**EMPLOYEE RECEIPT
OF ULSTER COUNTY AREA TRANSIT
SUBSTANCE ABUSE POLICY**

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

Employee Name (Please Print): _____

I have received and will read the UCAT 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 Program Manager or Assistant Program Manager.

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

This Policy adheres to the Federal Transit Administration's mandated regulations for drug and alcohol testing.

Employee Signature: _____

Date Signed: _____

Witnessed by: _____

UCAT / Non-Union Mgmt.

Attachment A

URINE COLLECTION AND ALCOHOL TESTING PROCEDURES

A. URINE SPECIMEN COLLECTION PROCEDURES

Urine collection for drug testing shall be done at a location that provides:

- A privacy enclosure for urination.
- A toilet receptacle large enough to contain a complete void.
- A source for washing hands.
- A suitable surface for writing.

The collection site personnel shall be trained in the proper procedures for preparing the collection site, collecting the urine specimen, sealing, and preparing the specimen for shipment and completing the custody and control form as required in 49 CFR Part 40.

A Federal DOT drug testing custody and control form will be used for the collection.

The collection room shall be inspected by the collector before and after each specimen collection for removal of any unauthorized persons and materials that could be used to adulterate the specimen. The collection site will be secure to prevent unauthorized access during the collection process.

The collector will verify the employee's identity by photo identification or by a company representative. The collection will not proceed if identity is not verified. The collection site will notify the employer if the employee fails to report or arrives more than 30 minutes late for the appointment.

The employee will be requested to check belongings (purses & briefcases) and remove any outer clothing (e.g. coveralls, jacket, coat, hat). The employee may retain their wallet.

The employee will be directed to wash and dry their hands.

The collector will unwrap the collection cup in front of the employee and direct them to the privacy enclosure. The collector remains outside the enclosure. The employee is instructed to provide at least 45 mL (about 2 ounces) of urine.

If the employee is unable to provide at least 45 mL of urine they will be given up to 40 ounces of fluids and remain at the collection site for up to 3 hours in an attempt to provide the specimen. If the required amount is provided, the original sample is discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen is discarded, testing discontinued, and the employer notified. The MRO shall refer the employee for a medical evaluation to determine whether the employee's inability to provide a specimen is genuine or

constitutes a refusal to submit to a drug test. The examining physician shall provide the MRO a brief statement setting forth his/her conclusion and the basis for it. Upon receipt of the statement the MRO shall report his/her conclusions to the employer in writing. If the MRO determines there is no medical explanation for the inability to provide an adequate specimen, this will be considered a refusal to test.

Within four (4) minutes of receiving the specimen from the employee, the collector will record the temperature of the specimen on the custody and control form. The temperature must be between 90.0 and 100.0 F. Any specimen temperature out of that range requires a second specimen to be collected immediately under direct observation by a collector of the same gender. The incident is noted in the remarks section of the custody and control form and both specimens are sent to the laboratory. The collector shall also visually examine the specimen for any unusual color or sediment, and note anything unusual on the custody and control form.

If the employee refuses to cooperate with the collection process the collector notifies the employer immediately and documents the non-cooperation on the custody and control form.

If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) mL shall be poured into one bottle, to be used as the primary specimen. At least 15 mL shall be poured into the other bottle, to be used as the split specimen. If a specimen bottle is used as a collection container, the collector shall pour off 30 mL of urine from the specimen bottle into a second specimen bottle, to be used as the primary bottle), and retain the reminder (at least 15 mL) in the collection bottle to be used as the split specimen.

Both bottles must be sealed and labeled in the presence of the donor. The labels must be printed with the same specimen identification number as the custody and control form. The collector dates and the donor initials the seals on the bottles verifying the specimen is his/hers.

The custody and control form is completed. The collector and the donor must sign the appropriate certification statements on the form regarding authenticity of the specimen and information provided and the integrity of the collection process. Each transfer of custody must be noted on the chain of custody portion of the urine custody and control form. Every effort should be made to minimize the number of persons handling the specimen.

The specimen must be stored in a secured location until transport to the laboratory. Both the primary specimen and the split specimen shall be sealed in a single shipping container, together with the appropriate pages of the custody and control form. The tape seal on the container shall bear the initials of the collector and the date of the closure for shipment.

Observed Collections

Observed urine drug collections are required in the following circumstances:

- For all return-to-duty tests and follow-up tests;
- When the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90°F - 100°F;
- When the employee is directed to provide another specimen because a negative drug test result is reported by the MRO as dilute and the creatinine concentration is between 2 mg/dL and 5 mg/dL.
- When the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- When a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- When the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid, and the MRO determined that there was not an adequate medical explanation for the result;
- When the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

Employees having observed collections will be required to raise clothing above the waist and lower clothing and underpants and turning around to show the collector, that they do not have any type of prosthetic or other device that could be used to interfere with the collection process. After it is determined there is no prosthetic device, the employee is permitted to return clothing to its proper position for observed urination. The collector must observe the employee's urine leave the body and enter the collection cup. The direct observation must be by a collector (or observer) of the same gender as the employee being tested.

B: ALCOHOL TESTING PROCEDURES

Alcohol testing shall be done at a location that provides:

- Privacy to the individual being tested.
- Security with no unauthorized access at any time to EBT.
- BAT conducting only one test at a time who must not leave the testing site while the preparations for testing or the test itself are in progress.

Upon arrival at the testing site the employee must provide positive identification in the form of a photo identification or identification by a company representative.

The BAT will explain the testing procedures to the employee.

The BAT and the employee will complete, date and sign Step #1 and Step #2 of the alcohol testing form indicating the employee is present and providing a breath specimen. Refusal by the employee to sign Step #2 of the alcohol testing form will be noted by the BAT in the remarks section and is considered a refusal to test.

Screening Test

Employee is informed that testing will begin with a screening test. The BAT will open an individually sealed, disposable mouthpiece in view of the employee and attach it to the EBT.

The employee will be instructed to blow forcefully into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained. The BAT will show the employee the result displayed on the EBT or the printed result.

If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required. The BAT and the employee will finish filling out the alcohol testing form. The employee may return to their safety sensitive position and the test will be reported to the employer as a negative.

Note: Alcohol screens may be performed by certified Screening Test Technicians (STT) using alternative alcohol screening devices approved by the Department of Transportation. The alternative methods may test either breath or saliva. If the screening tests results are 0.02 or greater a confirmation test by a BAT, using an evidential breath testing device, must be performed.

Confirmation Test

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.

The confirmation test must be conducted at least 15 minutes, but not more than 30 minutes, after the completion of the initial test. This delay prevents any accumulation of alcohol in the mouth from leading to an artificially high reading.

The BAT will inform the employee of the need to conduct a confirmation test. The employee will be instructed not to eat, drink, or put any object or substance in his/her mouth. The BAT will also instruct the employee not to belch to the extent possible while awaiting the confirmation test. The BAT will inform the employee that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instructions.

Before the confirmation test is administered, the BAT shall conduct an airblank on the EBT. If the reading is greater than 0.00, the BAT shall conduct one more

airblank. If the second airblank reading is greater than 0.00, the EBT must not be used to conduct the test.

The confirmation test is conducted using the same procedures as the screening test. A new mouthpiece will be used.

If the initial and confirmatory test results are not identical, the confirmation test result is deemed to be the final result.

If the result displayed on the EBT is not the same as that on the printed form, the test will be cancelled, and the EBT removed from service.

The BAT will sign and date the form. The employee will sign and date the certification statement, which includes a notice that the employee cannot perform safety-sensitive duties or operate a motor vehicle if the results are 0.02 or greater. Refusal by the employee to sign the certification statement is not considered a "refusal to test", but it will be noted in the remarks section by the BAT.

The BAT will attach the alcohol test result printout directly onto the alcohol collection form with tamperproof tape (unless the EBT prints the results directly on the form).

Reporting

The BAT will transmit all results to the Designated Employer Representative in a confidential manner. In the event an individual must be removed from safety-sensitive duties as a result of the alcohol test, the BAT will notify the Designated Employer Representative immediately.

ATTACHMENT B

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:

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 – Controlled Substances and Alcohol Use and Testing of Department of Transportation Federal Motor Carrier Safety Administration in regards to all covered Employees requiring a “CDL” (Commercial Driver’s License) in the performance of their duties or Title 49 CFR 655 – Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations of Department of Transportation Federal Transit Administration in regards to Public Transportation for covered safety sensitive duties.

Section 2. Notice Requirements

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, marijuana, opioids, and phencyclidine. At a minimum, the policy shall include detailed provisions on alcohol

Section 2 Notice Requirements – continued

- 2.1 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 regard 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.
- 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

Section 3 Test for Prohibited Drugs: continued

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, opioids, 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.
- 3.2.7 Each drug test shall be reviewed by the Drug and Alcohol Program Manager (DAPM/DER), or Assistant Drug and Alcohol Manager (ADAPM/ADER) 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, the MRO will contact the DAPM/DER, instructing the DAPM/DER to contact the employee," per section 40.131(c).
- 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 minimum thirty (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 for alcohol at a level of 0.02 or between 0.02 and 0.04 will incur the following penalties:
- 1) 1st occasion – 5 day suspension without pay (no treatment plan required)
 - 2) 2nd occasion – 10 day suspension without pay (no treatment plan required)
 - 3) 3rd occasion – 15 day suspension without pay (no treatment plan required)
 - 4) 4th 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, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.
- 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:

A handwritten signature in black ink, appearing to read 'M. Gilbert', written over a horizontal line.

Milton T. Gilbert, CSEA President

A handwritten signature in black ink, appearing to read 'Howard Baul', written over a horizontal line.

Howard Baul, Labor Relations Specialist

FOR THE COUNTY:

A handwritten signature in black ink, appearing to read 'James Farina', written over a horizontal line.

James Farina
Director of Employee Relations

Dated: April 29, 2009