

ARTICLE 35. EMPLOYEE'S BAIL, LICENSE, SUBSTANCE AND ALCOHOL TESTING

Section 1. Employee's Bail And/Or Court Appearance

When an employee is required to appear in any court for the purpose of testifying because of any accident the employee may have been involved in during working hours, such employee shall be reimbursed in full by the Employer for all earnings opportunity lost because of such appearance. The Employer shall furnish employees who are involved in accidents during working hours with bail bond and legal counsel and shall pay in full for same. Employees shall be compensated for time spent in jail at his/her regular rate of pay. Said bail bond and legal counsel shall remain assigned to the employee until all legal action in connection with said accident is concluded, provided the employee is not charged and convicted of criminal negligence. This Section shall not apply to employees who are found guilty of drunken driving when involved in an accident during working hours. The Employer shall assume all responsibility for all court costs, legal fees, and bail bond fees for any employee who is involved in any accident or accidents during working hours and shall assume all responsibility for all judgments and awards against any employee who is involved in accidents during working hours, which result through court action against said employee, except as provided above. In case an employee shall be subpoenaed as a witness in a company-related case, or as a result of his/her on duty observations of an accident not involving a UPS vehicle, he/she shall be reimbursed for all time lost and expenses incurred.

Section 2. Suspension or Revocation of License

In the event an employee shall suffer a suspension or revocation of the right to drive the Employer's equipment for any reason, the employee must notify the Employer before their next report to work. Failure to comply will subject the employee to disciplinary action up to and including discharge in accordance with the procedures set forth in the appropriate Supplement, Rider and Addendum. (See also Article 16, Leave of Absence, Section 3.1.)

If such suspension or revocation comes as a result of the employee complying with the Employer's instruction, which results in a succession of size and weight penalties or because the employee complies with the Employer's instructions to drive Employer's equipment which is in violation of the Department of Transportation regulations relating to equipment or because the Employer's equipment did not have either a speedometer or a tachometer in proper working order and if the employee has notified the Employer of the citation for such violation as above mentioned, the Employer shall provide employment to such employee at not less than the employee's regular earnings at the time of such suspension for the entire time period.

Section 3. Controlled Substances Testing

The parties have agreed that the procedures as set forth in Article 35, Section 3 shall be the methodology for all testing and will be modified only in the event that further federal legislation or Department of Transportation regulations require revised testing methodologies or requirements during the term of this Agreement. To the extent that a subject is not covered by this Article the appropriate regulation shall control.

Should other categories, modifications or types of testing be required by the government, the parties will meet as expeditiously as possible to develop a mutually agreeable procedure.

The provisions of Article 16, Section 5 will apply to all employees requesting enrollment in a rehabilitation program following a positive drug test. Employees may use the United Parcel Service Employee Assistance Program, a Union sponsored program, as well as any other referral service in choosing an approved program for treatment.

Section 3.1 Employees Who Must Be Tested

UPS employees subject to Department of Transportation mandated drug testing are drivers of vehicles with a vehicle

weight rating over 26,000 pounds, requiring a commercial driver license (CDL). This includes mechanics and employees who relieve for vacations or other temporary vacancies. Any employee who drives a tractor-trailer and is on the qualified feeder driver list is also subject to DOT mandated testing as provided in this Agreement.

In addition to testing mandated employees, controlled substance testing will be part of pre-qualification conditions for feeder driver employment, and those persons transferring to a feeder driver position. Individuals who are on a “bid list” for tractor-trailer employment or other similar classification type jobs are subject to being tested for controlled substances before being accepted into such a position.

Employees covered by this Collective Bargaining Agreement who are not subject to DOT mandated drug testing are only subject to reasonable cause testing as provided herein. The substances for which testing shall be conducted, and cut-off levels thereto, shall be consistent with those listed for the DOT-covered employees. This provision also applies to testing conducted pursuant to rehabilitation and after care programs.

Section 3.2 Testing

Because of the consequences that a positive test result has on an employee, UPS will employ a very accurate, two-stage testing program. Urine samples will be analyzed by a highly qualified independent laboratory which is certified by the Department of Health and Human Services (HHS). All samples will be tested according to DOT drug testing requirements. Validity testing for the presence of adulterants shall be conducted on all specimens, per HHS requirements.

Section 3.3 Screening Test

The initial test uses an immunoassay to determine levels of drugs or drug metabolites. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five (5) drugs or drug classes.

<u>Substance</u>	<u>Initial Test Level (ng/mL)(1)</u>
Marijuana Metabolites (2)	50(3)
Cocaine Metabolites	150(3)
Codeine/Morphine	2000
Hydrocodone/Hydromorphone	300
Oxycodone/ Oxymorphone	100
6-Acetylmorphine	10
Phencyclidine	25
Amphetamines/Methamphetamine	500
MDMA/MDA	500

These substances and test levels are subject to change by the Department of Transportation as advances in technology or other considerations warrant.

Section 3.4 Confirmatory Test

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed. The following cutoff levels shall be used to confirm the presence of drugs or drug metabolites:

<u>Substance</u>	<u>Confirmatory Test Level (ng/mL)</u>
Marijuana Metabolites (2)	15

Cocaine Metabolites	100
Codeine/Morphine	2000
Hydrocodone/Hydromorphone	100
Oxycodone/Oxymorphone	100
6-Acetylmorphine	10
Phencyclidine	25
Amphetamine/ Methamphetamine (4)	250
MDMA(4)/MDA (5)	250

- (1) For grouped analytes (i.e. two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be eighty percent (80%) or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

- (2) An immunoassay must be calibrated with the target analyte, A-9-tetrahydrocannabinol 1-9-carboxylic acid (THCA).
- (3) Alternate technology (THCA and Benzoyllecgonine): When using an alternate technology initial test for the specific target analytes of THCA and Benzoyllecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15ng/mL for THCA and 100ng/mL for Benzoyllecgonine).
- (4) Methylenedioxyamphetamine (MDMA).
- (5) Methylenedioxyamphetamine (MDA).

In the event the initial drug test indicates a positive response the confirmatory test must be done.

On an initial drug test, the laboratory must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, the laboratory must conduct a confirmation test.

On a confirmation drug test, the laboratory must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

These substances and test levels are subject to change by the Department of Transportation as advances in technology or other considerations warrant.

Section 3.5 Laboratory Testing

All laboratories selected by UPS for analyzing Controlled Substances Testing will be HHS certified.

Section 3.6 Types of Testing Required

Testing procedures will be performed as part of pre-qualified practices, after defined DOT reportable accidents, on the basis of reasonable cause, upon return to duty after a positive test, under DOT mandated random testing and as follow-up testing for post drug rehabilitation as outlined under Article 16, Section 5.

Section 3.7 Pre-Qualification Testing

Controlled substance testing will be part of UPS's regulated pre-qualification conditions for feeder driver positions.

Drivers will be advised in writing prior to the application process that pre-qualification testing will be conducted to determine the presence of controlled substances. Applicants will be required to acknowledge in writing an understanding of this request before they receive an application.

Section 3.8 Reasonable Cause Testing

Upon reasonable cause, UPS will require an employee to be tested for the use of controlled substances.

Reasonable cause is defined as an employee's observable action, appearance, or conduct that clearly indicate the need for a fitness- for-duty medical evaluation.

The employee's conduct must be witnessed by at least two (2) supervisors, if available. The witnesses must have received training in observing a person's behavior to determine if a medical evaluation is required. When the supervisor(s) confronts an employee, a Union representative should be made available pursuant to Article 4 of the National Master UPS Agreement as interpreted. If no steward is present, the employee may select another hourly paid employee to represent him.

Documentation of the employee's conduct shall be prepared and signed by the witnesses within twenty-four (24) hours of the observed behavior, or before the test results are released, whichever is earlier. In addition, a copy will be sent to the Local Union in a timely manner.

Note: (Reasonable Cause)

At the time the urine specimen is collected, the employee may opt to also give a blood sample. If the employee takes this option, the blood sample must confirm positive presence for the substance confirmed in the urine test. If no positive is confirmed in the blood specimen, the employee will be given a warning letter, offered an opportunity for rehabilitation as set forth in this Article, and the employee will be required to otherwise satisfy the requirements imposed by the DOT regulations. However, if there is a second occasion where reasonable cause testing results in a positive urine test, the employee will then be subject to discharge.

Non-DOT - Reasonable Cause:

In the event an employee (not covered by DOT) is tested pursuant to the discipline Article in the Supplemental Rider or Addenda to the National Master UPS Agreement, such test will be performed under the same procedures and requirements as those set forth in this Article. In the event the test result is positive, as set forth above, it shall be considered a dischargeable offense.

Section 3.9 Post-Accident Drug Testing

DOT mandated drivers will be required to submit to a drug test after a DOT defined serious accident, which is one in which:

1. There is a fatality, or;

2. A citation is issued and there is bodily injury to a person who, as a result of the injury, receives immediate medical treatment away from the scene of the accident, or;

3. A citation is issued and one (1) or more motor vehicles incur disabling damage as a result of the accident requiring a vehicle to be transported away from the scene by a tow truck or other vehicle.

Non-DOT mandated drivers may be required to submit to drug testing if there is any reasonable suspicion of drug usage or reasonable cause to believe that a driver has been operating a vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor.

Drivers are required to submit to such testing as soon as possible, but in all events within thirty-two (32) hours. Union representation will be made available pursuant to Article 4 of the National Master UPS Agreement, as interpreted.

It is not the intention of this language to prohibit the driver from leaving the scene of an accident for the period of time necessary to obtain assistance in responding to the accident or to receive necessary medical attention.

The result of a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of post-accident testing, provided such tests conform to applicable federal, state or local requirements, and that the results of the tests are obtained by the Employer.

Section 3.10 Random Testing

Random Employee Selection:

The procedure used to randomly select employees for drug testing, in compliance with the U.S. Department of Transportation Regulations, will be a computer program specifically intended for such an application.

The program will utilize an internal computer clock procedure to randomly generate lists of employees mandated for testing by the Department of Transportation/Federal Highway Administration. The computer shall randomly select the required number of employees from the total pool of affected employees. The total pool list shall be by each region.

For verification purposes and to cover absences the computer shall print the following lists for each testing period:

1. An alphabetical total pool list of employees in the region, and
2. A district list of employees shall be printed from the random list in the order in which they are computer selected.

An absent employee whose name appears on the primary list on the random test day must be tested upon return to work immediately upon notification provided he/she returns prior to the next selection period. The lists or true copies of the lists shall be maintained by a third party administrator. Upon request to the District Labor Relations Manager, the lists will be made available for review by Local Union representatives and company labor relations managers to verify the proper application and use of the lists in the random testing system.

The parties agree that no effort will be made to cause the system and method of selection to be anything but a true random selection procedure insuring that all affected employees are treated fairly and equally.

The parties further agree not to amend or change the current method of random selection as described herein without prior agreement between the parties.

Section 3.11 Notification

UPS employees, subject to Department of Transportation mandated random drug testing, will be notified of testing in person or by direct phone contact. Notification shall be given by the management person responsible for such notification.

Section 3.12 Rehabilitation and Testing After Return To Duty/SAP and Employer Duties

A positive test specimen as a result of a DOT pre-qualification or random test will result in a rehabilitation opportunity. An employee whose test results are reported to the Medical Review Officer by the HHS certified laboratory and who has been contacted by the Medical Review Officer or his/her designee has seventy two (72) hours to contact the Medical Review Officer to review the test results. If the review time schedule is not met, then the Medical Review Officer (MRO) may report to UPS Management that the test is verified as positive. If neither UPS nor the MRO, after making all reasonable efforts, as required by the DOT regulations, is able to contact the employee within ten (10) days from receiving the laboratory results, the test will be considered an uncontested positive test result. If the Medical Review Officer determines a specimen is positive, then the employee will have five (5) calendar days to evaluate his/her situation with an approved Substance Abuse Professional and then up to fifteen (15) calendar days to enter the rehabilitation treatment center after approval of a leave of absence as outlined in Article 16, Section 5 of the National Master UPS Agreement. UPS will follow the final recommendations of the Substance Abuse Professional as to the appropriate after-care protocol and post rehabilitation unannounced drug testing.

The employee will be permitted to return to work after the SAP has determined that the employee has successfully complied with pre-scribed education and/or treatment and the employee has provided a negative drug test result conducted under direct observation, as per cutoff levels contained in Section 3.3 or Section 3.4 of this Article, as applicable, and/or an alcohol test with an alcohol concentration less than 0.02. The Employer will make all reasonable efforts to conduct all return-to-work testing, conference calls, and examinations within five (5) working days of completion of a rehabilitation program.

It is understood that if the grievance procedure is utilized contractual time limits on disciplinary action and the employee's request for rehabilitation will be suspended until resolution of the grievance.

Substance Abuse Professional (SAP)

Each Substance Abuse Professional (SAP) must be a licensed Doctor of Medicine or Osteopathy, or a licensed or certified psychologist, social worker, employee assistance professional, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders and be knowledgeable of the SAP function as it relates to Employer interest in safety-sensitive functions and applicable DOT agency regulations. In addition, the SAP shall keep current on applicable DOT agency regulations and comply with the DOT qualification training and continuing education requirements.

The SAP is responsible for performing the following functions:

1. Conducting the initial face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to solve problems associated with alcohol and/or drug use;
2. Referring the employee to an appropriate education and/or treatment program;
3. Conducting a face-to-face 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. Providing the Employer with a follow-up drug and/or alcohol testing plan for the employee; and

5. Providing the employee and Employer with recommendations for continuing education and/or treatment.

Follow-up testing shall consist of at least six (6) tests in the first (1st) twelve (12) months following the employee's return to duty. The one (1) year period may be extended as necessary by written verification of the Substance Abuse Professional. Tests shall be conducted under direct observation.

Employer Responsibilities

Prior to allowing an employee to return to duty, after the employee has tested positive for the presence of controlled substances or has refused to submit to a drug test, the employer shall:

- A. Ensure that the employee is "drug free," based on a drug test that shows no positive evidence of the presence of a drug or a drug metabolite in the employee's system.
- B. Ensure that the employee has been evaluated by a Substance Abuse Professional (SAP) for drug use or abuse.
- C. Ensure and confirm with the Substance Abuse Professional that the employee demonstrates compliance with all conditions or requirements of a rehabilitation program in which he or she participated.

Section 3.13 Disciplinary Action

Employees may be subject to discipline up to and including discharge as provided below if they test positive for drugs specified elsewhere in this Article.

1. Reasonable Cause Testing

- a. A positive test is a dischargeable offense unless the Union and the Employer expressly agree to a lesser penalty. Any such agreement will not be precedent setting.
- b. Refusal to submit to a reasonable cause drug test is a dischargeable offense.

2. Post-Accident Testing

- a. A positive test is a dischargeable offense.
- b. Refusal to submit to a post-accident drug test is a dischargeable offense.

3. Random Testing

- a. 1st offense - A positive test shall result in a warning letter (subject to successful completion of rehabilitation).
- b. 2nd offense - A positive test is a dischargeable offense.
- c. Refusal to submit to a random drug test is a dischargeable offense.

4. Pre-qualification

- a. 1st offense - A positive test shall result in disqualification/not considered for feeder list until the next feeder driver school is conducted (subject to successful completion of rehabilitation).
- b. 2nd offense - A positive test is a dischargeable offense.

5. Other Dischargeable Offenses:

- a. Failure to successfully complete rehabilitation.
- b. A positive specimen as part of after-care drug testing.
- c. Failure to comply with after-care treatment plan.
- d. An adulterated or substituted specimen.

Section 3.14 Preparation for Testing

Pursuant to Department of Transportation regulations, the Employer reserves the right to utilize on site or off site collection facilities.

Upon arrival at the collection site, an employee must provide the collection agent with:

Photo identification issued by the Employer or a federal, state or local government;

If the employee arrives without the above-listed item, the collection agent should contact the district Safety and Health manager or district Human Resources manager.

A standard DOT approved urine custody and control form will be supplied by the appropriate laboratory. This form must be used by all collection facilities and signed by the employee and the collection agent in the appropriate areas.

Section 3.15 Specimen Collection Procedures

The Employer agrees to continue use of the Specimen Collection Checklist. The checklist, approved by the National UPS/IBT Safety and Health Committee, is to be used with the affected employees at the collection site by the person performing the collection services for the Employer.

The checklist is to be used at all locations, but it is understood that failure to use or the refusal to use the checklist does not invalidate a properly conducted controlled substance testing procedure. Nor does it prohibit an employee's recourse to the collective bargaining agreement and/or the grievance procedure.

All procedures for urine collection will follow Department of Transportation guidelines to ensure an individual's privacy. An employee who gives reason to believe that he or she may have adulterated or substituted a sample will be required to provide a specimen under direct observation by a same gender collection agent. If it is determined that an employee has adulterated or substituted a sample it shall result in the termination of his/her employment.

No unauthorized personnel will be allowed in any area of the collection site. Only one (1) controlled substances testing collection procedure will be conducted at a time and the specimens can only be handled by the collection site person.

The employee being tested should remove any outer garments, such as coats, jackets, hats or scarves, and should leave any personal belongings (purse or briefcase) with the collection agent. The employee shall display the items in his/her pockets to the collection agent. If the employee requests it, the collection agent shall provide the employee a receipt for his or her belongings. The employee may retain his or her wallet.

After washing his/her hands, the employee shall remain in the presence of the collection agent and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or other materials which could be used to adulterate the specimen.

The collection agent provides the employee with a new, sealed kit selected by the employee.

The employee will provide his or her specimen in a stall or otherwise partitioned area that allows for privacy. The Employer agrees to recognize all employees' rights to privacy while being subjected to the collection process at all times and at all collection sites. Further, the Employer agrees that in all circumstances the employee's dignity will be

considered and all necessary steps will be taken to insure that the entire process does nothing to demean, embarrass or offend the employee unnecessarily. Authorization for collection under direct observation will be in accordance with Department of Transportation regulations. All procedures shall be conducted in a professional, discreet and objective manner. Refusal to provide a specimen under direct observation when requested shall be considered a refusal to test and a terminable offense.

The employee shall be instructed to provide at least forty-five (45) milliliters of urine in the collection container. The employee shall hand the specimen to the collection agent. The specimen shall remain in the sight of both the collection agent and the employee at all times. A minimum of thirty (30) milliliters of urine shall be placed in the primary specimen container by the collection agent. The collection agent then must pour at least fifteen (15) milliliters of urine from the collection container into the second specimen bottle to be used for the split specimen. If the individual is unable to provide forty-five (45) milliliters of urine, the collection agent shall direct the individual to drink fluids, not to exceed forty (40) ounces distributed reasonably over a period not to exceed three (3) hours or until a sufficient specimen is provided, whichever occurs first. (The original specimen, if any, should be discarded, unless it was out of temperature range or showed evidence of adulteration or tampering.) If the individual is still unable to provide forty-five (45) milliliters of urine, he/she will be taken out of service and a medical evaluation will be conducted within five (5) business days by a licensed physician who has the expertise in this type of medical issue, and is approved by the Employer to determine if there is a medical reason for the inability to provide a specimen. If it is not determined that there is a medical reason, the individual will be treated as having refused to take the test. If the employee fails for any reason to provide forty-five (45) milliliters of urine, the collection agent should contact a third party administrator (TPA) and either the District Safety and Health Manager or another Employer designee.

The regulations specify the privacy procedures and the reasons to believe that a specimen has been adulterated which includes, but is not limited to, conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample, e.g., abnormal urine color or urine temperature outside the acceptable range. All specimens suspected of being adulterated shall be packaged and forwarded to the laboratory for testing.

In the event of suspected specimen adulteration, a second (2nd) specimen will be immediately collected under direct observation and the entire procedure should be repeated including initiation of a new custody and control form and separate packaging for shipping. If an employee refuses to provide a second (2nd) specimen, it shall be noted as a refusal to test and shall be a terminable offense.

The collection agent shall document any unusual behavior or appearance on the urine custody-and-control form.

Specimen handling (from one (1) authorized individual or place to another) will always be conducted using chain-of-custody procedures. Every effort must be made to minimize the number of people handling specimens. Both specimen containers shall be sealed and then forwarded to an approved laboratory for testing.

When a return-to-duty or follow-up test is being conducted, the collection process may be observed. If observed, the observer shall be the same gender as the employee being tested.

When a test kit is received by a laboratory, the thirty (30) milliliter sealed urine specimen container shall be removed immediately for testing. The shipping container with the remaining sealed container shall be immediately placed in secure refrigerated storage.

If an employee is told that the first (1st) sample tested positive, the employee may, within seventy-two (72) hours of receipt of actual notice, request that the second urine specimen be forwarded by the first (1st) laboratory to another independent and unrelated HHS approved laboratory of the parties' choice for GC/MS confirmatory testing of the presence of the drug. If an employee chooses to have the second (2nd) sample analyzed, he/she shall at that time execute a special checkoff authorization form to insure payment by the employee. If the second (2nd) test is positive, and the employee wishes to use the rehabilitation option, the employee shall reimburse the Employer for the costs of the second (2nd) confirmation test and handling and shipping charges before entering the rehabilitation program. For those employees who choose to have the second (2nd) specimen tested, disciplinary action can only take place after the MRO verifies the first test as positive and the second laboratory confirms the presence of the drug. However, the employee must be taken out of service once the first (1st) test result is verified as positive by the MRO while the

second test is being performed. If the second (2nd) laboratory report is negative, the employee will not be charged for the cost of the second (2nd) test and will be reimbursed for all lost time. It is also understood that if an employee opts for the second (2nd) specimen to be tested, contractual time limits on disciplinary action in the Supplements are waived.

Section 3.16 Specimen Shipping Preparations

After measuring temperature and visibly inspecting the urine specimen, the collection agent should tighten and seal the specimen shipping container.

The collection agent places a security label (initialed and dated by the employee) over the bottle cap, overlapping the bottle sides.

A double-pouch bag will be used for shipping, with one (1) side for the urine specimen and the other for paperwork.

The collection agent places the urine specimen in the sealable pocket of the specimen bag and then seals the bag.

The collection agent places laboratory copies of the urine custody and control form in the back sleeve of the double-pouch bag.

The collection agent places the sealed specimen bag in the shipping box.

Section 3.17 Medical Review Officer

Any person serving as a Medical Review Officer (MRO) for the Company must be a licensed doctor of medicine or osteopathy with knowledge of substance abuse disorders, issues relating to adulterated and substituted specimens, possible medical causes of specimens having an invalid result, and applicable DOT agency regulations. In addition, the MRO shall keep current on applicable DOT agency regulations and comply with the DOT qualification training and continuing education requirements.

The MRO is responsible for performing the following functions, in addition to those specified in the DOT regulations:

1. Reviewing the results of UPS's drug testing program.
2. Receiving all positive and negative drug test reports as prescribed under the DOT regulations, and making all reports of drug test results to the Employer.
3. Within a reasonable time, notifying an employee of a confirmed positive test result.
4. Reviewing and interpreting each confirmed positive test result in order to determine if there is an alternative medical explanation for the specimen's testing positive. The MRO shall perform the following functions as part of the review of a confirmed positive test result:
 - a. Provide an opportunity for the employee to discuss a positive test result.
 - b. Review the employee's medical history and relevant biomedical factors. A driver is allowed to use a controlled substance (except for methadone) only when taken as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.
 - c. Review all medical records made available by the employee to determine if a confirmed positive test resulted from legally pre-scribed medication or other possible explanation.

d. Verify that the laboratory report and assessment are correct.

5. Processing an employee's request to test the split sample. Such testing will be conducted at the employee's expense. The employee shall be reimbursed by UPS for any such expense should the retest provide a negative result. If a reanalysis is negative, then the MRO will declare the test canceled.

Section 3.18 MRO Determination

If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result, the MRO shall report the test to the Employer as a negative. If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result, the MRO shall report the positive test result to the appropriate member of management in accordance with DOT regulations.

Based on a review of laboratory reports, quality assurance and quality control data and other drug test results, the MRO may conclude that a particular confirmed positive drug test result should be cancelled. Under these circumstances, the MRO shall report that the test is cancelled.

Not later than seventy-two (72) hours after notification of a confirmed positive test result or refusal to test because of adulteration or substitution, an employee may submit a written or verbal request to the MRO for testing of the split sample. The laboratory used must be certified by the HHS and must follow usual chain-of-custody procedures.

The employee shall be reimbursed for any pay lost if taken out of service based upon a positive test result which is negated by the second (2nd) test or as the result of the resolution of the grievance.

Section 3.19 Record Retention

The medical review officer is the sole custodian of the individual test results. The MRO shall retain reports of individual positive test results for a minimum of five (5) years. Individual negative test results will be maintained for at least twelve (12) months. UPS shall maintain in a driver's qualification file only such information as required by the DOT to document compliance with the drug testing requirements.

Section 3.20 Release of Drug Testing Information

The MRO shall inform the employee before beginning the verification interview, that the MRO could transmit to appropriate parties information concerning medications being used by the employee or the employee's medical condition only if, in the MRO's medical judgment, the information indicated that the employee may be medically unqualified under applicable DOT agency rules.

When a grievance is filed as a result of a positive test the Employer shall obtain from the laboratory its records relating to the drug test. Upon receiving the records, the Employer shall provide copies to the appropriate official of the Union, by the end of the following business day after receiving the documents from the laboratory or the MRO, as applicable, provided that the employee has executed written consent authorizing release to the Union, a copy of which must be provided to the Employer.

The Company agrees to notify the Union of any change of HHS approved laboratories used for drug testing, for whatever reason.

Section 3.21 Paid For Time

Testing - Except for drug tests taken in conjunction with a DOT physical, the employee will be paid their regular straight time hourly rate of pay in the following manner:

1. For all time at the collection site.

2. (a) If the collection site is reasonably en route between the employee's home and the center, and the employee is going to or from work, pay for travel time one (1) way between the center and the collection site or the collection site to the center; or

(b) For travel time both ways between the center and the collection site, only if the collection site is not reasonably en route between the employee's home and the employee's center.

3. If an employee is called at home to take a random drug test at a time when the driver is not en route to or from work, the employee shall be paid in addition to all time at the collection site, travel time both ways between the employee's home and the collection site with no minimum guarantee.

When an employee is on the clock and a random drug test is taken any time during the employee's shift, and the shift ends after eight (8) hours, the employee shall be paid time and one-half (1-1/2) for all time past the eight (8) hours.

Provisions in Supplements, Riders and Addenda that are superior shall prevail.

Section 4. Alcohol Testing

The parties have agreed that the procedures as set forth in Article 35, Section 4 shall be the methodology for testing and will be modified only in the event that further federal legislation or Department of Transportation regulations required by regulation, revise testing methodologies or requirements during the term of this Agreement.

Where such regulations allow revised testing methodologies such modifications shall be subject to mutual agreement by the parties.

Section 4.1 Employees Who Must Be Tested

UPS employees subject to Department of Transportation mandated alcohol testing are drivers of vehicles with a vehicle weight rating over 26,000 pounds, requiring a Commercial Drivers License (CDL). This includes mechanics and employees who relieve for vacations or other temporary vacancies. Any employee who drives a tractor-trailer and is on the qualified feeder driver list is also subject to DOT mandated testing as provided in this Agreement.

Section 4.2 Testing

Because of the consequences that a positive test result has on an employee, UPS will employ a very accurate, two-stage testing program. Breath samples will be collected by a Breath Alcohol Technician (BAT), who has been trained in the use of the Evidential Breath Testing (EBT) device, in a course equivalent to the DOT's model course. All samples will be tested according to DOT alcohol testing requirements. In the event that breath testing is not possible in such cases as reasonable cause, or post-accident, the Employer has the right to use alternative DOT approved methods.

Section 4.3 Screening Test

The initial screening test uses an Evidential Breath Testing (EBT) device to determine levels of alcohol. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for alcohol. The EBT must also be capable of distinguishing alcohol from acetone at the 0.02 concentration level, test an air blank, and perform an external calibration check.

Breath Alcohol Levels: Less than 0.02 – Negative 0.02 and above - Positive (Requires Confirmation Test)

Section 4.4 Confirmatory Test

All specimens identified as positive on the initial screening test, showing an alcohol concentration of 0.02 or higher, shall be confirmed using an EBT that is capable of providing a printed result in triplicate; is capable of assigning a unique and sequential number to each test; and is capable of printing out, on each copy of the printed test result, the manufacturer's name for the device, the device's serial number, and the time of the test.

A confirmation test must be performed not sooner than fifteen (15) minutes after the screening test, but not more than thirty (30) minutes after the screening test.

The following cutoff levels shall be used to confirm the presence of alcohol:

Breath Alcohol Levels: Less than 0.02 – Negative 0.02 to 0.039 - Positive/Out of service for twenty-four (24) hours from time of the test 0.04 and above - Positive/Out of service and referred to Substance Abuse Professional (SAP).

Section 4.5 Types of Testing Required

Testing procedures will be performed as part of pre-qualified practices, after defined DOT reportable accidents, on the basis of reasonable cause, upon return to duty after a positive test, under DOT mandated random testing and as follow-up testing for post alcohol rehabilitation as outlined under Article 16, Section 5.

Section 4.6 Reasonable Cause Testing

Upon reasonable cause, UPS will require an employee to be tested for the use of alcohol.

Reasonable cause is defined as an employee's observable action, appearance or conduct that clearly indicates the need for a fitness-for-duty medical evaluation.

The employee's conduct must be witnessed by at least two (2) supervisors, if available. The witnesses must have received training in observing a person's behavior to determine if a medical evaluation is required. When the supervisor confronts an employee, a union representative should be made available pursuant to Article 4 of the National Master UPS Agreement as interpreted. If no steward is present, the employee may select another hourly paid employee to represent him.

Documentation of the employee's conduct shall be prepared and signed by the witnesses within twenty-four (24) hours of the observed behavior. In addition, a copy will be sent to the Local Union in a timely manner.

Non-DOT Reasonable Cause Testing

Employees covered by this Collective Bargaining Agreement who are not subject to DOT mandated alcohol testing are only subject to reasonable cause testing as provided herein, in accordance with supplemental practices.

Section 4.7 Post-Accident Alcohol Testing

DOT mandated drivers will be required to submit to an alcohol test after a DOT defined serious accident, which is one in which:

1. There is a fatality, or;

2. A citation is issued and there is bodily injury to a person who, as a result of the injury, receives immediate medical treatment away from the scene of the accident, or;
3. A citation is issued and one (1) or more motor vehicles incur disabling damage as a result of the accident requiring a vehicle to be transported away from the scene by a tow truck or other vehicle.

Non-DOT mandated drivers may be required to submit to alcohol testing if there is any reasonable suspicion of alcohol usage or reasonable cause to believe that a driver has been operating a vehicle while under the influence of alcohol, or reasonable cause to believe the driver was at fault in the accident and alcohol usage may have been a factor.

Alcohol testing will be required after accidents under the above conditions and drivers are required to submit to such testing within two (2) hours of the accident, if possible, and within eight (8) hours at the latest.

Drivers are required to submit to such testing as soon as possible within two (2) hours. Under no circumstances shall this type of testing be conducted more than eight (8) hours after the time of the accident.

It shall be the responsibility of the driver to remain readily available for testing after the occurrence of a commercial motor vehicle accident. It is also the responsibility of the driver to not use alcohol for eight (8) hours or until an alcohol test is performed under this section, whichever occurs first. Union representation will be made available pursuant to Article 4 of the National Master UPS Agreement, as interpreted.

It is not the intention of this language to prohibit the driver from leaving the scene of an accident for the period of time necessary to obtain assistance in responding to the accident or to receive necessary medical attention.

Law Enforcement Testing

The result of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of post-accident testing, provided such tests conform to applicable federal, state or local requirements, and that the results of the tests are obtained by the Employer.

Section 4.8 Random Testing - Random Employee Selection

The procedure used to randomly select employees for alcohol testing, in compliance with the U.S. Department of Transportation regulations, will be a computer program specifically intended for such an application.

The program will utilize an internal computer clock procedure to randomly generate lists of employees mandated for testing by the Department of Transportation/Federal Highway Administration. The computer shall randomly select the required number of employees from the total pool of affected employees. The total pool list shall be by each Region. The pool of employees selected randomly for controlled substance testing will also be the pool of employees selected for alcohol testing in compliance with DOT regulations. For verification purposes and to cover absences the computer shall print the following lists for each testing period:

1. An alphabetical total pool list of employees in the Region, and
2. A District list of employees shall be printed from the random list in the order in which they are computer selected.

An absent employee whose name appears on the random test list must be tested upon return to work immediately after notification provided he/she returns before the next selection period. The lists or true copies of the lists shall be maintained by a third party administrator. Upon request to the District Labor Relations Manager, the lists will be made available for review by Local Union representatives and company labor relations managers to verify the proper application and use of the lists in the random testing system.

The parties agree that no effort will be made to cause the system and method of selection to be anything but a true random selection procedure insuring that all affected employees are treated fairly and equally.

The parties further agree not to amend or change the current method of random selection as described herein without prior agreement between the parties.

A driver shall only be tested for alcohol while the driver is performing safety sensitive functions, just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions.

Employees who are on long term illness or leave of absence shall not be subject to testing.

Section 4.9 Notification

UPS employees, subject to Department of Transportation mandated random alcohol testing, will be notified of testing in person or by direct phone contact. Notification shall be given by the management person responsible for such notification.

Section 4.10 Rehabilitation and Testing after Return to Duty

If the Breath Alcohol Technician (BAT) determines a specimen is confirmed positive, then the employee will be removed from service and have five (5) calendar days to evaluate his/her situation with an approved Substance Abuse Professional (SAP) and then up to fifteen (15) calendar days to enter the rehabilitation treatment center after approval of a leave of absence as outlined in Article 16, Section 5 of the National Master UPS Agreement. UPS will follow the final recommendations of the Substance Abuse Professional (SAP), concerning the appropriate after-care protocol and post rehabilitation unannounced alcohol testing.

It is understood that if the grievance procedure is utilized contractual time limits on disciplinary action and the employee's request for rehabilitation will be suspended until resolution of the grievance.

The provision of Article 16, Section 5 will apply to all employees requesting enrollment in a rehabilitation program following a positive alcohol test. Employees may use the United Parcel Service Employee Assistance Program, a union sponsored program, as well as any other referral service in choosing an approved program for treatment.

Follow-up testing shall consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. The one (1) year period may be extended as necessary by written verification of the SAP.

Employer Responsibilities

Prior to allowing an employee to return to duty, after the employee has tested positive for an alcohol concentration higher than 0.02, or has refused to submit to an alcohol test, the Employer shall:

- A. Ensure that the employee is "alcohol free", defined as less than 0.02, based on an alcohol test.
- B. Ensure that the employee has been evaluated by a SAP for alcohol use or abuse.
- C. Ensure and confirm with the SAP that the employee demonstrates compliance with all conditions or requirements of a rehabilitation program in which he or she participated.

Section 4.11 Discipline

It is agreed that an employee will have rehabilitation opportunities for alcohol abuse as outlined in Article 16, Section 5, except as provided under Random Testing below.

Reasonable Cause Testing

An employee who is tested for reasonable cause and whose alcohol level is 0.02 to 0.039 will be taken out of service for twenty-four (24) hours and receive a warning letter.

An employee who is tested for reasonable cause and whose alcohol level is 0.040 to 0.069 will be taken out of service for twenty-four (24) hours, referred to a Substance Abuse Professional (SAP) and suspended for ten (10) days. If the employee has committed a disciplinary offense under the terms of the supplemental agreement, the results of the test may be used in the support of the Employer's disciplinary action.

A second positive test of 0.02 or above is a dischargeable offense. A positive test of 0.070 or above is a dischargeable offense.

A presumption exists that the employee was drinking on the job if the observation, time of testing and alcohol level combine to show the employee's level was too high to have consumed alcohol prior to the employee's report time.

An employee taken out of service for a positive test result must have a negative test prior to returning to work.

1. Post-Accident Testing

An employee who is involved in an accident for which the mandate requires post accident testing must submit to such test. A post -accident test of 0.02 or above is a dischargeable offense.

2. Random Testing

A positive test of 0.02 to 0.039 will result in the employee being taken out of service for twenty-four (24) hours and a warning letter shall be issued.

A second positive test of 0.02 to 0.069 or an initial positive test of 0.04 or above will result in the employee being taken out of service and a ten (10) day suspension shall be imposed. The employee will also be referred to a Substance Abuse Professional (SAP) for evaluation. If the SAP requires in-patient treatment and that in-patient treatment is the second (2nd) such treatment afforded the employee, the cost of such treatment will not be borne by the UPS medical plan.

A third (3rd) positive test of 0.02 or above after the employee was tested pursuant to the above levels will subject the employee to dis- charge.

3. Dischargeable Offenses

Other language to the contrary notwithstanding, the following may result in discipline up to and including discharge:

- A. Failure to successfully complete rehabilitation.
- B. A positive test, defined as 0.02 or higher, as part of post-care testing.
- C. Failure to comply with the after-care treatment plan.
- D. Possession of and/or consumption of an alcoholic beverage while on duty.
- E. Any test of an on-duty employee that measures at or above the state mandated DWI level. Should any state reduce the DWI man- dated levels below 0.08, the Employer and the Union agree to meet and re-negotiate section E of this Agreement.
- F. An employee's refusal to submit to a negotiated test.

Non-mandated employees shall be subject to reasonable cause testing as outlined above.

In no circumstances under this Section shall suspension time run concurrently with any leave period.

Section 4.12 Preparation for Testing

Pursuant to Department of Transportation regulations, the Employer reserves the right to utilize on site or off site testing facilities. Under no circumstances shall the Employer utilize UPS personnel to serve as a Breath Alcohol Technician (BAT).

Upon arrival at the testing site, an employee must provide the BAT with a photo identification.

If the employee arrives without the photo identification, issued by the Employer, or a federal, state or local government, the BAT should contact the District Safety and Health manager or the District Human Resources manager.

A standard DOT approved alcohol testing form must be used by all testing facilities. The form used for non-DOT tests will contain the same information and procedures as the DOT form.

Section 4.13 Specimen Testing Procedures

The Employer agrees to implement a "Specimen Testing Checklist." The checklist, approved by the UPS/IBT Safety and Health Committee, is to be used with the affected employees at the testing site by the person performing the testing for the Employer.

The checklist is to be used at all locations, but it is understood that failure to use or the refusal to use the checklist does not invalidate a properly conducted alcohol testing procedure. Nor does it prohibit an employee's recourse to the collective bargaining agreement and/or the grievance procedure.

Procedures for alcohol testing will follow Department of Transportation guidelines to ensure an individual's privacy.

No unauthorized personnel will be allowed in any area of the testing site. Only one (1) alcohol testing procedure will be conducted at a time.

The employee will provide his or her specimen in a location that allows for privacy. The Employer agrees to recognize all employees' rights to privacy while being subjected to the testing process at all times and at all testing sites. Further the Employer agrees that in all circumstances the employee's dignity will be considered and all necessary steps will be taken to insure that the entire process does nothing to demean, embarrass or offend the employees unnecessarily. Testing will be under the direct observation of a BAT. All procedures shall be conducted in a professional, discreet and objective manner. Direct observation will be necessary in all cases.

The employee shall provide an adequate amount of breath for the EBT device. If the individual is unable to provide a sufficient amount of breath, the BAT shall direct the individual to again attempt to provide a complete sample. If the employee fails for any reason to provide the requisite amount of breath, the BAT shall contact the District Safety and Health manager or Human Resources manager.

If an employee is unsuccessful in providing the requisite amount of breath, the Employer then must have the employee obtain, within five (5) business days, an evaluation from a licensed physician chosen by the Employer who has the expertise in the medical issues concerning the employee's medical ability to provide an adequate amount of breath. If the physician determines that a medical condition has, or with a high degree of probability, could have precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath will not be deemed a refusal to take the test.

If the physician is unable to make a determination that the employee was medically unable to provide a sufficient amount of breath, the employee will be regarded as refusing to take the test.

The BAT shall document any unusual behavior or appearance on the alcohol testing form.

Section 4.14 Substance Abuse Professional (SAP)

Each Substance Abuse Professional (SAP) must be a licensed Doctor of Medicine or Osteopathy, or a licensed or certified psychologist, social worker, employee assistance professional, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders and be knowledgeable of the SAP function as it relates to Employer interest in safety-sensitive functions and applicable DOT agency regulations. In addition, the SAP shall keep current on applicable DOT agency regulations and comply with the DOT qualification training and continuing education requirements.

The SAP is responsible for performing the following functions:

1. Conducting the initial face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to solve problems associated with alcohol and/or drug use;
2. Referring the employee to an appropriate education and/or treatment program;
3. Conducting a face-to-face 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. Providing the Employer with a follow-up drug and/or alcohol testing plan for the employee;
5. Providing the employee and employer with recommendations for continuing education and/or treatment.

Section 4.15 Record Retention

The Employer shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

Each Employer or its agent is required to maintain the following records for two (2) years:

1. Records of the inspection and maintenance of each EBT used in employee testing;
2. Documentation of the Employer's compliance with the Quality Assurance Plan (QAP) for each EBT it uses for alcohol testing;
3. Records of the training and proficiency testing of each BAT used in employee testing; and
4. Any required log books.

The Employer or its agent must maintain for two (2) years records pertaining to the calibration of each EBT used in alcohol testing, including records of the results of external calibration checks.

Section 4.16 Release of Alcohol Testing Information

The Breath Alcohol Technician (BAT) shall inform the employee before testing that the Employer will be notified if the confirmatory test is greater than 0.02, since the employee will be removed from service and considered medically unqualified to drive under DOT agency rules and regulations.

When a grievance is filed as a result of a positive test the Employer shall obtain records relating to the alcohol test. Upon receiving the records, the Employer shall provide copies to the appropriate official of the Union, by the end of the following business day after receiving the documents from the laboratory or the MRO, as applicable, provided that the employee has executed written consent authorizing release to the Union, a copy of which must be provided to the Employer.

Section 4.17 Paid for Time

Testing - the employee will be paid their regular straight time hourly rate of pay in the following manner:

1. For all time at the testing site.
2. (a) If the testing site is reasonably en route between the employee's home and the center, and the employee is going to or from work, pay for travel time one way between the center and the testing site or the testing site to the center; or
(b) For travel time both ways between the center and the testing site only if the testing site is not reasonably en route between the employee's home and the employee's center.

When an employee is on the clock and a random alcohol test is taken any time during the employee's shift, and the shift ends after eight (8) hours, the employee shall be paid time and one-half (1-1/2) for all time past the eight (8) hours.

Provisions in Supplements, Riders and Addenda that are superior shall prevail.