

Policy Number 3.25A	Supersedes 3.25A 03/18/99 12/01/2004 4/01/2017	Effective Date 9/01/2017
Manual Human Resources	Source Human Resources	Key Subject Drug and Alcohol Abuse
Title DRUG- AND ALCOHOL-FREE WORKPLACE POLICY Federal Transit Administration (FTA)		
Applies to All NJ TRANSIT employees who perform safety-sensitive functions covered by FTA regulations.		

Executive Director has adopted this policy as the official policy of NJ TRANSIT.

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

I. PURPOSE

The purpose of NJ TRANSIT's Drug-And Alcohol-Free Workplace policy is to ensure that NJ TRANSIT provides the safest possible transportation for the public and to promote the safety and welfare of our employees and customers through the requirement of a workplace and workforce free from the effects of prohibited drugs and alcohol in compliance with the Drug-Free Workplace Act of 1988 and the Omnibus Transportation Employee Testing Act of 1991, as amended.

This document outlines the requirements of NJ TRANSIT's drug- and alcohol testing program and establishes the processes and procedures for the administration of NJ TRANSIT's Drug -And Alcohol-Free Workplace Program in accordance with the regulations, rules, and guidelines established by the United States Department of Transportation (DOT) and the Federal Transit Administration (FTA.) Specifically, this policy mandates urine drug testing and breath alcohol testing, as is required by the FTA under 49 C.F.R. Part 655, for all positions defined as safety-sensitive, as defined in 49 C.F.R. Part 655.4. Accordingly, the application of this policy is expressly limited to NJ TRANSIT employees who perform safety-sensitive functions (Covered Employees) as is defined more specifically below and listed in the hereto attached Exhibit 1 to this policy and to any person applying for such positions.

All testing under this policy is pursuant to the FTA requirements for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations in 49 C.F.R. Part 655 and will be conducted in strict accordance with the DOT Procedures for Transportation Workplace Drug and Alcohol Testing Programs in 49 C.F.R. Part 40.

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

Contact NJ TRANSIT's Medical Services Department for any questions about NJ TRANSIT's Drug -And Alcohol-Free Workplace Program at (856) 968-3968 or (973) 378-6189.

NJ TRANSIT's goal to ensure that the workplace remains free from the effects of drug and alcohol in order to promote the health and safety of employees and the general public shall be accomplished through the implementation of a comprehensive anti-drug and alcohol program based on deterrence, detection, assistance, education 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, to enforce NJ TRANSIT's policy and to ensure service is operated in the safest manner possible.

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 supervisors to detect the signs and symptoms of drug and alcohol abuse.***
- ***Screening and testing of employees for drugs and alcohol both prospective to and during the course of employment, and***

- o Enforcing NJ TRANSIT's drug- and alcohol-free workplace policy and imposing discipline when prevention and deterrence fail.

III. **DEFINITIONS**

Unless specifically set forth otherwise, the following terms are defined pursuant to 49 C.F.R. Part 40

Accident - as defined by the FTA in 49 C.F.R. 655.4 is an occurrence associated with the operation of a vehicle, if as a result:

- o ***An individual dies; or***
- o ***An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or***
- o ***The vehicle involved is a bus, electric bus, van or automobile, in which one or more of the vehicles involved incur(s) disabling damage(as defined below) as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.***
- o ***The vehicle involved is a railcar, trolley car or trolley bus (on a fixed guide way or overhead wire) that is removed from operation.***

Adulterated Specimen or Test - A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol, that are contained in any beverage mixture, mouthwash, candy, food preparation or medication.

Alcohol Concentration - The alcohol in a volume of breath expressed in terms of gram alcohol per 210 liters of breath as measured by an evidential breath testing device.

Alcohol Confirmation Test- A subsequent test using an Evidential Breath Testing Device (EBT), following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

Alcohol Use - The drinking or swallowing of any beverage, liquid, mixture or preparation, including any medication, containing alcohol.

Cancelled Test - A drug or alcohol test that has a problem identified that cannot be or has not been corrected. In drug testing, a drug test that has been declared cancelled 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 cancelled under the criteria found in 49 CFR Part 40.267 or 269.

Chain of Custody - The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget

Collector - A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

Confirmation (or Confirmatory) Test - A second analytical procedure performed on a different aliquot of

the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Contractor - A person or organization that provides a service for a recipient, sub-recipient, 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. All contractors performing a safety sensitive function, as described by item number (4) of the definition of Safety Sensitive Function in 49 CFR 655.4, are required to have a drug and alcohol testing program and must certify compliance with all FTA and DOT rules and regulations.

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 - A person, including an applicant or transferee, who performs or will perform a safety-sensitive function for the employer.

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

Department of Health and Human Services (HHS or DHHS)- the United States Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Department of Transportation (DOT) - United States Department of Transportation

Department of Transportation Agency - An agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing.

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 testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655. The DER for NJ TRANSIT is the senior management official responsible for Medical Services or his/her designate.

Dilute Specimen - A urine specimen with creatine and specific gravity levels that are lower than expected for human urine. Generally, a specimen is considered diluted if the creatine concentration is greater than 2 mg/dL but less than 20 mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030.

Disabling Damage - Damage that precludes departure of any vehicle from the scene of the occurrence in the usual manner in daylight after simple repairs. It includes damage to vehicles that could have been operated but would have been further damaged, if so operated, but does not involve 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.

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 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", "covered employee," "individual to be tested" and "donor" have the same meaning for purposes of this policy.

Employee Assistance Program (EAP) - An assessment, referral and rehabilitation program through which substance abuse professionals assess and/or refer employees for evaluation and/or treatment for substance abuse problems.

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

Evidential Breath Testing Device (EBT)- A device approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

Final Applicant - An applicant who has received a conditional offer of employment.

Federal Transit Administration (FTA) - An agency within the US Department of Transportation (USDOT) responsible for the administration of transit related programs and funds.

Invalid Test - The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory- Any U.S. laboratory certified by HHS under that National Laboratory Certification Program as meeting the minimum standard as Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.

Limit of Detection (LOD)- The lowest concentration at which a measurement can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation- For quantitative assays, the lowest concentration at which the identity and concentration of the measurement can be accurately established.

Medical Review Officer (MRO) - An MRO shall be a licensed physician responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individuals' confirmed positive drug test together with his or her medical histories and any other relevant biomedical information. Information regarding NJ TRANSIT's MRO's can be found in Exhibit 2 hereto.

Negative Result - The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative Specimen - A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

NJ TRANSIT- Shall mean the NJ TRANSIT Corporation (the "corporation") and any public or private entity acquired, owned, or operated by the corporation. For purposes of this policy, NJ TRANSIT is an employer.

NJ TRANSIT Bus Operations - Refers to NJ TRANSIT Bus Operations Inc., NJ TRANSIT Mercer Inc. and NJ TRANSIT Morris Inc.

NJ TRANSIT Property - Any administrative or office building(s), facility(ies), depot(s), project site(s), terminal(s), garage(s) or yard(s) that is either leased or owned by the corporation.

Performing a Safety-Sensitive Function - Any period in which a covered employee is actually performing, ready to perform, immediately available to perform safety sensitive function.

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

Positive Result - The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

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

Prohibited Drug - Marijuana, cocaine, opiates, phencyclidine, amphetamines, ecstasy, and /or any other drug for which

an employer must test under 49 C.F.R. 655.21 as may be amended. In addition, barbiturates, benzodiazepines and methadone are prohibited drugs for sworn law enforcement officers.

Recipient - A person that receives Federal financial assistance under 49 U.S.C. 5307, 5309 or 5311 directly from the federal government.

Refusal to Submit to a Test - Means any circumstance outlined in 49 C.F.R. Parts 40.191 and 40.261 as is more specifically defined in the Standards of Conduct, subsection VIII below.

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 guide way.

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 oversee and/or 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 or reporting to duty.

Substance Abuse Professional (SAP) - A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, state-licensed marriage/family therapist, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), or the National Board of Certified Counselors, Inc., and Affiliates/Master Addictions Counselor (NBCC), with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders.

Substituted Specimen or Test - A urine 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 2 mg/dL and specific gravity less than or equal to 1.0010 or greater than or equal to 1.0200).

Supervisor- An officer, special agent official, representative or anyone acting in an official capacity whether employed 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.

Testing Site - The area where the DATT started the alcohol and/or drug testing process and where the DATT has a clear and unobstructed view of the employee being tested and/or the private and controlled area where the employee provides a urine sample for a drug test.

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, truck, van, automobile, railcar, trolley car, trolley bus or vessel, including a public transportation vehicle, device or structure that is used for transporting people or things.

Verified Negative Drug Test Result - A drug test result reviewed by an MRO and determined to have no evidence of prohibited drug use.

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

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

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 with respect to the covered employees.

E. Under this policy, covered employees will be tested for drugs and alcohol pursuant to 49 C.F.R. Part 40 and 49 C.F.R. Part 655 in the following circumstances: pre-employment, reasonable suspicion, post-accident, random, return-to-duty and follow-up. Specifically, covered employees are subject to drug and/or alcohol testing under NJ TRANSIT policy, including, but not limited to, the following circumstances: as part of periodic medical examinations performed by NJ TRANSIT Medical Services; reinstatement after not having performed safety-sensitive duties for 90 calendar days or more (or less than 90 days, if required as part of a reinstatement settlement); and follow-up testing when the employee's primary drug specimen tests positive but the split specimen result is negative, as described in Section XI-I-4.

- F. Compliance with NJ TRANSIT's Drug- and Alcohol-Free Workplace Program requirements is a condition of employment for all NJ TRANSIT covered employees and all covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 C.F.R. Part 655.

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. 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.
- C. Compliance with NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy 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 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.
 3. 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 being impaired by or under the influence of a drug or alcohol while:

- ***Subject to reporting for duty or on duty***
- Acting in an official capacity on behalf of NJ TRANSIT
- Wearing a recognizable NJ TRANSIT uniform
- ***Operating any NJ TRANSIT vehicle at any time***
- Conducting business for or representing NJ TRANSIT.

1. Covered employees may not use the following prohibited drugs, "marijuana, cocaine, opiates, phencyclidine, amphetamines, ecstasy, and /or any other drug for which an employer must test under 49 C.F.R. 655.21 as may be amended" at any time. In addition, "barbiturates, benzodiazepines and methadone are prohibited drugs for sworn law enforcement officers" at any time unless legally prescribed. A covered employee may be randomly tested for prohibited drug use at any time while on duty.
2. **Covered Employees may not unlawfully possess, distribute, dispense or manufacture a controlled substance at any time.**
3. **Using alcohol is prohibited 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.**
4. Covered Employees may not possess, distribute or use alcohol while reporting for or on duty is prohibited; while in the workplace; while in recognizable NJ TRANSIT uniform; and while conducting any other NJ TRANSIT business (i.e., reporting to NJ TRANSIT Medical Services for any kind of physical examination).
5. Covered Employees are prohibited from **using alcohol for eight (8) hours following an accident or until they have undergone a post-accident test, whichever occurs first.**
6. **Covered Employees are prohibited from performing safety- sensitive functions while having an alcohol concentration of 0.04 or greater.**

A violation of any of the above prohibitions is punishable by disciplinary action up to and including termination.

B. On-call Employees

Covered employees who have consumed alcohol during specified on-call hours, whether the employee is on call on company premises or not, have the opportunity to inform their immediate supervisor of their inability to perform his or her safety-sensitive function. If the covered employee has acknowledged use, then the covered employee is required to take an alcohol test even if he claims ability to perform his or her safety-sensitive function. In this circumstance, the employee may be subject to the disciplinary action.

C. Use of Prescription Drugs

Pursuant to NJ TRANSIT policy, NJ TRANSIT does not prohibit the appropriate use of prescription drugs. An individual must, in addition to proving his compliance with the requirements set forth below, provide Medical Services with a valid current prescription or the drug in its original container as required in subsection c below, 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 below. This statement must be submitted within 48 hours of a request by the MRO.

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/her assigned duties - that (s)he works in any safety- sensitive position - 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 or prescribed, or combinations of medications authorized or prescribed.
 - g. Police Department personnel are required to notify Medical Services within 72 hours whenever they have been prescribed mood-/mind-altering medications or over-the-counter mood-/mind-altering medications. The employee may be required to report to Medical Services when requested to do so. Failure to comply can lead to disciplinary action, up to and including termination.
 - h. Use of methadone is prohibited by NJ TRANSIT.
2. 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/her 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 OTC medication. Employees are required to do the following.
 - Comply with and obey 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. Use of Medicinal Marijuana

NJ TRANSIT's Drug and Alcohol Testing Regulation - 49 CFR Part 40, at 40.151(e) - does not authorize "medical marijuana" under a state law to be a valid medical explanation for a transportation employee's positive drug test

Corporate Policy 3.25A - Drug and Alcohol Free Workplace - Employees who perform safety-sensitive functions covered by FTA regulations result. Therefore, MROs will not verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana."

F. 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*, i.e. no contest), 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.

G. 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.

H. Cooperation and Compliance with Collection and Testing

1. ***Each covered employee or final applicant who has received a conditional offer of employment is 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. 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 in the testing of drugs and alcohol or the collection of specimens is a dischargeable offense in accordance with NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy.**

I. Behavior that Constitutes a Refusal to Cooperate and/or Test Refusal

Behavior that constitutes a refusal to cooperate with testing includes, but is not limited to, the following:

1. ***Failure to appear for any test (except for a pre-employment 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 (except for a pre-employment test.)***
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, regardless of whether the employee provided subsequent specimens or testing results.***
4. ***Refusal to take the test.***
5. ***Refusal to cooperate with the testing procedures contained in 49 C.F.R. Part 40.***

6. ***Failure to attempt to provide a breath or urine specimen or the failure to provide a sufficient quantity of breath or urine without a valid medical explanation***
7. ***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 and/or failure to undergo a medical evaluation as required by the MRO or DER***
8. ***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 and/or the refusal to follow an observer's instructions to raise and lower clothing and turn around***
9. ***Refusal to permit monitoring or observation of a collection when such monitoring or observation is required under DOT or FTA rule or regulation and/or this policy.***
10. ***Failure to take a second test when required.***
11. ***Admitting to adulteration or substitution of a specimen to the DATT or MRO***
12. ***Submission of an adulterated or substituted sample as verified by the MRO***
13. ***Possessing or wearing any device used to tamper with the testing process.***
14. ***Refusal to sign Step 2 of alcohol test form.***

IX. CO-WORKER REPORT PROGRAM

A. Maintenance of Employment Relationship

Subject to the conditions and procedures set forth below an employee may maintain an employment relationship with NJ TRANSIT following an alleged first offense under NJ TRANSIT's Drug- and Alcohol- Free Workplace Policy.

B. General Conditions

1. The alleged violation must come to the attention of NJ TRANSIT as a result of a report by a co-worker that the employee is apparently unsafe to work with or is, or appears to be, in violation of any of the Prohibited Behaviors set forth in this policy. The report by the co-worker must occur on the same day the employee is suspected to or determined to be impaired while returning to work which shall not affect future observations.
2. If a supervisor reasonably suspects that the employee is in violation of the policy, NJ TRANSIT reserves the right to remove the employee from service without pay and a D&A test will be administered using the Supervisory Referral form.
3. The employee must elect to waive investigation on the rule charge and must contact an NJ TRANSIT SAP the next business day from the date on which the supervisor removed the employee from service.

4. The SAP must schedule necessary interviews with the employee and complete an evaluation within ten (10) calendar days of the date on which the employee contacts the SAP with a request for evaluation, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 calendar days from the date on which the employee first contacts the SAP.

C. When Treatment Is Required

If the SAP determines that the employee is affected by psychological or chemical dependence on alcohol or a drug, or by another identifiable and treatable mental or physical disorder involving the abuse of drugs or the misuse of alcohol, the following conditions shall apply according to the procedures as set forth below:

1. NJ TRANSIT shall, to the extent necessary for treatment and rehabilitation, grant the employee an unpaid leave of absence of up to 45 days to complete primary treatment unless the SAP/EAP counselor indicates further treatment is required to obtain management of the substance abuse problem and the employee has sufficient employee benefits, including but not limited to, family and medical leave and disability, to cover the time for additional treatment. This absence will be counted against any leave allowance for which the employee may be eligible under the Family and Medical Leave Act.
2. The employee shall agree to undertake and successfully complete a course of treatment deemed acceptable by the SAP.
3. NJ TRANSIT shall promptly return the employee to duty upon recommendation of the SAP. Return to duty shall also be conditioned on successful completion of a return-to-duty medical examination, which shall include a drug and/or alcohol test in accordance with the provisions contained in 49 C.F.R. Part 655 for any covered employee who returns to duty following any period of separation resulting directly from a covered employee's violation of any other rule or regulation under that part. Testing pursuant to this section shall be performed in strict accordance with specified in 49 C.F.R. Part 40, subpart O.
4. Following his/her return to duty, the employee, as a further condition of withholding discipline for the initial reporting, shall, as necessary, be required to participate in a voluntary program of follow-up treatment as prescribed by the SAP for a period not to exceed five (5) years from the date the employee was returned to covered service.

D. When Treatment Is Not Required

If the SAP determines that the employee is not affected by an identifiable and treatable mental or physical disorder:

1. NJ TRANSIT shall return the employee to duty within five (5) calendar days after completion of the SAP's evaluation and minimum education requirements.

X. **ENFORCEMENT**

A. Responsive Action

Any employee, who either (1) refuses to cooperate with collection and testing; or (2) provides an adulterated or substituted sample; or (3) is the subject of a verified positive drug test; or (4) is the subject of a confirmed positive alcohol test; or (5) admits to the collector or MRO that the employee adulterated or substituted the specimen; or (6) as an employee, if the MRO reports that you have a verified adulterated or substituted test result, the employee has refused to take a drug 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 following the administration of a test based upon reasonable suspicion or a post-accident test.

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 the type of assistance (education and/or treatment program) the employee needs to in resolving problems associated with drug and/or alcohol misuse.

Notwithstanding any provision contained in this policy to the contrary, the referral and any subsequent evaluation by the SAP shall not affect NJ TRANSIT's sole and exclusive 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, conviction, or a violation otherwise of a criminal drug statute.**
- d. **Conviction of a 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.**
- 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 June 2001), 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 for illegal use of drugs, 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.

If a police officer, or applicant for employment as a police officer has a verified positive drug test result, or has a confirmed alcohol test of .040 or greater, or refuses to submit to a drug or alcohol test required, the employer shall advise the employee of the resources available for evaluation and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

XI. DRUG AND ALCOHOL TESTS

NJ TRANSIT's Medical Services Department's physician/MRO is responsible for determining whether a candidate is medically approved for employment at NJ TRANSIT.

A. Periodic Medical Examinations (Physicals)

Periodic and/or Commercial Driver License (CDL) physicals by NJ TRANSIT's Medical Services Department are available to employees who are required to have such examinations. Employees who request this examination will receive a drug and alcohol test under company authority as part of the examination.

B. Return to Work

An employee who has not performed covered service/safety-sensitive duties for more than 90 calendar days or more, and has not been in the random testing pool during that time, is required to take and pass a drug and alcohol test under company authority before assuming covered service/safety-sensitive duties.

C. Reinstatement Testing

An employee who is being reinstated under NJ TRANSIT policy must be given a pre-employment drug and alcohol test when/if required under the provisions of the reinstatement agreement.

D. Pre-Employment Testing

1. ***All final applicants for safety-sensitive positions and employees seeking to transfer from a non-safety-sensitive position to a safety-sensitive position must be given a pre-employment drug and alcohol test pursuant to 49 C.F.R. Part 655.41. Employees who have not performed safety-sensitive duties for 90 calendar days and have been removed from the random pool must take and pass a drug and alcohol test conducted pursuant to FTA regulations 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, amphetamines and Ecstasy, and/or any other drug that may subsequently be added to the prohibited substances list.***
2. ***When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under 49 C.F.R. Part 655.41(a)(2) the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in 49 C.F.R. Part 655.62.***
3. 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.
4. 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 under company authority. 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.

NJ TRANSIT's Medical Services Department's physician/MRO is responsible for determining whether a candidate is medically approved for employment at NJ TRANSIT.

5. ***No individual shall be hired for or transferred to a safety-sensitive position unless said individual tests negative for drugs and obtains a result less than 0.020 on a test for alcohol.***
6. ***NJ TRANSIT shall notify the individual of the results of the drug and alcohol tests. If an individual's drug test is cancelled, the individual shall take another pre-employment drug test. If an individual declines testing and withdraws his or her application for employment, then no record shall be maintained of the declination.***
7. Individuals who are reinstated into safety-sensitive positions must complete a physical examination, which includes a drug and alcohol test. Individuals who test positive 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 shall be terminated.
8. ***If a safety sensitive employee has been on extended leave for a period of 90 days or more and has been excluded from the random testing pool, the employee will be required to take a drug and alcohol test and shall test negative for both drugs and alcohol prior to resuming the performance of safety sensitive job functions.***

E. Random, Unannounced Testing

1. ***All employees who perform safety-sensitive functions are subject to random, unannounced drug and alcohol testing.***

A covered employee shall only be randomly tested for alcohol use while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

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 (s)he has been selected for testing, (s)he must report immediately to the collection site. It is the responsibility of the employee to remain at the site until directed otherwise.***

F. 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, including, but not***

limited to, the employee's appearance, behavior, speech or body odors, to believe that the employee has engaged in a behavior prohibited by this policy.

2. Reasonable suspicion testing shall be subject to the following limitations and conditions:

(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or has engaged in alcohol use.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations including, but not limited to, concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

(c) Alcohol testing is authorized under this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test

G. Post-Accident Testing

Testing for drugs and alcohol is required following an "accident" as defined in Section III of this policy.

1. Fatal Accident

As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 382.303(a)(1) or (b) (1).

The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the decision.

2. Non-fatal Accident

As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle is involved, the employer shall drug and alcohol test each covered employee operating the public transportation vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

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. Pursuant to NJ TRANSIT policy, 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 will be discharged.

H. Return-to-Duty Testing

1. Pursuant to NJ TRANSIT policy, 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, mandated by NJ TRANSIT policy, as 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
 - e. All testing must be conducted in accordance with 49 C.F.R. Part 40, subpart O

- f. All tests shall be conducted under direct observation
 - g. Follow up alcohol testing is only permissible just before/during/after actual performance of safety-sensitive functions.
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 cancelled, 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.**

I. Unannounced Follow-Up Testing

1. ***An employee returned to duty under any of the conditions described in Section H 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. Pursuant to NJ TRANSIT policy, ***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 discharge as outlined in Section X-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 XII-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 according to the SAP's testing plan.

XII. EMPLOYEE ASSISTANCE

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

1. 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 an employee troubled by alcohol or drug problems. EAP is an assessment, referral and rehabilitation program through which substance abuse professionals (SAP), 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 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.

2. 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 a police officer using illegal drugs. Any sworn NJ TRANSIT 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.

If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of .04 or greater, or refuses to submit to a drug or alcohol test of required, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

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. 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 and the employee has sufficient employee benefits, including but not limited to, FMLA and disability, to cover the time for additional treatment. Once temporary disability allowance (TDA) or temporary disability benefits (TDB) have lapsed, EAP will be terminated.

Note: 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. All absence, with the exception of vacation time, whether paid or unpaid, will be counted against any leave allowance for which the employee is eligible under the Family and Medical Leave Act.

5. 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.
6. All treatment records will be held in confidence, with management being simply told that the employee remains medically not qualified for duty.
7. Pursuant to NJ TRANSIT policy, employees who enter EAP, whether voluntary or mandatory participation, 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 XII-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 engaged in any prohibited behavior set forth in this policy, or on account of his/her entry into EAP.
3. An employee who has already participated twice in NJ TRANSIT's EAP for drug and/or alcohol problems (mandatory or voluntary referral), shall not be offered a third opportunity under this section but shall be discharged.

C. Mandatory EAP Participation

1. Pursuant to NJ TRANSIT policy, an employee shall be eligible for mandatory EAP participation if (s)he has not previously had a positive drug or alcohol test or has not been determined to have failed to cooperate with the drug and alcohol collections or procedures (including adulterating, substituting or tampering with a specimen) in any of the following circumstances:
 - a. (S)he tests positive for drugs or alcohol on a test upon transfer into a safety-sensitive position, or upon reinstatement in such a position.
 - b. (S)he tests positive for drugs or alcohol on a test conducted as part of a periodic medical examination.
 - c. (S)he tests positive for drugs or alcohol on a random unannounced test.
 - d. (S)he tests positive for drugs or alcohol on a return-to-duty test.
 - e. (She) tests positive for drugs or alcohol on 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. If the employee agrees to enter EAP, (s)he shall be suspended without pay for 30 calendar days. The suspension shall be served concurrently with the employee's EAP participation (see Corporate-wide Policy 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. The employee will be provided a list of DOT- qualified SAPs.
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. The employee will be provided a list of DOT- qualified SAPs.
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 shall 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.

XIII. **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), amphetamines, methamphetamines, Ecstasy, and any other prohibited drugs. 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 (May 2012).

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 qualified collectors.

C. Specimen Collection

1. ***Urine specimens shall only be collected by qualified 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. The proof must be presented within five (5) business days after MRO evaluation.

6. Based on this medical evaluation, the MRO or designated physician shall report their conclusions in writing to NJ TRANSIT's DER.
7. ***If an individual refuses to cooperate with the collection process, then the DATT must inform the appropriate supervisor and document the non-cooperation on the CCF.***
8. ***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.***
9. ***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.***
10. ***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.***
11. ***Circumstances such as an employee refusing to provide a second specimen under observed collection would result as a refusal to test, and the original specimen suspected to have been adulterated, substituted, or diluted would be discarded, per 49 C.F.R. Part 40.65(7.)***
12. ***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 negative but dilute. The first collection result will be cancelled; 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 H, 7 will apply.

E. Observed Collections

1. **Procedures for collecting urine specimens shall allow individual privacy unless the employee attempts to tamper with his/her specimen at the collection site. The following circumstances are the grounds constituting a reason to believe that an employee may have attempted to tamper with his/her specimen:**
 - a. **The urine specimen falls outside the normal temperature range of 90 to 100 degrees Fahrenheit; or**
 - b. **The specimen shows signs of tampering such as unusual color, odor, characteristics; or**
 - c. **The collector finds an item in the employee's pockets or wallet which appears to be brought into the collection to contaminate a specimen; or the collector notes conduct suggesting tampering.**
2. **Direct Observation can be ordered by the MRO when:**
 - a. **The employee has no legitimate medical reason for certain atypical laboratory results; or**
 - b. **The employee's positive or refusal (adulterated/substituted) test result had to be cancelled because the split specimen test could not be performed (i.e. a sufficient split sample was not available)**
3. **Direct Observation is required for all Follow-Up and Return to Duty tests.**
4. **A supervisor of the collector shall review and concur in advance with any decision by a collector to obtain a specimen under direct observation. The direct observation must be performed by a collector of the same gender as the employee being tested. The collector's supervisor shall select the observer if there is not a collector of the same gender available.**
5. **If a person other than the collector acts as the observer, his/her name must be included with the appropriate comments on the "Remarks" line.**

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.

With respect to subsection 1 and 2 of this Section F, the laboratory shall conduct drug testing immunoassay using the cut-off levels specified by DOT Regulations in 49 C.F.R. 87. In the event of a conflict between this Section F and the text of 49 C.F.R. Part 40, then the regulation, as may be amended, shall control.

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 (ng/ml)</u>
Marijuana metabolites (THCA)	50
Cocaine metabolites (Benzoylecgonine)	150
Codeine/Morphine	2000
Hydrocodone/Hydromorphone	300
Oxycodone/Oxymorphone	100
6-Acetylmorphine	10
Phencyclidine	25
Amphetamines/Methamphetamine	500
MDMA/MDA	500

* 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 are considered a dilute specimen and 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:

	Confirmation test level (ng/ml)
THCA	15
Benzoylecgonine	100
Codeine	2000
Morphine	2000
Hydrocodone	100
Hydromorphone	100
Oxycodone	100
Oxymorphone	100
6-Acetylmorphine	10
Phencyclidine	25
Amphetamines	250
Methamphetamine	250
MDMA	250
MDA	250

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

To be confirmed positive for methamphetamines, the specimen must also contain amphetamine at a level of \geq 100 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 June 2001), 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:

	<u>Initial test</u>
	<u>level (ng/ml).</u>
Barbiturates	300
Benzodiazepines	300
Methadone	300
	<u>Confirmation</u>
	<u>test level</u>
	<u>(ng/ml)</u>
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.***
- The testing of the split sample will be conducted consistent with 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.***
- 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 cancelled. 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 MRO must cancel the test and;***
 - a. ***Report to the DER and the employee that the test must be cancelled and the reason for the cancellation;***
 - b. ***Direct the DER to ensure the immediate recollection of another specimen from the employee under direct observation, with no notice give to the employee of this collection requirement until immediately before the collection; and***
 - c. ***Notify the Office of Drug and Alcohol Policy and Compliance (ODAPC) of the failure to reconfirm.***

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 shall 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 via face-to-face or telephone interview. 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:

1. ***A verification done without an interview with an employee is reopened.***
2. ***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.***

XIV. 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 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 cancelled and the EBT removed from service. If a fatal flaw occurs during the testing process the DER must be notified and the test must be treated as if it never happened.***
- 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. A confirmed alcohol concentration of 0.040 or greater is a Federal violation and employees will be subject to disciplinary action under NJ TRANSIT's authority.***

5. Any employee whose confirmation test result is between 0.020 and 0.039 will be considered unavailable for work for up to eight (8) hours under guidelines and can be referred to his/her supervisor under NJ TRANSIT's authority 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 Alcohol Testing Form (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.

XV. SUBSTANCE ABUSE PROFESSIONALS (SAP)

A. The SAP shall have 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.

XVI. 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. To accomplish this objective, a number of approaches will be taken to include the following:***

- a. ***Displays educational materials and posters of pertinent information on substance abuse to all employees to all employees***
 - b. ***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***
 - c. ***Display and distribution of a hot-line telephone number for employee assistance for substance abuse problems, and***
 - d. ***Distribution of NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy to all NJ TRANSIT employees.***
2. **Notwithstanding any provision of this policy to the contrary, NJ Transit's Education and Training Program(s) related to this policy shall strictly conform to the requirements contained in the provisions of 49 C.F.R. Part 655.14. Specifically, covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. Moreover, supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.**

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.

XVII. RECORDS AND RECORD KEEPING

A. 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 and 40.333. 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.

B. 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/her 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 X-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 and arising from the results of a drug or alcohol test under this policy including but not limited to unemployment compensation, workers compensation, or other proceeding related to a benefit sought by the covered employee as is set forth in the provisions of 49 C.F.R. 655.73(g)**
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 a covered employee; or to a State oversight authorized to oversee fail fixed guidance systems.**
5. **NJ TRANSIT shall also permit the Secretary of Transportation or any USDOT agency with regulatory authority over NJ TRANSIT or any of its employee's 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.

XVIII. REPORTING

NJ TRANSIT's Medical Services Department 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).

XIX. 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 49 CFR Part 655.

XX. AUTHORITIES

A. Federal Regulations

1. **Department of Transportation, Federal Transit Administration, 49 CFR Parts 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, October 2009***

B. State Regulations

1. Executive Order 204, March 18, 1989

2. Division of Criminal Justice's Revised Law Enforcement Drug Screening Guidelines (1998)

XXI. **CROSS-REFERENCES**

A. Corporate-Wide Policy

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