


## MEMORANDUM

**TO:** All NJ TRANSIT Employees  
**FROM:** George D. Warrington  
 Executive Director   
**DATE:** December 1, 2004  
**SUBJECT:** Revised Drug- and Alcohol-Free Workplace Policy

NJ TRANSIT is firmly committed to providing safe and reliable transportation service to the hundreds of thousands of people who rely on us each day to get them to and from work, school and leisure destinations. We are equally committed to promoting the safety and welfare of our employees and to providing our employees with a safe workplace.

In support of these aims, we have a longstanding policy prohibiting drug or alcohol use or impairment by our employees while they are on NJ TRANSIT property, on duty or subject to duty.

This policy, which was first issued in 1989, is shaped largely by federal and state laws and regulations aimed at ensuring a drug- and alcohol-free workplace. To ensure that our policy reflects the most current federal and state regulations, our Board of Directors has adopted a revised Drug- and Alcohol-Free Workplace Policy, effective December 1, 2004. A copy of this policy is attached.

The revised Drug- and Alcohol-Free Workplace Policy is fundamentally the same as the policies that preceded it. It continues to prohibit employees from being impaired by, or under the influence of, drugs or alcohol while they are subject to duty, on duty, in the workplace, in recognizable NJ TRANSIT uniform, conducting NJ TRANSIT business or representing NJ TRANSIT. The use of drugs at any time, whether on or off duty, except as permitted in the policy, also continues to be prohibited, as are the unlawful dispensing, manufacture or distribution of controlled substances and the use of alcohol within four hours of performing duty.

In addition to outlining the behavior that is prohibited, the policy delineates the circumstances in which employees are subject to drug and/or alcohol testing and describes the procedures that are followed in conducting these tests. It explains the part our Employee Assistance Program plays in helping employees with substance abuse problems and it establishes the consequences an employee faces for violating the policy.

However, you will find some differences between this version of the policy and the 1999 version that it supersedes. The most significant of these has to do with the policy's format.

Like the 1999 policy, the new Drug- and Alcohol-Free Workplace Policy is comprised of four policy documents - Policies 3.25, 3.25A, 3.25B and 3.25C. However, unlike the 1999 policy, which consisted of a core policy (Policy 3.25), containing information about the aspects of our drug- and alcohol-free workplace program that apply to all of our employees, and three addenda (Policies 3.25A, B and C) containing information about specific aspects of the program, mandated by federal or state regulations and applicable only to employees in positions involving the performance of safety-sensitive functions, each of the documents in the 2004 policy is now a complete statement of the policy as it pertains to the specific employees it covers. This eliminates the need to refer to more than one policy document for full information about the provisions of our drug- and alcohol-free workplace program.

- Policy 3.25 is the policy that applies to employees who are not subject to testing mandated by the

Federal Transit Administration (FTA), Federal Railroad Administration (FRA) or the Federal Motor Carrier Safety Administration (FMCSA).

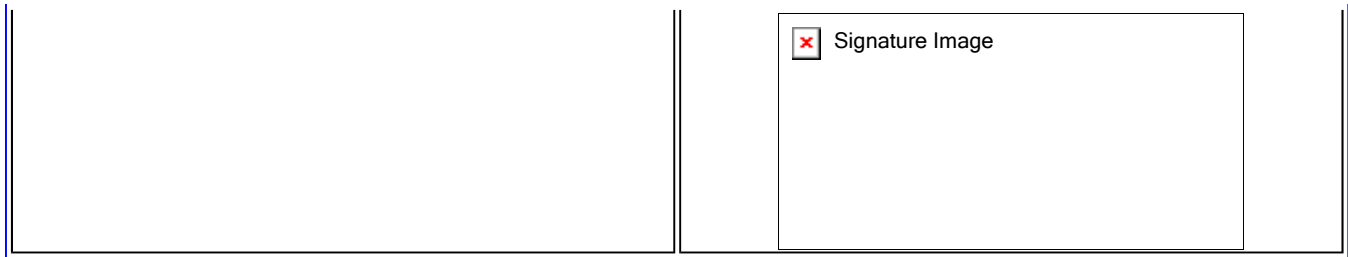
- Policy 3.25A is the policy that applies to employees who perform safety-sensitive functions covered by FTA regulations.
- Policy 3.25B is the policy that applies to employees whose jobs involve the performance of Rail covered service that is subject to FRA regulations.
- Policy 3.25C is the policy that applies to those employees whose jobs involve the performance of safety-sensitive functions covered by FMCSA regulations.

In addition:

- The text of the four documents has been standardized so that provisions common to all four policies read the same way in all of them.
- A few changes, involving the incorporation of additional language taken directly from federal regulations, have been made in Policy 3.25A, at the FTA’s recommendation, to ensure that the policy accurately reflects and conforms to the wording and intent of those regulations.
- Text pertaining to the rule violations that constitute reasonable cause for FRA-mandated drug and alcohol testing, which had inadvertently been omitted in the 1999 policy, has been restored to Policy 3.25B.
- Language concerning testing following Rail accidents/incidents has been added to Policies 3.25 and 3.25C.

Compliance with our Drug- and Alcohol-Free Workplace Policy is a condition of employment and each of us is responsible for ensuring that we are familiar with the policy and its requirements and that we act in accordance with them. I urge you to take the time to review the policy and to recommit to making NJ TRANSIT safer for everyone by keeping our workplace drug- and alcohol-free.

Policy Number <b>3.25A</b>	Supersedes <b>3.25A 03/18/99</b>	Effective Date <b>12/1/2004</b>
Manual <b>Human Resources</b>	Source <b>Human Resources</b>	Key Subject <b>Drug &amp; Alcohol Abuse</b>
Title <b>Drug- and Alcohol-Free Workplace Policy (Safety-sensitive employees-FTA)</b>		
Applies to <b>All NJ TRANSIT employees who perform safety-sensitive functions covered by FTA regulations</b>		



Where the use of gender specific pronouns would have led to very awkward sentences, we have used the masculine pronoun. This use should be considered to refer to both genders.

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*NOTE: Provisions of this policy shown in bold, italicized type are mandated by the Federal Transit Administration (FTA).*

#### I. PURPOSE

This document outlines NJ TRANSIT's policy to achieve a drug- and alcohol-free workplace. The

purpose of this policy is to ensure that NJ TRANSIT operates in the safest and most efficient manner possible, and to promote the safety and welfare of our employees and customers by creating a drug- and alcohol-free workplace and ensuring that our employees are free from the effects of drugs and alcohol.

This document outlines those requirements of NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy, which are applicable only to NJ TRANSIT employees who perform safety-sensitive functions as defined herein.

## II. NJ TRANSIT'S DRUG- AND ALCOHOL-FREE WORKPLACE PROGRAM

NJ TRANSIT's goal to achieve a drug- and alcohol-free workplace shall be accomplished through the implementation of a comprehensive anti-drug and alcohol program based on deterrence, detection, assistance and enforcement. The program objectives in support of this goal are to prevent drug and alcohol abuse, to assist employees who seek help, to detect drug and alcohol abuse, and to enforce NJ TRANSIT's policy.

The above objectives shall be accomplished by:

- Providing educational material that explains the requirements of NJ TRANSIT's policy and procedures
- Educating employees about the impact that drug and alcohol use, both on and off the job, can have on job performance, health and safety
- Offering an employee assistance program and encouraging affected employees to seek help voluntarily as well as encouraging referral of employees for such assistance before job performance deteriorates
- *Training for supervisors to detect the signs and symptoms of drug and alcohol abuse*
- *Screening employees for drugs and alcohol both prospective to and during employment, and*
- Enforcing NJ TRANSIT's drug- and alcohol-free workplace policy and imposing discipline when prevention and deterrence fail.

## III. DEFINITIONS

***Accident - An occurrence associated with the operation of a vehicle, if as a result:***

- *An individual dies; or*
- *An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or*
- *With respect to an occurrence in which the vehicle involved is a bus, electric bus, van or automobile, one or more of the vehicles involved incur(s) disabling damage\* as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.*

*\*Disabling damage is damage that precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged, if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts; tire disablement without other damage even if no spare tire is available; or damage to headlights, taillights, turn signals, horn or windshield wipers that makes them inoperative.*

- *With respect to an occurrence in which the vehicle involved is a railcar, trolley car or trolley bus, the vehicle is removed from operation.*

*Adulterated Specimen or Test - A specimen that contains a substance that is not expected to be present in human urine or that contains a substance expected to be present, but at a concentration so high that it is not consistent with human urine.*

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

*Alcohol Concentration - The alcohol in a volume of breath expressed in terms of gram alcohol per 210 liters of breath as indicated by a breath test, or the alcohol as measured by grams of alcohol per 100 ml. of blood.*

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

*Canceled Test- A drug or alcohol test that has a problem identified that cannot be or has not been corrected or which 49 CFR Part 40 otherwise requires. A canceled test is neither a positive nor a negative test.*

*Confirmation (or Confirmatory) Test - In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy. In alcohol testing, a second test, following a screening test with a result of 0.020 or greater, which provides quantitative data of alcohol concentration.*

*Contractor - A person or organization that provides a service for a recipient, subrecipient, employer or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties. A contractor or vendor will adhere to all applicable rules and regulations per FTA as defined in this policy.*

*Controlled Substance - Defined by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR 1301-1316). It also includes illicit drugs, drugs that are required to be distributed only by a medical practitioner's prescription or other authorization, and certain preparations for which distribution is documented through over-the-counter sales.*

*Covered Employee - The Federal Transit Administration defines a covered employee as a person, including an applicant or transferee, who performs a safety-sensitive function.*

Criminal Drug Statute - A federal or state criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.

**Designated Employer Representative (DER)**- *An employee authorized by the employer to initiate immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40. The DER for NJ TRANSIT is the senior management official responsible for Medical Services or his designate.*

**Diluted Specimen**- *A specimen is considered diluted if the creatinine concentration is less than 20 mg/dl, but not less than 2 mg/dl, and the specific gravity is less than 1.003.*

**Drug** - *Any substance (other than alcohol) that has known mind- or function-altering effect on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.*

**Drug and Alcohol Testing Technician (DATT)** - *A licensed medical professional or medical technologist or technician who is provided instruction for specimen collection under 49 CFR Part 40 and who performs the collection and certifies completion as required therein; or a person who has successfully completed training as a collector as required by 49 CFR Part 40. (NJ TRANSIT's collection site person will generally be referred to as a DATT. However, "DATT", "collector" or "collection site person" have the same meaning for purposes of this policy.)*

**Employee** - An individual designated as subject to drug and/or alcohol testing under this policy. "Employee", "individual", "individual to be tested" and "donor" have the same meaning for purposes of this policy.

**Employer** - *A recipient, including state recipients, who receives equipment or funding or other entity that provides mass transportation services or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, grantees and contractors.*

**Federal Transit Administration (FTA)** - *An agency within the US Department of Transportation (USDOT).*

**Invalid Test** - *In drug testing, a drug test that has been declared invalid by a Medical Review Officer. It is neither a verified positive nor negative test, and includes a specimen rejected for testing by a laboratory. In alcohol testing, a test that is deemed invalid under 49 CFR Part 40.267 or 269. It is neither a positive nor a negative test.*

**Medical Review Officer (MRO)**- *An MRO shall be a licensed physician with knowledge of substance abuse disorders and appropriate medical training to review and interpret individuals' confirmed positive drug test results from the laboratory together with their medical histories and any other relevant biomedical information to determine if there is evidence of prohibited drug use. Information regarding NJ TRANSIT's MRO's can be found in Exhibit 2 hereto.*

**NJ TRANSIT Bus Operations**- Refers to NJ TRANSIT Bus Operations and NJ TRANSIT Mercer.

**Performing a Safety-Sensitive Function** - *Any period in which an employee is actually performing, ready to perform or immediately available to perform such a function.*

**Positive Alcohol Test**- *A confirmation test with an alcohol concentration result of 0.040 or greater.*

**Possess** - To have on one's person or in one's personal effects or under one's control.

**Prohibited Drug** - Marijuana, cocaine, opiates, amphetamines or phencyclidine. In addition, barbiturates, benzodiazepines and methadone are prohibited drugs for sworn law enforcement officers.

**Recipient** - *An entity receiving financial assistance under Sections 3, 9 or 18 of the Federal Transit Act.*

**Refusal to Submit to a Test** - *Failure to provide adequate breath for alcohol testing or a urine or blood specimen for drug testing, as required, without a valid medical explanation, after an employee has received notice of the requirement to be tested in accordance with a provision of this policy. Failure to cooperate with DOT requirements to complete forms, including the alcohol testing form and chain of custody form, or engaging in conduct that clearly obstructs the testing process.*

**Revenue Service Vehicle** - *A vehicle used to transport passengers, including a bus, van, car, railcar, locomotive, trolley car, trolley bus or a vehicle used on a fixed guideway.*

**Safety-Sensitive Functions** include any of the following duties:

- *Operating a revenue service vehicle, including when not in revenue service*
- *Operating a non-revenue service vehicle when such vehicle is required to be operated by a holder of a Commercial Driver's License*
- *Controlling dispatch or movement of a revenue service vehicle*
- *Maintaining a revenue service vehicle or equipment used in revenue service*
- *Carrying a firearm for security purposes.*

These categories include supervisors who perform these functions.

**Split Specimen**- *In drug testing, a part of the urine specimen that is sent to the certified laboratory shown in Exhibit 2 and retained unopened, and which is transported to a second laboratory if the employee requests that it be tested following a verified positive test or a verified adulterated or substituted test result of the primary specimen.*

**Subject to Duty**- *Any time period an employee is required to be available to report for duty.*

**Substance Abuse Professional (SAP)** - *A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders.*

***Substituted Specimen or Test*** - A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine (i.e., a creatinine concentration less than 5 mg/dl and specific gravity less than or equal to 1.001 or greater than or equal to 1.020).

**Supervisor or Supervisory Employee** - An officer, special agent or other employee, whether or not directly employed by NJ TRANSIT, who is responsible for supervising or monitoring the conduct or performance of one or more NJ TRANSIT employees.

**Validity Testing**- Specimen validity testing is the evaluation of a specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted or if the specimen was substituted.

**Vehicle** - A bus, electric bus, van, automobile, railcar, trolley car, trolley bus or vessel. A "mass transit vehicle" is a vehicle used for mass transportation.

**Verified Negative Drug Test Result**- A drug test result reviewed by an MRO and determined not to be evidence of use of a prohibited drug.

**Verified Positive Drug Test Result** - A drug test result reviewed by an MRO and determined to be evidence of use of a prohibited drug.

**Workplace**- Any location, including but not limited to, equipment, garages, depots, terminals, stations, offices, vehicles, buses, trolleys or trains, whether or not owned, leased or operated by NJ TRANSIT, where NJ TRANSIT business is conducted or where NJ TRANSIT job duties are performed.

#### **IV. PREEMPTION OF STATE AND LOCAL LAWS**

- A. ***FTA regulations upon which this policy is primarily based preempt any state or local law, rule, regulation or order when:***
1. ***Compliance with both the state or local requirement and any requirement of FTA regulations is not possible; or***
  2. ***Compliance with the state or local requirement is an obstacle to accomplishing and executing any requirement of the regulations.***
- B. ***However, the regulations do not preempt any provisions of state criminal law that impose sanctions for reckless conduct leading to loss of life, injury or damage to property.***

#### **V. POLICY SCOPE AND APPLICATION**

- A. It is the policy of NJ TRANSIT to comply with the requirements of the Drug-Free Workplace Act of 1988, the drug and alcohol rules promulgated by FTA, the New Jersey Division of Criminal Justice's Attorney General's Law Enforcement Drug Testing Policy and any other applicable federal or state laws and regulations.
- B. If any section of this policy is invalidated as contrary to any law, the remaining sections shall remain in full force and effect.

- C. The provisions of this policy shall be subject to any limitations or requirements imposed by federal or state law. Moreover, any employment action taken by NJ TRANSIT due to violation of this policy shall be taken in accordance with the procedures contained in any applicable labor agreement.
- D. This document is a statement of NJ TRANSIT's current official policy and, as such, supersedes all prior drug and alcohol policy statements, directives and memoranda of NJ TRANSIT and its subsidiaries dealing with this subject.
- E. As a condition of employment, this policy applies to all NJ TRANSIT employees except as noted otherwise herein or as found in Policies 3.25, 3.25B and 3.25C. NJ TRANSIT management will ensure that this policy is implemented uniformly throughout the agency.

## **VI. EMPLOYEES SUBJECT TO TESTING**

- A. *All employees (including supervisors), who perform safety-sensitive functions for NJ TRANSIT as defined by FTA regulations, are subject to the testing requirements of this policy. A list of NJ TRANSIT's safety-sensitive positions covered by this policy appears in Exhibit 1 hereto.*
- B. *Employees who perform safety-sensitive functions are required under federal regulations to be tested for drugs and/or alcohol in the following circumstances: pre-employment (which includes reinstatement in a safety-sensitive position), reasonable suspicion, post-accident, random, return-to-duty and follow-up.*
- C. All sworn law enforcement officers are also subject to any provisions of the Division of Criminal Justice's Revised Law Enforcement Drug Screening Guidelines that are not preempted by FTA regulations.
- D. Compliance with NJ TRANSIT's Drug- and Alcohol-Free Workplace Program requirements is a condition of employment for all NJ TRANSIT employees.

## **VII. CONTRACTORS SUBJECT TO TESTING**

- A. *Employees of contractors who are "standing in the shoes of" NJ TRANSIT and who perform safety-sensitive functions are subject to compliance with FTA regulations regarding drug and alcohol testing (i.e., safety-sensitive functions for contract employees are the same functions as for NJ TRANSIT employees).*
- B. If NJ TRANSIT uses a contract service provider or maintenance provider, NJ TRANSIT shall ensure and certify to FTA that the contractor is in compliance with its regulations regarding drug and alcohol testing.
  - 1. NJ TRANSIT shall notify all such contractors in writing of FTA regulations and the requirements for their compliance with them.
  - 2. NJ TRANSIT shall provide all such contractors with copies of the applicable FTA regulations and ensure that each contractor provides a signed form acknowledging receipt of the regulations.
  - 3. NJ TRANSIT shall require contractors who are "standing in the shoes of" NJ

TRANSIT and acting as a service provider to have a Drug and Alcohol Policy/program that meets or exceeds FTA's regulations and policy.

4. NJ TRANSIT shall obtain from each contractor an annual Management Information System Report (MIS) and file the report with FTA.
- C. All invitations for bids and requests for proposals involving the performance of safety-sensitive functions shall include a statement regarding the required compliance with FTA regulations regarding drug and alcohol testing. NJ TRANSIT shall inform the contractor in writing of FTA requirements and of NJ TRANSIT's intent to monitor the contractor's compliance with them.

## VIII. STANDARDS OF CONDUCT

### A. Prohibited Behavior

As a condition of employment, all NJ TRANSIT employees are prohibited from:

1. ***Being impaired by or under the influence of a drug or alcohol while subject to, reporting for, or on duty; while in the workplace;*** while in recognizable NJ TRANSIT uniform; while operating any NJ TRANSIT vehicle at any time; or while conducting business for or representing NJ TRANSIT.
2. ***Using a drug at any time, whether on or off duty, except as permitted by Sections VIII-C and VIII-D ("Use of Prescription Drugs" and "Use of Over-the-Counter Medications").***
3. ***Unlawfully possessing, distributing, dispensing or manufacturing a controlled substance at any time.***
4. ***Using alcohol for whichever is the lesser of the following periods: within four (4) hours prior to reporting for duty; after receiving a call or notice to report for duty; or within four (4) hours prior to performing job duties.***
5. Possessing, distributing or using alcohol while reporting for or on duty; while in the workplace; and while in recognizable NJ TRANSIT uniform.
6. ***Using alcohol for eight (8) hours following an accident or until they have undergone a post-accident test, whichever occurs first.***

**A violation of any of the above prohibitions is a dischargeable offense.**

### B. On-call Employees

***An employee may acknowledge the use of alcohol and his inability to perform his job at the time he is called to report to duty. If an employee has acknowledged the use of alcohol but claims the ability to perform his job, the employee shall be required to take an alcohol test.***

### C. Use of Prescription Drugs

1. NJ TRANSIT will allow the use of a drug specifically prescribed for an employee by his physician provided:
  - a. *The employee has described his assigned duties to the physician at the time the drug is prescribed; and*
  - b. *With knowledge of those duties and on the basis of the available medical history, the physician has made a good faith judgment that the use of the drug (s) at the prescribed dosage level(s) is consistent with the safe performance of the employee's duties; and*
  - c. *The drug is in its original container when the drug is in the employee's possession while in the workplace, clearly labeled with the employee's name, the name of the drug and the physician's Federal Drug Enforcement Administration number; and*
  - d. *The drug is used at the dosage prescribed; and*
  - e. *In the event that the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that the use of all medications in combination is consistent with the safe performance of the employee's duties; and*
  - f. *The employee observes any restrictions imposed with all medications authorized of prescribed, or combinations of medications authorized or prescribed.*
2. NJ TRANSIT requires that the use of a prescription drug be legitimate. An individual must, in addition to proving his compliance with the requirements set forth above, provide Medical Services with a valid current prescription or the drug in its original container as required in subsection c above, and a statement signed by the prescribing physician indicating the physician's and the employee's compliance with subsections 1a, 1b and, if applicable, 1e and 1f above. This must be submitted within 48 hours or a request by the MRO.
3. If NJ TRANSIT's MRO determines upon review of a test reported positive by the laboratory that there was legitimate use of a prescribed drug, the MRO shall verify and report the test result to NJ TRANSIT as negative.

#### D. Use of Over-the-Counter Medications

1. NJ TRANSIT recognizes that use of over-the-counter (OTC) medications may compromise an employee's ability to function properly in his safety-sensitive position, as does the use of prescribed medication. To ensure safety in the workplace, employees are required to exercise caution when using any medication. Employees are required to do the following.
  - Observe any restrictions printed on the OTC medication
  - Use the medication according to the recommended dose

- Consult a physician or a pharmacist for possible interactions of the OTC medication with other medication being consumed
- Obtain clearance for use of the OTC medication while performing safety-sensitive functions from the physician, pharmacist or Medical Services.

2. If NJ TRANSIT's MRO determines, upon review of a test reported positive by the laboratory that there was legitimate use of an OTC drug, the MRO shall verify and report the test result to NJ TRANSIT as negative.

E. Notification to NJ TRANSIT of Charges and Convictions of Criminal Drug Statutes

1. All NJ TRANSIT employees must notify their immediate supervisor, in writing, within five (5) calendar days of being formally charged with a violation, and/or conviction (which includes a plea of *nolo contendere*), of any criminal drug statute.
2. Conviction of any criminal drug statute or failure to comply in a timely manner with the above notice requirements is a dischargeable offense.

F. Police Officers to Report Suspected Drug Use

Pursuant to the Law Enforcement Drug Screening Guidelines, sworn law enforcement officers must immediately report evidence of suspected drug use by other officers to their supervising officer.

G. Cooperation and Compliance with Collection and Testing

1. ***Each employee or final applicant required to be tested for drugs and/or alcohol pursuant to this policy must provide complete, valid, undiluted, unadulterated breath and/or urine and/or blood specimens as requested; supply the information necessary to identify the specimens (i.e., complete paperwork and initial specimen); and otherwise cooperate with collection and testing procedures.***
2. ***If it is required by a collection site (e.g., hospital for post-accident testing), an individual required to participate in body fluid testing shall immediately evidence consent to the taking of specimens, their release for toxicological analysis and release of the test results to NJ TRANSIT's MRO by promptly executing a consent form.*** The individual is not required to execute any document waiving rights that he would otherwise have against NJ TRANSIT and any such waiver is void. The individual may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen, or to indemnify any person for the negligence of others.
3. Refusal to cooperate is a dischargeable offense in accordance with NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy. Any applicant who refuses to cooperate with required testing will not be hired.

H. Behavior that Constitutes a Refusal to Cooperate

***Behavior that constitutes a refusal to cooperate with testing includes, but is not limited to,***

*the following.*

1. *Failure to appear for a test within a reasonable time, as determined by the employer, after being directed to do so by the employer.*
2. *Failure to remain at the testing site until the testing process is complete.*
3. *Failure to remain readily available for drug and/or alcohol testing following an accident or incident until tests have been conducted and/or specimens have been collected, without regard to any subsequent provision of specimens*
4. *Tampering with a specimen including:*
  - *Substitution of specimen*
  - *Dilution of specimen*
  - *Adulteration of specimen*
  - *Tampering with testing equipment in order to prevent a valid test*
5. *Refusal to take the test.*
6. *Refusal to cooperate with testing procedures as required by federal regulations*
7. *Failure to provide a sufficient quantity of breath or urine without a valid medical explanation*
8. *Refusing to be examined or to comply with any medical requirements to explain why a specimen was not provided in a shy lung or bladder situation*
9. *Refusing to remove outer clothing (including but not limited to coveralls, jackets, coats, hats, and sweaters) and refusing to empty pockets and display items to the collector*
10. *Refusal to permit monitoring or observation of a collection when such monitoring or observation is required under federal regulation and/or this policy.*

## **IX. ENFORCEMENT**

### **A. Responsive Action**

*Any employee, who either (1) refuses to cooperate with collection and testing, (2) provides an adulterated or substituted sample, (3) is the subject of a verified positive drug test, or (4) is the subject of a confirmed positive alcohol test will be immediately removed from duty.*

*No employee whose test result indicates an alcohol concentration of 0.020 or greater, but less than 0.040, may perform or continue to perform his job duties until the start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the administration of the test.*

*Any employee whose test result indicates an alcohol concentration of 0.040 or greater will be taken out of service and referred to EAP for a first offense, except in the case of a positive result on a reasonable suspicion test or a post-accident test where it has been*

*determined that the employee was at fault.*

*The employee shall be advised by an NJ TRANSIT Employee Assistance Program SAP of the resources available to evaluate and resolve problems associated with drug and/or alcohol misuse. The SAP shall determine what assistance, if any, the employee needs in resolving problems associated with drug and/or alcohol misuse.* This referral and the subsequent evaluation by the SAP shall not affect NJ TRANSIT's right to assess discipline up to and including discharge for any violation of this policy.

**B. Consequences of a Violation of Policy**

1. NJ TRANSIT considers the following dischargeable offenses:

- a. Producing a verified positive drug test or confirmed positive alcohol test (subject to right of mandatory Employee Assistance Program participation described in Section XI-C below)
- b. Violation of any of the prohibited behaviors described in Section VIII-A above
- c. Failure to timely notify one's supervisor of a formal charge, or conviction, of violation of a criminal drug statute
- d. Conviction of violation of a criminal drug statute
- e. Refusal to cooperate with collection or testing requirements
- f. Failure to cooperate with and successfully complete EAP requirements (including after care) recommended by NJ TRANSIT's SAP's.
- g. Failure of a sworn law enforcement officer to report suspected drug use by another sworn law enforcement officer.

2. In all cases where an employee is suspected or found to be in possession of, selling or distributing a controlled substance while on duty or in the workplace, the matter will be referred to the appropriate law enforcement agency.

**C. Consequences of a Violation of Policy as a Police Officer or Applicant for Employment as a Police Officer**

Pursuant to the Division of Criminal Justice's Attorney General's Law Enforcement Drug Testing Policy (revised September 1998), any sworn law enforcement officer who produces a verified positive test result for illegal use of drug(s) will be dismissed from the agency and permanently barred from future law enforcement employment in New Jersey. Moreover, any sworn officer that tests positive will be reported to the Central Drug Registry maintained by the Division of State Police.

Applicants for employment as police officers who produce a verified positive test result for illegal use of drug(s) will be removed from consideration for employment and future law enforcement employment by any law enforcement agency in New Jersey for a period of two years. Applicants who test positive will be reported to the Central Drug Registry maintained by the Division of State Police.

Sworn officers who refuse to submit to a drug test will be terminated and applicants who refuse to submit to a drug test will be denied consideration for employment. Sworn officers and applicants who test positive will be reported to the Central Drug Registry.

NJ TRANSIT considers failure of a sworn law enforcement officer to report suspected drug use by another sworn law enforcement officer a dischargeable offense.

## X. DRUG AND ALCOHOL TESTS

### A. Periodic Medical Examinations (Physicals)

Periodic physicals by NJ TRANSIT's Medical Services Department are available to employees who are required to have such examinations. Employees who request such examinations will be required to sign a form reflecting their consent to drug and alcohol tests as part of the examination.

### B. Pre-Employment Testing

1. ***All final applicants for safety-sensitive positions, employees seeking to transfer from a non-safety-sensitive position to a safety-sensitive position and employees who are being reinstated under NJ TRANSIT policy must be given a pre-employment drug and alcohol test under FTA authority. Employees who have not performed safety-sensitive duties for 90 calendar days must take and pass a drug and alcohol test conducted under federal authority before assuming safety-sensitive duties. Individuals shall be informed of the testing requirements prior to the tests being conducted and notified that the urine sample will be tested for the presence of marijuana, cocaine, opiates, phencyclidine and amphetamines.***
2. Pursuant to the Attorney General's Law Enforcement Drug Testing Policy, a final applicant for a sworn law enforcement position must sign a notice and acknowledgment form consenting to drug testing. Final applicants for sworn law enforcement positions shall be notified that an additional urine specimen will be collected and tested for barbiturates, benzodiazepines and methadone. A trainee for a sworn law enforcement position must sign a notice and acknowledgment form consenting to random and reasonable suspicion drug testing during attendance at the police academy.
3. Any final applicant whose post-offer medical examination reveals a history of substance abuse may be referred to an NJ TRANSIT SAP for an evaluation. However, final applicants with a history of substance abuse within the past five years must be referred for an evaluation by an NJ TRANSIT SAP. Each individual will be evaluated on a case-by-case basis to determine if there is a need for unannounced follow-up testing. The SAP shall determine the nature, frequency and duration of such testing, if any, and the individual shall only be hired or transferred on the condition that he consents to such testing.
4. ***No individual shall be hired for or transferred to a safety-sensitive position unless he tests negative for drugs and obtains a result less than 0.040 on his alcohol test.***
5. ***NJ TRANSIT shall notify the individual of the results of the drug and alcohol tests.***

***If an individual's drug test is canceled, the individual shall take another pre-employment drug test. If an individual declines to be tested and withdraws his application for employment, no record shall be maintained of the declination.***

6. Individuals who are reinstated into safety-sensitive positions must complete a physical examination, which includes a drug and alcohol test. Individuals who test positive on a reinstatement physical for either drugs and/or alcohol will not be considered for reinstatement until they have completed a Mandatory Employee Assistance Program, if eligible. Employees who are not eligible to participate in the mandatory program will be terminated.

C. Random, Unannounced Testing

1. ***All employees who perform safety-sensitive functions are subject to random, unannounced drug and alcohol testing.***
2. ***The testing will be fair and equitable with no discretion on the part of management or operations in the testing process. Employee numbers shall be in a pool from which random selection is made. Employees shall be selected by a scientifically valid computer-based random number generator that is matched with the individual's employee number. All employees in the random pool shall have an equal chance of being selected for testing and shall remain in the pool even after being tested. Therefore, it is possible for some employees to be tested several times in one year. The drug and alcohol testing shall be spread reasonably throughout the calendar year and shall be conducted on all days and hours during which transit service is in operation.***
3. ***Once the employee has been notified that he has been selected for testing, he must report immediately to the collection site.***

D. Reasonable Suspicion Testing

1. ***An employee is required to submit to an alcohol and/or drug test when a supervisor has reasonable suspicion, based on specific contemporaneous observations concerning the employee's appearance, behavior, speech or body odors, to believe the employee has engaged in any of the behaviors prohibited by this policy concerning the use of alcohol and/or drugs.***
2. ***Reasonable suspicion testing shall be subject to the following limitations and conditions:***
  - a. ***When the suspicion is only of drug use, a urine test shall be performed; when the suspicion is only of alcohol use, a breath test shall be performed; when the suspicion is not specific to either drug or alcohol use, both a urine and a breath test shall be performed.***
  - b. ***A supervisor who makes the determination of reasonable suspicion must be trained in detecting the signs and symptoms of drug use and alcohol misuse. A supervisor who makes the determination that reasonable suspicion of alcohol use exists may not conduct the breath alcohol test on that employee. A direct supervisor of an employee shall not serve as the DATT for a drug test of an***

*employee.*

- c. *No employee may be required to participate in alcohol or drug testing after the expiration of an eight (8) hour period from the time of the observations providing reasonable suspicion. In the case of a drug test, the eight (8) hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the urine specimen within that period.*
- d. *A supervisor may direct an employee to undergo reasonable suspicion testing for alcohol only while the employee is performing a safety-sensitive function, just before the employee is to perform a safety-sensitive function or just after the employee has ceased performing such function.*
- e. *If an alcohol test is not administered within two (2) hours following the determination that the test should be conducted, the supervisor shall prepare and maintain on file a written record stating the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the determination, the supervisor shall cease attempts to have the test administered and shall state in the record the reasons the test was not administered.*
- f. *In all cases where an employee is required to be tested based upon reasonable suspicion, a written report setting forth the facts upon which the reasonable suspicion is based shall be completed and signed by the supervisor.*
- g. *An employee shall be removed from service without pay pending the outcome of the test(s). The employee shall be returned to service with back pay (to include any time consumed by the collection/testing process, if not otherwise compensated) if the outcome of the test (s) is negative.*
- h. *Any employee who tests positive for drugs or alcohol on a reasonable suspicion test will be discharged.*

E. Post-Accident Testing

***Testing for drugs and alcohol is required following an "accident" as defined in Section III above and meeting the criteria below unless an employee's performance can be discounted completely as a causative or contributing factor in the accident.***

1. Fatal Accident

***Whenever there is an accident involving a loss of human life and a supervisory employee of NJ TRANSIT has a reasonable belief, based upon specific facts, that the acts or omissions of an employee performing a safety-sensitive function on duty in the vehicle at the time of the accident contributed to the occurrence or severity of the accident, that employee must be tested for drugs and alcohol. An employee not in the vehicle at the time of the accident, but whose acts or omissions could have contributed to the accident or its severity, as determined by an NJ TRANSIT supervisor using the best information available at the time of the accident, must also be tested for drugs and alcohol.***

## 2. Non-fatal Accident

***Each employee performing a safety-sensitive function on duty in the vehicle at the time of the accident shall be tested for drugs and alcohol, if a supervisory employee of NJ TRANSIT has a reasonable belief, based upon specific facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident, and (a) any individual is taken to a medical treatment facility; (b) the accident involves a bus, electric bus, van or automobile and any of the vehicles must be towed from the scene; or (c) the accident involves a rail car, trolley car or trolley bus and results in the vehicle's removal from operation. An employee not in the vehicle at the time of the accident, but whose acts or omissions could have contributed to the accident, as determined by a supervisor using the best information available at the time of the accident, must also be tested for drugs and alcohol.***

## 3. Time Limitations and Conditions

- a. ***An employee shall be tested for drugs within 32 hours following an accident.***
- b. ***An alcohol test must be performed promptly after the accident. If a test is not administered within two (2) hours following the accident, the supervisor must still attempt to insure the administration of the test, but shall prepare and maintain on file a written record stating the reason(s) the test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the accident, the supervisor shall cease attempts to have the test administered and shall prepare and maintain a record giving the reasons why the test was not promptly administered.***
- c. ***An employee who is subject to post-accident testing and who fails to remain readily available for such testing, including failing to contact his supervisor and/or the NJ TRANSIT representative at the location, or who leaves the scene of the accident prior to submission to such test, shall be deemed to have refused to cooperate with testing.***
- d. ***The requirement to test for drugs and alcohol following an accident shall in no way delay necessary medical attention for injured people or prohibit an employee from leaving the scene of an accident in order to obtain assistance in responding to the accident or to obtain necessary emergency medical care.***
- e. ***A written report setting forth the facts upon which the post-accident testing is based shall be completed and signed by the supervisor in all cases where an employee is required to be tested under the post-accident criteria.***
- f. **An employee shall be removed from service without pay pending the outcome of the test(s). The employee shall be returned to service with back pay (to include any time consumed by the collection/testing process, if not otherwise compensated) if the outcome of the test(s) is negative.**
- g. **Any employee who tests positive for drugs or alcohol on a post- accident test where it is determined by NJ TRANSIT that the employee was at fault will be discharged.**

F. Return-to-Duty Testing

1. *Testing negative on a return-to-duty drug and/or alcohol test is required of an employee prior to his being approved to return to duty from any of the following events.*
  - a. *Discipline resulting from a positive drug or alcohol test result*
  - b. *Discipline resulting from violation of any of the Standards of Conduct set forth in Section VIII*
  - c. *Returning to duty following a refusal to cooperate or tampering with, adulterating or substituting a specimen.*
  - d. *Successful completion of NJ TRANSIT's EAP either under voluntary or mandatory participation*
2. An NJ TRANSIT SAP may require that an employee be administered a return-to-duty drug test even if the original infraction or substance abuse involved alcohol. Conversely, the SAP can require that an employee be administered a return-to-duty alcohol test even if the original infraction or substance abuse involved drugs.
3. *Before a return-to-duty test is performed, an employee shall be evaluated by an NJ TRANSIT SAP to insure that the employee has followed the counseling and treatment recommendations.*
4. *An employee must have a verified negative drug test result or an alcohol test result of less than 0.020 to return to duty. If a drug and/or alcohol return-to-duty test result is canceled, the employee shall be required to submit to and pass another drug and/or alcohol test.*
5. A mandatory EAP participant who tests positive on a return-to-duty test will be discharged in accordance with NJ TRANSIT's policy.

G. Unannounced Follow-Up Testing

1. *An employee returned to duty under any of the conditions described in Section F above shall continue in any program of counseling or treatment recommended by the SAP and shall also be subject to unannounced follow-up drug and/or alcohol testing.*
2. *Employees who successfully complete the NJ TRANSIT voluntary or mandatory EAP will be subject to a program of unannounced follow-up testing for at least 12 months, but not more than 60 months, from the date of the employee's return to duty. The frequency, duration and nature of the follow-up testing shall be determined by NJ TRANSIT's SAP, but it shall consist of a minimum of six (6) tests in the first 12 months after the employee's return to duty. Employees who are subject to follow-up testing must cooperate with testing or be subject to the same disciplinary action that is outlined in Section IX-B(1).*
3. *An employee who participates in an NJ TRANSIT mandatory EAP and who tests*

*positive on any unannounced follow-up test will be discharged.* A voluntary EAP participant who tests positive will be offered the opportunity to enter the EAP on a mandatory basis as authorized by Section XI-C below.

4. In accordance with NJ TRANSIT policy, an employee shall be subject to unannounced follow-up testing if the employee's primary drug specimen tests positive but the split specimen result is negative. In such a case, the employee shall be returned to duty and subject to unannounced follow-up testing during the next 90 days.

## **XI. EMPLOYEE ASSISTANCE**

### **A. NJ TRANSIT's Employee Assistance Program (EAP)**

1. In accordance with the Attorney General's Law Enforcement Drug Testing Policy (revised September 1998), NJ TRANSIT does not offer Voluntary or Mandatory EAP to an illegal drug using police officer. Any NJ TRANSIT sworn law enforcement officer who is determined to have used illegal drug(s), through his own admission, a drug test or otherwise, must be dismissed. Dismissal cannot be avoided by utilization of the EAP, even on a voluntary basis.
2. Except as indicated in subsection 1 above, it is the policy of NJ TRANSIT to encourage employees to voluntarily seek help prior to being discovered to be in violation of this policy. NJ TRANSIT provides EAP services for any employee troubled by alcohol or drug problems. EAP is an assessment, referral and rehabilitation program through which substance abuse professionals provided by or through referral by NJ TRANSIT, counsel and treat employees affected by substance abuse problems. The SAP's also monitor the progress of employees in recovery and assist them in managing these problems that may affect job performance.
3. Employees entering EAP will be evaluated by a qualified NJ TRANSIT SAP/EAP counselor. The counselor will determine if the employee is affected by a psychological or physical dependence upon alcohol or drugs or by any other identifiable and treatable mental or physical disorder involving the use of alcohol or drugs.
4. Employees shall not be permitted to participate in the EAP more than twice for drug and/or alcohol problems under this or any previous policy, unless the third participation is voluntary and begins at least 10 years after the completion of the most recent previous participation.
5. The amount of time an employee will be excused from duty for EAP participation shall not exceed 90 calendar days per treatment unless the SAP/EAP counselor indicates further treatment is required. Employees entering EAP under voluntary or mandatory participation will be entitled to receive any sick pay, health benefits or vacation time to which they are entitled, provided that they continue to comply with the EAP-recommended treatment. After the expiration of earned sick time and/or available vacation time, the balance of any time off required to complete primary treatment and gain manageability over the substance abuse problem will be granted through an unpaid leave of absence. The absence, whether paid or unpaid, will be counted against any leave allowance for which the employee is eligible under the Family and Medical Leave Act.

6. NJ TRANSIT shall not offer the voluntary EAP option in a case where the seeking of assistance, referral or report is made in anticipation of, or with the effect of, anticipating the imminent and probable detection by a supervisory employee of a policy violation.
7. All treatment records will be held in confidence, with management being simply told that the employee remains medically not qualified for duty.
8. Employees who enter EAP, either voluntarily or mandatorily, must abide by and with the treatment plan. Employees who refuse to cooperate with EAP or who fail to successfully complete the program will be discharged from NJ TRANSIT.

B. Voluntary EAP Participation

1. NJ TRANSIT's EAP is open to all employees on a voluntary and confidential basis. Except as indicated in Section XI-A(1), the EAP affords employees affected by alcohol or drug use problems the opportunity to maintain an employment relationship with NJ TRANSIT while seeking help before the employee has engaged in conduct deemed by NJ TRANSIT sufficient to warrant discipline. The employee may voluntarily seek assistance through NJ TRANSIT for treatment of the problem or be referred for such assistance by a supervisor, another employee or a representative of the employee's union.
2. An employee who enters EAP voluntarily will not be disciplined on account of any admission that he has previously engaged in any prohibited behavior set forth in this policy, or on account of his entry into EAP.

C. Mandatory EAP Participation

1. An employee shall be eligible for mandatory EAP participation if he has not previously had a positive drug or alcohol test or been determined to have failed to cooperate with drug or alcohol collection or testing procedures (including adulterating, substituting or tampering with a specimen) and he tests positive for drugs or alcohol in any of the following circumstances:
  - a. A test upon transfer into a safety-sensitive position, or upon reinstatement in such a position
  - b. A test conducted as part of a periodic medical examination
  - c. A post-accident test where it is determined by NJ TRANSIT that the employee was not at fault
  - d. A random unannounced test
  - e. A return-to-duty test
  - f. An unannounced follow-up test.
2. If, after any applicable hearing procedure, an employee described in Section C-1 above is determined to have violated NJ TRANSIT's policy, the employee shall be

discharged unless he agrees to enter EAP and successfully complete any recommended course of treatment. If the employee agrees to enter EAP he shall be suspended without pay for 30 calendar days. The suspension shall be served concurrently with the employee's EAP participation. (See Policy No. 3.16 Employee Discipline when suspending a non-agreement employee.)

3. An employee who has already participated twice in NJ TRANSIT's EAP for drug and/or alcohol problems shall not be offered a third opportunity under this section, but shall be discharged.
4. An employee who has previously had a positive drug or alcohol test or previously been determined to have refused to cooperate with collection or testing shall be discharged in accordance with NJ TRANSIT's policy.
5. Positive drug and/or alcohol tests under all prior versions of NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy shall be considered previous positive tests for purposes of this section.

#### D. EAP Return to Work Requirements

1. ***Employees must cooperate with and successfully complete any treatment recommended by the SAP, including any treatment plan for the period after they are returned to duty.***
2. Any SAP referral and subsequent handling, including counseling and treatment, is treated as confidential, except confidentiality is deemed waived if:
  - a. The employee at any time refuses to cooperate in a recommended course of counseling or treatment; or
  - b. The employee is subsequently involved in a disciplinary offense and, after an investigation, it is determined that the employee violated any drug and/or alcohol prohibitions.

## XII. DRUG TESTING PROCEDURES

### A. Drugs Tested

***Urine specimens shall be tested for the following drugs or their metabolites: marijuana, cocaine, opiates (i.e., morphine, codeine), phencyclidine (PCP) and amphetamines (i.e., methamphetamine).*** Additional urine specimens taken from sworn law enforcement officers shall be tested for barbiturates, benzodiazepines and methadone pursuant to the Division of Criminal Justice, Revised Attorney General's Law Enforcement Drug Testing Policy (September 1998).

### B. Preparation for Collection

NJ TRANSIT and its certified drug-testing laboratory shall maintain clear and well-documented procedures for the collection, shipment and accessioning of urine specimens. Collection procedures shall include:

1. *Use of a clean, single-use collection cup or collection container(s) that is securely wrapped until filled with the specimen; and*
2. *Use of a tamper-evident sealing system for specimen bottles; and*
3. *Use of a standard Drug Testing Custody and Control Form (CCF); and*
4. *Use of a shipping container in which specimens and associated paperwork can be placed.*

NJ TRANSIT will provide written procedures, instructions and training on the collection process to certified collectors.

C. Specimen Collection

1. *Urine specimens shall only be collected by certified collectors.*
2. *A person with direct management or supervisory responsibility over the employee to be tested may not serve as the collector for a urine test.*
3. *Urine specimens shall only be collected at secure, designated collection sites which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage and shipping or transportation of specimens to a certified drug testing laboratory.*
4. *Precautions shall be taken by the collector to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and on the CCF can identify the individual from whom the specimen was collected.*
5. Upon notification of testing, individuals are required to remain available until the completion of the collection process. Individuals are required to provide at least 45 ml of urine under the split sample method of collection described below. If the individual is unable to provide at least 45 ml, the DATT shall instruct the individual that he may drink a maximum of 40 ounces of fluids over the course of three hours. The individual shall again attempt to provide a complete specimen. If the individual fails for any reason to provide 45 ml of urine within three hours, the test shall be discontinued and the DATT shall direct the individual to report to Medical Services for an evaluation by the MRO. The MRO may direct the employee to another physician with expertise in the appropriate medical discipline to determine if the employee's failure to provide a sufficient specimen is valid or constitutes a refusal to cooperate with a drug test. Based on this medical evaluation, the MRO or designated physician shall report their conclusions in writing to NJ TRANSIT's DER.
6. *If an individual refuses to cooperate with the collection process, the DATT must inform the appropriate supervisor and document the non-cooperation on the CCF.*
7. *The chain of custody block of the CCF shall be properly executed by the DATT upon receipt of a specimen. Handling and transportation of specimens from one authorized individual or place to another, including handling at the laboratory, shall always be accomplished through chain of custody procedures. However, since*

*specimens are sealed in packages that would indicate any tampering during transit to the laboratory and because couriers, express carriers and postal service personnel do not have access to the CCF, such personnel need not document chain of custody during transit.*

8. *Specimens shall be placed in containers designed to minimize the possibility of damage during shipment to the laboratory and shall be securely sealed to eliminate the possibility of undetected tampering.*
9. *In any case where an employee has sustained a personal injury and is subject to drug testing, necessary medical treatment shall be accorded priority over the provision of body fluid specimens. No employee who is unable to urinate normally as a result of personal injury or resulting medical treatment shall be required to provide a urine specimen. However, an employee who has been transported to receive medical care is not to be considered released from duty for the purpose of compliance with this policy.*
10. *Any specimen suspected of having been adulterated, substituted or diluted shall be forwarded to the laboratory for testing.*
11. *Employees will be required to supply another sample as soon as possible and without prior notification if the specimen is reported by the laboratory as being dilute. The first collection result will be canceled; the second collection result is the test on which NJ TRANSIT will rely.*

D. Split Specimen

*A minimum of 45 ml of urine is required for the split specimen procedure to be utilized under this policy. The urine specimen must be split and poured into two (2) specimen bottles, "A" and "B". Thirty (30) ml shall be poured into bottle "A", to be used as the primary specimen. At least 15 ml shall be poured into the other bottle ("B"), to be used as the split specimen. Both bottles shall be forwarded to the laboratory. In the event that a split sample or bottle "B" is unavailable, the provisions of Section G (7) will apply.*

E. Observed Collections

1. *Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. The following circumstances are the only grounds constituting a reason to believe that an individual may alter or substitute a specimen.*
  - a. *The employee has presented a urine specimen that falls outside the normal temperature range of 90 to 100 degrees Fahrenheit; or*
  - b. *The DATT observes conduct clearly and unequivocally indicating an attempt to tamper with, substitute or adulterate the specimen or an attempt to bring an adulterant or a substitute urine specimen into the collection site; or*
  - c. *The urine specimen provided by the employee on the most recent previous occasion was determined by the laboratory and confirmed by the MRO to be invalid, substituted, or adulterated or the test result had to be canceled because*

*the test of the split sample could not be performed.*

*An employee who is in the follow-up program is required to provide a second sample under direct observation when the first sample is reported by the laboratory and determined by the MRO as being dilute.*

- d. *The employee has previously been determined to have used a drug without medical authorization and the particular test is being conducted as part of a rehabilitation program on return to duty after any required rehabilitation; or under any USDOT agency regulation providing for follow-up testing upon or after return to duty.*
  - e. *When the MRO receives a laboratory report that a specimen was dilute with a creatinine concentration greater than or equal to 2 ml/dl and less than or equal to 5 ml/dl.*
2. *A supervisor of the DATT shall review and concur in advance with any decision by a DATT to obtain a specimen under direct observation. The direct observation must be performed by a DATT of the same gender as the employee or applicant being tested. The DATT's supervisor shall select the observer if there is not a DATT of the same gender available.*
  3. *The DATT must indicate in the "Remarks" section of the CCF that the collection took place under direct observation and the reason for doing so, as well as indicating who did the observation.*

F. Laboratory Testing

1. *Laboratory*

*Urine specimens shall be analyzed by a laboratory certified under the Department of Health and Human Services' (DHHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs. The laboratory shall be secure at all times and shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage and continuing until final disposition of specimens. NJ TRANSIT's laboratory is identified in Exhibit 2 hereto.*

2. *Initial Test of Primary Specimen*

*The laboratory shall use as an initial test an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution, and shall use the following cut-off levels:*

	<u>Initial test level</u> <u>(ng/ml)</u>
<b>Marijuana metabolites</b>	<b>50</b>
<b>Cocaine metabolites</b>	<b>300</b>
<b>Opiate metabolites</b>	<b>2,000*</b>

Phencyclidine	25
Amphetamines	1,000

*\* 25 ng/ml if immunoassay specific for free morphine*

*The laboratory shall also conduct validity tests to determine if the specimen has been adulterated, substituted or diluted, and if so, identify the specific adulterant(s) used.*

*Laboratories are to report substituted samples by documenting on copy #1 of the CCF the specific gravity and creatinine concentration. Specimens with creatinine levels less than 2 ml/dl are to be reported to the MRO as substituted. Specimens with creatinine levels 2 ml/dl to 5 ml/dl will require a collection to be provided immediately under direct observation.*

### 3. *Confirmation Test of Primary Specimen*

*All primary specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) at the following cut-off levels:*

	<b>Confirmation test level(ng/ml)</b>
Marijuana metabolite 1	15
Cocaine metabolite <sup>2</sup>	150
Opiates:	
Morphine	2,000
Codeine	2,000
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

*<sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.*

*<sup>2</sup> Benzoylcegonine.*

*All opiates confirmed positive will undergo an additional test for 6-acetylmorphine at a level of 10 ng/ml.*

*To be confirmed positive for amphetamines, the specimen must also contain amphetamine at a level of  $\geq$  200 ng/ml.*

#### G. Testing of NJ TRANSIT Sworn Law Enforcement Officers

*Urine specimens for sworn law enforcement officers shall be collected and tested for marijuana, cocaine, opiates, phencyclidine (PCP) and amphetamines in accordance with the above procedures under FTA regulations.*

Under the Division of Criminal Justice's, Attorney General's Law Enforcement Drug Testing Policy (revised September 1998), sworn law enforcement officers are required to complete a

drug testing medication information form before providing a urine sample for detection of the three drugs listed below. A separate split urine specimen will be collected and will be tested for these additional drugs and the cut-off levels for the drugs shall be as follows:

	<b><u>Initial test level (ng/ml)</u></b>
Barbiturates	300
Benzodiazepines	300
Methadone	300
	<b><u>Confirmation test level (ng/ml)</u></b>
Barbiturates	300
Benzodiazepines	300
Methadone	300

#### H. Test of Split Specimen

1. *Under NJ TRANSIT and federal regulations, an employee or final applicant for employment has the option of having an analysis of the split specimen performed at a different DHHS-certified laboratory should the primary specimen test result be verified positive or identified as having been adulterated or substituted.*
2. *The MRO shall notify each individual who has a verified positive drug test or whose sample has been determined to have been adulterated or substituted that the individual has 72 hours in which to request a test of the split specimen. If the individual requests in writing a test of the split specimen within 72 hours of having been informed of a verified positive test or an adulterated or substituted sample, the MRO shall direct, in writing, the laboratory to ship the split specimen to a different DHHS-certified laboratory for testing. Any transfer of a specimen between laboratories must be accomplished in accordance with chain of custody procedures.*
3. The testing of the split sample will be conducted consistent with federal regulations. NJ TRANSIT requests an individual seeking a test of a split specimen to be responsible for the cost of any transfer of the split specimen and the cost of the test, unless the test fails to reconfirm the positive result or adulterated or substituted specimen. The MRO must receive a copy of the results from the split sample testing.
4. *Because some analytes deteriorate or are lost during freezing or storage, quantification for a test of a split specimen is not subject to a specific cut-off requirement, but must provide sufficient data to confirm the presence of the drugs or metabolites. In the case of multiple confirmed positive results in the primary sample, the test of the split sample must provide sufficient data to confirm the presence of at least one of the drugs or metabolites found in the primary sample.*
5. In accordance with NJ TRANSIT policy, if the result of the test of the split specimen is negative, an employee may be returned to duty with back pay, but he shall be subject

to unannounced follow-up testing during the next 90 days.

6. ***In the event that the testing of the split sample fails to reconfirm a positive result or an adulterated or substituted specimen, the original test shall be canceled. The MRO must report the failure to reconfirm to the Department of Transportation as per Appendix D of CFR Part 40.***
7. ***Split samples are always to be collected. However, if for some reason, the split specimen or "B" bottle is lost, spilled or otherwise unavailable, the laboratory will:***
  - a. ***Test the primary sample; and***
  - b. ***Report the results of the primary sample to the MRO; and***
  - c. ***Report the original test as canceled.***

***If the primary sample is reported as a verified positive, adulterated or substituted test, a second sample is to be collected under direct observation. The results of the second collection will be final.***

#### I. Quality Assurance

1. ***The drug testing laboratory shall have a quality assurance program which encompasses all aspects of the drug testing process including, but not limited to, specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, certification of calibrators and controls, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.***
2. ***In addition, there shall be laboratory quality control requirements for both initial and confirmation tests.***
3. ***Blind samples shall be randomly intermingled by NJ TRANSIT and sent to the testing laboratory with individual specimens. They will be analyzed in the same manner to ensure the accuracy of the laboratory testing program.***

#### J. Confirmation and Verification Process

1. ***Drug test results reported positive, substituted, adulterated or invalid by the laboratory shall not be deemed positive or disseminated to any person (other than to the employee in a medical interview with the MRO, if conducted) until they are reviewed and verified by an MRO. The MRO shall review all drug test results reported positive, substituted, adulterated or invalid by the laboratory. The review will include:***
  - a. ***Verifying the chain of custody to ensure that it is complete and sufficient on its face; and***
  - b. ***Verifying that the laboratory report and assessment of all drug test results are reasonable; and***
  - c. ***Examining alternate medical explanations for positive, substituted, adulterated or invalid drug test results; and***

- d. *Giving all individuals (applicants and employees) an opportunity to discuss the test results with the MRO prior to his making a decision to verify a positive, substituted, adulterated or invalid result.*
2. *In the case of an adulterated, substituted or invalid test, the individual is responsible for obtaining an explanation and demonstrating there is a link between the alleged reason and the ability to physiologically produce the laboratory result obtained. The proof must be presented within five (5) days after the MRO review. Employees will not be permitted to perform safety-sensitive duty during this review period and until any additional testing has been completed. Employees will be returned to duty with back pay, if the MRO determines the test to be negative on the basis of the information of documentation the employee supplied.*

K. Contact Procedures

1. *The MRO or qualified staff person under the MRO's supervision will contact the individual directly in a confidential manner to arrange for the individual to discuss the test results with the MRO. Only the MRO can discuss the test results with the individual. The MRO can, however, verify a test as positive without having communicated directly with the individual about the test in three circumstances:*
  - a. *The individual expressly declines the opportunity to discuss the test.*
  - b. *Neither the MRO nor the DER has been able to contact the individual within ten (10) days of the date on which the MRO receives the confirmed positive test result from the laboratory, after making all reasonable efforts. ("All reasonable efforts" means that the MRO or designate must make and document at least three (3) attempts within a 24-hour period to contact the individual. If the MRO or designate has been unable to contact the individual, the DER will make and document at least three (3) further attempts within a second 24-hour period to contact the individual. If the DER's attempts are unsuccessful, a message can be left for the individual by voice mail, electronic mail or a letter instructing the individual to contact the MRO. The DER must inform the MRO of the dates and times of his attempts to contact the individual).*
  - c. *The DER has successfully made and documented a contact with the individual and instructed the individual to contact the MRO; more than 72 hours have passed since the date the individual was contacted by the DER and advised of the consequences of failing to contact the MRO within 72 hours.*

L. Reevaluation Procedures

1. *A laboratory-confirmed positive, substituted, adulterated or invalid test can be reevaluated by the MRO if the individual provides documented proof to the MRO within 60 days of the verification that a serious illness, injury or other circumstance beyond the individual's control prevented contact with the MRO within the specified time frame.*

*The MRO may change a verified positive drug test or refusal to test in the following*

*situations:*

- a. *A verification done without an interview with an employee is reopened.*
- b. *Information, not available at the time of the original verification, is received which demonstrates there is a legitimate medical explanation for the drug/metabolite in the employee's specimen or evidence that a legitimate medical explanation for an adulterated or substituted result exists.*

**XIII. ALCOHOL TESTING PROCEDURES**

A. Evidential Breath Testing Device (EBT)

1. *Alcohol testing shall be conducted using an evidential breath testing device (EBT) which shall be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the Federal Register from time to time by the National Highway Traffic Safety Administration (NHTSA), USDOT.*
2. *Each device shall have a manufacturer-developed quality assurance plan approved by NHTSA that specifies a designated method to perform external calibration checks; minimum intervals for performing external calibration checks; tolerances; and inspection, maintenance and calibration requirements and intervals for the device.*

B. Drug and Alcohol Testing Technician (DATT)

1. *Alcohol testing shall be conducted by a Drug and Alcohol Testing Technician (DATT) who is proficient in the use of the EBT and in alcohol testing procedures. The DATT shall have successfully completed a USDOT-approved course of instruction and demonstrated competence in the operation of the device and use of the breath alcohol calibrating unit.*
2. *The supervisor of an employee to be tested for alcohol shall not serve as the DATT for that employee's test.*

C. Alcohol Testing Site

*The DATT shall conduct the test in a manner that provides the employee with privacy to the greatest extent practicable. The testing site shall be secured by the DATT, with no unauthorized access at any time the EBT is unsecured or when testing is occurring. The DATT shall conduct only one test at a time and must remain at the testing site while the preparations for testing or the test itself are in progress.*

D. Priority of Medical Treatment over Testing

*In any case where an employee has sustained a personal injury and is subject to alcohol testing, necessary medical treatment shall be accorded priority over the provision of breath samples. However, an employee who has been transported to receive medical care is not to be considered released from duty for purposes of this policy.*

E. Screening Test

**If the result of the EBT screening test is an alcohol concentration of less than 0.020, no further testing will be conducted.**

F. Confirmation Test

- 1. If the result of the screening test is an alcohol concentration of 0.020 or greater, a confirmation test shall be performed. The confirmation test must be conducted not less than 15 minutes, but not more than 30 minutes, after the completion of the initial test.*
- 2. Before the confirmation test is administered, the DATT shall conduct an air blank on the EBT. If the reading is greater than 0.00, the DATT shall conduct one more air blank. If the second air blank reading is greater than 0.00, that EBT shall not be used to conduct the test.*
- 3. If the initial and confirmatory test results are not identical, the confirmation test result shall be deemed to be the final result. If the result displayed on the EBT itself is not the same as that on the printed form produced by the EBT, the test shall be canceled and the EBT removed from service. A second confirmation must be conducted using a different EBT. Documentation regarding the incident is to be completed.*
- 4. No individual shall be deemed to have tested positive for alcohol in violation of this policy unless a confirmed breath test of at least 0.040 is obtained.*
5. Any employee whose confirmation test result is between 0.020 and 0.039 will be considered unavailable for work under NJ TRANSIT policy and referred to his supervisor for appropriate action, including discipline.

G. Uncompleted Tests and Refusal to Test

- 1. If a screening or confirmatory test cannot be completed for any reason the DATT shall, if practical, begin a new test.*
- 2. Refusal by an individual to complete and sign step 2 of the ATF, to provide an adequate amount of breath, or otherwise to cooperate with the collection process shall be noted on the ATF and the test shall be terminated. Refusal to sign Step 4 is not considered a refusal to test. Step 4 does not need to be signed if the confirmation or screening test result is less than 0.020.*
- 3. If an individual attempts but fails to provide an adequate amount of breath, the DATT shall inform the DER. The DATT shall order the individual to the Company doctor for an evaluation. The Company doctor may refer the employee to a physician with expertise in an appropriate medical discipline to determine if the employee's failure to provide an adequate amount of breath specimen is valid or constitutes a refusal to cooperate with a breath test. The physician(s) shall report their conclusions in writing to NJ TRANSIT's DER. An employee's failure to comply with a request to obtain additional information or to appear for the required evaluations is considered a refusal to cooperate with testing.*

4. An individual will be given only two (2) opportunities to provide a breath sample.

#### **XIV. SUBSTANCE ABUSE PROFESSIONALS (SAP)**

##### **A. The SAP shall carry out the following responsibilities.**

1. Advise each individual who has an alcohol concentration of 0.040 or greater, or who has a verified positive drug test result, or who has refused to submit to an alcohol or drug test of the resources available to evaluate and resolve problems associated with alcohol misuse or drug abuse, including the names, addresses and telephone numbers of SAP's and counseling and treatment programs.
2. Evaluate whether each employee who tested positive for drugs or alcohol and wants to return to work has properly followed the SAP's recommendation for treatment.
3. *Determine the type of testing, (i.e., drug and/or alcohol) that a returning employee shall be subject to on return-to-duty and/or on follow-up testing.*
4. Determine the frequency and number of tests to which a returning employee will be subject as part of follow-up drug and/or alcohol testing after returning to duty.

#### **XV. EMPLOYEE DRUG AND ALCOHOL ABUSE EDUCATION AND SUPERVISOR TRAINING**

##### **A. Employee Education**

1. *NJ TRANSIT's EAP, with the assistance of the appropriate departments, will educate all employees about the dangers of alcohol and drugs, their effects and consequences. The education program will help motivate employees to understand the problems associated with abusing alcohol and drugs and the ways such abuse will compromise their personal functioning, as well as their functioning on the job. To accomplish this objective, a number of approaches will be taken to include the following.*
  - a. *Displays and/or direct mailings to all employees of pertinent information on substance abuse*
  - b. *Orientation for all employees on EAP and opportunities for treatment and rehabilitation*
  - c. Education modules will be provided as part of regularly scheduled safety meetings, rule review sessions and other regular or special meetings, to include discussions on the rationale for NJ TRANSIT's program, the reliability of drug and alcohol testing, the circumstances where disciplinary action will be taken for failure to comply with this policy and applicable requirements to assure the confidentiality of patient records for the protection of the employee's physician-patient relationship and medical history
  - d. *An educational component for employees in safety-sensitive positions, which includes information on the effects and consequences of alcohol and drug*

*abuse on personal health, safety and the work environment, and the manifestations and behavioral cues that may indicate substance use and abuse*

- e. *Display and distribution of a hot-line telephone number for employee assistance for substance abuse problems, and*
- f. *Distribution of NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy to all NJ TRANSIT employees.*

B. Supervisor Training

*Each supervisor shall be trained in the signs and symptoms of alcohol and drug impairment and misuse. The program shall, at a minimum, provide information concerning the acute behavioral and physiological effects of alcohol and the major drug groups on the controlled substances list.*

C. Communication of Policy to Employees

*All employees of NJ TRANSIT and new hires, prior to commencing employment, will be given a copy of NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy and required to sign a dated receipt therefor.*

**XVI. RECORDS AND RECORD KEEPING**

A. Confidentiality and Access to Records

Drug and alcohol tests results may be released only under the following circumstances:

1. *Upon written request, NJ TRANSIT shall promptly provide any employee with any records relating to his test.*
2. *No drug or alcohol test results may be released by NJ TRANSIT to a third party (except as provided for in subsection 3 below) unless the individual tested signs a specific authorization for the release of the results to an identified person. A copy of a verified positive drug test result or of a positive alcohol test result will be provided to the employee's union representative upon the employee's written request. No records of information or test results shall be used or disseminated by or within NJ TRANSIT and its subsidiaries for any purpose other than for providing for compliance with this policy without the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Drug and alcohol test results will not be voluntarily disclosed to law enforcement agencies or officials, except as provided for in Section IX-B.2 above.*
3. *NJ TRANSIT may disclose information related to a test result to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee tested.*
4. *When requested, NJ TRANSIT shall release information to the National Transportation Safety Board (NTSB) about a test performed as a result of an accident under NTSB investigation; or to the Secretary of Transportation or to any*

*USDOT agency with regulatory authority over NJ TRANSIT or its employees; or to a State oversight agency with regulatory authority over NJ TRANSIT.*

5. *NJ TRANSIT shall also permit the Secretary of Transportation or any USDOT agency with regulatory authority over NJ TRANSIT or any of its employees access to all facilities utilized in complying with the requirements of this policy.*
6. Test results can be released for a criminal or civil proceeding only if the court orders it and only to the parties involved in the proceedings.

B. Record Keeping

*Records on program administration and the test results of individuals shall be maintained in accordance with 49 CFR Parts 655.71 and 655.73. Records shall be maintained in a confidential and secure manner.*

If NJ TRANSIT contract services are involved, NJ TRANSIT management shall document oversight/compliance activities designed to ensure that the contractor's records are accurate and current and that they fully comply with FTA regulations.

VII. REPORTING

*NJ TRANSIT shall file annual reports summarizing test results with FTA. The standard Management Information System (MIS) reports that must be used are contained in 49 CFR Part 40, Appendix H. NJ TRANSIT shall also submit annual MIS reports to FTA on its contractors whose employees perform safety-sensitive functions and are, therefore, covered by FTA regulations.*

*The above reports are to be submitted to FTA by March 15 of each calendar year (January 1 - December 31).*

VIII. CERTIFICATIONS

*NJ TRANSIT shall certify annually to FTA compliance with the requirements of 49 CFR Part 655 using language similar to that contained therein. Certification means a written statement, authorized by NJ TRANSIT's governing board or other authorizing official, that NJ TRANSIT has complied with the provisions of Part 655.*

IX. AUTHORITIES

A. Federal Regulations

1. *Department of Transportation, Federal Transit Administration, 49 CFR Parts 653, 654 and 655 - Prevention of Alcohol and Prohibited Drug Use in Transit Operation; Rules*
2. Department of Transportation, 49 CFR Part 29 - Government-Wide Requirements for Drug-Free Workplace Act of 1988 (Grants)
3. *Department of Transportation, Office of the Secretary, 49 CFR Part 40 - Procedures for Transportation Workplace Drug Testing Programs*

4. *Department of Transportation, Federal Transit Administration, Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, April 1994*

B. State Regulations

1. Executive Order 204, March 18, 1989
2. Division of Criminal Justice's Revised Law Enforcement Drug Screening Guidelines (1998)

XX. **CROSS REFERENCES**

A. Corporate-Wide Policy and Procedures

[\*\*3.16 - Employee Discipline\*\*](#)

[\*\*3.25 - NJ TRANSIT Drug and Alcohol-Free Workplace Policy \(Employees not covered under Policies 3.25A/B/C\)\*\*](#)

[\*\*3.25B - NJ TRANSIT Drug and Alcohol-Free Workplace Policy \(Covered Service employees subject to FRA regulations\)\*\*](#)

[\*\*3.25C - NJ TRANSIT Drug and Alcohol-Free Workplace Policy \(Safety-sensitive employees subject to FMCSA regulations\)\*\*](#)

B. Exhibits

[Exhibit 1 - Positions Covered Under Policy 3.25A](#)

[Exhibit 2 - Contacts](#)