



Metropolitan Transportation Authority

# Corporate Governance Committee Meeting

## March 2015

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### **Committee Members**

T. Prendergast, Chairman

F. Ferrer, Vice Chairman

J. Ballan

A. Cappelli

S. Metzger

J. Molloy

M. Pally

A. Saul

J. Sedore, Jr.

# **Corporate Governance Committee Meeting**

2 Broadway, 20th Floor Board Room

Monday, 3/23/2015

2:45 - 3:45 PM ET

## **1. Approval of Minutes**

*Minutes of Meeting - November 17, 2014 - Page 3*

## **2. Presentation on Recent Developments in Corporate Governance**

*Presentation*

## **3. Review and Approve Mission Statement and Measurement Report**

*Action Item*

*Staff Summary - Mission Statements and Measurements Report - Page 5*

*2014 Mission Statement and Measurement Report - Page 6*

## **4. Review and Approve Drug and Alcohol Policies for MTA and its Agencies**

*Action Item*

*Staff Summary - Drug and Alcohol Policy Statements - Page 39*

*Drug and Alcohol Policies - Page 40*

## **5. Review and Approve All Agency Travel and Business Expense Policy**

*Action Item*

*Staff Summary - Travel and Business Expense Policy - Page 257*

*Travel and Business Expense Policy Directive - Page 258*

## **6. Review and Approve MTA Policies in connection with Provisions of the Public Authorities Law**

*Action Item*

*Staff Summary - Public Authorities Law Required Policies - Page 277*

## **7. Review and Approve Procurement Guidelines**

*Action Item*

*Staff Summary - Procurement Guidelines - Page 278*

*All Agency Procurement Guidelines - Page 279*

*All Agency Procurement of Services - Page 291*

**MINUTES OF THE MEETING**  
**MTA Corporate Governance Committee**  
**November 17, 2014**  
**347 Madison Avenue**  
**New York, New York**

The following MTA Corporate Governance Committee members were present:

Hon. Thomas F. Prendergast, Chairman  
Hon. Fernando Ferrer, Vice Chairman  
Hon. Jonathan A. Ballan  
Hon. Susan Metzger  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.

The following MTA Corporate Governance Committee members were absent:

Hon. Allen P. Cappelli  
Hon. Andrew Saul

MTA Board member Hon. Robert C. Bickford also attended the meeting.

The following MTA staff attended the meeting:

Jerome Page, General Counsel  
Lamond W. Kears, Chief Compliance Officer

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Chairman Prendergast called the November 17, 2014 meeting of the MTA Corporate Governance Committee to order at 3:10p.m.

**Public Comments Period**

There were no speakers in the public comments portion of the meeting.

**Approval of Minutes**

Upon motion duly made and seconded, the Committee approved the minutes of the Committee meeting held on March 24, 2014.

**1. Review MTA By-Laws**

MTA Chief Compliance Officer Lamond Kears advised the Committee that each year this committee must review the MTA and its Agencies' By-laws which were last revised by the Board on July 24, 2013. Kears advised and there were no recommended changes at this time.

**2. Procurement Lobby Law**

Kears advised the Committee that he reviewed each of the MTA Agency's procurement lobby programs and found that they are in compliance and there have been no determinations of violation of the Procurement Lobbying provisions to report at this time.

**3. Review and Approval of 2015 Committee Work Plan**

Kears presented the 2015 Governance Committee Work plan.

#### **4. Review and Governance Committee Charter**

Kearse advised the committee that each committee is required to review its charter including this committee. There were no changes recommended to the Governance Committee Charter.

#### **5. Review and Approval of MTA Whistleblower Protection Policy**

Kearse advised the Committee that the recommended revisions to the Whistleblower Policy are based upon guidance from the ABO and would (1) help to ensure that the identity of whistleblowers and the substance of their reports would be kept confidential to the extent possible; (2) prohibit MTA employees from interfering with other Employees who wish to disclose wrongful acts and (3) ensure that this policy would not infringe on the rights of any MTA Employee under any provision of law or regulation.

Upon motion duly made and seconded, the Committee recommended Board approval of revisions to the Whistleblower Protection Policy.

#### **6. Review and Approval to the MTA All Agency and Board Member Code of Ethics**

Kearse advised the committee that the Joint commission on Public Ethics (“JCOPE”) issued new/revised regulations on gifts, honoraria and travels reimbursement. The proposed revisions to the All Agency code of Ethics and The MTA Board Code of Ethics will ensure consistency with the JCOPE regulation.

Among the changes necessitated by the JCOPE regulations is the expansion of the definition of Prohibited Source to include entities that (1) contract with other State agencies for the benefit of the MTA; (2) apply to the MTA for funds, and (3) are government or quasi-governmental organizations. In addition, all references to the MTA having to report the receipt of honoraria by its employees to JCOPE have been removed. However, employees must now obtain written approval to accept honoraria.

The MTA Board Code of Ethics has been revised to include JCOPE’s restrictions on Board Members’ political activities. In addition, the Code contains new procedural requirements for Board Members who may be interested in running for elective office.

Upon motion duly made and seconded, the Committee recommended Board approval of revisions to the MTA All Agency and Board Member Code of Ethics.

#### **Adjournment**

Upon motion duly made and seconded, Chairman Prendergast adjourned the November 17, 2014 meeting of the Corporate Governance Committee at 3:16pm.

Respectfully submitted

Lamond W. Kearse  
MTA Chief Compliance Officer

# Staff Summary

<b>Subject</b> Mission Statement, Measurements, and Performance Indicators Report
<b>Department</b> Chief of Staff
<b>Department Head Name</b> Donna Evans <i>Donna Evans</i>
<b>Department Head Signature</b>
<b>Project Manager Name</b>

<b>Date</b> March 25, 2015
<b>Vendor Name</b> N/A
<b>Contract Number</b> N/A
<b>Contract Manager Name</b> N/A
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
	Corporate Governance	3/23/15			
	Board	3/25/15			

Internal Approvals			
Order	Approval	Order	Approval
1	Chief of Staff <i>DAE</i>		
2	Legal <i>AP</i>		
3	Chief Compliance Officer <i>AK</i>		

**Purpose:**

To obtain Board approval of the MTA’s Mission Statement and to authorize submission of the annexed 2014 Mission Statement, Measurements, and Performance Indicators Report (the “Report”) to the Independent Authorities Budget Office (“ABO”).

**Discussion:**

Section 1269-f and Section 2824-a of the Public Authorities Law require MTA annually to reexamine its mission statement, reassess its stakeholders, and selected performance measurement indicators and to submit a report based on the performance indicator results from the previous year.

The MTA and its Board engage in oversight of agency operating performance throughout the year. The Board, through its transit, rail and bridge/tunnel operation committees, closely monitors agency operating performance. Each operating agency reports its most recent performance data in posted monthly reports and in committee books distributed in advance of public MTA operating committee meetings, which are conducted at least eleven times a year. At these public meetings, operating agency results are reviewed and discussed by Board members and agency senior staff. In addition, presentations focused on particular areas of performance are made by the agency staff to the Board operating committees periodically through the year, in accordance with the work plan schedule of each operating committee. The MTA website also contains a “Performance Dashboard” for each of the MTA operating agencies, updated monthly, summarizing the agencies’ leading performance measurements.

The Report compiles the MTA Mission Statement, Stakeholder Assessment and the performance measurements from 2014. The operating agencies have each submitted, within the Report, a summary that evaluates agency performance on the applicable indicators in the past year.

**Recommendation:**

It is recommended that the MTA Board approve the annexed Report and authorize submission of such Report as required by Section 1269-f and Section 2824-a of the Public Authorities Law to the ABO.



**Metropolitan Transportation Authority  
Mission Statement, Measurements, and Performance  
Indicators Report Covering Fiscal Year 2014**

**In Compliance with New York State Public Authorities Law §1269-f and §2824-a**

***Submitted as Part of the MTA 2014 Annual Report to the Governor***

### Note

Because of the timing of this report, the performance indicators against which the MTA agencies measure their performance are preliminary and subject to subsequent reconciliation and adjustment as data is finalized over the course of the year. For that reason, some of the 2013 data that was reported in last year's report has been adjusted, and our 2014 performance is being measured against this more recent and accurate data, even if it differs only slightly from the data in last year's report. Similarly, our 2014 preliminary data is also subject to subsequent adjustment, and our 2015 report will similarly measure performance against the most recent and accurate data available.

## MTA Mission Statement

The Metropolitan Transportation Authority (MTA) preserves and enhances the quality of life and economic health of the region it serves through the cost-efficient provision of safe, on-time, reliable, and clean transportation services.

## Stakeholder Assessment

The main stakeholders of the MTA are its customers; the businesses, residents, and taxpayers of our service area and the State; the MTA's employees and unions; and its government partners. A set of goals for each group has been defined, along with performance indicators to measure the attainment of these goals.

<b>Customers</b>	
<b>Our customers are those who ride our trains and buses or cross our bridges and tunnels. They include the residents in our region, as well as tourists and visiting business persons. Our customers expect service that is safe, on-time, reliable, and that provides good value for their money.</b>	
<b>MTA Goals</b>	<b>Performance Indicators</b>
Ensure our customers' safety	<ul style="list-style-type: none"> <li>✓ Customer injury rates</li> <li>✓ Bus collision rate</li> </ul>
Provide on-time and reliable services	<ul style="list-style-type: none"> <li>✓ On-time performance (subway and commuter railroads)</li> <li>✓ Subway wait assessment</li> <li>✓ Bus trips completed</li> <li>✓ Mean distance between failures</li> </ul>
Provide services to people with disabilities	<ul style="list-style-type: none"> <li>✓ Elevator availability</li> <li>✓ Escalator availability</li> <li>✓ Bus passenger wheelchair lift usage (does not include paratransit)</li> <li>✓ Paratransit ridership</li> </ul>
Repair, replace, and expand transportation infrastructure	<ul style="list-style-type: none"> <li>✓ Capital Program commitments</li> <li>✓ Capital Program completions</li> </ul>

## Businesses, Residents, and Taxpayers

The businesses, residents, and taxpayers in our service area want the MTA to spend its resources efficiently and appropriately, while enhancing the mobility of the region.

MTA Goals	Performance Indicators
Perform services in an efficient manner	<ul style="list-style-type: none"> <li>✓ Farebox operating ratio</li> <li>✓ Operating cost per customer</li> <li>✓ Total support to mass transit</li> </ul>
Maximize system usage	<ul style="list-style-type: none"> <li>✓ Ridership</li> <li>✓ Traffic volume</li> </ul>
Repair, replace, and expand transportation infrastructure	<ul style="list-style-type: none"> <li>✓ Capital Program commitments</li> <li>✓ Capital Program completions</li> </ul>

## Employees and Unions

Our employees and unions expect a safe workplace, skills training relevant to their roles, and opportunities for growth.

MTA Goals	Performance Indicators
Ensure our employees' safety	<ul style="list-style-type: none"> <li>✓ Employee lost time and restricted-duty rate</li> </ul>
Maintain a workforce that reflects the regional availability of all races, nationalities, and genders for our industry	<ul style="list-style-type: none"> <li>✓ Female representation in MTA workforce</li> <li>✓ Minority representation in MTA workforce</li> </ul>

## Government Partners (Federal, State, and Local Governments)

Our government partners expect us to enhance regional mobility by providing excellent service, while spending our resources in a cost-effective and appropriate manner.

MTA Goals	Performance Indicators
Provide on-time and reliable services	<ul style="list-style-type: none"> <li>✓ On-time performance (subway and commuter railroads)</li> <li>✓ Subway wait assessment</li> <li>✓ Bus trips completed</li> <li>✓ Mean distance between failures</li> </ul>
Maximize system usage	<ul style="list-style-type: none"> <li>✓ Ridership</li> <li>✓ Traffic volume</li> </ul>
Perform services in an efficient manner	<ul style="list-style-type: none"> <li>✓ Farebox operating ratio</li> <li>✓ Operating cost per customer</li> </ul>
Repair, replace, and expand transportation infrastructure	<ul style="list-style-type: none"> <li>✓ Capital Program commitments</li> <li>✓ Capital Program completions</li> </ul>

## **MTA New York City Transit (“NYCT”)**

<b>Performance Indicator</b>	<b>2013 Actual</b>	<b>2014 Actual *</b>
<b>Service Indicators</b>		
On-Time Performance – Terminal	80.5%	74.0%
Subway Wait Assessment	80.3%	78.8%
Elevator Availability – Subways	97.3%	96.5%
Escalator Availability – Subways	95.8%	95.1%
Total Ridership – Subways	1,707,555,714	1,751,287,621
Mean Distance Between Failures – Subways (miles)	153,382	141,202
Mean Distance Between Failures – Staten Island Railway (miles)	71,313	74,358
On-Time Performance – Staten Island Railway	94.7%	91.4%
% of Completed Trips – NYCT Bus	99.3%	99.0%
Total Paratransit Ridership – NYCT Bus	9,266,385	8,884,282
Bus Passenger Wheelchair Lift Usage – NYCT Bus	1,446,813	1,463,940
Total Ridership – NYCT Bus	667,569,432	667,051,170
Mean Distance Between Failures – NYCT Bus (miles)	4,941	4,221
<b>Safety Indicators</b>		
Customer Injury Rate – Subways (per million customers)	2.53	2.61
Customer Accident Injury Rate – NYCT Bus (per million customers)	1.15	1.16
Collisions with Injury Rate – NYCT Bus (per million vehicle miles)	7.56	6.50
Employee Lost Time and Restricted-Duty Rate (per 100 employees)	3.42	3.37
<b>Workforce Indicators</b>		
Female Representatives in NYCT Workforce	17.4%	17.4%
Minority Representatives in NYCT Workforce	74.5%	75.0%
<b>Financial Indicators</b>		
Farebox Operating Ratio	59.1%	58.2%
Operating Cost per Passenger	\$2.87	\$2.87
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of planned value)	\$2,563 (100%)	\$2,633 (72%)
Completions in \$ Millions (% of planned value)	\$1,542 (75%)	\$1,842 (86%)
<p><i>Note: MTA performance data are subject to periodic adjustment. Some 2013 data may have been updated subsequent to the 2013 PAL §1269-f report. The 2014 Farebox Operating Ratios are based on preliminary estimates from the “MTA 2015 Adopted Budget, February Financial Plan,” and will be updated by the MTA Division of Management &amp; Budget in April 2015. The Subway Customer Injury Rate is preliminary through November 2014.</i></p>		

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATORS: Customer Injury Rate**

The 2014 “customer injury rate” for the NYCT Department of Subways was 2.61 per million customers through November 2014. This represents a slight increase over the latest adjusted 2013 rate of 2.53 per million customers. This increase, however, follows a steady overall decline in customer injuries, from 3.33 per million in 2009. NYCT Subways remains committed to continuing this long-term decline in customer injuries.

NYCT Bus saw a slight increase in its customer accident injury rate, from 1.15 per million customers in 2013 to 1.16 per million in 2014. By continuing its “Bus Accident Safety Improvement Coordination System” (BASICS), NYCT Bus has been able to maintain overall safety performance with a minimal increase in the accident injury rate. The BASICS program and other safety initiatives should continue to improve the safety habits of bus operators.

NYCT Bus saw a 14.0-percent decrease in its collision injury rate in 2014, as compared to 2013. The improvement can be attributed in part to the BASICS initiative, which is based upon analysis of driver performance and focuses on performance in the bus stop area, including such basic procedures as scanning mirrors, observing the area around the bus, pulling into and out of bus stops properly, and positioning the bus correctly in the bus stop.

NYCT Bus continues to incorporate relevant accident findings into its safety and training initiatives. Additionally, NYCT, in joint agreement with all represented labor unions, continues to emphasize a “zero-tolerance” policy banning cell phones and other electronic devices for bus operators on duty.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: On-Time Performance, Mean Distance Between Failures, Subway Wait Assessment, Bus Trips Completed**

NYCT Subways “on time performance” (OTP) declined from 80.5 percent in 2013 to 74.0 percent in 2014. Two main factors drove the decline. First, ridership is increasing, which means that even a small delay can multiply rapidly due to crowding in stations and trains. Second, NYCT is aggressively increasing system maintenance on the right-of-way. Critical inspections and maintenance of tracks and signals require having workers on the tracks while trains are running. For safety reasons, trains must slow down as they pass track workers.

NYCT Subways “wait assessment” declined from 80.3 percent in 2013 to 78.8 percent in 2014. Wait assessment, which measures the regularity of service, is a primary service indicator for subway customers. Unlike commuter rail passengers, subway passengers are typically affected more by the wait intervals between trains than by actual arrival times or the OTP along an entire line. Accordingly, NYCT Subways employs strategies to maintain regular intervals between trains, even if those strategies lead to a decline in OTP. The wait assessment data measures the percentage of trains maintaining their scheduled train-to-train intervals. The subway “mean distance between failures” (MDBF) fell from 153,382 miles in 2013 to 141,202 miles in 2014.

At the Staten Island Rapid Transit Operating Authority (SIRTOA), OTP declined from 94.7 percent in 2013 to 91.4 percent in 2014. SIRTOA’s MDBF increased from 71,313 miles in 2013 to 74,358 in 2014. Despite this improvement in 2014, the railway continues to post historically low MDBF numbers, attributable to a rail fleet nearly 40 years old.

NYCT Bus posted an MDBF of 4,221 miles in 2014, representing a 14.6-percent decrease from the 2013 MDBF of 4,941 miles. NYCT Bus continues to manage a population of significantly over-age buses that pose a challenge for operations. A large number of these buses will be replaced in 2015 and 2016 under the 2010-2014 Capital Program, and the remaining over-age fleet will be replaced after approval of the proposed 2015-2019 Capital Program.

The percentage of “bus trips completed,” which depends on both vehicle and operator availability, decreased from 99.3 percent to 99.0 percent in 2014. The decrease in trips completed is primarily attributable to an aging fleet, coupled with the impact of severe winter weather experienced during the first quarter of 2014.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Elevator Availability, Escalator Availability, Bus Passenger Wheelchair Lift Usage, Paratransit Ridership**

NYCT elevator availability met the agency’s goal of 96.5 percent in 2014, though it declined from a 97.3-percent availability in 2013. Escalator availability declined slightly from 95.8 percent in 2013 to 95.1 percent in 2014.

Wheelchair ridership at NYCT Buses increased by 1.2 percent in 2014 to a total of 1.46 million passengers. The agency’s new low-floor buses provide easier boarding and more reliable service for wheelchair passengers, contributing to the increase in wheelchair ridership.

NYCT Paratransit’s Access-A-Ride requests for service and “no show” customers declined significantly in 2014, resulting in a 4.1-percent decrease in annual ridership.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

NYCT committed over \$2.6 billion of its Capital Programs funds in 2014, representing 72 percent of the 2014 total commitment goal. This is lower than the 100 percent of the commitment goal achieved in 2013. In terms of the number of projects committed, 190 projects were awarded versus 218 planned, representing 87 percent of the planned goal, as compared to the 145 projects out of 119 planned projects, or 122 percent, during the previous year.

NYCT achieved capital project completions in 2014 worth over \$1.8 billion, or 86 percent of the year’s \$2.1 billion completion goal. This compares with a 75-percent completion value in 2013.

In terms of the number of projects, NYCT completed 85 percent of 189 planned projects for 2014, versus 75 percent of 152 planned projects in 2013. Overall, NYCT's Capital Program completions fell short of the agency's 2014 goal by nearly \$290 million. Notable delays in 2014 capital project completions included the rehabilitation of Culver Viaduct Underside (\$50 million), the replacement of segments of the Track and Switch Program (\$47 million), repair of the Smith-9th Street and 4th Avenue stations (\$41 million), and acceptance of 2,273 paratransit vehicles (\$36 million).

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

NYCT's "farebox operating ratio" fell slightly in 2014, going from 59.1 percent of operating costs in 2013 to 58.2 percent in 2014, as estimated in the "MTA 2015 Adopted Budget, February Financial Plan." The 2014 "operating cost per passenger" was \$2.87, unchanged from 2013.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Ridership**

NYCT Subways continued to experience strong subway ridership in 2014, surpassing total rides for the previous year and reaching the highest total since 1948, with some lines now running near peak levels for much of the day. Total subway ridership increased by nearly 44 million rides from the previous year to 1.75 billion rides in 2014.

NYCT Bus ridership decreased 0.1 percent in 2014 to 667 million riders, with most of the decline attributable to severe winter weather in January and February 2014.

**MTA GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

The combined employee "lost time and restricted-duty" accident rates at NYCT Subways and Buses fell slightly to 3.37 per 100 employees in 2014 from the latest adjusted 2013 rate of 3.42 per 100 employees.

At NYCT Subways, the rate fell from 2.89 per 100 employees in 2013 to 2.60 in 2014, a 10-percent decline. This was primarily due to decreased 2014 accident rates in the divisions of Rail Operations (49 total accidents, a 17.2-percent decline), Station Environment (18 total accidents, an 11.2-percent decline), and Track (15 total accidents, a 19.4-percent decline). NYCT Subways continues to operate an expanded safety program for employees, including safety communications, safety audits, training, and accident investigations. In addition, the NYCT Subways FASTRACK program provides a safer working environment for maintenance and repair crews by curbing train operations in work areas.

NYCT Bus saw a 6.6-percent increase in the “employee lost time and restricted-duty” accident rate in 2014. The agency continued to build on the previous year’s positive safety trends through the implementation and expansion of related safety programs. An oversight group maintains a focus on preventing injuries through increased safety awareness campaigns, as well as a focus on the root causes of incidents leading to injuries. Management and labor have jointly focused on critical areas of concern in order to reduce injuries.

In addition, NYCT Bus and MTA Bus have continued major initiatives aimed at protecting MTA bus operators from assault, including oversight by an executive task force, enhanced training, and the ongoing installation of bus operator shields.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

Female representation agency-wide continues to be below the estimated percentage of women available for work within NYCT’s recruiting area. A contributing factor is the low percentage of women who apply for what are generally considered non-traditional jobs. NYCT will continue to increase its outreach and recruitment efforts to improve female representation within its workforce. The percentage of minority representation, which grew slightly in 2014, from 74.5 percent to 75.0 percent, exceeds the estimated percentage of minorities available for work within NYCT’s recruiting area.

## MTA Long Island Rail Road (“LIRR”)

Performance Indicator	2013 Actual	2014 Actual *
<b>Service Indicators</b>		
On-Time Performance	93.5%	92.0%
Elevator Availability	98.3%	98.3%
Escalator Availability	95.5%	97.3%
Total Ridership	83,386,729	85,861,075
Mean Distance Between Failures (miles)	205,890	206,226
<b>Safety Indicators</b>		
Customer Injury Rate (per million customers)	6.12	6.28
Employee Lost Time and Restricted-Duty Rate (per 200,000 worker hours)	3.09	3.79
<b>Workforce Indicators</b>		
Female Representatives in LIRR Workforce	16.0%	15.5%
Minority Representatives in LIRR Workforce	33.6%	34.0%
<b>Financial Indicators</b>		
Farebox Operating Ratio	47.9%	43.8%
Operating Cost per Passenger	\$15.89	\$16.78
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of planned value)	\$785.80 (137%)	\$278.3 (111%)
Completions in \$ Millions (% of planned value)	\$76.30 (89%)	\$148.3 (92%)
<p><i>*Note: MTA performance data are subject to periodic adjustment. Some 2013 data may have been updated subsequent to the 2013 PAL §1269-f report. The 2014 Farebox Operating Ratios are based on preliminary estimates from the “MTA 2015 Adopted Budget, February Financial Plan,” and will be updated by the MTA Division of Management &amp; Budget in April 2015.</i></p>		

### **MTA GOAL: Ensure Customer Safety**

#### **PERFORMANCE INDICATORS: Customer Injury Rate**

The LIRR experienced a moderate increase in the “customer injury rate” in 2014. While the total number of customer injuries increased by 5.7 percent from the previous year, the injury rate (based on injuries per 1 million rides) increased by 2.6 percent. This slight increase is relatively positive in view of the significant growth in ridership. It is notable that both escalator and gap-

related incidents decreased significantly in 2014. LIRR's "Be Train Smart/Don't Become a Statistic" safety information campaign contributed to the improvement and will remain an integral part of LIRR's safety program in 2015.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: On-Time Performance, Mean Distance Between Failures**

The LIRR's "on-time performance" (OTP) for 2014 was 92.0 percent, a decline of 1.5 percent from the previous year. The decline in OTP was attributable to significant weather events. Additional incidents affecting OTP in 2014 resulted from trespassers, motor vehicles, loading, disorderly or dispute situations, and other factors. The LIRR has implemented new branch-specific OTP goals for 2015, which will allow improved performance and provide LIRR customers a realistic sense of what they can expect.

The agency's 2014 "mean distance between failures" (MDBF) exceeded the goals set for each of the LIRR fleets, and set a new record at 206,226 miles, a 0.2-percent improvement over the 2013 MDBF of 205,890 miles. This increase was largely attributable to the continued efforts of the LIRR's reliability-centered maintenance program; performance-improvement teams; and initiatives targeting the performance of the entire fleet.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Elevator Availability, Escalator Availability**

Elevator availability remained at 98.3 percent in 2014, matching availability during the previous year. Escalator availability increased to 97.3 percent, up 1.8 percent from last year. Much of that success was due to the refurbishment of older O&K brand escalators, an effort begun in 2012 and completed in 2013. The rehabilitations included updated safety sensors, new steps, new step chains, new brake assemblies, and new comb plates and controllers. The LIRR's Elevator and Escalator Operations Center, staffed with certified "Qualified Elevator-Escalator Inspectors," further reduced the frequency of breakdowns through preventive maintenance and improved response times.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

The LIRR's 2014 capital commitments totaled over \$278 million. Commitments that exceeded the annual goal included the Colonial Road Improvements; Ellison Avenue Bridge Replacement; Massapequa Pocket Track; and Replacement of Atlantic Tunnel Block Ties.

The railroad's 2014 capital completions totaled more than \$148 million. Among the major completions during the year were the Woodhaven Boulevard Bridge Rehabilitation; the 2014 Annual Track Program; Third Rail and Communication Pole Replacement Programs; New Atlantic Terminal Elevator; and Sutphin Boulevard Bridge Painting and Fireproofing.

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

The LIRR's "farebox operating ratio" decreased from 47.9 percent in 2013 to 43.8 percent in 2014, as estimated in the "MTA 2015 Adopted Budget, February Financial Plan." This decrease was driven by an increase in passenger expense mostly attributable to labor costs, offset by an increase to farebox revenue due to ridership growth. The LIRR's "operating cost per passenger" increased from \$15.89 in 2013 to \$16.78 in 2014. Again, this increase stemmed largely from higher costs relating to labor, mitigated by the increase in ridership.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Ridership**

LIRR ridership rose from 83.4 million customers in 2013 to 85.9 million in 2014, a 3.0-percent increase. A steadily improving economy and popular new service to the Barclays Center in Brooklyn contributed to ridership growth for the third consecutive year. Also contributing to the rise were the restoration of two evening rush hour trains on the Babylon Branch, restoration of weekend service on the West Hempstead Branch, the return of two summer-only trains to/from Long Beach, and the extension of seasonal service on the Montauk Branch.

The total number of passengers carried by the LIRR in 2014 represents the third highest annual ridership for the LIRR over the last 60 years, since the post-war record of 91.8 million passengers in 1949. It is also the highest ridership since the recent record of 87.4 million passengers in 2008. In addition, LIRR operated 5,000 more trains in 2014 than in 2013. In 2015, the LIRR will pursue continued ridership growth, further expanding off-peak service to accommodate increasing demand.

**MTA GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

The year proved challenging for LIRR with respect to employee accidents and injuries. The rate of employee “lost-time and restricted duty” injuries (based on injuries per 200,000 worker hours) increased in 2014 by 22.7 percent, while the total number of employee injuries rose by 23.7 percent. The greatest number of employee accidents were “slip, trip, and falls,” while the category that experienced the greatest increase in incidents in 2014 was being “struck on an object.” LIRR is currently reviewing the data and related circumstances to determine potential mitigation strategies.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

The percentage of female representation in LIRR’s workforce decreased slightly in 2014 from 16.0 percent to 15.5 percent. The percentage of minority representation increased slightly from 33.6 percent to 34.0 percent. The percentage of minority representation exceeds the estimated percentage of minorities available in LIRR’s recruitment area. The percentage of female representation continues to fall below the estimated percentage of women available for work in the recruitment area. Many of the positions that became available in 2014 are considered “nontraditional” jobs for women and, as a result, a low percentage of the applicants for these positions were women. LIRR continues to focus on efforts to improve the representation of women and minorities in its workforce.



## **MTA Metro-North Railroad (“Metro-North”)**

<b>Performance Indicator</b>	<b>2013 Actual</b>	<b>2014 Actual *</b>
<b>Service Indicators</b>		
On-Time Performance (East of Hudson)	94.8%	91.5%
On-Time Performance (West of Hudson)	96.5%	95.4%
Elevator Availability	98.2%	97.4%
Escalator Availability	93.2%	97.4%
Total Rail Ridership (East & West of Hudson )	83,378,506	84,659,000
Total Ridership on Connecting Services Provided by MNR Contractors	543,500	535,414
Mean Distance Between Failures (miles)	156,615	147,063
<b>Safety Indicators</b>		
Customer Injury Rate (per million customers)	5.07	3.11
Employee Lost Time and Restricted-Duty Rate (per 200,000 worker hours)	2.45	2.46
<b>Workforce Indicators</b>		
Female Representatives in MNR Workforce	13%	13%
Minority Representatives in MNR Workforce	35%	35%
<b>Financial Indicators</b>		
Farebox Operating Ratio	58.6%	56.1%
Operating Cost per Passenger	\$13.03	\$14.70
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of planned value)	\$265.0 (122%)	\$542.5 (205%)
Completions in \$ Millions (% of planned value)	\$199.5 (124%)	\$170.6 (98%)
<p><i>*Note: MTA performance data are subject to periodic adjustment. Some 2013 data may have been updated subsequent to the 2013 PAL §1269-f report. The 2014 Farebox Operating Ratios are based on preliminary estimates from the “MTA 2015 Adopted Budget, February Financial Plan” and will be updated by the MTA Division of Management &amp; Budget in April 2015.</i></p>		

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATORS: Customer Injury Rate**

The “customer injury rate” at Metro-North decreased from 5.07 per million customers in 2013 to 3.11 in 2014. The higher rate of customer injuries in 2013 was directly attributable to two major derailments. The rate in 2014 was comparable to previous years.

In 2014, Metro-North undertook a “100-Day Action Plan,” the foundation of which was to assess and improve the safety and reliability of the railroad’s operations and infrastructure. The railroad also initiated a number of significant changes to advance safety as a result of recommendations from the Federal Railroad Administration (FRA), the Transportation Technology Center, Inc. (TTCI), the National Transportation Safety Board (NTSB), and the MTA Blue Ribbon Panel on Safety.

In its regular customer safety programs, Metro-North continued to disseminate safety information and reminders directly to the public through customer publications, social media, email, and the MTA website.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: On-Time Performance, Mean Distance Between Failures**

Metro-North’s systemwide “on-time performance” (OTP) for 2014 totaled 91.5 percent, a significant drop from 94.8 percent OTP in 2013 and below the goal of 93 percent. Several factors contributed to the OTP decrease. These included:

- Speed restrictions enacted at 33 locations in Metro-North territory, both east and west of the Hudson, due to FRA Executive Order 29, following a December 1, 2013, train derailment at Spuyten Duyvil.
- Extreme winter weather that buffeted the region in the first quarter of 2014.
- An aggressive track inspection program, which identified multiple locations that required temporary speed restrictions until repairs could be made.

- A fire in May 2014 near Cos Cob on the New Haven Line, which destroyed a critical piece of equipment controlling switches and signals. This limited peak-direction trains to two of the four tracks on a nine-mile stretch between Stamford, CT, and Port Chester, NY, causing 5- to 10-minute delays along the line. Metro-North restored full capability by early September 2014 months earlier than the original estimate.
- Repeated failures of the 118-year-old rotating Walk Bridge in May and June 2014. After opening for marine traffic, the structure failed to close properly, creating extensive delays.
- The railroad's aggressive track improvements, which impacted service in the off-peak and weekend periods, when most work was performed. Railroad forces replaced 42,500 crossties and resurfaced 83 miles of track across all lines, resulting in upgrades to 20 miles of right-of-way, including drainage improvements. Two dozen new switches (enabling trains to switch tracks) were installed on the main lines, at Grand Central Terminal, and in yards, improving operational flexibility. Workers replaced 7,000 feet of continuous welded rail on six curves on the Hudson Line and 4,700 feet of rail on three curves on the New Haven Line. Three highway grade crossings were renewed at Chippawalla Road and Pleasant Ridge Road on the Harlem Line and at Manitou Road on the Hudson Line. Steel repairs were made to four under-grade bridges and timber bridge decks were replaced on nine bridges, east and west of the Hudson River. New timber ties, continuous welded rail, new miter rails, and presence detectors were installed at Walk Bridge, in Norwalk, CT. New timber ties were installed at the Devon Bridge in Milford, CT, and at the Harlem River Lift Bridge, which connects Manhattan and the Bronx.

In 2014, Metro-North's fleet attained a "mean distance between failure" (MDBF) of 147,063 miles versus a goal of 185,000 miles. The major factor impacting the MDBF was harsh winter weather during the first quarter of 2014, which took a toll on equipment. Despite the first quarter, Metro-North's ongoing investments continue to improve the condition of equipment and the number of cars available for service to meet the railroad's record ridership growth. Metro-North continued the roll-out of the new M-8 fleet, which will have a beneficial effect on several critical fleet costs, including parts consumption, frequency of repairs, and overall maintenance costs. To

ensure an extended lifespan, the M-7 fleet began a 10-year lifecycle maintenance program in 2014. The Genesis locomotive overhaul program also continued.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Elevator Availability, Escalator Availability**

At 97.4 percent, Metro-North's elevator availability remained at a high service level, slightly below a goal of 98.0 percent.

The railroad's focus on escalator repairs, particularly in Grand Central Terminal, resulted in a 97.4 percent escalator availability for 2014, well above the goal of 93 percent. Metro-North plans to replace all eleven escalators in Grand Central with a new, heavy-duty model designed to handle the terminal's high pedestrian traffic. Design work will be completed in 2015; replacement will begin in 2017 and is set to be completed by approximately 2020.

In addition to ensuring that elevators and escalators are functioning as intended, Metro-North posts the current status of station elevators and escalators online to provide customers with up-to-date information.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

Metro-North's Capital Program commitments and completions for 2014 came in at 205 percent and 98 percent of the year's goals, respectively.

Commitments that exceeded the annual goal included: the design-build of Harmon Shop, Phase V, Stage I; construction of four Harlem/Hudson substations; construction of the 86th Substation/110 St Reactor; repair work on the Grand Central Terminal Train Shed; and work related to Positive Train Control (PTC).

Capital program completions that met the annual goal in 2014 included: the acceptance of the new M8 cars; New Haven Line station improvements; the Moodna/Woodbury Viaduct repairs; and the Grand Central Terminal turnout/switch renewal.

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

Metro-North's 2014 "farebox operating ratio" was 56.1 percent, as estimated in the "MTA 2015 Adopted Budget, February Financial Plan," a 2.5-percent decrease from the previous year. Both revenues and expenses increased year-over-year, but at different rates.

The revenue increase reflects the highest East-of-Hudson ridership in Metro-North's history, as well as a State of Connecticut fare increase. Revenue improvements were offset by the growth in 2014 expenses. These reflect inflationary increases in baseline service levels and maintenance programs, as well as a \$134 million estimated wage adjustment, based on the recent wage agreement settlements with several Metro-North unions. Additional expenses included responses to weather and service emergencies during the year.

In addition, new initiatives funded in 2014 include: the initial implementation of strategic safety investment initiatives; additional New Haven Line service; and the continuation of the comprehensive "Infrastructure Improvement" and "Station Enhancement" programs. Excluding the wage settlement adjustment, the farebox operating ratio would have been 60.4 percent.

The 2014 cost-per-passenger of \$14.70 is \$1.67 higher than in 2013. Though Metro-North saw a 1.5-percent increase in the number of passengers carried in 2014, this favorable impact was offset by the wage settlement adjustment noted above, which, if excluded, would have resulted in a cost-per-passenger of \$13.11.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Ridership**

Combined ridership in 2014 reached the highest levels in Metro-North’s history at 85.2 million rides.

East-of-Hudson ridership hit a record 83.0 million for the year, surpassing by 1.4 percent the previous record of 81.8 million rides set in 2013. The Hudson Line was the fastest growing line, increasing ridership by 2.3 percent to over 16.2 million customers in 2014, its highest ridership ever. Also setting a record, the New Haven Line was up 1.6 percent to 39.6 million rides in 2014, over 600,000 more rides than the previous record in 2013. The Harlem Line grew 0.7 percent in 2014, carrying over 27.1 million customers. Commutation ridership grew 0.5 percent in 2014, while non-commutation ridership increased 2.7 percent.

Combined ridership on the three Metro-North-operated connecting services (Haverstraw-Ossining Ferry, Newburgh-Beacon Ferry, and Hudson Rail Link) decreased slightly by 1.2 percent to about 535,000 customers. Ridership increased by 3.6 percent on the Hudson Rail Link, but decreased by 11.5 percent on the Haverstraw-Ossining Ferry and by 7.4 percent on the Newburgh-Beacon Ferry.

West-of-Hudson ridership reached 1.7 million, a 6.8-percent increase over 2013. Ridership on the Port Jervis Line increased 3.6 percent; ridership on the Pascack Valley Line jumped 12.2 percent. These increases are attributable to reliable service, an improving economy, and customers returning to the railroad after the service disruptions caused by Superstorm Sandy and Hurricane Irene.

**MTA GOAL: Ensure Our Employees’ Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

Metro-North’s “employee lost time and restricted-duty rate” for 2014 was 2.46 (per 200,000 worker hours), virtually unchanged from the 2013 rate of 2.45.

In addition to Metro-North's "100-Day Action Plan," in response to recommendations of the FRA and the TTCI, the railroad has initiated a number of significant changes to improve employee safety. These include responses to the recommendations of the MTA Blue Ribbon Panel on Safety and to the Special Investigative Report issued by the NTSB.

To promote a culture of safety, Metro-North has taken the following initial actions:

- Communicated a clear message to our employees that working and operating safely is the primary focus of the railroad, not on-time performance.
- Conducted company-wide "Safety Stand-Down" days on a quarterly basis, which were attended by a majority of the workforce.
- Reviewed and revised train schedules to ensure that sufficient intervals exist to perform track maintenance, scheduling necessary track work despite the impact on service.
- Revamped the railroad's program on required operational testing and evaluation. Testing is now performed daily. Results are reviewed monthly and quarterly, as well as being subject to a federally mandated semi-annual review by the FRA.
- Revised the "System Safety Program Plan" to serve as a further guide to a more proactive, programmatic approach to safety throughout the railroad.
- Implemented a systemwide confidential "close call" reporting system, so employees can report safety issues without fear of reprisal.
- Increased the emphasis on communicating safety messages at all levels of the railroad.
- Launched a pilot program for screening safety-critical employees for obstructive sleep apnea.

These actions represent the start of the railroad's efforts to return Metro-North to its "best-in-class" status.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races,  
Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

Metro-North's minority workforce representation of 35 percent exceeds the estimated availability of minorities in a majority of its Equal Employment Opportunity (EEO) job categories. The female workforce representation of 13 percent falls below the estimated availability for women in a majority of its EEO job categories. However, in three out of the seven EEO job categories at Metro-North, female representation exceeds the estimated availability for women. The three categories are Professionals, Skilled Craftsman, and Service Maintenance. Metro-North will continue its outreach and recruitment efforts to attract qualified women and minorities.

## **MTA Bridges and Tunnels (“Bridges and Tunnels”)**

<b>Performance Indicator</b>	<b>2013 Actual</b>	<b>2014 Actual *</b>
<b>Service Indicators</b>		
Total Traffic	284,527,505	286,361,311
<b>Safety Indicators</b>		
Collisions with Injury Rate (per million vehicles)	1.00	0.99
Employee Lost Time Rate (per 200,000 work hours)	6.1	6.5
<b>Workforce Indicators</b>		
Female Representation in B&T Workforce	21.6%	21.5%
Minority Representation in B&T Workforce	50.8%	52.2%
<b>Financial Indicators</b>		
E-ZPass Market Share	83.9%	84.7%
Total Support to Transit (\$ millions)	\$1,004.6	\$992.8
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of planned value)	\$274.0 (85%)	\$808.1 (83%)
Completions in \$ Millions (% of planned value)	\$84.0 (163%)	\$287.5 (184%)
<i>*Note: MTA performance data are subject to periodic adjustment. Some 2013 data may have been updated subsequent to the 2013 PAL §1269-f report.</i>		

### **MTA GOAL: Ensure Customer Safety**

#### **PERFORMANCE INDICATOR: Customer Injury Rate**

Bridges and Tunnels reported 287 customer accidents with injuries in 2014, a slight drop from 288 in 2013. As a result, the rate of “collisions with injuries” per million vehicles decreased from 1.00 in 2013 to 0.99 in 2014.

The agency is dedicated to improving all aspects of its safety performance. To achieve this, in 2014 it began the implementation of a Safety Management Program, a broad range of initiatives that include safety training, policy enhancements, hazard identification and accident prevention, and the communication of safety values and practices. The goal of this program is to transform the organizational culture to effectively focus on customer and employee safety.

## **Bridges and Tunnels, cont.**

### **MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

#### **PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

In 2014, Bridges and Tunnels made 171 task commitments to Capital Program projects, well above its goal of 150 task commitments. While the agency exceeded the number of planned commitments, the total value of the awards was \$808.1 million. This represents 83 percent of the 2014 goal, as compared to \$274.0 million and 85 percent of the goal committed in 2013. The actual awards in 2014 were \$168.7 million less than their planned values, primarily due to favorable market conditions.

Major project commitments in 2014 included: Superstorm Sandy restoration projects at the Hugh L. Carey Tunnel; reconstruction of the Bronx toll plaza deck on the Robert F. Kennedy Bridge; rehabilitation of an electrical substation at the Verrazano-Narrows Bridge; and replacement of the upper- and lower-level plazas and southbound approach structure on the Henry Hudson Bridge.

The value of Capital Program projects completed in 2014 totaled \$287.5 million, versus planned completions of \$156.3 million, representing 184 percent of the 2014 goal. In 2013, by comparison, a total of \$84.0 million was completed, representing 163 percent of goal. Major projects completed in 2014 included: concrete anchorage repairs on the Bronx-Whitestone Bridge; rehabilitation of the orthotropic deck and painting of the Throgs Neck Bridge; design-build deck replacement of the Robert F. Kennedy Manhattan-Queens ramp; toll plaza improvements on the Verrazano-Narrows Bridge; and replacement of the electrical switchgear and equipment at the Hugh L. Carey Tunnel.

### **MTA GOAL: Perform Services in an Efficient Manner**

#### **PERFORMANCE INDICATORS: Total Support to Transit**

A total of \$992.8 million in surplus revenue from Bridges and Tunnels was provided for MTA transit services in 2014.

## **Bridges and Tunnels, cont.**

### **MTA GOAL: Maximize System Usage**

#### **PERFORMANCE INDICATORS: Traffic Volume**

Bridges and Tunnels had a total of 286.4 million crossings in 2014, an increase of about 0.6 percent or 1.8 million more crossings than in 2013. Overall E-ZPass usage increased to 84.7 percent of total crossings at year-end 2014, up from 83.9 percent in 2013.

### **MTA GOAL: Ensure Our Employees' Safety**

#### **PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

Bridges and Tunnels experienced 98 lost-time injuries in 2014, an increase from 92 in 2013. As a result, the “employee lost-time injury rate” increased to 6.5 (per 200,000 work hours) in 2014, up slightly from 6.1 in 2013.

### **MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

#### **PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

The percentage of female employees in the agency’s workforce fell slightly in 2014 to 21.5 percent, while the percentage of minorities increased to 52.2 percent. Bridges and Tunnels has a structured program to achieve and maintain a workforce that exceeds 80 percent of estimated availability of females and minorities within the relevant labor market serviced by the MTA, based on U.S. Census data. This program includes: targeted recruitment and outreach efforts to attract qualified female and minority candidates; strategic retention and mobility programs to provide the skills and opportunities necessary for female and minority employees to have successful career paths; and a monitoring program to identify and address female and minority under-representation on an ongoing basis.

## **MTA Bus Company (“MTA Bus”)**

<b>Performance Indicator</b>	<b>2013 Actual</b>	<b>2014 Actual *</b>
<b>Service Indicators</b>		
% of Completed Trips	99.1%	98.2%
Bus Passenger Wheelchair Lift Usage	67,424	65,101
Total Ridership	124,951,185	125,581,237
Mean Distance Between Failures (miles)	5,548	5,366
<b>Safety Indicators</b>		
Customer Accident Injury Rate (per million customers)	0.98	.91
Collisions with Injury Rate (per million vehicle miles)	4.94	5.61
Employee Lost Time Rate (per 100 employees)	6.55	7.75
<b>Workforce Indicators</b>		
Female Representation in MTA Bus Workforce	12.4%	12.4%
Minority Representation in MTA Bus Workforce	70.2%	72.5%
<b>Financial Indicators</b>		
Farebox Operating Ratio	37.2%	35.9%
Operating Cost per Passenger	\$4.58	\$4.90
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of planned value)	\$16.1 (21%)	\$91.1 (62%)
Completions in \$ Millions (% of planned value)	\$88.3 (88%)	\$ 5.6 (13%)
<i>*Note: MTA performance data are subject to periodic adjustment. Some 2013 data may have been updated subsequent to the 2013 PAL §1269-f report. The 2014 Farebox Operating Ratios are based on preliminary estimates from the “MTA 2015 Adopted Budget, February Financial Plan,” and will be updated by the MTA Division of Management &amp; Budget in April 2015.</i>		

### **MTA GOAL: Ensure Customer Safety**

#### **PERFORMANCE INDICATORS: Customer Injury Rate**

MTA Bus saw a 7.1-percent decrease in its “customer accident injury rate” in 2014, as compared to 2013. By continuing the Bus Accident Safety Improvement Coordination System (BASICS) begun in 2012 and the focus on improving the basic safety habits of bus operators, the agency has been able to sustain a favorable safety trend.

The “collisions with injury rate” increased by 13.6 percent in 2014 from the previous year. Based on accident analysis, the agency’s 2014 safety initiatives continued to focus on basic operating procedures in bus stop areas, including scanning mirrors, observing all sides of the bus, pulling into and out of bus stops properly, and positioning the bus correctly in the bus stop. MTA Bus continues to incorporate relevant accident findings into its safety and training initiatives. In July, 2014, the Vision Zero’s “Eye on Safety” eight-hour bus operator training program was implemented for operators who are awaiting results of post-accident testing. The agency expects to see improved outcomes in 2015.

In a joint agreement with all represented labor unions, MTA Bus continues to emphasize a “zero-tolerance” policy banning cell phones and other electronic devices for bus operators on duty. In addition, the agency recently negotiated an “accident review system” (ARS) with the MTA Bus Transit Workers Union and intends to continue negotiating for ARS procedures with the remaining MTA labor unions.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: Mean Distance Between Failures, Bus Trips Completed**

MTA Bus had a “mean distance between failures” (MDBF) of 5,366 miles in 2014, which represents a decrease of 3.3 percent from the 2013 MDBF of 5,548 miles. MTA Bus continues to manage a population of significantly over-age buses that pose a challenge for operations. A large number of these buses will be replaced in 2015 and 2016 under the 2010-2014 Capital Program, and the remaining over-age fleet will be replaced after approval of the proposed 2015-2019 Capital Program.

The number of bus trips completed depends on the availability of both buses and bus operators. The “percentage of trips completed” decreased to 98.2 percent in 2014 from 99.1 percent in 2013, primarily attributable to an aging fleet, coupled with the impact of severe winter weather during the first quarter of 2014.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Bus Passenger Wheelchair Lift Usage**

Wheelchair ridership on MTA buses was 65,101 passengers in 2014, a decrease of 3.4 percent from 67,424 passengers in 2013. Again, harsh winter conditions experienced in the first quarter of 2014 contributed to the decrease in Bus Passenger Wheelchair ridership.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

MTA Bus committed \$91.1 million in capital project funds in 2014. This represents 62 percent of planned commitments, compared to 21 percent committed in 2013. The planned commitments not achieved in 2013 consist of various small-facility projects that fell behind schedule.

In terms of the number of projects committed, five out of eleven planned projects, or 45 percent, were awarded in 2014, compared to four out of eleven planned projects, or 36 percent, in 2013. Notable 2014 commitments included the award of 45 standard buses and 75 articulated buses.

MTA Bus completed \$5.6 million in capital projects in 2014. This represents 13 percent of the value of planned completions for the year, as compared to 88 percent of planned completions in 2013. The actual completions consisted of several small-facility projects, including fire protection at the JFK Depot (\$4.0 million) and installation of an oil-water separator and a chassis wash at the JFK Depot (\$2.0 million). The shortfall in 2014 is primarily a result of delays to improvements at the Eastchester, JFK, Baisley Park, and LaGuardia bus depots (\$36.7 million, five-projects total).

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

The “farebox operating ratio” was 35.9 percent in 2014, as estimated in the “MTA 2015 Adopted Budget, February Financial Plan,” down from 37.2 percent in 2013. Fare collections from increased ridership and fares in 2014 were offset by increased operating expenses. These were primarily attributable to higher wages and higher health and welfare costs, as well as higher costs for maintenance and operating contracts, professional services, and materials and supplies. The operating-cost-per-customer was \$4.90 in 2014, as compared to \$4.58 in 2013. The \$0.32 increase was the result of the increased operating costs cited above.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Ridership**

Total MTA Bus ridership increased by 0.5 percent in 2014 to 125.6 million riders, as compared to 124.9 million riders in 2013, continuing the growth trend seen in previous years.

**A GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

MTA Bus saw an 18.3-percent increase in the “employee lost-time accident rate” in 2014. In 2015 MTA Bus will implement several NYCT Bus safety programs. An oversight group will maintain a focus on preventing injuries through increased safety awareness campaigns, as well as a focus on the root causes of incidents leading to injuries.

In addition, NYCT Bus and MTA Bus will continue major initiatives aimed at protecting all bus operators from assault, including oversight by an executive task force, enhanced training, and the ongoing installation of bus operator shields.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

Female representation agency-wide continues to be below the estimated percentage of women available to work within MTA Bus's recruiting area. MTA Bus will continue to increase its outreach and recruitment efforts to improve female representation within its workforce. The percentage of minority representation, which increased slightly in 2014 from 70.2 percent to 72.5 percent, exceeds the estimated percentage of minorities available to work within MTA Bus's recruiting area.

## **MTA Capital Construction (“MTACC”)**

<b>Performance Indicator</b>	<b>2013 Actual</b>	<b>2014 Actual *</b>
<b>Workforce Indicators</b>		
Female Representatives in MTACC Workforce	36%	35%
Minority Representatives in MTACC Workforce	51%	52%
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of planned value)	\$1,346 (79%)	\$1,401 (122%)
Completions in \$ Millions (% of planned value)	\$1,832 (61%)	\$2,060 (68%)
<i>*Note: MTA performance data are subject to periodic adjustment. Some 2013 data may have been updated subsequent to the 2013 PAL §1269-f report.</i>		

### **MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

#### **PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

MTACC had a total commitment goal of \$1.15 billion in capital funds for 2014 and committed approximately \$1.40 billion, or 122 percent of goal. The net commitments above goal were primarily due to the 2014 re-planning of East Side Access, which resulted in the rebalancing of “soft cost” above yearly goal.

Notable MTACC commitments in 2014 included East Side Access Manhattan North Structures and three Systems Package contracts.

MTACC’s goal for capital project completions in 2014 was \$3.04 billion, of which \$2.06 billion, or 68 percent, was achieved. The shortfall was primarily due to delayed substantial completion of the Fulton Center Transit Center Building contract and the 7 Line Extension Systems contract, as well as delays in two East Side Access contracts in the Harold Interlocking. Notable completions during the year included the East Side Access Queens Bored Tunnels contract; and the heavy civil work at Second Avenue Subway’s 72nd Street and 86th Street stations.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

At 35 percent, down slightly from the previous year, the agency's percentage of female representation in 2014 exceeds the estimated availability of women available for work within the MTACC recruitment area. While overall minority representation was 52 percent in 2014, the percentage of certain minority groups falls below the estimated availability of those groups within a few job categories. MTACC will strengthen its outreach and recruitment efforts to attract qualified minority candidates.

# Staff Summary

<b>Subject</b> Drug and Alcohol Policy Statements
<b>Department</b> Chief of Staff
<b>Department Head Name</b> Donna Evans <i>Donna M. Evans</i>
<b>Department Head Signature</b>
<b>Project Manager Name</b>

<b>Date</b> March 25, 2015
<b>Vendor Name</b> N/A
<b>Contract Number</b> N/A
<b>Contract Manager Name</b> N/A
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
	Corporate Governance	3/23/15			
	Board	3/25/15			

Internal Approvals			
Order	Approval	Order	Approval
1	Chief of Staff <i>DWE</i>		
2	Legal <i>AS</i>		
3	Chief Compliance Officer <i>[Signature]</i>		

**Purpose:**

To obtain Board approval of the MTA and Agency's Drug and Alcohol Policies.

**Discussion:**

The drug and alcohol policies of MTA and its constituent Agencies are governed by a variety of laws and regulations, including but not limited to, the Drug Free Workplace Act, the Federal Transit Administration ("FTA") regulation entitled Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, and the Federal Railroad Administration regulation entitled Control of Alcohol and Drug Use. While some of these laws and regulations differ as to the specific requirements necessary for compliance by the covered Agencies, each has as an underlying principle of helping to prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and prohibited drugs by employees. While the aforementioned regulations do not apply to all MTA Agencies, as a matter of good corporate governance practice, each Agency's drug and alcohol policy is being presented to the Board for approval.

It should be noted that NYCT's original drug and alcohol policy was approved by the Board on March 28, 2000 and that an updated version is being presented to the Board for approval.

**Recommendation:**

It is recommended that the Board adopt the attached policies.

# MTA and its Agencies

## Drug & Alcohol Policies

# MTA HEADQUARTERS

# MTAHQ Policy and Procedure

## ALCOHOL & CONTROLLED SUBSTANCES

Policy Number	Responsible Department	Effective Date	Page
25-004A	Human Resources	TBD	Page 1 of 2

### Consumption and Possession of Alcoholic Beverages and Controlled Substances<sup>1</sup> on MTA Property

Transportation agencies bear a special responsibility to keep alcoholic beverages and controlled substances out of the workplace. Substance abuse by MTA employees reduces productivity and poses a threat to safety and property at the MTA. As a condition of employment, all employees are required to abide by the MTA's substance abuse policy.

No employee may use, possess, or be under the influence of alcohol or any controlled substances on MTA property. Any employee guilty of drug or alcohol abuse on MTA property is subject to discipline, including but not limited to dismissal. Drug abuse includes the unlawful manufacture, distribution, sale, attempt to sell, purchase, possession or use of a controlled substance.

No employee may report for work or remain at work at any location while under the influence of alcohol or any controlled substance. If a supervisor has a reasonable suspicion that an employee is not able to perform his/her duties as a result of a disability caused by use of alcohol or controlled substance, the employee may be required to undergo a medical examination. Furthermore, pursuant to the Federal Drug-Free Workplace Act and MTA policy, you are advised that if you are convicted of any criminal drug statute violation for an offense that occurred at the MTA, you must notify the MTA's Director of Human Resources no later than five days after such conviction.

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<sup>1</sup> "Controlled Substances is defined in the Drug-Free Workplace Act as those substances listed in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15, and as may be revised from time to time by publication in the Federal Register. Controlled substances include, but are not limited to, narcotics, depressants, stimulants, hallucinogens, and cannabis."

## MTAHQ Policy and Procedure

### ALCOHOL & CONTROLLED SUBSTANCES

Policy Number	Responsible Department	Effective Date	Page
25-004A	Human Resources	TBD	Page 2 of 2

It is recommended that supervisors consult with the Director of Human Resources prior to taking formal action in response to a violation of this policy.

Possession of alcohol in a full and unopened container in transport for use off MTA property is permissible. Use of a controlled substance at a prescribed dosage authorized by a licensed medical practitioner, or possession incident to such use, is permitted if a treating medical practitioner has made a good faith determination that use of the substance at a prescribed dosage level is medically advisable and will not interfere with performance of work duties.

**VIOLATION OF THE ABOVE POLICY WILL SUBJECT YOU TO DISCIPLINARY ACTION WHICH MAY INCLUDE DISCHARGE.**

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 1 of 11

### I. PURPOSE

The Metropolitan Transportation Authority is committed to providing an alcohol and drug-free workplace in order to protect the safety of our customers and employees. The use of illegal drugs and the abuse of alcohol and controlled substances interfere with the safe and efficient operations of the MTA and pose a threat to the health and safety of our customers and employees. Therefore this Policy strictly prohibits the unlawful manufacture, distribution, sale, dispensation, possession, or use of controlled substances in the work place. In addition, no MTA employee may report for duty or remain on duty if under the influence of alcohol or drugs.

### II. SCOPE

This policy applies to all Metropolitan Transportation Authority Headquarters (“MTA”) employees. Please note that if you are employed by MTA in a position requiring you to carry a firearm for security purposes, you are subject to additional prohibitions and to drug and/or alcohol testing under certain circumstances. Material concerning these additional prohibitions and testing circumstances is available from MTA Police Department, Internal Affairs Bureau.

### III. OBJECTIVES

To declare MTA policy on the use and abuse of alcohol, drugs, and controlled substances;

To define the responsibilities of employees and their supervisors with regard to the use and abuse of alcohol, drugs, and controlled substances;

To establish guidelines for an MTA program to enhance awareness of the symptoms and dangers of alcohol and drug abuse;

To provide a means for employees, voluntarily or by referral, to seek rehabilitation for problems with alcohol and substance abuse; and

To provide guidelines for disciplinary actions against employees whose performance has been affected by, or who have otherwise violated MTA policy on, alcohol and substance abuse.

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 2 of 11

### IV. DEFINITIONS

#### A. Chain of Command

1. Department Head – Includes but is not necessarily limited to, the Chair/Chief Executive Officer, Chief Financial Officer, the General Counsel, the Chief of Staff, and the Directors of the Departments of Diversity and Civil Rights, Audit, Labor Relations, Planning, Public Affairs, Real Estate, and Information Technology, and Corporate Compliance.
2. Division Head – An executive of the MTA who is responsible for a division within a larger department is a “Division Head.”
3. Supervisor – Any manager authorized by a Department Head to approve by signature employee time reports for one or more Regular Employees is a “Supervisor.”

#### B. Alcohol and Controlled Substances and Related Topics

1. Alcohol – Any beverage, mixture, or preparation containing ethyl alcohol is “Alcohol.”
2. Controlled Substances – As defined in the Drug-Free Workplace Act, “controlled substances” are those substances listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15, and as may be revised from time to time by publication in the Federal Register. Controlled substances include, but are not limited to, narcotics, depressants, stimulants, hallucinogens, and cannabis.
3. Drug – Any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances, is a “Drug.”
4. Drug-Free Workplace – Any facility, owned, operated, leased or under the control of MTA at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, attempting to sell, purchase, possession or use of a controlled substance.

## MTAHQ Policy Directive

### ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 3 of 11

5. Drug-Free Workplace Act – Title V, Subtitle D, of the federal Anti-Drug Abuse Action of 1988 (P.L. 100-690), dealing with the responsibilities of recipients of federal grants to certify to the relevant federal agencies their provision of a drug-free workplace, is the “Drug-Free Workplace Act of 1988.” References to the Drug-Free Workplace Act within this policy instruction may also be interpreted to include any related rules and regulations regarding implementation of this act as published in the CFR.
6. Substance Abuse Policy – This Policy and any other statements of policy on the use or abuse of drugs and/or alcohol emanating from the Office of the Chairman or the Chief of Staff are the “Substance Abuse Policy.”

#### C. Drug Testing

1. Initial Test – A screening test of an Employee’s blood or urine conducted to eliminate negative specimens from further consideration. Specimens which give positive results are subject to confirmatory testing.
2. Confirmatory Test – A second analytical procedure conducted on a portion of the same blood or urine specimen used in the initial test to identify the presence of a specific drug or metabolite.
3. Pass a Drug Test – An Employee may be said to “pass a drug test” when the MTA Physician has determined, in accordance with federal regulations, that the results of a drug test a) showed no evidence or insufficient evidence of a prohibited drug or drug metabolite; b) showed evidence of a prohibited drug or drug metabolite but there was a legitimate medical explanation for the result; c) were scientifically insufficient to warrant further action; or d) were suspect because of irregularities in the administration of the test or observation of chain of custody procedures.

## MTAHQ Policy Directive

### ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 4 of 11

#### D. Employee Assistance Program

1. MTA Physician – The medical director of the Occupational Health Services or any other physician designated by the Chairman or Chief of Staff, or the designee of that physician.
2. Employee Assistance Policy (EAP Policy) – The “Employee Assistance Policy” is MTA policy instruction 25-005 and any other policy statements issued by the Chairman or the Chief of Staff regarding assistance to employees with problems that may affect their work performance, such as but not limited to problems with alcohol and substance abuse, family and psychological problems, and financial difficulties.
3. Employee Assistance Program (EAP) – A program established under the auspices of the EAP Policy to provide a confidential means for helping employees to cope with problems that may affect their work performance, such as problems with alcohol and substance abuse, family and psychological problems, and financial difficulties, is the “Employee Assistance Program.”

#### V. POLICY

##### A. General Prohibition Against Abuse of Alcohol and Drugs

It is the policy of the Metropolitan Transportation Authority that no employee may report for duty or remain on duty if under the influence of alcohol or drugs.

The manufacture, distribution, sale, attempt to sell, possession, use, or purchase of controlled substances while at the workplace or while performing in a work-related capacity is prohibited, and may result in criminal prosecution as well as in disciplinary action, up to and including termination.

Use or possession of alcohol on MTA property is prohibited, except that possession of alcohol in a full and unopened container in transport for use off MTA property is permissible.

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 5 of 11

### B. Prescription Drugs

Use of a controlled substance at a prescribed dosage authorized by a licensed medical practitioner, or possession incident to such use, is permitted if a treating medical practitioner has made a good faith determination that use of the substance at a prescribed dosage level is medically advisable and will not interfere with performance of work duties.

### C. Education and Awareness

The MTA shall establish and maintain an employee education and training program for all employees. The education component shall include display and distribution of a copy of this policy as well as the MTA EAP Policy; information on the effects and consequences of alcohol and drug use on personal health, safety and the work environment; and information concerning the manifestations and behavioral cues that may indicate alcohol and drug use and abuse.

Supervisory Employees shall receive mandatory additional training on the physical, behavioral, and performance indicators of probable drug and alcohol abuse.

### D. MTA Drug Testing Program

The MTA shall establish and maintain a program of testing for drug and alcohol use based on reasonable suspicion.

Any reference to drug-testing in this policy instruction shall be assumed to include testing for alcohol as well as other drugs and controlled substances.

#### Reasonable Suspicion Testing

An employee may be required to take a test for drugs and alcohol if the MTA has reasonable suspicion to believe that the Employee is under the influence of drugs or alcohol.

An inference that an employee may be under the influence of alcohol and/or drugs, based on a series of specific, articulable observations by a supervisor trained in recognizing the symptoms of drug and alcohol use, is a “Reasonable Suspicion.”

## MTAHQ Policy Directive

### ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 6 of 11

Reasonable suspicion that an employee may be impaired by alcohol or controlled substances must be based upon specific, reliable observations concerning the appearance, behavior, speech or body odor of the employee. The following observations may indicate drug or alcohol use: unsteady gait, odor of alcohol on the breath, thick or slurring speech, aggressive or abusive language or behavior, and disorientation or lethargy.

A supervisor may also consider, when determining a reasonable suspicion of drug or alcohol abuse, the employee's time and attendance patterns (such as absences around weekends or holidays, excessive use of sick leave, excessive lateness and unauthorized absences), on-the-job accidents, difficulty in recalling instructions or conversation, poor relationships with co-workers and supervisors, and other variations in productivity.

A supervisor with reasonable suspicion that an employee may be under the influence of drugs and/or alcohol may, after consultation with his/her department or division head, consult with the Director of Human Resources or his/her designee. The Director of Human Resources or his/her designee, based on the referral and documentation presented by the employee's supervisor and department/division head, will determine whether reasonable suspicion drug testing should be administered by the Occupational Health Services medical unit. Whether or not the employee is referred for reasonable suspicion drug testing, the employee may be referred to the EAP.

The Director of Human Resources or his/her designee will notify the employee's department/division head when an employee fails to pass a drug or alcohol test.

#### **E. Employee Assistance Program**

1. Voluntary Referrals - An employee may refer himself or herself to the EAP for counseling on alcoholism and substance abuse or other problems that may be affecting his or her work performance.

Voluntary referrals to the EAP shall remain confidential, except as explained in section V.I., below.

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 7 of 11

Mandatory Referrals – An employee may be subject to mandatory referral to the EAP at the discretion of the MTA upon the failing of a drug or alcohol test. In such an event, the employee may be asked to sign a rehabilitation agreement acknowledging the terms of this referral and establishing the terms pursuant to which the employee may return to work. Such referrals shall not interfere with disciplinary action, up to and including termination.

### **F. Expectations of Performance; Leaves of Absence for Rehabilitation**

Employees who have been referred to the EAP or who have voluntarily referred themselves are expected to perform their jobs satisfactorily, and are subject to the normal requirements of their positions, including timeliness and attendance, and are subject to periodic performance appraisals and other normal terms and conditions of employment.

Employees may be granted leaves of absence consistent with MTA Policy to participate in rehabilitative services or to resolve family and/or personal problems.

### **G. Return to Work; Future Performance**

When an employee is ready to return to work, the employee will notify the Director of Human Resources or his/her designee of the proposed date of return and any requested restrictions on future assignments.

### **H. Disciplinary Action**

1. Employees who violate this Policy will be subject to disciplinary action up to and including termination.
2. Employees who refuse to take a drug or alcohol test for which he/she was referred because of reasonable suspicion, are subject to disciplinary action, up to and including termination.
3. Employees who fail to pass a drug or alcohol test may be subject to disciplinary action, up to and including termination.

### **I. Confidentiality**

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 8 of 11

Information regarding the EAP will be treated as confidential. Disclosure will be limited to those with a need to know, in accordance with the relevant federal regulations and guidelines with the following exceptions: a) when the employee voluntarily waives confidentiality, in writing, or b) when disclosure is required by law.

In addition, mandatory participation in the EAP will not be disclosed except to the Director of Human Resources or his/her designee and (by the Director of Human Resources) to the Employee's department/division head, or under the following circumstances: a) when the Employee has been referred to the EAP as a condition of continued employment, and he/she refuses to participate or does not comply with the treatment plan; or b) when an individual has reported to the MTA a conviction for an offense reportable under the Drug Free Workplace Act.

Voluntary participation in the EAP will not be disclosed except when the employee has authorized in writing the release of confidential information using the appropriate consent form.

EAP records will be maintained only by the EAP.

### J. Employment at Will

Neither any portion of this policy instruction nor the acceptance of an employee as an EAP client shall be interpreted as changing the status of employment with the MTA, which for non-union employees is employment at will.

### K. Responsibility

1. Employee – It is the responsibility of the Employee to understand and abide by this Policy, and, in conformance with the Drug-Free Workplace Act, to report to the MTA within five days any conviction for drug-related offenses occurring within the workplace.
2. Supervisor – It is the responsibility of the supervisor to be familiar with the information provided by the MTA on the physical and behavioral manifestations of alcohol and substance use; to inform employees about the Substance Abuse and EAP

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 9 of 11

policies and about the availability of the EAP; and, based on reasonable suspicion that an employee is under the influence of drugs or alcohol , to refer said employee, after consultation with the department/division head, to the Director of Human Resources or his/her designee for possible referral to the Employee Assistance Program for assessment.

3. Director of Human Resources – The Director of Human Resources is responsible, in cooperation with the MTA Physician, for establishing and maintaining the MTA Drug Testing Program, for assessing any supervisory reports of reasonable suspicion of alcohol or drug use, and for general administration of this policy.

MTA Physician – The MTA Physician must supervise the administration of the MTA Drug-Testing Program.

### VI. PROCEDURE

#### A. Reasonable Suspicion Testing

Supervisor with Department/Division Head

1. When an Employee’s appearance, behavior, speech, or body odor present reasonable suspicion\* that an employee may be impaired by alcohol or controlled substances, consult with Human Resources regarding appropriate action.. Supervisor must consult first with department/division head to determine whether to proceed with referral to Human Resources.

\*See Section V.D. above for fuller discussion of reasonable suspicion.

Director of Human Resources

2. Consider referral from supervisor and department/division head.
  - a) If determining that reasonable

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 10 of 11

suspicion of alcohol or drug impairment exists, refer employee to Occupational Health Services medical unit for testing, and, depending on test result to EAP. Go to paragraph 3 below.

- b) If determining that no reasonable suspicion exists, may refer employee to EAP for counseling for other problems not necessarily related to alcohol or substance use. Go to paragraph 4 below.
- c) If determining that referral to medical unit or to EAP would be inappropriate, advise employee's supervisor or department/Division head. No further action needed.

Occupational Health Services Medical Unit

EAP Counselor

- 3. Conduct testing and provide services as required. Report results to Director of Human Resources or his/her designee.
- 4. Evaluate employee Provide services as required.

### B. Drug Free Workplace Act Reporting

Employee convicted of criminal drug statute violation in the workplace

- 1. Report conviction to MTA Human Resources Director or his/her designee

# MTAHQ Policy Directive

## ALCOHOL and DRUG FREE WORKPLACE

Policy Number	Responsible Agency/Department	Effective Date	Page
25-004	Human Resources	TBD	Page 11 of 11

Director of Human resources

Chief of Staff

- within five calendar days.
- 2. Notify Chief of Staff. Within thirty days, initiate disciplinary or rehabilitative action.
- 3. Within ten days of notification by Employee, notify federal grantor as required under Drug Free Workplace Act.

# MTA Bridges and Tunnels

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**1.0 Purpose**

It is the policy of the Triborough Bridge and Tunnel Authority (the "Authority") to operate and maintain its facilities in a safe and efficient manner, to provide a safe environment for its patrons and employees, and to secure and safeguard its revenues for the benefit of the citizens of this state. Safety of the Authority's employees, patrons, and property, and the security of its revenues are jeopardized by the use or ingestion of illegal drugs and controlled substances and the misuse of alcohol. Accordingly, possession or the use or ingestion of illegal drugs and controlled substances or alcohol that may prevent an employee from performing the functions of his/her job safely and/or efficiently is prohibited.

**2.0 Scope**

This policy and procedure applies to all employees holding the civil service title of Bridge and Tunnel Officer, probationary Bridge and Tunnel Officers and applicants for the position of Bridge and Tunnel Officer. Bridge and Tunnel Officer holding a Commercial Motor Vehicle license are covered under policy ADM 01-15-02.

**3.0 Definitions**

The following definitions and abbreviations are used in this policy:

- 3.1 **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- 3.2 **Alcohol Concentration (or content):** This means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- 3.3 **Aliquot:** A portion of a specimen used for testing.
- 3.4 **Breath Alcohol Technician (BAT):** An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
- 3.5 **Canceled Test:** In drug testing, a drug test that is declared invalid by the Medical Review Officer (MRO). A canceled test is neither a positive nor a negative test. It is also different from the behavior that constitutes a refusal to submit. When a test is canceled, the employee may be required to submit a new specimen.
- 3.6 **CFR:** Code of Federal Regulations.
- 3.7 **Chain-of-Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- 3.8 **Collection Container:** A container into which the employee urinates to provide the urine sample used for a drug test.
- 3.9 **Collection Site:** A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs and a breath sample for the presence of alcohol. Current Collection Sites are MTA New York City Transit Medical Assessment Centers (MAC). See Attachment E.
- 3.10 **Collection Site Person:** A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.
- 3.11 **Confirmation (or confirmatory) Test:** In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test, following a screening test with a result of 0.04 or greater of breath alcohol concentration that provides quantitative data of alcohol concentration.
- 3.12 **Designated Employer Representative (DER):** The MTA Bridges & Tunnels employee authorized to take immediate action to remove employees from duty and to make required decisions in the testing and evaluation processes. This employee also receives the test results and other communications on behalf of the Authority.
- 3.13 **DHH:** United States Department of Health and Human Services.
- 3.14 **DHHS Drug Panel:** The controlled drugs listed in section 102(6) of the Controlled Substances Act that has been determined as being a risk to public safety. See Appendix A
- 3.15 **DOT:** United States Department of Transportation.
- 3.16 **Drug Metabolite:** The specific substance produced when the human body metabolizes a given drug as it passes through the body and is excreted in urine.
- 3.17 **EAP:** TBTA's contracted Employee Assistance Program
- 3.18 **EBT:** Evidential Breath Testing Device.
- 3.19 **EMIT:** An immunoassay test for the presence of controlled substances in a fluid. Often used as a screening test.
- 3.20 **Employee:** A Bridge and Tunnel Officer
- 3.21 **Employer:** The term employer herein includes the Triborough Bridge and Tunnel Authority, its' agents, officers and representatives.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- 3.22 **FMCSA:** Federal Motor Carrier Safety Administration which is an agency of the US DOT.
- 3.23 **Gas Chromatography/Mass Spectrometry – GC/MS:** A test used to confirm the presence in the urine of a controlled substance.
- 3.24 **Initial Test (or screening test):** In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- 3.25 **Medical Review Officer (MRO):** A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- 3.26 **Prescribers Report:** Attachment A
- 3.27 **Probationary Employee:** An employee who has not successfully completed the applicable probationary period for the position to which he/she has been appointed.
- 3.28 **Refuse to Submit:** An employee (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with applicable Federal rules (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with relevant Federal rules, or (3) engages in conduct that clearly obstructs the testing process.
- 3.29 **Shipping container:** A container capable of being secured with a tamper evident seal that is used for transfer of one or more specimen bottle(s) and associated documentation from the collection site to the laboratory.
- 3.30 **Specimen bottle:** The bottle that, after being labeled and sealed according to the procedures in this policy, is used to transmit a urine sample to the laboratory.
- 3.31 **Split Specimen:** The employee observed placement, by a collection site person of the employee's urine specimen into two specimen bottles for transmittal to a DHHS certified testing laboratory.
- 3.32 **Substance Abuse Professional (SAP):** A professional knowledgeable about and having clinical experience in the diagnosis and treatment of both drug and alcohol-related disorders. The SAP shall be a licensed physician; a licensed psychologist; a licensed social worker; an employee assistance professional; or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

3.33 **Tampering:** In breath specimens, tampering includes (but is not limited to) the use of any physical, chemical, liquid, vaporous, electronic or other means of attempting to invalidate or negate a breath test.

In urine specimens, tampering includes, but is not limited to: (a) addition of liquid or solid chemicals or other substances to the urine container; heating or cooling the urine and/or the container; or submitting someone else's sample as one's own; (b) causing the production of urine that is sufficiently diluted as to preclude detection of substances therein, such as by ingestion of excess amounts of water or other liquids, use of diurectic or other means.

3.37 **Verified Positive Drug Test Result:** A laboratory confirmed-positive test which the MRO determines has no legitimate medical explanation.

**4.0 Prohibitions**

4.1 An employee may not possess or consume the following while on duty or on Authority property:

- Alcohol in any form,
- Controlled substances (including unauthorized prescribed medications)

4.2 An employee may not be on duty with any measurable amount of breath alcohol. A breath alcohol test is positive if it is confirmed at or greater than 0.04. An employee testing 0.04 or greater will be immediately removed from duty.

4.3 No employee shall be on duty within four hours after using alcohol. Whenever the Authority has actual knowledge that an employee has used alcohol within four hours of reporting to duty it shall not permit the employee to perform or continue to perform duty related functions.

4.4 An employee required to take a post-accident alcohol test shall not use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

4.5 An employee who is on duty and who intends to work while taking a prescribed medication that is a controlled substance or any other prescribed medication which may cause impairment including but not limited to sedation or agitation must submit a written report from the prescriber to the Authority MRO at the time the prescription is written. The report shall contain the names of the medication(s), dosages and duration of treatment as well as a statement documenting the prescriber's recommendation of the medication(s) in view of the nature of the employee's work. A form for the Prescriber's Report and a list of reportable drugs is available (see Appendix E and Attachment A). Failure to comply with this procedure may subject the employee to discipline and to counseling by the SAP. If in the opinion of the SAP the use of undisclosed prescription medication may indicate substance abuse, the employee may receive a mandatory referral to the EAP.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

4.6 No employee shall refuse to submit to an alcohol or controlled substance test required under this policy and procedure. Refusal to submit to testing will be treated in the same manner as a positive test.

Refusal includes but is not limited to:

- Alleging sickness after notification to report for testing.
- Failing to provide adequate breath for testing without a valid medical explanation after employee has received notice of the requirement for breath testing.
- Failing to provide adequate urine for controlled substances testing without a valid medical explanation after employee has received notice of the requirement for urine testing.
- Failing to arrive at the Collection Site after notification to report for testing.
- Insubordination or declining to follow directives during the collection and testing procedures.
- Tampering (see Definitions, Paragraph 3.36) with breath or urine specimens, procedures or documentation.
- Undocumented "family emergencies".

**5.0 Non-Availability**

5.1 Only the following situations will exclude an employee from random testing:

- Absence for illness, vacation, medical, immediate family or operational emergency, or previously arranged duty-related obligations (outside training, etc.).
- Non-availability due to any other reason must precede employee notification to be considered bona fide.
- Medical and immediate family emergencies will be those conditions or circumstances which would be of such a degree or nature to preclude or excuse an employee from performing his/her regular tour of duty. The validity of a claimed family emergency will be the decision of the Facility Director or his/her designee in accordance with established practice.

**6.0 Drug and Alcohol Testing**

Whenever testing is ordered, the Authority shall test for both drugs and alcohol except in random testing where an employee could be selected for both drugs and alcohol or (since the alcohol selection testing percentage is lower than the drug testing percentage) drug testing alone.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

6.1 Drugs for which testing is to be conducted:

1. Marijuana Metabolites Delta 9-THC
2. Cocaine Metabolites Benzoyllecgonine
3. Opiate Metabolites Morphine Codeine
4. Phencyclidine
5. Amphetamines Amphetamine Methamphetamine

6.2 **Types of Testing:**

6.2.1 **Pre-Employment Testing**

All applicants for the positions of Bridge and Tunnel Officer must submit to drug testing.

6.2.2 **Post-Accident Testing**

(See attachment D)

As soon as practicable following an accident involving a commercial motor vehicle, the Authority shall test for alcohol and controlled substances each surviving driver with respect to the vehicle if the accident involved the loss of human life; or if the driver receives a citation under state or local laws for a moving traffic violation arising from the accident. Alcohol tests will be administered within two hours following the accident, but not more than eight hours after the accident

Following any such accident, employees subject to testing are required to abstain from consuming any alcoholic beverages for eight hours, or until tested, whichever occurs first. Additionally, all employees subject to testing must remain available for urine drug testing for 32 hours, by insuring that their immediate supervisor knows of their whereabouts during the period. Failure to remain available is considered a refusal to be tested.

In addition to the post-accident requirements of the FMCSA, TBTA shall be allowed to require employees who operate a commercial motor vehicle to submit to a post- accident alcohol and drug test in those situations where employees are involved in commercial motor vehicle accidents which result in serious physical injury necessitating transportation to a hospital for medical treatment unless the Authority has determined that the accident was not the fault of the employee who was operating the vehicle. Post-accident tests conducted by TBTA pursuant to this paragraph shall conform to the post-accident procedures of the FMCSA regulations.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.2.3 Reasonable Suspicion Testing**

(See attachment B and C)

If a supervisor trained in detecting the signs and symptoms of prohibited drug use or alcohol misuse documents that an employee manifests such signs and symptoms, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, a reasonable suspicion test will be ordered.

**6.2.4 Random Testing**

**6.2.4.1 Random Selection Process**

The selection of employees for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table of a computer-based random number generator that is matched with employee identification number. Under the selection process used, each employee shall have an equal chance of being tested each time selections are made. Because of the nature of random testing it is to be expected that some employees will be selected more than once in a year and some employees may not be selected for extended periods of time. During the course of the calendar year the Authority will test up to 50% of all Bridge and Tunnel Officers for drugs and 25% of Bridge and Tunnel Officers for alcohol.

**6.2.5 Return to Duty Testing**

6.2.5.1 Before an employee returns to duty after engaging in conduct prohibited by this policy and procedure, the employee shall, with respect to alcohol, undergo a return-to-duty test which must indicate an alcohol concentration of less than 0.04, and with respect to controlled substances, the employee shall undergo a return-to-duty test which must result in a verified negative for controlled substances use.

6.2.5.2 The Authority may direct an employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee.

**6.2.6 Follow-up Testing**

6.2.6.1 Following a determination by a substance abuse professional that an employee is in need of assistance resolving problems associated with alcohol misuse and/or use of controlled substances, the Authority shall ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP and administered by the Authority. The particular length and frequency of such testing

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

is determined by the SAP, but will include at least 6 tests during the first 12 months after a return to duty and may extend to 36 months.

6.2.6.2 Follow-up alcohol testing shall be conducted only when the employee is on duty, just before the employee is to report for their tour of duty, or just after the employee has ceased their tour of duty.

6.2.6.3 The Authority may direct an employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee.

### **6.3 Notification and Reporting for Testing**

The Manager of Substance Abuse Prevention generates the list of employees to be tested and informs the selected employees' supervisors. The supervisor in turn determines when, in consideration of daily work load, availability of relief personnel, and other factors, to relieve and notify the selected employee. Upon notification, the employee must report directly to the Collection Site, comply with all testing procedures, and report directly back to the job upon completion of the testing process.

Employees may be sent for random alcohol tests just before, during or after completing their tour of duty. Employees may be sent for random drug tests at any time including nights, weekends and holidays.

### **6.4 Levels of Detection**

The cutoff levels are the level at which the test is determined to be positive. The cutoff levels for drug and alcohol screening tests, and confirmatory GC/MS testing are given in the Appendix B. Cutoff levels for screening tests may differ from the cutoff levels set for GC/MS confirmation. Cutoff levels are set by DHHS not by the Authority.

### **6.5 Testing Procedures – Appendix C**

#### **6.5.1 Compliance with 49 CFR 40**

All breath tests and urine collections are carried out by trained technicians in accordance with, and using procedures mandated by, 49 CFR Part 40. Below are a few important highlights from those regulations.

##### **6.5.1.1 Identification**

Any person being tested must provide positive, current, photo-identification to the collection site person/and Breath Alcohol Technician (BAT). Acceptable identification includes a valid Authority employee identification card and/or a valid state driver's license. If an employee is accompanied to the testing site by a supervisor and does not have such identification in his/her possession,

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

testing will proceed if and only if the supervisor can personally identify the employee.

**6.5.1.2 Breath Specimen Collection for Alcohol Testing**

Breath testing for alcohol will be conducted by having the employee exhale into a preliminary breath testing machine approved by NHTSA. If a level of alcohol of 0.04 or higher is detected, a confirmatory test will be run 15 minutes later on an approved evidential breath tester. All such testing is administered by trained Breath Alcohol Technician (BAT) utilizing equipment that is properly maintained and calibrated.

**6.5.1.3 Urine Specimen Collection for Drug Testing**

The employee will be provided a single-use, collection container, factory sealed in a plastic bag, the seal of which will be broken only in the employee's presence, or by the employee. Urine collection for drug testing will be conducted by having the employee void into the single-use plastic container.

**6.5.1.4 Privacy**

During urine testing for drugs, an employee will be afforded the use of a private stall or otherwise partitioned area in a restroom facility used only for such testing during period of urine specimen collection.

**6.5.1.5 Use of Tamper Evident Shipping Containers**

After the employee has turned over custody of the urine collection container to the collection site personnel the collection site personnel will in the direct view of the employee pour the urine specimen into two specimen bottles. Thirty 30 ml. shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml. shall be poured into the other bottle, to be used as the split specimen. The two specimen bottles and the accompanying documentation shall be placed in a shipping container. The collection site person shall seal the container and its documentation in a tamper evident shipping container for transportation to the testing laboratory. "Tamper evident" means a transport container so designed that once sealed, it cannot be opened without physical destruction of some part of it, such that any attempt to open it will be immediately apparent to even an untrained observer.

**6.5.1.6 Chain of Custody Documentation**

At the start of the urine collection procedure, the collection site person will initiate a Chain of Custody document, and will complete it in the direct view of the employee. The Chain of Custody documents the handling of the specimen from receipt of the specimen by the collection site person, to the receipt of the specimen by the testing laboratory. See Appendix C.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.5.1.7 DHHS Certified Laboratories**

Only laboratories certified by the DHHS will be used for the testing of urine samples.

**6.5.1.8 Initial Urine Screening Tests**

Upon receipt of a urine specimen, the receiving laboratory will conduct initial screening tests using procedures in accordance with 49 CFR Part 40, to determine any preliminary indicators of the presence of drugs.

**6.5.1.9 Confirmation Testing**

If the screening test indicates the possible presence of drugs, or the presence of unusual chemicals or agents that may interfere with the screening test results and/or suggest possible specimen tampering, the laboratory will conduct confirmation testing using GC/MS procedures.

**6.5.1.10 Security of Results**

The results of urine testing will be reported by secure electronic transmission directly to the MRO.

**6.5.1.11 Medical Review of Positive Drug Results**

Any urine specimen reported by the laboratory as being positive for drugs after GC/MS testing will be reviewed by the MRO. The MRO will review all available medical reports and documentation, contact the employee, and will interview (and examine as required) the subject employee. The MRO will report a verified positive (if no legitimate, alternative medical explanations are documented) to the Substance Abuse Prevention Program Manager and the Employee Assistance Program.

**6.5.2 Requests for Specimen Re-tests**

If an employee disputes positive test results, she/he may request a re-test of the specimen, provided such a request is made to the MRO, within 72 hours of the original notification by the MRO of a positive result. The re-test is conducted on a portion the original specimen (the "split"), which is maintained in storage at the laboratory. Re-tests are performed at a DHHS-certified laboratory. The employee does not have the option to provide a separate, second specimen for re-testing, and administrative or personnel actions based on the original test results will not be delayed pending the result of the re-test. The presence of drug(s) (identified in the original test), in a re-test upholds the original test result and the employee must pay the Authority the cost of the re-test. If the original test result is not upheld by the re-test the Authority will pay for the cost of the re-test and the MRO will void the original test and investigate the reason for the discrepancy in results.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.5.3 Monitoring for Tampering**

If the employee is suspected by Collection Site Personnel of tampering with a urine specimen, a second specimen will be collected under observation by Collection Site or Supervisory personnel of the same sex. Both the suspected tampered specimen and the observed specimen will be forwarded to the laboratory for testing and all future specimens will be observed. Even if both specimens are negative for drugs, tampering itself may subject the employee to disciplinary action, which may include termination.

Measures of temperature, specific gravity, and other special chemical tests are made by the laboratory on all urine specimens to check for tampering. If the employee is suspected of tampering by the MRO (upon review of laboratory reports), all future tests for that employee will be under observed conditions. Such observed conditions will begin, for each test, at the time the employee is notified of selection for any test.

**7.0 Education and Treatment**

**7.1 Drug Awareness Training**

Every Bridge and Tunnel Officer will receive initial and ongoing information or training in:

- the effects of alcohol and controlled substances use on an individual's health, work, and personal life,
- recognition of the signs and symptoms of an alcohol or a controlled substances problem and
- how to utilize the Employee Assistance Program.

**7.2 Anti-Drug Information/Wellness Program**

Educational mailings and/or distributions concerning a wide variety of lifestyle issues, including drug and alcohol abuse, will be made periodically to all employees and their families.

**7.3 Employee Assistance Program**

The Authority offers its employees and their family members an EAP to aid them in working out personal difficulties that may be affecting their lives, performance on the job, and possibly contributing to the misuse of alcohol or controlled substances, or exacerbating other medical illnesses or problems. Any employee may at any time seek confidential assistance through the Authority EAP.

Management referral or permission is not required. The EAP is staffed with fully trained mental health and substance abuse specialists, who can assist with a program to help with all problems of living. Any reference to the EAP refers to the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

EAP contracted with the Authority. No other EAP will be recognized under this policy to provide mandatory treatment or advice under this policy for Authority employees.

**7.4 Outside EAP Provider**

To ensure confidentiality and make employees more comfortable using the EAP, the Authority contracts with an outside service company to provide the EAP. The current provider and its telephone numbers are noted in Appendix D. Should the provider change, the Authority will advise all employees of the new provider's selection by direct household mailings or work location postings.

**7.5 Mandatory EAP Referrals**

Services through the EAP are confidential provided an employee seeks those services voluntarily. Under this Policy, employees who have a first positive alcohol or drug test, and are evaluated as needing treatment by the SAP, receive mandatory referrals to the EAP. Since those referrals are initiated by the Authority, the Authority is naturally aware of the circumstance involved. In such cases the EAP will share sufficient information with the MRO in order to determine when an employee who has tested positive is ready to return to work. An eligible employee will be afforded the opportunity to accept rehabilitation through counseling only once in that employee's career, following a positive alcohol or drug test.

**7.5.1 Rules Pertaining to Mandatory Referrals and Follow-Up**

**7.5.1.1 Employee Assistance Program – Eligible Employee:**

A permanent employee with the Authority who has a first positive alcohol or drug test will be eligible to be referred to the EAP and will be required to participate in counseling. Failure to satisfactorily attend, participate in and complete the required counseling, rehabilitation and aftercare will result in discipline up to and including dismissal from service. An eligible employee will be afforded the opportunity to accept rehabilitation through counseling only once in that employee's career. No employee who has been convicted in any court of competent jurisdiction of the possession or sale of illegal drugs or controlled substances will be eligible to participate in the EAP. Any such employee will be subject to discipline up to and including dismissal from service.

**7.5.1.2 Entry into Mandatory Treatment**

The employee must contact the Authority's EAP within 72 hours of referral. She/he must comply with any treatment the EAP counselors recommend.

When the employee is released from any prescribed treatment, she/he must contact the MRO within 72 hours to schedule a post-treatment evaluation, and at the evaluation, present for review a letter from the treatment provider certifying that she/he has complied with treatment, agrees to any recommended after-care, and is able to return to duty without restriction.

As part of the return-to-duty evaluation, the employee will be tested for drugs and alcohol. If this test is positive, she/he will be dismissed from employment

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

with the Authority. If this test is negative, she/he will be entered into the follow-up testing program, wherein all tests must be negative.

**7.5.1.3 Mandatory Follow-Up Testing Guidelines**

Employees subject to mandatory follow-up testing must comply with the following rules, which the Authority may amend from time to time as required under FMCSA rules. The Authority will give the Union advance notice as to proposed amendments.

1. The employee will receive unannounced follow-up drug and alcohol testing for a period of time specified by the Authority's SAP, not to exceed sixty months. If the employee is notified of a test, he/she must report directly to the Collection Site for testing.
2. Failure to submit to a properly-required drug and alcohol test, or tampering with specimens, specimen or test procedures or test documentation, will subject him/her to discipline up to and including discharge. If the employee is suspected by Collection Site Personnel of tampering with a urine specimen, a second specimen will be collected under observation by the Collection Site Personnel or Supervisory Personnel of the same sex. Both the suspected tampered specimen and the observed specimen will be forwarded to the lab for testing. Even if both specimens are negative for drugs, tampering itself is an offense subject to discipline up to and including dismissal. If the employee is suspected by the MRO of specimen tampering all future tests for the employee (follow-up and otherwise) will be under observed conditions.
3. The employee must meet with the SAP for monitoring and counseling appointments, if scheduled by the SAP. The employee may call the SAP at any time to set up an appointment if she/he desires.
4. If the employee desires treatment or assistance, she/he may request it by calling the EAP or the SAP. However, if the employee requests assistance or treatment after she/he has been notified of selection for any test, asking for assistance will not block the test from occurring, and she/he must still submit to testing. Asking for assistance after being notified of a test will not alter the administrative or disciplinary consequences of such testing if those test results are positive.
5. The employee must comply with any treatment or aftercare plan prescribed by the Authority's EAP, a treatment provider, or the SAP. If any disputes arise as to the recommended treatment plan the MRO will have the final decision. If the employee is returned to work while still completing a part of his/her primary treatment or aftercare program, she/he must still complete all parts of the prescribed treatment or aftercare. If the employee drops out of treatment or aftercare before completing it, drops out against medical advice, or is otherwise non-

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

compliant with prescribed treatment or aftercare, she/he will be medically disqualified from working pending successful completion of the prescribed program. Noncompliance with any aspect of prescribed treatment or aftercare will result in disciplinary action in which the Authority will seek the employee's termination.

6. Participation in follow-up testing, the EAP, or any aspect of any employee assistance program does not alter or prevent appropriate administrative or disciplinary action for any violation of Authority rules and regulations.

7. The employee must inform the MRO (see form in Appendix E) of the specific medication when she/he is taking a prescribed drug or medication, such as (but not limited to) those listed on the Authority's Notice concerning restricted medications (see list in Appendix F). A copy of this notice will be made available to the employee. It is illegal for the employee to take any prescription drug or medication prescribed for anyone else.

## **8.0 Confidentiality**

An employee's test results, and the fact of and circumstances relating to an employee's participation in the EAP, will be treated as confidential medical information and maintained in complete confidence in the Personnel Division. Such information will be disclosed only to the Director of Personnel, the MRO, the SAP, Labor Relations and such other personnel as have a need to know. All personnel with a need to know will execute a statement of confidentiality. Statistical compilations, not identifying the individuals in question, may be made of testing and EAP data and made available to the public and/or regulators.

In the event that an employee, or any Union or other representative of that employee, makes disclosure of test result or EAP participation, further disclosure of the information may be made by the Authority to the extent necessary to protect its and the public's interest, after consultation with the General Counsel.

The Authority will not voluntarily disclose the results of the random testing procedure to law enforcement agencies or officials.

Unauthorized disclosure of information about drug and alcohol testing results by any person authorized to possess such information is prohibited. Unauthorized disclosure of such information is punishable by discipline up to and including dismissal, after a hearing where applicable. Possession of confidential information by persons not authorized to have such information, is also prohibited and punishable by discipline up to an including dismissal, after a hearing where applicable.

The confidential aspect of testing refers only to results of the tests. Persons having access to results must maintain the confidentiality of the laboratory and MRO reports to protect the tested individual's identity. Secrecy, in the sense that others know that a random testing sample has been drawn is not part of the procedure.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

Chapter Number: ADM 01-15-03	Amendment Number: 0
Date: March 2015	Revision Number: 0

**Appendix A**

**Drug Test Panels**

DHHS Panel

- Marijuana Metabolites  
Delta 9-THC
  
- Cocaine Metabolites  
Benzoyllecgonine
  
- Opiate Metabolites  
Morphine  
Codeine
  
- Phencyclidine
  
- Amphetamines  
Amphetamine  
Methamphetamine

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix B

### Levels of Detection

Breath alcohol levels are expressed as Breath Alcohol Concentration (BAC), as measured by the test equipment in the Collection Site. If any measurable level of alcohol is found on the initial test the employee shall be administered a confirmatory test shall be administered. If the confirmatory test result is a blood alcohol of concentration that equals or exceeds 0.04, the result is reported as positive initial test

The following are the levels of detection, expressed in nanograms per milliliter for substances in the current urine test panels. If a screening test result equals or exceeds the cutoff level shown, the laboratory's automatic action is to perform a confirmatory test. If the confirmatory test result equals or exceeds the cutoff level shown, the test is reported as positive by the laboratory. These cutoff levels are subject to change due to FMCSA regulations.

<b>Substance</b>	<b>Screening DHHS</b>	<b>Confirmatory DHHS</b>
Marijuana Metabolites	50	
Delta 9-THC		15
Cocaine Metabolites	300	
Benzoyllecgonine		150
Opiate Metabolites	300	
Morphine		300
Codeine		300
Phencyclidine	25	25
Amphetamines	1000	
Amphetamine		500
Methamphetamine		500

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix C

### Alcohol and Drug Testing Procedures

#### 1. Notification

- a. The employee will be notified in private that he or she was randomly selected to provide a urine and/or breath specimen to be testing for the presence of drugs and/or alcohol.
- b. Employees selected to be tested pursuant to TBTA's Drug Testing Policy and Procedure shall continue to be on the clock during the testing procedures.
- c. The employee's supervisor will review the Request for Medical Examination form with the employee. The employee must verify that the employee has his or her driver's license and their TBTA I.D. card before leaving the facility.
- d. The employee will report immediately (arrive within one hour of notification) to the MTA NYCTA MAC closest to their facility or if it after 4:00 p.m. a weekend or holiday to MAC #1.
- e. When the employee arrives at the MAC the employee must identify themselves to security personnel and tell them they are there for a random drug/alcohol screening. When the employee arrives at the actual collection site they must identify themselves as a TBTA employee.
- f. If the employee is chosen randomly for alcohol and drug testing, the employee will provide a breath sample prior to providing a urine specimen.

#### 2. Preparation for Breath Alcohol Testing

- a. When the employee enters the alcohol testing location, the Breath Alcohol Technician (BAT) will require him or her to provide positive identification (e.g., through use of a photo I.D. card or identification by the Authority's representative). On request by the employee, the BAT shall provide positive identification to the employee.
- b. The BAT shall explain the testing procedure to the employee.

#### 3. Procedures for Screening Tests

- a. The BAT shall complete Step 1 on the Breath Alcohol Testing Form. The employee shall then complete Step 2 on the form by signing the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-03</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

- b. An individually sealed mouthpiece shall be opened in the view of the employee and BAT and attached to the Evidential Breath Tester (EBT) in accordance with the manufacturer's instructions.
- c. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- d. The BAT shall ensure, before the screening test is administered to each employee that he/she and the employee read the sequential test number displayed by the EBT.
- e. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper evident tape).
- f. If the EBT prints the test results directly on the form, the BAT shall show the employee the results displayed on the EBT.
- g. If any case in which the result of the screening tests is a breath alcohol concentration of less than 0.04, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- h. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
- i. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with the rules, the test is invalid and the Authority and employee shall so be advised.
- j. No further testing is authorized. The BAT shall transmit the result of less than 0.04 to the Authority in a confidential manner and the Authority shall receive and store the information so as to ensure that confidentiality is maintained as required by the rules.
- k. If the result of the screening test is an alcohol concentration of 0.04 or greater, a confirmation test shall be performed.
- l. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**4. Procedures for Confirmation Tests**

- a. The BAT shall instruct the employee not to eat, drink, put any object or substance in his/her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact, that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
- b. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
- c. A new mouthpiece shall be used for the confirmation test.
- d. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using the instrument, which shall be taken out of service. However, testing may proceed on another instrument. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is completed and the EBT is found to be within tolerance limits.
- e. Before the confirmation test is administered for each employee, the BAT shall ensure that he or she and the employee read the sequential test number displayed by the EBT.
- f. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
- g. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result displayed on the EBT. The BAT shall show the employee the result

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-03</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).

- h. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
- i. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- j. If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section.
- k. If a test result printed by the EBT does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the confirmation test (see paragraph (e) of this section), the BAT shall note the disparity in the "Remarks:" section. Both the employee and the BAT shall initial and sign the notation. In accordance with the rules, the test is invalid and the employee shall be so advised.
- l. The BAT shall transmit all results to the Authority in a confidential manner.

**5. Refusals to Test and Uncompleted Test**

- a. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the Authority.
- b. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

**6. Inability to Provide an Adequate Amount of Breath**

- a. In any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition the following procedures shall be followed.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- b. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the Authority.
- c. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the Authority.
- d. If the employee attempts and fails to provide an adequate amount of breath, the Authority shall proceed as follows:
- e. The Authority shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.
- f. If the MRO determines, in his/her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the Authority a written statement of the basis for his/her conclusion.
- g. If the MRO, in his/her reasonable medical judgment, is unable to make a determination concerning employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The MRO shall provide a written statement of the basis for his/her conclusion to the Authority.

**7. Preparation for Drug Testing**

- a. When an employee arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the Authority's representative). If the employee's identify cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.
- b. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The employee may retain his or her wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- c. The employee shall be instructed to wash and dry his or her hands prior to urination.
- d. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, a faucet, a soap dispenser, a cleaning agent or any other materials which could be used to adulterate the specimen.
- e. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container. The employee shall have a maximum of three hours to provide a complete specimen.
- f. The collection site person shall note any unusual behavior or appearance of the employee on the urine custody and control form.
- g. In the exceptional event that the Authority-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures; A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the employee not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.
- h. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml. If the individual is unable to provide at least 45 ml of urine, the collection site person shall instruct the employee to drink no more than 24 ounces of fluids in order to produce more urine.
- i. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml. shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml. shall be poured into the other bottle, to be used as the split specimen. If a single specimen bottle is used as collection container, the collection site person, in the presence of the donor, shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).

- j. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.

**8. Testing of the Split Specimen**

- a. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.
- b. Then the MRO informs the laboratory in writing that employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
- c. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
- d. Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from duty) is not stayed pending the result of the test of the split specimen.
- e. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall void the test, and report the void and the reasons for it to the Authority and the employee.

**9. Post Collection**

- a. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
- b. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used, must accurately reflect the temperature of the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.
- c. A specimen temperature outside the range of 32.5° - 38°C or 90.5°F- 100°F constitutes a reason to believe that the individual has

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-03</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

altered or substituted the specimen. In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

- d. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.
- e. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
- f. Whenever there is reason to believe that a particular employee has altered or substituted the specimen. A second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
- g. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled.
- h. As provided below, the specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.
- i. The collection site person and the employee being tested shall be present at the same time during collection procedures.
- j. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him/her.
- k. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
- l. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in fact the specimen he/she provided.
- m. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-03</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

specimen from the employee and shall certify proper completion of the collection.

- n. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.
- o. The employee must have the collection site person indicate on their (G46) Request for Medical Examination form the time they completed testing and then return immediately to their facility to resume his/her tour of duty.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**Appendix D**

The Employee Assistance Program is:

Corporate Counseling Associates

475 Park Avenue South

New York, NY 10016

Contact: Any Counselor

24-hour Hot Line: (800) 833-8707

Any employee or family member may self-refer in confidence to the EAP.

Important note: The EAP is, by conscious decision by the Authority, a "broad-brush" program. Because hundreds of Authority families utilize the service for various problems of living, there is no drug or alcohol stigma connected with a visit to the EAP.

<b>National Hotline Numbers</b>		
Alcohol and Drug Referral Hotline		1-800-252-6465
National Cocaine Hotline		1-800-262-2463
Narcotics Anonymous	(Regional Office)	(212) 929-6262
National A.I.D.S. Hotline	(English)	1-800-342-2437
	(Spanish)	1-800-7432

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Officers Who  
Do Not Hold A Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-03	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix E

### ***CLASSES OF REPORTABLE PRESCRIPTION AND PATENT MEDICATIONS***

Below is a list of prescription drugs and patent medicines as referenced in this Policy. Employees who have consumed any of the prescription drugs described are required to report such consumption to the MRO using Form (Prescriber's Report and Recommendation). **The list is intended only as a guide and is not all-inclusive.** Employees should confer with the MRO regarding any questions on medications that are not listed.

#### **ANALGESICS**

Aspirin with codeine, Codeine, Darvocet, Darvon, Demerol, Dilaudid, Empirin Compound w/codeine, evo-Dromoran, Methadone, Morphine, Percocet, Percodan, Soma Compound w/codeine, Talacet, Talwin, Tylenol w/codeine, Vicodin.

#### **ANTI-MOTION-SICKNESS**

Antivert, Dramamine, Marezine, Phenergan, Transderm-Scop.

#### **TRANQUILIZERS & SEDATIVES**

Ativan, Benadryl, Centrax, Compazine, Dalmane, Diazepam, Equanil, Halcion, Haldol, Libritabs, Librium, Limbitrol, Paxipam, Prolixin, Serax, Stelazine, Thorazine, Tranxene, Valium, Valrelease, Xanax.

#### **ANTIDEPRESSANTS**

Adapin, Amitriptyline, Asendin, Deprol, Desyrel, Elavil, Endep, Etrafon, Libitrol, Lithium, Ludiomil, Marplan, Nardil, Norpramin, Pamelor, Parnate, Pertofrane, Sinequan, Surmontil, Tofranil, Triavil, Vivactil.

#### **BARBITURATES**

Alurate, Butisol, Dilantin, Mebaral, Nembutal, Pentobarbital, Phenobarbital, Seconal, Sedapap, Tuinal.

#### **SKELETAL MUSCLE RELAXANTS**

Flexeril, Parafon, Soma

#### **NON-PRESCRIPTION COUGH & COLD REMEDIES, ANTIHISTMINES**

(Not required to be reported, but employees should pay particular attention to labels indicating drowsiness or restrictions regarding driving and/or working around machinery, and adjust their dosage accordingly.)

Benadryl, Bromfed, Chlortrimeton, Comtrex, Contact, Deconamine, Dimetapp, Dristan, Drixoral, Extendryl, Fedahist, Kronofed, Naldecon, Nalamine, Novafed, Omade, Rondec, Rynatan, Sinubid, Sinulin, Tavist-D.



# Bridges and Tunnels

## Prescriber's Report and Recommendation

Fax completed form to:

Robert J. Nadig, M.D.  
331 West 57<sup>th</sup> Street, Suite 307  
New York, New York 10019  
FAX: 1-888-806-2674

**Instructions:** Employee fills in this section, presents form to physician (M.D. or D.O. only). Print clearly.

Employee's Name (Print):

Job Title:

Facility:

TBTA ID#

Day Phone:

Home Phone:

To My Doctor (M.D. or D.O.):

Please provide the information requested below for use by MTA Bridges and Tunnels' Medical Review Officer (MRO). This is necessary because of safety concerns involving the use of medications by Maintainers, CDL holders, Bridge and Tunnels Officers, Sergeants and Lieutenants in safety sensitive positions.

I herewith authorize you to release this information to the MTA Bridges and Tunnels' MRO, and thank you for your assistance in this matter.

Date

Employee's Signature

**Doctor (M.D. or D.O.): Complete this section. Return to employee or send directly to MRO.**

**Report:** This verifies that I have prescribed the following medication(s) for the above-named patient

(if more space is needed check [ ] and use back of form): (if none-please state none)

MEDICATION and date prescribed (Please Print Clearly)	STRENGTH & NUMBER OF PILLS	DIRECTIONS	DURATION(days/weeks) (If PRN, end date required)

**Recommendation:** I further certify and attest that, with full knowledge of the patient's job description and duties, in my opinion this patient may safely consume these medications at the dosage listed above while on duty or subject to duty.

**REQUIRED:** The medication(s) above is (are) prescribed for the following diagnosis(es):

Signature of Prescriber (M.D. or D.O.):

Print Name Clearly:

Print Address:

Phone:

Fax:

Date:

### GUIDELINES ON REASONABLE SUSPICION TESTING

#### **AUTHORIZED SUPERVISORS SHOULD READ ALL INFORMATION BELOW PRIOR TO SENDING AN EMPLOYEE FOR A REASONABLE SUSPICION TEST**

- An employee shall be required to submit to an alcohol and controlled substance test when a trained supervisor has reasonable suspicion to believe that the employee has violated the alcohol or controlled substance prohibitions of the Federal Motor Carrier Safety Administration (FMCSA) rules or the Authority's internal rules or policies.
- The determination that reasonable suspicion exists to require an alcohol and controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the affected employee.
- The observations may include indications of the chronic and/or withdrawal effects of controlled substance.
- The required observations for reasonable suspicion testing shall be made by a supervisor who is trained in accordance with FMCSA rules.
- The supervisor's decision must be made promptly, using the following steps:
  - Remember that the primary issue is **safety**. Employees believed to be under the influence of a prohibited substance are an immediate hazard to themselves and to others. Whether management subsequently obtains proof to substantiate reasonable suspicion of substance abuse is secondary to assuring safety.
  - The first steps are observing and interviewing, then documenting.
- **Observe** – Observations reported by others, even anonymously, must be confirmed by the supervisor's own observations. **Hearsay is not an acceptable basis for a reasonable suspicion referral.** If witnesses saw a specific event or behavior, the supervisor should ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was substance abuse-related behavior? On what basis did they reach their conclusions?
- The supervisor should observe the employee. What can the supervisor observe and objectively document as it related to physical signs and symptoms, emotional state, physical evidence, and related facts?

## Attachment B

- **Interview** – After observing any of the factors described above giving rise to reasonable suspicion, a supervisor may ask the employee to explain the suspected behavior and describe the events that took place from his or her perspective. A persuasive explanation should not deter or prevent you from requiring a test if you have a reasonable belief that prohibited drug use or alcohol misuse is involved. Denial should be an expected reaction. If an employee knows he/she will test positive, he/she may give many explanations and protests, wanting to avoid testing. As a result, a reasonable suspicion decision must be based on objective observations. Remember, a request for the urine specimen and a breath test is not an accusation; it is merely a request for additional objective data.

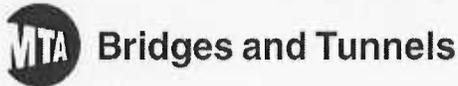
Before you begin the interview, remove the employee from the vehicle or workplace and talk to him/her in a private setting.

It is important to respect the dignity and privacy of employee during the interview.

- **Review Observations** – During the conversation, observe physical and behavioral symptoms. Be sure to document any characteristics or observations that bear upon the determination to test. The FHWA rules only require that one supervisor make the reasonable suspicion referral. However, if possible, a second supervisor at the site should be asked to confirm the observation.
- **Make the Reasonable suspicion Decision** – Based upon your observations and interview, decide whether there is reason to suspect that the employee has violated the relevant alcohol and controlled substances prohibitions. If so, complete the Request For Medical Examination Of Employee Form (G46). It is essential that all reasonable steps be taken to have the breath alcohol test administered within two (2) hours following the determination, a record must be made of the reason(s) the alcohol test was not promptly administered. If the alcohol test is not administered within eight (8) hours following the determination, attempts to administer the test must cease and a record must be made of the reason(s) for not administering the test.
- **Inform the Employee** – After you have made the reasonable suspicion decision, explain to the employee that you believe that he or she may not be fit for duty and that he or she will be escorted to and from the pertinent MAC collection site. Inform the employee of the consequences of refusal and that he or she is being relieved from duty.

## Attachment B

- **Document Events** – Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion test by using the “Supervisor’s Report and Observations of Reasonable Suspicion Form” provided in this book. The signs and symptoms to look for are more fully described in the fact sheets and the “Americans for a Drug Free America” booklet in the back of the Facility book. The FMCSA requires that the documentation must be completed within twenty-four (24) hours of sending the employee for the test.
- **Return to duty** – The tested employee will not be permitted to resume his/her duties until the Facility Director or designee has received written authorization from the Designated Employee Representative.



**Supervisor's Report and Observations of  
Reasonable Suspicion  
Drug and Alcohol Testing Program**

Date and Time of Occurrence/Observation: \_\_\_\_\_

Place./Location of Incident/Event: \_\_\_\_\_

Employee's Name: \_\_\_\_\_

Job/Position

Title: \_\_\_\_\_ ID#: \_\_\_\_\_

**SUPERVISOR, PLEASE CHECK ALL APPROPRIATE BOXES**

**1. REASONABLE SUSPICION**

• **PHYSICAL SIGNS (Change in employee's normal behavior)**

<input type="checkbox"/> Slurred speech	<input type="checkbox"/> Excessive sweating	<input type="checkbox"/> Staggering walk
<input type="checkbox"/> Odor of Alcoholic Beverage	<input type="checkbox"/> Drowsiness	<input type="checkbox"/> Odor of Marijuana
<input type="checkbox"/> Irritability	<input type="checkbox"/> Nervousness	<input type="checkbox"/> Red Eyes
<input type="checkbox"/> Disoriented	<input type="checkbox"/> Shaky hands (tremors)	<input type="checkbox"/> Excessive talkativeness

• **ABILITY TO WALK?**

<input type="checkbox"/> Unable to	<input type="checkbox"/> Falling	<input type="checkbox"/> Swaying	<input type="checkbox"/> Sagging
<input type="checkbox"/> Grasping for support	<input type="checkbox"/> On hands and knees		<input type="checkbox"/> Normal

• **ABILITY TO STAND?**

<input type="checkbox"/> Swaying	<input type="checkbox"/> Rigid	<input type="checkbox"/> Unable to	<input type="checkbox"/> Other
<input type="checkbox"/> Normal	<input type="checkbox"/> Feet wide apart for balance	<input type="checkbox"/> Continual leaning for Support	

• **SPEECH?**

<input type="checkbox"/> Shouting	<input type="checkbox"/> Rambling	<input type="checkbox"/> Incoherent	<input type="checkbox"/> Boisterous	<input type="checkbox"/> Slow
<input type="checkbox"/> Slurred	<input type="checkbox"/> Crying	<input type="checkbox"/> Whispering	<input type="checkbox"/> Other	<input type="checkbox"/> Normal

• **DEMEANOR?**

<input type="checkbox"/> Fighting	<input type="checkbox"/> Indifferent	<input type="checkbox"/> Excited	<input type="checkbox"/> Hysterical	<input type="checkbox"/> Calm
<input type="checkbox"/> Polite	<input type="checkbox"/> Sleepy	<input type="checkbox"/> Cooperative	<input type="checkbox"/> Irritable	<input type="checkbox"/> Confuse
<input type="checkbox"/> Irritable				

• **ACTIONS?**

<input type="checkbox"/> Punching	<input type="checkbox"/> Kicking	<input type="checkbox"/> Resisting	<input type="checkbox"/> Profanity	<input type="checkbox"/> Normal
<input type="checkbox"/> Threatening		<input type="checkbox"/> Difficult to Awaken		

• **EYES?**

<input type="checkbox"/> Bloodshot	<input type="checkbox"/> Watery	<input type="checkbox"/> Droopy eyelids	<input type="checkbox"/> Normal
<input type="checkbox"/> Wearing glasses	<input type="checkbox"/> and/or Contacts	<input type="checkbox"/> Fixed in a blank state	<input type="checkbox"/> Dilated pupils
<input type="checkbox"/> Constricted pupils			

• **CLOTHING?**

<input type="checkbox"/> Mussed	<input type="checkbox"/> Dirty	<input type="checkbox"/> Partly Dressed	<input type="checkbox"/> Vomited on
<input type="checkbox"/> Defecated in same		<input type="checkbox"/> Urinated in same	<input type="checkbox"/> Normal

• **FACE?**

<input type="checkbox"/> Flushed	<input type="checkbox"/> Pale	<input type="checkbox"/> Normal
----------------------------------	-------------------------------	---------------------------------

• **MOVEMENT OF HANDS?**

Fumbling  Slow  Wringing of hands  
 Excessive Movement  Normal

**2. JOB PERFORMANCE**

- Employee's Job title \_\_\_\_\_ was he/she performing the job at the time?
- Is the Employee ill?  Yes  No. If yes, what are the employee complaints?

---

---

---

---

Did you see him/her operating a vehicle?  YES  NO

Or in a vehicle  YES  NO

Was the Vehicle:

Zig-zagging  Excessive Speed  
 On wrong side of roadway  Too slow  
 Lights not on  Operated disobeying traffic rules

Is employee able to perform job?  YES  NO

If no, Why?

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• **OTHER OBSERVATIONS:**

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Print Supervisor's Name: \_\_\_\_\_

# Attachment C

**Print Supervisor's Title:** \_\_\_\_\_

**Supervisor's Signature:** \_\_\_\_\_

GUIDELINES ON POST-ACCIDENT TESTING

**READ ALL INFORMATION BELOW PRIOR TO SENDING AN EMPLOYEE FOR A POST-ACCIDENT TEST.**

Post-Accident Testing must be conducted under the following circumstances:

1. As soon as practicable following an accident involving a commercial motor vehicle\*, the Authority shall test for alcohol and controlled substances each surviving Authority driver who was performing safety-sensitive functions with respect to the vehicle: (a) if the accident involved the loss of human life; or (b) if the driver receives a citation under state or local laws for a moving traffic violation arising from the accident (where there is bodily injury requiring immediate medical treatment away from the scene of the accident, or disabling damage requiring the vehicle to be transported away by a tow truck).

As per our collective bargaining agreements, employees who operate a commercial motor vehicle must submit to a post-accident alcohol and drug test in those situations where employees are involved in a commercial motor vehicle accident which results in serious physical injury necessitating transportation to a hospital for medical treatment unless the Authority has determined that the accident was not the fault of the employee who was operating the vehicle.

2. The need for a post-accident test is presumed. Any decision not to administer a test must be based on the determination, using the best information available at the time, that a human being did not die or that the commercial motor vehicle driver was not cited for a moving traffic violation arising from the accident within such time that a test could be conducted.
3. Do not delay necessary medical attention for injured employees following an accident in order to get them to a post-accident test.
4. An alcohol test will be administered, under normal circumstances, within two (2) hours following the accident, but under no circumstance, more than eight (8) hours after the accident. If an alcohol test is not administered within two hours following the accident, the supervisor must prepare (and forward to the Designated Employee Representative) a written statement explaining the reason why the test was not promptly administered. **After eight hours, all attempts to test the driver must cease.**
5. No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first. Remind the driver of this requirement.
6. Immediately after the alcohol test, the collection site personnel will administer a controlled substances test.

## Attachment D

7. Additionally, all employees subject to testing must remain available for the urine drug test for up to thirty-two (32) hours following the accident, by ensuring that their immediate supervisor knows of their whereabouts during that period.
  8. If an employee was taken to a medical facility for treatment, he/she may be taken for post-accident testing after being released, if the employee is still within the test window limits (eight hours for alcohol and thirty-two hours for controlled substances).
  9. Failure to remain available for testing is considered a refusal to be tested. A refusal will be treated as a positive test result.
  10. Supervisors must complete a Request for Medical Examination of Employee (G46) Form for their employees and have them escorted as follows: Monday through Friday, 8:00 a.m. – 3:40 p.m., to the nearest MAC site; after 3:40 p.m., weekends, and holidays, to MAC #1 at 180 Livingston Street, Brooklyn.
  11. All employees must be escorted to and from the collection site for Post-Accident testing.
  12. In lieu of administering a post-accident test, the results of a drug or alcohol test administered by on-site state or local police or other public safety officials acting under their own independent authority to test, may be substituted if the results are obtained from such officials.
  13. The tested employee will not be permitted to resume his/her duties until the Facility Director or designee has received written authorization from the Designated Employee Representative and that the alcohol and controlled substance test results are negative.
- \* Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle--
- (1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - (2) Has a gross combination weight rating of 26,001 or more pounds; or
  - (3) Is designed to transport 16 or more passengers, including the driver; or
  - (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

## Attachment E

### **Medical Assessment Center 1**

Location: 180 Livingston Street, 5th Floor, Brooklyn, NY 11201  
Telephone: 347-643-8277/8274/8276 FAX: 347-643-8269/8268  
Hours of Operation: Monday - Friday (8 am - 4 pm)

Directions to MAC: Take "A", "C", "G" to Hoyt/Schermerhorn Street or "2", "3" to Hoyt Street.

### **24-Hour Laboratory: 180 Livingston Street, Brooklyn, NY 11201, Room 5035**

Telephone: 347-643-8282/8283/8284/8285 FAX : 347-643-8267  
Hours of Operation: 24 hours, 7 days/week

### **Medical Assessment Center 3**

Location: 3961 10th Avenue, New York, NY 10034  
Telephone: 212-544-3201 FAX: 212-544-3168  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Use Manhattan-bound "A" Train to 207th Street, the last stop. Facing the fare booth, use stairway on the right and exit on 211th Street. Walk east on 211th Street to 10th Avenue, or take the Bronx bound "1" train to 207th Street and 10th Avenue.

### **Medical Assessment Center 5**

Location: 2556 McDonald Avenue (Avenue X), Brooklyn, NY 11223  
Telephone: 718-714-3123/3124 FAX: 718-714-3878  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Use Coney Island-Stillwell Ave bound "F" train (third car from back) to Avenue X Station. Go down stairway to right and exit on McDonald Avenue diagonally to entrance gate. Go in and make left turn to MAC #5 entrance.

### **Medical Assessment Center 7**

Location: 735 Bay Street, Staten Island, NY 10304  
Telephone: 718-818-8760 FAX: 718-818-8761/8798  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Subway to Staten Island Ferry. Staten Island Ferry to St. George Terminal. From St. George Terminal and Ramp A Bay 1, take the Grant City via Bay St. via Ft. Wadsworth bound S51 bus. Get off at Bay St. & Vanderbilt Ave or take Staten Island Railroad (last car) from St George Station towards Tottenville to Clifton Station. Go down stairway and exit on Bay Street. Walk straight ahead to MAC 7 entrance.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**1.0 Purpose**

It is the policy of the Triborough Bridge and Tunnel Authority (the "Authority") to comply with the requirements of the alcohol and drug testing rules adopted by the Federal Motor Carrier Safety Administration and the U.S. Department of Transportation applicable to entities which employ persons required to have a Commercial Driver's License (CDL). 49 CFR Parts 40, 382, 391, and 395.

Additionally it is the policy of the Authority to operate and maintain its facilities in a safe and efficient manner, to provide a safe environment for its patrons and employees, and to secure and safeguard its revenues for the benefit of the citizens of this state. Safety of the Authority's employees, patrons, and property, and the security of its revenues are jeopardized by the use or ingestion of illegal drugs and controlled substances and the misuse of alcohol. Accordingly, possession or the use or ingestion of illegal drugs and controlled substances or alcohol that may prevent an employee from performing the functions of his/her job safely and/or efficiently is prohibited.

**2.0 Scope**

This policy and procedure applies to all employees required to have a CDL to perform the functions of their position.

**3.0 Definitions**

The following definitions and abbreviations are used in this policy:

- 3.1 **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- 3.2 **Alcohol Concentration (or content):** This means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- 3.3 **Aliquot:** A portion of a specimen used for testing.
- 3.4 **Breath Alcohol Technician (BAT):** An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
- 3.5 **Canceled Test:** In drug testing, a drug test that is declared invalid by the Medical Review Officer (MRO). A canceled test is neither a positive nor a negative test. It is also different from the behavior that constitutes a refusal to submit. When a test is canceled, the employee may be required to submit a new specimen.
- 3.6 **CDL:** Commercial Driver's License.
- 3.7 **CFR:** Code of Federal Regulations.
- 3.8 **Chain-of-Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

- 3.9 **Collection Container:** A container into which the employee urinates to provide the urine sample used for a drug test.
- 3.10 **Collection Site:** A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs and a breath sample for the presence of alcohol. Current Collection Sites are MTA New York City Transit Medical Assessment Centers (MAC). See Attachment E.
- 3.11 **Collection Site Person:** A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.
- 3.12 **Commercial Motor Vehicle:** A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: ( 1) has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds or (2) has a gross vehicle weight rating of 26,001 or more pounds; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of hazardous materials requiring placards.
- 3.13 **Confirmation (or confirmatory)Test:** In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test, following a screening test with a result of 0.02 or greater of breath alcohol concentration that provides quantitative data of alcohol concentration.
- 3.14 **Designated Employer Representative (DER):** The MTA Bridges & Tunnels employee authorized to take immediate action to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. This employee also receives the test results and other communications on behalf of the Authority.
- 3.15 **DHH:** United States Department of Health and Human Services.
- 3.16 **DHHS Drug Panel:** The controlled drugs listed in section 102(6) of the Controlled Substances Act that has been determined as being a risk to public safety. See Appendix A
- 3.17 **DOT:** United States Department of Transportation.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- 3.18 **Driver:** Any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purposes of pre-employment/pre duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle.
- 3.19 **Drug Metabolite:** The specific substance produced when the human body metabolizes a given drug as it passes through the body and is excreted in urine.
- 3.20 **EAP:** TBTA's contracted Employee Assistance Program for all employees or the Personal Services Unit (PSU) of District Council 37 for those employees in the title of Maintainer Bridges & Tunnels.
- 3.21 **EBT:** Evidential Breath Testing Device.
- 3.22 **EMIT:** An immunoassay test for the presence of controlled substances in a fluid. Often used as a screening test.
- 3.23 **Employee:** An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this document "employee" refers to all persons required to have a CDL to perform the function of their position and includes an applicant for employment in a position which requires a CDL.
- 3.24 **Employer:** Any entity which owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer herein includes the TBTA, its' agents, officers and representatives.
- 3.25 **FMCSA:** Federal Motor Carrier Safety Administration which is an agency of the US DOT.
- 3.26 **Gas Chromatography/Mass Spectrometry – GC/MS:** A test used to confirm the presence in the urine of a controlled substance.
- 3.27 **Initial Test (or screening test):** In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- 3.28 **Medical Review Officer (MRO):** A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- 3.29 **Prescribers Report:** Attachment A

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- 3.30 **Probationary Employee:** An employee who has not successfully completed the applicable probationary period for the position to which he/she has been appointed.
- 3.31 **Refuse to Submit:** An employee (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with applicable Federal rules (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with relevant Federal rules, or (3) engages in conduct that clearly obstructs the testing process.
- 3.32 **Safety-Sensitive Position:** Are those positions for which a CDL is required.
- 3.33 **Safety-sensitive function (performing):** An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
- 3.34 **Safety-sensitive function:** Any of those on-duty functions listed below:
- (1) All time at an Authority facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the Authority.
  - (2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
  - (3) All time spent at the driving controls of a commercial motor vehicle.
  - (4) All time, other than driving time, spent on or in a commercial motor vehicle.
  - (5) All time, loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
  - (6) All time spent performing the driver requirements associated with an accident
  - (7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
  - (8) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by the FMCSA regulations, when directed by the Authority.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- (9) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier: and
- (10) Performing any compensated worked for any non motor carrier entity.

- 3.35 **Shipping container:** A container capable of being secured with a tamper evident seal that is used for transfer of one or more specimen bottle(s) and associated documentation from the collection site to the laboratory.
- 3.36 **Specimen bottle:** The bottle that, after being labeled and sealed according to the procedures in this policy, is used to transmit a urine sample to the laboratory.
- 3.37 **Split Specimen:** The employee observed placement, by a collection site person of the employee's urine specimen into two specimen bottles for transmittal to a DHHS certified testing laboratory.
- 3.38 **Substance Abuse Professional (SAP):** A professional knowledgeable about and having clinical experience in the diagnosis and treatment of both drug and alcohol-related disorders. The SAP shall be a licensed physician; a licensed psychologist; a licensed social worker; an employee assistance professional; or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.
- 3.39 **Tampering:** In breath specimens, tampering includes (but is not limited to) the use of any physical, chemical, liquid, vaporous, electronic or other means of attempting to invalidate or negate a breath test.  
  
In urine specimens, tampering includes, but is not limited to: (a) addition of liquid or solid chemicals or other substances to the urine container; heating or cooling the urine and/or the container; or submitting someone else's sample as one's own; (b) causing the production of urine that is sufficiently diluted as to preclude detection of substances therein, such as by ingestion of excess amounts of water or other liquids, use of diurectic or other means.
- 3.37 **Verified Positive Drug Test Result:** A laboratory confirmed-positive test which the MRO determines has no legitimate medical explanation.

#### **4.0 Prohibitions**

- 4.1 An employee may not possess or consume the following while on duty or on Authority property:
  - Alcohol in any form,
  - Controlled substances (including unauthorized prescribed medications)
- 4.2 An employee may not perform a safety-sensitive function with any measurable amount of breath alcohol. A breath alcohol test is positive if it is confirmed at or greater than 0.04. An employee testing 0.04 or greater will be immediately removed from work. If the alcohol level is 0.02 to 0.039, the employee will be removed from

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

safety-sensitive work for 24 hours. Employees who repeatedly test at the 0.02 to 0.039 alcohol level will be subject to disciplinary action.

- 4.3 No employee shall perform safety-sensitive functions within four hours after using alcohol. Whenever the Authority has actual knowledge that an employee has used alcohol within four hours of reporting to duty it shall not permit the employee to perform or continue to perform safety-sensitive functions.
- 4.4 An employee required to take a post-accident alcohol test shall not use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- 4.5 An employee who performs safety-sensitive functions who intends to work while taking a prescribed medication that is a controlled substance or any other prescribed medication which may cause impairment including but not limited to sedation or agitation must submit a written report from the prescriber to the Authority MRO at the time the prescription is written. The report shall contain the names of the medication(s), dosages and duration of treatment as well as a statement documenting the prescriber's recommendation of the medication(s) in view of the safety-sensitive nature of the employee's work. A form for the Prescriber's Report and a list of reportable drugs is available (see Appendix E and Attachment A). Failure to comply with this procedure may subject the employee to discipline and to counseling by the SAP. If in the opinion of the SAP the use of undisclosed prescription medication may indicate substance abuse, the employee may receive a mandatory referral to the EAP.
- 4.6 No employee shall refuse to submit to an alcohol or controlled substance test required under this policy and procedure. Refusal to submit to testing will be treated in the same manner as a positive test.

Refusal includes but is not limited to:

- Alleging sickness after notification to report for testing.
- Failing to provide adequate breath for testing without a valid medical explanation after employee has received notice of the requirement for breath testing.
- Failing to provide adequate urine for controlled substances testing without a valid medical explanation after employee has received notice of the requirement for urine testing.
- Failing to arrive at the Collection Site after notification to report for testing.
- Insubordination or declining to follow directives during the collection and testing procedures.
- Tampering (see Definitions, Paragraph 3.39) with breath or urine specimens, procedures or documentation.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- Undocumented "family emergencies".

**5.0 Non-Availability**

5.1 Only the following situations will exclude an employee from random testing:

- Absence for illness, vacation, medical, immediate family or operational emergency, or previously arranged duty-related obligations (outside training, etc.).
- Non-availability due to any other reason must precede employee notification to be considered bona fide.
- Medical and immediate family emergencies will be those conditions or circumstances which would be of such a degree or nature to preclude or excuse an employee from performing his/her regular tour of duty. The validity of a claimed family emergency will be the decision of the Facility Director or his/her designee in accordance with established practice.

**6.0 Drug and Alcohol Testing**

Whenever testing is ordered, the Authority shall test for both drugs and alcohol except in random testing where an employee could be selected for both drugs and alcohol or (since the alcohol selection testing percentage is lower than the drug testing percentage) drug testing alone.

6.1 Drugs for which testing is to be conducted:

1. Marijuana Metabolites Delta 9-THC
2. Cocaine Metabolites Benzoylecgonine
3. Opiate Metabolites Morphine Codeine
4. Phencyclidine
5. Amphetamines Amphetamine Methamphetamine

6.2 **Types of Testing:**

6.2.1 **Pre-Employment Testing**

All applicants for employment in a position which requires a commercial driver's license must submit to drug testing.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.2.2 Post-Accident Testing**

(See attachment D)

As soon as practicable following an accident involving a commercial motor vehicle, the Authority shall test for alcohol and controlled substances each surviving driver who was performing safety-sensitive functions with respect to the vehicle if the accident involved the loss of human life; or if the driver receives a citation under state or local laws for a moving traffic violation arising from the accident. Alcohol tests will be administered within two hours following the accident, but not more than eight hours after the accident

Following any such accident, employees subject to testing are required to abstain from consuming any alcoholic beverages for eight hours, or until tested, whichever occurs first. Additionally, all employees subject to testing must remain available for urine drug testing for 32 hours, by insuring that their immediate supervisor knows of their whereabouts during the period. Failure to remain available is considered a refusal to be tested.

In addition to the post-accident requirements of the FMCSA, TBTA shall be allowed to require employees who operate a commercial motor vehicle to submit to a post- accident alcohol and drug test in those situations where employees are involved in commercial motor vehicle accidents which result in serious physical injury necessitating transportation to a hospital for medical treatment unless the Authority has determined that the accident was not the fault of the employee who was operating the vehicle. Post-accident tests conducted by TBTA pursuant to this paragraph shall conform to the post-accident procedures of the FMCSA regulations.

**6.2.3 Reasonable Suspicion Testing**

(See attachment B and C)

If a supervisor trained in detecting the signs and symptoms of prohibited drug use or alcohol misuse documents that an employee manifests such signs and symptoms, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, a reasonable suspicion test will be ordered.

**6.2.4 Random Testing**

**6.2.4.1 Random Selection Process**

The selection of employees for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table of a computer-based random number generator that is matched with employee identification number. Under the selection process used, each employee shall have an equal chance of being tested each time selections are made. Because of the nature of random selection it is to be expected that some employees will be selected more than once in a year and some

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

employees may not be selected for extended periods of time. Testing rates are set by the FMCSA (for CDL holders) or set out in the collective bargaining agreements.

**6.2.5 Return to Duty Testing**

6.2.5.1 Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this policy and procedure, the employee shall, with respect to alcohol, undergo a return-to-duty test which must indicate an alcohol concentration of less than 0.02, and with respect to controlled substances, the employee shall undergo a return-to-duty test which must result in a verified negative for controlled substances use.

6.2.5.2 The Authority may direct an employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee.

**6.2.6 Follow-up Testing**

6.2.6.1 Following a determination by a substance abuse professional that an employee is in need of assistance resolving problems associated with alcohol misuse and/or use of controlled substances, the Authority shall ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP and administered by the Authority. The particular length and frequency of such testing is determined by the SAP, but will include at least 6 tests during the first 12 months after a return to duty and may extend to 60 months.

6.2.6.2 Follow-up alcohol testing shall be conducted only when 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 safety-sensitive functions.

6.2.6.3 The Authority may direct an employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee.

**6.2.7 Transfer**

An employee transferring into a safety sensitive position must submit to transfer testing under pre-employment requirements prior to the first time the employee performs safety-sensitive functions. If such transfer testing is positive, the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

transfer will be voided, and the employee treated as though the test were a random test with its attendant consequences.

### **6.3 Notification and Reporting for Testing**

The Manager of Substance Abuse Prevention generates the list of employees to be tested and informs the selected employees' supervisors. The supervisor in turn determines when, in consideration of daily work load, availability of relief personnel, and other factors, to relieve and notify the selected employee. Upon notification, the employee must report directly to the Collection Site, comply with all testing procedures, and report directly back to the job upon completion of the testing process.

Employees may be sent for random alcohol tests just before, during or after performing safety-sensitive functions. Employees may be sent for random drug tests at any time including nights, weekends and holidays.

### **6.4 Levels of Detection**

The cutoff levels are the level at which the test is determined to be positive. The cutoff levels for drug and alcohol screening tests, and confirmatory GC/MS testing are given in the Appendix B. Cutoff levels for screening tests may differ from the cutoff levels set for GC/MS confirmation. Cutoff levels are set by DHHS not by the Authority.

### **6.5 Testing Procedures – Appendix C**

#### **6.5.1 Compliance with 49 CFR 40**

All breath tests and urine collections are carried out by trained technicians in accordance with, and using procedures mandated by, 49 CFR Part 40. Below are a few important highlights from those regulations.

##### **6.5.1.1 Identification**

Any person being tested must provide positive, current, photo-identification to the collection site person/and Breath Alcohol Technician (BAT). Acceptable identification includes a valid state driver's license and a valid Authority employee identification card. If an employee is accompanied to the testing site by a supervisor and does not have such identification in his/her possession, testing will proceed if and only if the supervisor can personally identify the employee.

##### **6.5.1.2 Breath Specimen Collection for Alcohol Testing**

Breath testing for alcohol will be conducted by having the employee exhale into a preliminary breath testing machine approved by NHTSA. If a level of alcohol of 0.02 or higher is detected, a confirmatory test will be run 15 minutes later on an approved evidential breath tester. All such testing is administered by trained Breath Alcohol Technician (BAT) utilizing equipment that is properly maintained and calibrated.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.5.1.3 Urine Specimen Collection for Drug Testing**

The employee will be provided a single-use, collection container, factory sealed in a plastic bag, the seal of which will be broken only in the employee's presence, or by the employee. Urine collection for drug testing will be conducted by having the employee void into the single-use plastic container.

**6.5.1.4 Privacy**

During urine testing for drugs, an employee will be afforded the use of a private stall or otherwise partitioned area in a restroom facility used only for such testing during period of urine specimen collection.

**6.5.1.5 Use of Tamper Evident Shipping Containers**

After the employee has turned over custody of the urine collection container to the collection site personnel the collection site personnel will in the direct view of the employee pour the urine specimen into two specimen bottles. Thirty 30 ml. shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml. shall be poured into the other bottle, to be used as the split specimen. The two specimen bottles and the accompanying documentation shall be placed in a shipping container. The collection site person shall seal the container and its documentation in a tamper evident shipping container for transportation to the testing laboratory. "Tamper evident" means a transport container so designed that once sealed, it cannot be opened without physical destruction of some part of it, such that any attempt to open it will be immediately apparent to even an untrained observer.

**6.5.1.6 Chain of Custody Documentation**

At the start of the urine collection procedure, the collection site person will initiate a Chain of Custody document, and will complete it in the direct view of the employee. The Chain of Custody documents the handling of the specimen from receipt of the specimen by the collection site person, to the receipt of the specimen by the testing laboratory. See Appendix C.

**6.5.1.7 DHHS Certified Laboratories**

Only laboratories certified by the DHHS will be used for the testing of urine samples.

**6.5.1.8 Initial Urine Screening Tests**

Upon receipt of a urine specimen, the receiving laboratory will conduct initial screening tests using procedures in accordance with 49 CFR Part 40, to determine any preliminary indicators of the presence of drugs.

**6.5.1.9 Confirmation Testing**

If the screening test indicates the possible presence of drugs, or the presence of unusual chemicals or agents that may interfere with the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

screening test results and/or suggest possible specimen tampering, the laboratory will conduct confirmation testing using GC/MS procedures.

**6.5.1.10 Security of Results**

The results of urine testing will be reported by secure electronic transmission directly to the MRO.

**6.5.1.11 Medical Review of Positive Drug Results**

Any urine specimen reported by the laboratory as being positive for drugs after GC/MS testing will be reviewed by the MRO. The MRO will review all available medical reports and documentation, contact the employee, and will interview (and examine as required) the subject employee. The MRO will report a verified positive (if no legitimate, alternative medical explanations are documented) to the Substance Abuse Prevention Program Manager and the Employee Assistance Program.

**6.5.2 Requests for Specimen Re-tests**

If an employee disputes positive test results, she/he may request a re-test of the specimen, provided such a request is made to the MRO, within 72 hours of the original notification by the MRO of a positive result. The re-test is conducted on a portion the original specimen (the "split"), which is maintained in storage at the laboratory. Re-tests are performed at a DHHS-certified laboratory. The employee does not have the option to provide a separate, second specimen for re-testing, and administrative or personnel actions based on the original test results will not be delayed pending the result of the re-test. The presence of drug(s) (identified in the original test), in a re-test upholds the original test result and the employee must pay the Authority the cost of the re-test. If the original test result is not upheld by the re-test the Authority will pay for the cost of the re-test and the MRO will void the original test and investigate the reason for the discrepancy in results.

**6.5.3 Monitoring for Tampering**

If the employee is suspected by Collection Site Personnel of tampering with a urine specimen, a second specimen will be collected under observation by Collection Site or Supervisory personnel of the same sex. Both the suspected tampered specimen and the observed specimen will be forwarded to the laboratory for testing and all future specimens will be observed. Even if both specimens are negative for drugs, tampering itself may subject the employee to disciplinary action, which may include termination.

Measures of temperature, specific gravity, and other special chemical tests are made by the laboratory on all urine specimens to check for tampering. If the employee is suspected of tampering by the MRO

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

(upon review of laboratory reports), all future tests for that employee will be under observed conditions. Such observed conditions will begin, for each test, at the time the employee is notified of selection for any test.

**7.0 Education and Treatment**

**7.1 Drug Awareness Training**

Every employee in a safety-sensitive position, and every supervisor of these employees will receive initial and ongoing information or training in:

- the effects of alcohol and controlled substances use on an individual's health, work, and personal life,
- recognition of the signs and symptoms of an alcohol or a controlled substances problem and
- how to utilize the Employee Assistance Program.

**7.2 Anti-Drug Information/Wellness Program**

Educational mailings and/or distributions concerning a wide variety of lifestyle issues, including drug and alcohol abuse, will be made periodically to all employees and their families.

**7.3 Employee Assistance Program**

The Authority offers its employees and their family members an EAP to aid them in working out personal difficulties that may be affecting their lives, performance on the job, and possibly contributing to the misuse of alcohol or controlled substances, or exacerbating other medical illnesses or problems. Any employee may at any time seek confidential assistance through the Authority EAP. Employees in the title of Maintainer Bridges and Tunnels may also seek confidential assistance through the PSU of DC 37.

Management referral or permission is not required. The EAP is staffed with fully trained mental health and substance abuse specialists, who can assist with a program to help with all problems of living. Any reference to the EAP refers to the EAP contracted with the Authority. No other EAP will be recognized under this policy to provide mandatory treatment or advice under this policy for Authority employees except for the PSU of District Council 37 for employees in the title of Maintainer Bridges & Tunnels.

**7.4 Outside EAP Provider**

To ensure confidentiality and make employees more comfortable using the EAP, the Authority contracts with an outside service company to provide the EAP. The current provider and its telephone numbers are noted in Appendix D. Should the provider change, the Authority will advise all employees of the new provider's selection by direct household mailings or work location postings.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**7.5 Mandatory EAP Referrals**

Services through the EAP are confidential provided an employee seeks those services voluntarily. Under this Policy, employees who have a first positive alcohol or drug test, and are evaluated as needing treatment by the SAP, receive mandatory referrals to the EAP or the PSU of District Council 37 for employees in the title of Maintainer Bridges & Tunnels. Since those referrals are initiated by the Authority, the Authority is naturally aware of the circumstance involved. In such cases the EAP will share sufficient information with the MRO in order to determine when an employee who has tested positive is ready to return to work. An eligible employee will be afforded the opportunity to accept rehabilitation through counseling only once in that employee's career, following a positive alcohol or drug test.

**7.5.1 Rules Pertaining to Mandatory Referrals and Follow-Up**

**7.5.1.1 Employee Assistance Program – Eligible Employee:**

A permanent employee with the Authority who has a first positive alcohol or drug test will be eligible to be referred to the EAP and will be required to participate in counseling. Failure to satisfactorily attend, participate in and complete the required counseling, rehabilitation and aftercare will result in discipline up to and including dismissal from service. An eligible employee will be afforded the opportunity to accept rehabilitation through counseling only once in that employee's career. No employee who has been convicted in any court of competent jurisdiction of the possession or sale of illegal drugs or controlled substances will be eligible to participate in the EAP. Any such employee will be subject to discipline up to and including dismissal from service.

**7.5.1.2 Entry into Mandatory Treatment**

The employee must contact the Authority's EAP within 72 hours of referral. She/he must comply with any treatment the EAP counselors recommend.

When the employee is released from any prescribed treatment, she/he must contact the MRO within 72 hours to schedule a post-treatment evaluation, and at the evaluation, present for review a letter from the treatment provider certifying that she/he has complied with treatment, agrees to any recommended after-care, and is able to return to duty without restriction.

As part of the return-to-duty evaluation, the employee will be tested for drugs and alcohol. If this test is positive, she/he will be dismissed from employment with the Authority. If this test is negative, she/he will be entered into the follow-up testing program, wherein all tests must be negative.

**7.5.1.3 Mandatory Follow-Up Testing Guidelines**

Employees subject to mandatory follow-up testing must comply with the following rules, which the Authority may amend from time to time as required under FMCSA rules. The Authority will give the Union advance notice as to proposed amendments.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

1. The employee will receive unannounced follow-up drug and alcohol testing for a period of time specified by the Authority's SAP, not to exceed sixty months. If the employee is notified of a test, he/she must report directly to the Collection Site for testing.
2. Failure to submit to a properly-required drug and alcohol test, or tampering with specimens, specimen or test procedures or test documentation, will subject him/her to discipline up to and including discharge. If the employee is suspected by Collection Site Personnel of tampering with a urine specimen, a second specimen will be collected under observation by the Collection Site Personnel or Supervisory Personnel of the same sex. Both the suspected tampered specimen and the observed specimen will be forwarded to the lab for testing. Even if both specimens are negative for drugs, tampering itself is an offense subject to discipline up to and including dismissal. If the employee is suspected by the MRO of specimen tampering all future tests for the employee (follow-up and otherwise) will be under observed conditions.
3. The employee must meet with the SAP for monitoring and counseling appointments, if scheduled by the SAP. The employee may call the SAP at any time to set up an appointment if she/he desires.
4. If the employee desires treatment or assistance, she/he may request it by calling the EAP or the SAP. However, if the employee requests assistance or treatment after she/he has been notified of selection for any test, asking for assistance will not block the test from occurring, and she/he must still submit to testing. Asking for assistance after being notified of a test will not alter the administrative or disciplinary consequences of such testing if those test results are positive.
5. The employee must comply with any treatment or aftercare plan prescribed by the Authority's EAP, a treatment provider, or the SAP. If any disputes arise as to the recommended treatment plan the MRO will have the final decision. If the employee is returned to work while still completing a part of his/her primary treatment or aftercare program, she/he must still complete all parts of the prescribed treatment or aftercare. If the employee drops out of treatment or aftercare before completing it, drops out against medical advice, or is otherwise non-compliant with prescribed treatment or aftercare, she/he will be medically disqualified from working pending successful completion of the prescribed program. Noncompliance with any aspect of prescribed treatment or aftercare will result in disciplinary action in which the Authority will seek the employee's termination.
6. Participation in follow-up testing, the EAP, or any aspect of any employee assistance program does not alter or prevent appropriate administrative or disciplinary action for any violation of Authority

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

rules and regulations.

7. The employee must inform the MRO (see form in Appendix E) of the specific medication when she/he is taking a prescribed drug or medication, such as (but not limited to) those listed on the Authority's Notice concerning restricted medications (see list in Appendix F). A copy of this notice will be made available to the employee. It is illegal for the employee to take any prescription drug or medication prescribed for anyone else.

### **8.0 Confidentiality**

An employee's test results, and the fact of and circumstances relating to an employee's participation in the EAP, will be treated as confidential medical information and maintained in complete confidence in the Personnel Division. Such information will be disclosed only to the Director of Personnel, the MRO, the SAP, Labor Relations and such other personnel as have a need to know. All personnel with a need to know will execute a statement of confidentiality. Statistical compilations, not identifying the individuals in question, may be made of testing and EAP data and made available to the public and/or regulators.

In the event that an employee, or any Union or other representative of that employee, makes disclosure of test result or EAP participation, further disclosure of the information may be made by the Authority to the extent necessary to protect its and the public's interest, after consultation with the General Counsel.

The Authority will not voluntarily disclose the results of the random testing procedure to law enforcement agencies or officials.

Unauthorized disclosure of information about drug and alcohol testing results by any person authorized to possess such information is prohibited. Unauthorized disclosure of such information is punishable by discipline up to and including dismissal, after a hearing where applicable. Possession of confidential information by persons not authorized to have such information, is also prohibited and punishable by discipline up to and including dismissal, after a hearing where applicable.

The confidential aspect of testing refers only to results of the tests. Persons having access to results must maintain the confidentiality of the laboratory and MRO reports to protect the tested individual's identity. Secrecy, in the sense that others know that a random testing sample has been drawn is not part of the procedure.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix A

### Drug Test Panels

#### DHHS Panel

- Marijuana Metabolites  
Delta 9-THC
  
- Cocaine Metabolites  
Benzoyllecgonine
  
- Opiate Metabolites  
Morphine  
Codeine
  
- Phencyclidine
  
- Amphetamines  
Amphetamine  
Methamphetamine

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**Appendix B**

**Levels of Detection**

Breath alcohol levels are expressed as Breath Alcohol Concentration (BAC), as measured by the test equipment in the Collection Site. If any measurable level of alcohol is found on the initial test the employee shall be administered a confirmatory test shall be administered. If the confirmatory test result is a blood alcohol of concentration at least 0.02 but not more than 0.039, the employee shall be removed from work for at least 24 hours. If the confirmatory test result equals or exceeds 0.04, the result is reported as positive initial test

The following are the levels of detection, expressed in nanograms per milliliter for substances in the current urine test panels. If a screening test result equals or exceeds the cutoff level shown, the laboratory's automatic action is to perform a confirmatory test. If the confirmatory test result equals or exceeds the cutoff level shown, the test is reported as positive by the laboratory. These cutoff levels are subject to change due to FMCSA regulations.

<b>Substance</b>	<b>Screening DHHS</b>	<b>Confirmatory DHHS</b>
Marijuana Metabolites	50	
Delta 9-THC		15
Cocaine Metabolites	300	
Benzoylecgonine		150
Opiate Metabolites	300	
Morphine		300
Codeine		300
Phencyclidine	25	25
Amphetamines	1000	
Amphetamine		500
Methamphetamine		500

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix C

### Alcohol and Drug Testing Procedures

**1. Notification**

- a. The employee will be notified in private that he or she was randomly selected to provide a urine and/or breath specimen to be testing for the presence of drugs and/or alcohol.
- b. Employees selected to be tested pursuant to TBTA's Drug Testing Policy and Procedure shall continue to be on the clock during the testing procedures.
- c. The employee's supervisor will review the Request for Medical Examination form with the employee. The employee must verify that the employee has his or her driver's license and their TBTA I.D. card before leaving the facility.
- d. The employee will report immediately (arrive within one hour of notification) to the MTA NYCTA MAC closest to their facility or if it after 2:00 p.m. a weekend or holiday to MAC #1.
- e. When the employee arrives at the MAC the employee must identify themselves to security personnel and tell them they are there for a random drug/alcohol screening. When the employee arrives at the actual collection site they must identify themselves as a TBTA employee.
- f. If the employee is chosen randomly for alcohol and drug testing, the employee will provide a breath sample prior to providing a urine specimen.

**2. Preparation for Breath Alcohol Testing**

- a. When the employee enters the alcohol testing location, the Breath Alcohol Technician (BAT) will require him or her to provide positive identification (e.g., through use of a photo I.D. card or identification by the Authority's representative). On request by the employee, the BAT shall provide positive identification to the employee.
- b. The BAT shall explain the testing procedure to the employee.

**3. Procedures for Screening Tests**

- a. The BAT shall complete Step 1 on the Breath Alcohol Testing Form. The employee shall then complete Step 2 on the form by signing the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

- b. An individually sealed mouthpiece shall be opened in the view of the employee and BAT and attached to the Evidential Breath Tester (EBT) in accordance with the manufacturer's instructions.
- c. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- d. The BAT shall ensure, before the screening test is administered to each employee that he/she and the employee read the sequential test number displayed by the EBT.
- e. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper evident tape).
- f. If the EBT prints the test results directly on the form, the BAT shall show the employee the results displayed on the EBT.
- g. If any case in which the result of the screening tests is a breath alcohol concentration of less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- h. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
- i. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with the rules, the test is invalid and the Authority and employee shall so be advised.
- j. No further testing is authorized. The BAT shall transmit the result of less than 0.02 to the Authority in a confidential manner and the Authority shall receive and store the information so as to ensure that confidentiality is maintained as required by the rules.
- k. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed.
- l. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

**4. Procedures for Confirmation Tests**

- a. The BAT shall instruct the employee not to eat, drink, put any object or substance in his/her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact, that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
- b. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
- c. A new mouthpiece shall be used for the confirmation test.
- d. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using the instrument, which shall be taken out of service. However, testing may proceed on another instrument. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is completed and the EBT is found to be within tolerance limits.
- e. Before the confirmation test is administered for each employee, the BAT shall ensure that he or she and the employee read the sequential test number displayed by the EBT.
- f. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
- g. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

displayed on the EBT. The BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).

- h. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
- i. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- j. If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section.
- k. If a test result printed by the EBT does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the confirmation test (see paragraph (e) of this section), the BAT shall note the disparity in the "Remarks:" section. Both the employee and the BAT shall initial and sign the notation. In accordance with the rules, the test is invalid and the employee shall be so advised.
- l. The BAT shall transmit all results to the Authority in a confidential manner.

**5. Refusals to Test and Uncompleted Test**

- a. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the Authority.
- b. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

**6. Inability to Provide an Adequate Amount of Breath**

- a. In any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition the following procedures shall be followed.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

- b. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the Authority.
- c. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the Authority.
- d. If the employee attempts and fails to provide an adequate amount of breath, the Authority shall proceed as follows:
- e. The Authority shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.
- f. If the MRO determines, in his/her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the Authority a written statement of the basis for his/her conclusion.
- g. If the MRO, in his/her reasonable medical judgment, is unable to make a determination concerning employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The MRO shall provide a written statement of the basis for his/her conclusion to the Authority.

**7. Preparation for Drug Testing**

- a. When an employee arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the Authority's representative). If the employee's identify cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.
- b. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The employee may retain his or her wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

- c. The employee shall be instructed to wash and dry his or her hands prior to urination.
- d. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, a faucet, a soap dispenser, a cleaning agent or any other materials which could be used to adulterate the specimen.
- e. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container. The employee shall have a maximum of three hours to provide a complete specimen.
- f. The collection site person shall note any unusual behavior or appearance of the employee on the urine custody and control form.
- g. In the exceptional event that the Authority-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures; A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the employee not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.
- h. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml. If the individual is unable to provide at least 45 ml of urine, the collection site person shall instruct the employee to drink no more than 24 ounces of fluids in order to produce more urine.
- i. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml. shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml. shall be poured into the other bottle, to be used as the split specimen. If a single specimen bottle is used as collection container, the collection site person, in the presence of the donor, shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).

- j. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.

**8. Testing of the Split Specimen**

- a. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.
- b. Then the MRO informs the laboratory in writing that employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
- c. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
- d. Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split specimen.
- e. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall void the test, and report the void and the reasons for it to the Authority and the employee.

**9. Post Collection**

- a. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
- b. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used, must accurately reflect the temperature of the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.
- c. A specimen temperature outside the range of 32.5° - 38°C or

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

90.5°F- 100°F constitutes a reason to believe that the individual has altered or substituted the specimen. In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

- d. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.
- e. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
- f. Whenever there is reason to believe that a particular employee has altered or substituted the specimen. A second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
- g. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled.
- h. As provided below, the specimen shall be sealed {by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.
- i. The collection site person and the employee being tested shall be present at the same time during collection procedures.
- j. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him/her.
- k. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
- l. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b>	<b>ADM 01-15-01</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

fact the specimen he/she provided.

- m. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.
- n. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.
- o. The employee must have the collection site person indicate on their (G46) Request for Medical Examination form the time they completed testing and then return immediately to their facility to resume his/her tour of duty.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
Commercial Driver's License (CDL)**

<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**Appendix D**

The Employee Assistance Program is:

Corporate Counseling Associates

475 Park Avenue South

New York, NY 10016

Contact: Any Counselor

24-hour Hot Line: (800) 833-8707

Any employee or family member may self-refer in confidence to the EAP.

Important note: The EAP is, by conscious decision by the Authority, a "broad-brush" program. Because hundreds of Authority families utilize the service for various problems of living, there is no drug or alcohol stigma connected with a visit to the EAP.

Personal Services Unit (PSU), District Council 37	(212) 815-1250
<b>National Hotline Numbers</b>	
Alcohol and Drug Referral Hotline	1-800-252-6465
National Cocaine Hotline	1-800-262-2463
Narcotics Anonymous	(Regional Office) (212) 929-6262
National A.I.D.S. Hotline	(English) 1-800-342-2437
	(Spanish) 1-800-7432

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Employees Required to Hold A  
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<b>Chapter Number:</b> ADM 01-15-01	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix E

### ***CLASSES OF REPORTABLE PRESCRIPTION AND PATENT MEDICATIONS***

Below is a list of prescription drugs and patent medicines as referenced in this Policy. Employees who have consumed any of the prescription drugs described are required to report such consumption to the MRO using Form (Prescriber's Report and Recommendation). **The list is intended only as a guide and is not all-inclusive.** Employees should confer with the MRO regarding any questions on medications that are not listed.

#### **ANALGESICS**

Aspirin with codeine, Codeine, Darvocet, Darvon, Demerol, Dilaudid, Empirin Compound w/codeine, evo-Dromoran, Methadone, Morphine, Percocet, Percodan, Soma Compound w/codeine, Talacet, Talwin, Tylenol w/codeine, Vicodin.

#### **ANTI-MOTION-SICKNESS**

Antivert, Dramamine, Marezine, Phenergan, Transderm-Scop.

#### **TRANQUILIZERS & SEDATIVES**

Ativan, Benadryl, Centrax, Compazine, Dalmane, Diazepam, Equanil, Halcion, Haldol, Libritabs, Librium, Limbitrol, Paxipam, Prolixin, Serax, Stelazine, Thorazine, Tranxene, Valium, Valrelease, Xanax.

#### **ANTIDEPRESSANTS**

Adapin, Amitriptyline, Asendin, Deprol, Desyrel, Elavil, Endep, Etrafon, Libitrol, Lithium, Ludiomil, Marplan, Nardil, Norpramin, Pamelor, Parnate, Pertofrane, Sinequan, Surmontil, Tofranil, Triavil, Vivactil.

#### **BARBITURATES**

Alurate, Butisol, Dilantin, Mebaral, Nembutal, Pentobarbital, Phenobarbital, Seconal, Sedapap, Tuinal.

#### **SKELETAL MUSCLE RELAXANTS**

Flexeril, Parafon, Soma

#### **NON-PRESCRIPTION COUGH & COLD REMEDIES, ANTIHISTMINES**

(Not required to be reported, but employees should pay particular attention to labels indicating drowsiness or restrictions regarding driving and/or working around machinery, and adjust their dosage accordingly.)

Benadryl, Bromfed, Chlortrimeton, Comtrex, Contact, Deconamine, Dimetapp, Dristan, Drixoral, Extendryl, Fedahist, Kronofed, Naldecon, Nalamine, Novafed, Omade, Rondec, Rynatan, Sinubid, Sinulin, Tavist-D.



# Bridges and Tunnels

## Prescriber's Report and Recommendation

Fax completed form to:

**Robert J. Nadig, M.D.**  
**331 West 57<sup>th</sup> Street, Suite 307**  
**New York, New York 10019**  
**FAX: 1-888-806-2674**

**Instructions:** Employee fills in this section, presents form to physician (M.D. or D.O. only). Print clearly.

Employee's Name (Print): \_\_\_\_\_ Job Title: \_\_\_\_\_ Facility: \_\_\_\_\_ TBTA ID# \_\_\_\_\_

Day Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

To My Doctor (M.D. or D.O.):

Please provide the information requested below for use by MTA Bridges and Tunnels' Medical Review Officer (MRO). This is necessary because of safety concerns involving the use of medications by Maintainers, CDL holders, Bridge and Tunnels Officers, Sergeants and Lieutenants in safety sensitive positions.

I herewith authorize you to release this information to the MTA Bridges and Tunnels' MRO, and thank you for your assistance in this matter.

\_\_\_\_\_ Date

\_\_\_\_\_ Employee's Signature

**Doctor (M.D. or D.O.): Complete this section. Return to employee or send directly to MRO.**

**Report:** This verifies that I have prescribed the following medication(s) for the above-named patient

(if more space is needed check [  ] and use back of form): (if none-please state none)

MEDICATION and date prescribed (Please Print Clearly)	STRENGTH & NUMBER OF PILLS	DIRECTIONS	DURATION(days/weeks) (If PRN, end date required)

**Recommendation:** I further certify and attest that, with full knowledge of the patient's job description and duties, in my opinion this patient may safely consume these medications at the dosage listed above while on duty or subject to duty.

**REQUIRED:** The medication(s) above is (are) prescribed for the following diagnosis(es):

Signature of Prescriber (M.D. or D.O.): \_\_\_\_\_

Print Name Clearly: \_\_\_\_\_

Print Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

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

### GUIDELINES ON REASONABLE SUSPICION TESTING

#### **AUTHORIZED SUPERVISORS SHOULD READ ALL INFORMATION BELOW PRIOR TO SENDING AN EMPLOYEE FOR A REASONABLE SUSPICION TEST**

- An employee shall be required to submit to an alcohol and controlled substance test when a trained supervisor has reasonable suspicion to believe that the employee has violated the alcohol or controlled substance prohibitions of the Federal Motor Carrier Safety Administration (FMCSA) rules or the Authority's internal rules or policies.
- The determination that reasonable suspicion exists to require an alcohol and controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the affected employee.
- The observations may include indications of the chronic and/or withdrawal effects of controlled substance.
- The required observations for reasonable suspicion testing shall be made by a supervisor who is trained in accordance with FMCSA rules.
- The supervisor's decision must be made promptly, using the following steps:
  - Remember that the primary issue is **safety**. Employees believed to be under the influence of a prohibited substance are an immediate hazard to themselves and to others. Whether management subsequently obtains proof to substantiate reasonable suspicion of substance abuse is secondary to assuring safety.
  - The first steps are observing and interviewing, then documenting.
- **Observe** – Observations reported by others, even anonymously, must be confirmed by the supervisor's own observations. **Hearsay is not an acceptable basis for a reasonable suspicion referral.** If witnesses saw a specific event or behavior, the supervisor should ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was substance abuse-related behavior? On what basis did they reach their conclusions?
- The supervisor should observe the employee. What can the supervisor observe and objectively document as it related to physical signs and symptoms, emotional state, physical evidence, and related facts?

## Attachment B

- **Interview** – After observing any of the factors described above giving rise to reasonable suspicion, a supervisor may ask the employee to explain the suspected behavior and describe the events that took place from his or her perspective. A persuasive explanation should not deter or prevent you from requiring a test if you have a reasonable belief that prohibited drug use or alcohol misuse is involved. Denial should be an expected reaction. If an employee knows he/she will test positive, he/she may give many explanations and protests, wanting to avoid testing. As a result, a reasonable suspicion decision must be based on objective observations. Remember, a request for the urine specimen and a breath test is not an accusation; it is merely a request for additional objective data.

Before you begin the interview, remove the employee from the vehicle or workplace and talk to him/her in a private setting.

It is important to respect the dignity and privacy of employee during the interview.

- **Review Observations** – During the conversation, observe physical and behavioral symptoms. Be sure to document any characteristics or observations that bear upon the determination to test. The FHWA rules only require that one supervisor make the reasonable suspicion referral. However, if possible, a second supervisor at the site should be asked to confirm the observation.
- **Make the Reasonable suspicion Decision** – Based upon your observations and interview, decide whether there is reason to suspect that the employee has violated the relevant alcohol and controlled substances prohibitions. If so, complete the Request For Medical Examination Of Employee Form (G46). It is essential that all reasonable steps be taken to have the breath alcohol test administered within two (2) hours following the determination, a record must be made of the reason(s) the alcohol test was not promptly administered. If the alcohol test is not administered within eight (8) hours following the determination, attempts to administer the test must cease and a record must be made of the reason(s) for not administering the test.
- **Inform the Employee** – After you have made the reasonable suspicion decision, explain to the employee that you believe that he or she may not be fit for duty and that he or she will be escorted to and from the pertinent MAC collection site. Inform the employee of the consequences of refusal and that he or she is being relieved from duty.

## Attachment B

- **Document Events** – Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion test by using the “Supervisor’s Report and Observations of Reasonable Suspicion Form” provided in this book. The signs and symptoms to look for are more fully described in the fact sheets and the “Americans for a Drug Free America” booklet in the back of the Facility book. The FMCSA requires that the documentation must be completed within twenty-four (24) hours of sending the employee for the test.
- **Return to duty** – The tested employee will not be permitted to resume his/her duties until the Facility Director or designee has received written authorization from the Designated Employee Representative.



## Bridges and Tunnels

**Supervisor's Report and Observations of  
Reasonable Suspicion  
Drug and Alcohol Testing Program**

Date and Time of Occurrence/Observation: \_\_\_\_\_

Place./Location of Incident/Event: \_\_\_\_\_

Employee's Name: \_\_\_\_\_

Job/Position

Title: \_\_\_\_\_ ID#: \_\_\_\_\_

**SUPERVISOR, PLEASE CHECK ALL APPROPRIATE BOXES****1. REASONABLE SUSPICION****• PHYSICAL SIGNS (Change in employee's normal behavior)**

<input type="checkbox"/> Slurred speech	<input type="checkbox"/> Excessive sweating	<input type="checkbox"/> Staggering walk
<input type="checkbox"/> Odor of Alcoholic Beverage	<input type="checkbox"/> Drowsiness	<input type="checkbox"/> Odor of Marijuana
<input type="checkbox"/> Irritability	<input type="checkbox"/> Nervousness	<input type="checkbox"/> Red Eyes
<input type="checkbox"/> Disoriented	<input type="checkbox"/> Shaky hands (tremors)	<input type="checkbox"/> Excessive talkativeness

**• ABILITY TO WALK?**

<input type="checkbox"/> Unable to	<input type="checkbox"/> Falling	<input type="checkbox"/> Swaying	<input type="checkbox"/> Sagging
<input type="checkbox"/> Grasping for support	<input type="checkbox"/> On hands and knees		<input type="checkbox"/> Normal

**• ABILITY TO STAND?**

<input type="checkbox"/> Swaying	<input type="checkbox"/> Rigid	<input type="checkbox"/> Unable to	<input type="checkbox"/> Other
<input type="checkbox"/> Normal	<input type="checkbox"/> Feet wide apart for balance	<input type="checkbox"/> Continual leaning for Support	

**• SPEECH?**

<input type="checkbox"/> Shouting	<input type="checkbox"/> Rambling	<input type="checkbox"/> Incoherent	<input type="checkbox"/> Boisterous	<input type="checkbox"/> Slow
<input type="checkbox"/> Slurred	<input type="checkbox"/> Crying	<input type="checkbox"/> Whispering	<input type="checkbox"/> Other	<input type="checkbox"/> Normal

**• DEMEANOR?**

<input type="checkbox"/> Fighting	<input type="checkbox"/> Indifferent	<input type="checkbox"/> Excited	<input type="checkbox"/> Hysterical	<input type="checkbox"/> Calm
<input type="checkbox"/> Polite	<input type="checkbox"/> Sleepy	<input type="checkbox"/> Cooperative	<input type="checkbox"/> Irritable	<input type="checkbox"/> Confuse
<input type="checkbox"/> Irritable				

**• ACTIONS?**

<input type="checkbox"/> Punching	<input type="checkbox"/> Kicking	<input type="checkbox"/> Resisting	<input type="checkbox"/> Profanity	<input type="checkbox"/> Normal
<input type="checkbox"/> Threatening		<input type="checkbox"/> Difficult to Awaken		

**• EYES?**

<input type="checkbox"/> Bloodshot	<input type="checkbox"/> Watery	<input type="checkbox"/> Droopy eyelids	<input type="checkbox"/> Normal
<input type="checkbox"/> Wearing glasses	<input type="checkbox"/> and/or Contacts	<input type="checkbox"/> Fixed in a blank state	<input type="checkbox"/> Dilated pupils
<input type="checkbox"/> Constricted pupils			

**• CLOTHING?**

<input type="checkbox"/> Mussed	<input type="checkbox"/> Dirty	<input type="checkbox"/> Partly Dressed	<input type="checkbox"/> Vomited on
<input type="checkbox"/> Defecated in same		<input type="checkbox"/> Urinated in same	<input type="checkbox"/> Normal

**• FACE?**

<input type="checkbox"/> Flushed	<input type="checkbox"/> Pale	<input type="checkbox"/> Normal
----------------------------------	-------------------------------	---------------------------------

- **MOVEMENT OF HANDS?**  
 Fumbling  Slow  Wringing of hands  
 Excessive Movement  Normal

**2. JOB PERFORMANCE**

- Employee's Job title \_\_\_\_\_ was he/she performing the job at the time?
- Is the Employee ill?  Yes  No. If yes, what are the employee complaints?

---

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---

Did you see him/her operating a vehicle?  YES  NO

Or in a vehicle  YES  NO

Was the Vehicle:

- |   |  |
|---|--|
| <input type="checkbox"/> Zig-zagging              | <input type="checkbox"/> Excessive Speed                   |
| <input type="checkbox"/> On wrong side of roadway | <input type="checkbox"/> Too slow                          |
| <input type="checkbox"/> Lights not on            | <input type="checkbox"/> Operated disobeying traffic rules |

Is employee able to perform job?  YES  NO

If no, Why?

---

---

---

• **OTHER OBSERVATIONS:**

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Print Supervisor's Name: \_\_\_\_\_

# Attachment C

**Print Supervisor's Title:** \_\_\_\_\_

**Supervisor's Signature:** \_\_\_\_\_

GUIDELINES ON POST-ACCIDENT TESTING

**READ ALL INFORMATION BELOW PRIOR TO SENDING AN EMPLOYEE FOR A POST-ACCIDENT TEST.**

Post-Accident Testing must be conducted under the following circumstances:

1. As soon as practicable following an accident involving a commercial motor vehicle\*, the Authority shall test for alcohol and controlled substances each surviving Authority driver who was performing safety-sensitive functions with respect to the vehicle: (a) if the accident involved the loss of human life; or (b) if the driver receives a citation under state or local laws for a moving traffic violation arising from the accident (where there is bodily injury requiring immediate medical treatment away from the scene of the accident, or disabling damage requiring the vehicle to be transported away by a tow truck).

As per our collective bargaining agreements, employees who operate a commercial motor vehicle must submit to a post-accident alcohol and drug test in those situations where employees are involved in a commercial motor vehicle accident which results in serious physical injury necessitating transportation to a hospital for medical treatment unless the Authority has determined that the accident was not the fault of the employee who was operating the vehicle.

2. The need for a post-accident test is presumed. Any decision not to administer a test must be based on the determination, using the best information available at the time, that a human being did not die or that the commercial motor vehicle driver was not cited for a moving traffic violation arising from the accident within such time that a test could be conducted.
3. Do not delay necessary medical attention for injured employees following an accident in order to get them to a post-accident test.
4. An alcohol test will be administered, under normal circumstances, within two (2) hours following the accident, but under no circumstance, more than eight (8) hours after the accident. If an alcohol test is not administered within two hours following the accident, the supervisor must prepare (and forward to the Designated Employee Representative) a written statement explaining the reason why the test was not promptly administered. **After eight hours, all attempts to test the driver must cease.**
5. No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first. Remind the driver of this requirement.
6. Immediately after the alcohol test, the collection site personnel will administer a controlled substances test.

## Attachment D

7. Additionally, all employees subject to testing must remain available for the urine drug test for up to thirty-two (32) hours following the accident, by ensuring that their immediate supervisor knows of their whereabouts during that period.
  8. If an employee was taken to a medical facility for treatment, he/she may be taken for post-accident testing after being released, if the employee is still within the test window limits (eight hours for alcohol and thirty-two hours for controlled substances).
  9. Failure to remain available for testing is considered a refusal to be tested. A refusal will be treated as a positive test result.
  10. Supervisors must complete a Request for Medical Examination of Employee (G46) Form for their employees and have them escorted as follows: Monday through Friday, 8:00 a.m. – 3:40 p.m., to the nearest MAC site; after 3:40 p.m., weekends, and holidays, to MAC #1 at 180 Livingston Street, Brooklyn.
  11. All employees must be escorted to and from the collection site for Post-Accident testing.
  12. In lieu of administering a post-accident test, the results of a drug or alcohol test administered by on-site state or local police or other public safety officials acting under their own independent authority to test, may be substituted if the results are obtained from such officials.
  13. The tested employee will not be permitted to resume his/her duties until the Facility Director or designee has received written authorization from the Designated Employee Representative and that the alcohol and controlled substance test results are negative.
- \* Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle--
- (1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - (2) Has a gross combination weight rating of 26,001 or more pounds; or
  - (3) Is designed to transport 16 or more passengers, including the driver; or
  - (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

## Attachment E

### **Medical Assessment Center 1**

Location: 180 Livingston Street, 5th Floor, Brooklyn, NY 11201  
Telephone: 347-643-8277/8274/8276 FAX: 347-643-8269/8268  
Hours of Operation: Monday - Friday (8 am - 4 pm)

Directions to MAC: Take "A", "C", "G" to Hoyt/Schermerhorn Street or "2", "3" to Hoyt Street.

### **24-Hour Laboratory: 180 Livingston Street, Brooklyn, NY 11201, Room 5035**

Telephone: 347-643-8282/8283/8284/8285 FAX : 347-643-8267  
Hours of Operation: 24 hours, 7 days/week

### **Medical Assessment Center 3**

Location: 3961 10th Avenue, New York, NY 10034  
Telephone: 212-544-3201 FAX: 212-544-3168  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Use Manhattan-bound "A" Train to 207th Street, the last stop. Facing the fare booth, use stairway on the right and exit on 211th Street. Walk east on 211th Street to 10th Avenue, or take the Bronx bound "1" train to 207th Street and 10th Avenue.

### **Medical Assessment Center 5**

Location: 2556 McDonald Avenue (Avenue X), Brooklyn, NY 11223  
Telephone: 718-714-3123/3124 FAX: 718-714-3878  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Use Coney Island-Stillwell Ave bound "F" train (third car from back) to Avenue X Station. Go down stairway to right and exit on McDonald Avenue diagonally to entrance gate. Go in and make left turn to MAC #5 entrance.

### **Medical Assessment Center 7**

Location: 735 Bay Street, Staten Island, NY 10304  
Telephone: 718-818-8760 FAX: 718-818-8761/8798  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Subway to Staten Island Ferry. Staten Island Ferry to St. George Terminal. From St. George Terminal and Ramp A Bay 1, take the Grant City via Bay St. via Ft. Wadsworth bound S51 bus. Get off at Bay St. & Vanderbilt Ave or take Staten Island Railroad (last car) from St George Station towards Tottenville to Clifton Station. Go down stairway and exit on Bay Street. Walk straight ahead to MAC 7 entrance.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**1.0 Purpose**

It is the policy of the Triborough Bridge and Tunnel Authority (the "Authority") to operate and maintain its facilities in a safe and efficient manner, to provide a safe environment for its patrons and employees, and to secure and safeguard its revenues for the benefit of the citizens of this state. Safety of the Authority's employees, patrons, and property, and the security of its revenues are jeopardized by the use or ingestion of illegal drugs and controlled substances and the misuse of alcohol. Accordingly, possession or the use or ingestion of illegal drugs and controlled substances or alcohol that may prevent an employee from performing the functions of his/her job safely and/or efficiently is prohibited.

**2.0 Scope**

This policy and procedure applies to all employees holding the civil service titles of Bridge and Tunnel Sergeant, Bridge and Tunnel Lieutenant, probationary Bridge and Tunnel Sergeants and applicants for the positions of Bridge and Tunnel Sergeant and Bridge and Tunnel Lieutenant.

**3.0 Definitions**

The following definitions and abbreviations are used in this policy:

- 3.1 **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- 3.2 **Alcohol Concentration (or content):** This means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- 3.3 **Aliquot:** A portion of a specimen used for testing.
- 3.4 **Breath Alcohol Technician (BAT):** An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
- 3.5 **Canceled Test:** In drug testing, a drug test that is declared invalid by the Medical Review Officer (MRO). A canceled test is neither a positive nor a negative test. It is also different from the behavior that constitutes a refusal to submit. When a test is canceled, the employee may be required to submit a new specimen..
- 3.6 **CFR:** Code of Federal Regulations.
- 3.7 **Chain-of-Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- 3.8 **Collection Container:** A container into which the employee urinates to provide the urine sample used for a drug test.
- 3.9 **Collection Site:** A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs and a breath sample for the presence of alcohol. Current Collection Sites are MTA New York City Transit Medical Assessment Centers (MAC). See Attachment E.
- 3.10 **Collection Site Person:** A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.
- 3.11 **Confirmation (or confirmatory) Test:** In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test, following a screening test with a result of 0.04 or greater of breath alcohol concentration that provides quantitative data of alcohol concentration.
- 3.12 **Designated Employer Representative (DER):** The MTA Bridges & Tunnels employee authorized to take immediate action to remove employees from duty and to make required decisions in the testing and evaluation processes. This employee also receives the test results and other communications on behalf of the Authority.
- 3.13 **DHH:** United States Department of Health and Human Services.
- 3.14 **DHHS Drug Panel:** The controlled drugs listed in section 102(6) of the Controlled Substances Act that has been determined as being a risk to public safety. See Appendix A
- 3.15 **DOT:** United States Department of Transportation.
- 3.16 **Drug Metabolite:** The specific substance produced when the human body metabolizes a given drug as it passes through the body and is excreted in urine.
- 3.17 **EAP:** TBTA's contracted Employee Assistance Program
- 3.18 **EBT:** Evidential Breath Testing Device.
- 3.19 **EMIT:** An immunoassay test for the presence of controlled substances in a fluid. Often used as a screening test.
- 3.20 **Employee:** A Bridge and Tunnel Sergeant or Lieutenant
- 3.21 **Employer:** The term employer herein includes the Triborough Bridge and Tunnel Authority, its' agents, officers and representatives.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- 3.22 **FMCSA:** Federal Motor Carrier Safety Administration which is an agency of the US DOT.
- 3.23 **Gas Chromatography/Mass Spectrometry – GC/MS:** A test used to confirm the presence in the urine of a controlled substance.
- 3.24 **Initial Test (or screening test):** In drug testing, an immunoassay screen to eliminate “negative” urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
- 3.25 **Medical Review Officer (MRO):** A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- 3.26 **Prescribers Report:** Attachment A
- 3.27 **Probationary Employee:** An employee who has not successfully completed the applicable probationary period for the position to which he/she has been appointed.
- 3.28 **Refuse to Submit:** An employee (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with applicable Federal rules (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with relevant Federal rules, or (3) engages in conduct that clearly obstructs the testing process.
- 3.29 **Shipping container:** A container capable of being secured with a tamper evident seal that is used for transfer of one or more specimen bottle(s) and associated documentation from the collection site to the laboratory.
- 3.30 **Specimen bottle:** The bottle that, after being labeled and sealed according to the procedures in this policy, is used to transmit a urine sample to the laboratory.
- 3.31 **Split Specimen:** The employee observed placement, by a collection site person of the employee's urine specimen into two specimen bottles for transmittal to a DHHS certified testing laboratory.
- 3.32 **Substance Abuse Professional (SAP):** A professional knowledgeable about and having clinical experience in the diagnosis and treatment of both drug and alcohol-related disorders. The SAP shall be a licensed physician; a licensed psychologist; a licensed social worker; an employee assistance professional; or an addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

3.33 **Tampering:** In breath specimens, tampering includes (but is not limited to) the use of any physical, chemical, liquid, vaporous, electronic or other means of attempting to invalidate or negate a breath test.

In urine specimens, tampering includes, but is not limited to: (a) addition of liquid or solid chemicals or other substances to the urine container; heating or cooling the urine and/or the container; or submitting someone else's sample as one's own; (b) causing the production of urine that is sufficiently diluted as to preclude detection of substances therein, such as by ingestion of excess amounts of water or other liquids, use of diurectic or other means.

3.37 **Verified Positive Drug Test Result:** A laboratory confirmed-positive test which the MRO determines has no legitimate medical explanation.

#### **4.0 Prohibitions**

4.1 An employee may not possess or consume the following while on duty or on Authority property:

- Alcohol in any form,
- Controlled substances (including unauthorized prescribed medications)

4.2 An employee may not be on duty with any measurable amount of breath alcohol. A breath alcohol test is positive if it is confirmed at or greater than 0.04. An employee testing 0.04 or greater will be immediately removed from duty

4.3 No employee shall be on duty within four hours after using alcohol. Whenever the Authority has actual knowledge that an employee has used alcohol within four hours of reporting to duty it shall not permit the employee to perform or continue to perform duty related functions.

4.4 An employee required to take a post-accident alcohol test shall not use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

4.5 An employee who intends to work while taking a prescribed medication that is a controlled substance or any other prescribed medication which may cause impairment including but not limited to sedation or agitation must submit a written report from the prescriber to the Authority MRO at the time the prescription is written. The report shall contain the names of the medication(s), dosages and duration of treatment as well as a statement documenting the prescriber's recommendation of the medication(s) in view of the nature of the employee's work. A form for the Prescriber's Report and a list of reportable drugs is available (see Appendix E and Attachment A). Failure to comply with this procedure may subject the employee to discipline and to counseling by the SAP. If in the opinion of the SAP the use of undisclosed prescription medication may indicate substance abuse, the employee may receive a mandatory referral to the EAP.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

4.6 No employee shall refuse to submit to an alcohol or controlled substance test required under this policy and procedure. Refusal to submit to testing will be treated in the same manner as a positive test.

Refusal includes but is not limited to:

- Alleging sickness after notification to report for testing.
- Failing to provide adequate breath for testing without a valid medical explanation after employee has received notice of the requirement for breath testing.
- Failing to provide adequate urine for controlled substances testing without a valid medical explanation after employee has received notice of the requirement for urine testing.
- Failing to arrive at the Collection Site after notification to report for testing.
- Insubordination or declining to follow directives during the collection and testing procedures.
- Tampering (see Definitions, Paragraph 3.36) with breath or urine specimens, procedures or documentation.
- Undocumented "family emergencies".

## **5.0 Non-Availability**

5.1 Only the following situations will exclude an employee from random testing:

- Absence for illness, vacation, medical, immediate family or operational emergency, or previously arranged duty-related obligations (outside training, etc.).
- Non-availability due to any other reason must precede employee notification to be considered bona fide.
- Medical and immediate family emergencies will be those conditions or circumstances which would be of such a degree or nature to preclude or excuse an employee from performing his/her regular tour of duty. The validity of a claimed family emergency will be the decision of the Facility Director or his/her designee in accordance with established practice.

## **6.0 Drug and Alcohol Testing**

Whenever testing is ordered, the Authority shall test for both drugs and alcohol except in random testing where an employee could be selected for both drugs and alcohol or (since the alcohol selection testing percentage is lower than the drug testing percentage) drug testing alone.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

6.1 Drugs for which testing is to be conducted:

1. Marijuana Metabolites Delta 9-THC
2. Cocaine Metabolites Benzoylecgonine
3. Opiate Metabolites Morphine Codeine
4. Phencyclidine
5. Amphetamines Amphetamine Methamphetamine

6.2 **Types of Testing:**

6.2.1 **Promotional Testing**

All applicants for the positions of Bridge and Tunnel Sergeant and Lieutenant must submit to drug testing.

6.2.2 **Post-Accident Testing**

(See attachment D)

As soon as practicable following an accident involving a commercial motor vehicle, the Authority shall test for alcohol and controlled substances each surviving driver with respect to the vehicle if the accident involved the loss of human life; or if the driver receives a citation under state or local laws for a moving traffic violation arising from the accident. Alcohol tests will be administered within two hours following the accident, but not more than eight hours after the accident

Following any such accident, employees subject to testing are required to abstain from consuming any alcoholic beverages for eight hours, or until tested, whichever occurs first. Additionally, all employees subject to testing must remain available for urine drug testing for 32 hours, by insuring that their immediate supervisor knows of their whereabouts during the period. Failure to remain available is considered a refusal to be tested.

In addition to the post-accident requirements of the FMCSA, TBTA shall be allowed to require employees who operate a commercial motor vehicle to submit to a post- accident alcohol and drug test in those situations where employees are involved in commercial motor vehicle accidents which result in serious physical injury necessitating transportation to a hospital for medical treatment unless the Authority has determined that the accident was not the fault of the employee who was operating the vehicle. Post-accident tests conducted by TBTA pursuant to this paragraph shall conform to the post-accident procedures of the FMCSA regulations.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.2.3 Reasonable Suspicion Testing**

(See attachment B and C)

If a supervisor trained in detecting the signs and symptoms of prohibited drug use or alcohol misuse documents that an employee manifests such signs and symptoms, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee, a reasonable suspicion test will be ordered.

**6.2.4 Random Testing**

**6.2.4.1 Random Selection Process**

The selection of employees for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table of a computer-based random number generator that is matched with employee identification number. Under the selection process used, each employee shall have an equal chance of being tested each time selections are made. Because of the nature of random testing it is to be expected that some employees will be selected more than once in a year and some employees may not be selected for extended periods of time. During the course of the calendar year the Authority will test up to 25% of all Bridge and Tunnel Sergeants and Lieutenants for drugs and alcohol.

**6.2.5 Return to Duty Testing**

6.2.5.1 Before an employee returns to duty after engaging in conduct prohibited by this policy and procedure, the employee shall, with respect to alcohol, undergo a return-to-duty test which must indicate an alcohol concentration of less than 0.04, and with respect to controlled substances, the employee shall undergo a return-to-duty test which must result in a verified negative for controlled substances use.

6.2.5.2 The Authority may direct an employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee.

**6.2.6 Follow-up Testing**

6.2.6.1 Following a determination by a substance abuse professional that an employee is in need of assistance resolving problems associated with alcohol misuse and/or use of controlled substances, the Authority shall ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP and administered by the Authority. The particular length and frequency of such testing is determined by the SAP, but will include at least 6 tests during

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

the first 12 months after a return to duty and may extend to 36 months.

6.2.6.2 Follow-up alcohol testing shall be conducted only when the employee is on duty, just before the employee is to report for their tour of duty, or just after the employee has ceased their tour of duty.

6.2.6.3 The Authority may direct an employee to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular employee.

### **6.3 Notification and Reporting for Testing**

The Manager of Substance Abuse Prevention generates the list of employees to be tested and informs the selected employees' supervisors. The supervisor in turn determines when, in consideration of daily work load, availability of relief personnel, and other factors, to relieve and notify the selected employee. Upon notification, the employee must report directly to the Collection Site, comply with all testing procedures, and report directly back to the job upon completion of the testing process.

Employees may be sent for random alcohol tests just before, during or after performing their tour of duty. Employees may be sent for random drug tests at any time including nights, weekends and holidays.

### **6.4 Levels of Detection**

The cutoff levels are the level at which the test is determined to be positive. The cutoff levels for drug and alcohol screening tests, and confirmatory GC/MS testing are given in the Appendix B. Cutoff levels for screening tests may differ from the cutoff levels set for GC/MS confirmation. Cutoff levels are set by DHHS not by the Authority.

### **6.5 Testing Procedures – Appendix C**

#### **6.5.1 Compliance with 49 CFR 40**

All breath tests and urine collections are carried out by trained technicians in accordance with, and using procedures mandated by, 49 CFR Part 40. Below are a few important highlights from those regulations.

##### **6.5.1.1 Identification**

Any person being tested must provide positive, current, photo-identification to the collection site person/and Breath Alcohol Technician (BAT). Acceptable identification includes a valid state driver's license and a valid Authority employee identification card and/or a valid state driver's license. If an employee is accompanied to the testing site by a supervisor and does not have such identification in his/her possession,

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

testing will proceed if and only if the supervisor can personally identify the employee.

**6.5.1.2 Breath Specimen Collection for Alcohol Testing**

Breath testing for alcohol will be conducted by having the employee exhale into a preliminary breath testing machine approved by NHTSA. If a level of alcohol of 0.04 or higher is detected, a confirmatory test will be run 15 minutes later on an approved evidential breath tester. All such testing is administered by trained Breath Alcohol Technician (BAT) utilizing equipment that is properly maintained and calibrated.

**6.5.1.3 Urine Specimen Collection for Drug Testing**

The employee will be provided a single-use, collection container, factory sealed in a plastic bag, the seal of which will be broken only in the employee's presence, or by the employee. Urine collection for drug testing will be conducted by having the employee void into the single-use plastic container.

**6.5.1.4 Privacy**

During urine testing for drugs, an employee will be afforded the use of a private stall or otherwise partitioned area in a restroom facility used only for such testing during period of urine specimen collection.

**6.5.1.5 Use of Tamper Evident Shipping Containers**

After the employee has turned over custody of the urine collection container to the collection site personnel the collection site personnel will in the direct view of the employee pour the urine specimen into two specimen bottles. Thirty 30 ml. shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml. shall be poured into the other bottle, to be used as the split specimen. The two specimen bottles and the accompanying documentation shall be placed in a shipping container. The collection site person shall seal the container and its documentation in a tamper evident shipping container for transportation to the testing laboratory. "Tamper evident" means a transport container so designed that once sealed, it cannot be opened without physical destruction of some part of it, such that any attempt to open it will be immediately apparent to even an untrained observer.

**6.5.1.6 Chain of Custody Documentation**

At the start of the urine collection procedure, the collection site person will initiate a Chain of Custody document, and will complete it in the direct view of the employee. The Chain of Custody documents the handling of the specimen from receipt of the specimen by the collection site person, to the receipt of the specimen by the testing laboratory. See Appendix C.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.5.1.7 DHHS Certified Laboratories**

Only laboratories certified by the DHHS will be used for the testing of urine samples.

**6.5.1.8 Initial Urine Screening Tests**

Upon receipt of a urine specimen, the receiving laboratory will conduct initial screening tests using procedures in accordance with 49 CFR Part 40, to determine any preliminary indicators of the presence of drugs.

**6.5.1.9 Confirmation Testing**

If the screening test indicates the possible presence of drugs, or the presence of unusual chemicals or agents that may interfere with the screening test results and/or suggest possible specimen tampering, the laboratory will conduct confirmation testing using GC/MS procedures.

**6.5.1.10 Security of Results**

The results of urine testing will be reported by secure electronic transmission directly to the MRO.

**6.5.1.11 Medical Review of Positive Drug Results**

Any urine specimen reported by the laboratory as being positive for drugs after GC/MS testing will be reviewed by the MRO. The MRO will review all available medical reports and documentation, contact the employee, and will interview (and examine as required) the subject employee. The MRO will report a verified positive (if no legitimate, alternative medical explanations are documented) to the Substance Abuse Prevention Program Manager and the Employee Assistance Program.

**6.5.2 Requests for Specimen Re-tests**

If an employee disputes positive test results, she/he may request a re-test of the specimen, provided such a request is made to the MRO, within 72 hours of the original notification by the MRO of a positive result. The re-test is conducted on a portion the original specimen (the "split"), which is maintained in storage at the laboratory. Re- tests are performed at a DHHS-certified laboratory. The employee does not have the option to provide a separate, second specimen for re-testing, and administrative or personnel actions based on the original test results will not be delayed pending the result of the re-test. The presence of drug(s) (identified in the original test), in a re-test upholds the original test result and the employee must pay the Authority the cost of the re-test. If the original test result is not upheld by the re-test the Authority will pay for the cost of the re-test and the MRO will void the original test and investigate the reason for the discrepancy in results.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**6.5.3 Monitoring for Tampering**

If the employee is suspected by Collection Site Personnel of tampering with a urine specimen, a second specimen will be collected under observation by Collection Site or Supervisory personnel of the same sex. Both the suspected tampered specimen and the observed specimen will be forwarded to the laboratory for testing and all future specimens will be observed. Even if both specimens are negative for drugs, tampering itself may subject the employee to disciplinary action, which may include termination.

Measures of temperature, specific gravity, and other special chemical tests are made by the laboratory on all urine specimens to check for tampering. If the employee is suspected of tampering by the MRO (upon review of laboratory reports), all future tests for that employee will be under observed conditions. Such observed conditions will begin, for each test, at the time the employee is notified of selection for any test.

**7.0 Education and Treatment**

**7.1 Drug Awareness Training**

All Bridge and Tunnel Sergeants and Lieutenants along with every supervisor of these employees will receive initial and ongoing information or training in:

- the effects of alcohol and controlled substances use on an individual's health, work, and personal life,
- recognition of the signs and symptoms of an alcohol or a controlled substances problem and
- how to utilize the Employee Assistance Program.

**7.2 Anti-Drug Information/Wellness Program**

Educational mailings and/or distributions concerning a wide variety of lifestyle issues, including drug and alcohol abuse, will be made periodically to all employees and their families.

**7.3 Employee Assistance Program**

The Authority offers its employees and their family members an EAP to aid them in working out personal difficulties that may be affecting their lives, performance on the job, and possibly contributing to the misuse of alcohol or controlled substances, or exacerbating other medical illnesses or problems. Any employee may at any time seek confidential assistance through the Authority EAP.

Management referral or permission is not required. The EAP is staffed with fully trained mental health and substance abuse specialists, who can assist with a program to help with all problems of living. Any reference to the EAP refers to the

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

EAP contracted with the Authority. No other EAP will be recognized under this policy to provide mandatory treatment or advice under this policy for Authority employees.

**7.4 Outside EAP Provider**

To ensure confidentiality and make employees more comfortable using the EAP, the Authority contracts with an outside service company to provide the EAP. The current provider and its telephone numbers are noted in Appendix D. Should the provider change, the Authority will advise all employees of the new provider's selection by direct household mailings or work location postings.

**7.5 Mandatory EAP Referrals**

Services through the EAP are confidential provided an employee seeks those services voluntarily. Under this Policy, employees who have a first positive alcohol or drug test, and are evaluated as needing treatment by the SAP, receive mandatory referrals to the EAP. Since those referrals are initiated by the Authority, the Authority is naturally aware of the circumstance involved. In such cases the EAP will share sufficient information with the MRO in order to determine when an employee who has tested positive is ready to return to work. An eligible employee will be afforded the opportunity to accept rehabilitation through counseling only once in that employee's career, following a positive alcohol or drug test.

**7.5.1 Rules Pertaining to Mandatory Referrals and Follow-Up**

**7.5.1.1 Employee Assistance Program – Eligible Employee:**

A permanent employee with the Authority who has a first positive alcohol or drug test will be eligible to be referred to the EAP and will be required to participate in counseling. Failure to satisfactorily attend, participate in and complete the required counseling, rehabilitation and aftercare will result in discipline up to and including dismissal from service. An eligible employee will be afforded the opportunity to accept rehabilitation through counseling only once in that employee's career. No employee who has been convicted in any court of competent jurisdiction of the possession or sale of illegal drugs or controlled substances will be eligible to participate in the EAP. Any such employee will be subject to discipline up to and including dismissal from service.

**7.5.1.2 Entry into Mandatory Treatment**

The employee must contact the Authority's EAP within 72 hours of referral. She/he must comply with any treatment the EAP counselors recommend.

When the employee is released from any prescribed treatment, she/he must contact the MRO within 72 hours to schedule a post-treatment evaluation, and at the evaluation, present for review a letter from the treatment provider certifying that she/he has complied with treatment, agrees to any recommended after-care, and is able to return to duty without restriction.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

As part of the return-to-duty evaluation, the employee will be tested for drugs and alcohol. If this test is positive, she/he will be dismissed from employment with the Authority. If this test is negative, she/he will be entered into the follow-up testing program, wherein all tests must be negative.

**7.5.1.3 Mandatory Follow-Up Testing Guidelines**

Employees subject to mandatory follow-up testing must comply with the following rules, which the Authority may amend from time to time as required under FMCSA rules. The Authority will give the Union advance notice as to proposed amendments.

1. The employee will receive unannounced follow-up drug and alcohol testing for a period of time specified by the Authority's SAP, not to exceed sixty months. If the employee is notified of a test, he/she must report directly to the Collection Site for testing.
2. Failure to submit to a properly-required drug and alcohol test, or tampering with specimens, specimen or test procedures or test documentation, will subject him/her to discipline up to and including discharge. If the employee is suspected by Collection Site Personnel of tampering with a urine specimen, a second specimen will be collected under observation by the Collection Site Personnel or Supervisory Personnel of the same sex. Both the suspected tampered specimen and the observed specimen will be forwarded to the lab for testing. Even if both specimens are negative for drugs, tampering itself is an offense subject to discipline up to and including dismissal. If the employee is suspected by the MRO of specimen tampering all future tests for the employee (follow-up and otherwise) will be under observed conditions.
3. The employee must meet with the SAP for monitoring and counseling appointments, if scheduled by the SAP. The employee may call the SAP at any time to set up an appointment if she/he desires.
4. If the employee desires treatment or assistance, she/he may request it by calling the EAP or the SAP. However, if the employee requests assistance or treatment after she/he has been notified of selection for any test, asking for assistance will not block the test from occurring, and she/he must still submit to testing. Asking for assistance after being notified of a test will not alter the administrative or disciplinary consequences of such testing if those test results are positive.
5. The employee must comply with any treatment or aftercare plan prescribed by the Authority's EAP, a treatment provider, or the SAP. If any disputes arise as to the recommended treatment plan the MRO will have the final decision. If the employee is returned to work while still completing a part of his/her primary treatment or aftercare program, she/he must still complete all parts of the prescribed treatment or

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

aftercare. If the employee drops out of treatment or aftercare before completing it, drops out against medical advice, or is otherwise non-compliant with prescribed treatment or aftercare, she/he will be medically disqualified from working pending successful completion of the prescribed program. Noncompliance with any aspect of prescribed treatment or aftercare will result in disciplinary action in which the Authority will seek the employee's termination.

6. Participation in follow-up testing, the EAP, or any aspect of any employee assistance program does not alter or prevent appropriate administrative or disciplinary action for any violation of Authority rules and regulations.

7. The employee must inform the MRO (see form in Appendix E) of the specific medication when she/he is taking a prescribed drug or medication, such as (but not limited to) those listed on the Authority's Notice concerning restricted medications (see list in Appendix F). A copy of this notice will be made available to the employee. It is illegal for the employee to take any prescription drug or medication prescribed for anyone else.

**8.0 Confidentiality**

An employee's test results, and the fact of and circumstances relating to an employee's participation in the EAP, will be treated as confidential medical information and maintained in complete confidence in the Personnel Division. Such information will be disclosed only to the Director of Personnel, the MRO, the SAP, Labor Relations and such other personnel as have a need to know. All personnel with a need to know will execute a statement of confidentiality. Statistical compilations, not identifying the individuals in question, may be made of testing and EAP data and made available to the public and/or regulators.

In the event that an employee, or any Union or other representative of that employee, makes disclosure of test result or EAP participation, further disclosure of the information may be made by the Authority to the extent necessary to protect its and the public's interest, after consultation with the General Counsel.

The Authority will not voluntarily disclose the results of the random testing procedure to law enforcement agencies or officials.

Unauthorized disclosure of information about drug and alcohol testing results by any person authorized to possess such information is prohibited. Unauthorized disclosure of such information is punishable by discipline up to and including dismissal, after a hearing where applicable. Possession of confidential information by persons not authorized to have such information, is also prohibited and punishable by discipline up to an including dismissal, after a hearing where applicable.

The confidential aspect of testing refers only to results of the tests. Persons having access to results must maintain the confidentiality of the laboratory and MRO reports to protect the tested individual's identity. Secrecy, in the sense that others know that a random testing sample has been drawn is not part of the procedure.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**Appendix A**

**Drug Test Panels**

DHHS Panel

- Marijuana Metabolites  
Delta 9-THC
  
- Cocaine Metabolites  
Benzoylecgonine
  
- Opiate Metabolites  
Morphine  
Codeine
  
- Phencyclidine
  
- Amphetamines  
Amphetamine  
Methamphetamine

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix B

### Levels of Detection

Breath alcohol levels are expressed as Breath Alcohol Concentration (BAC), as measured by the test equipment in the Collection Site. If any measurable level of alcohol is found on the initial test the employee shall be administered a confirmatory test shall be administered. If the confirmatory test result is a blood alcohol of concentration that equals or exceeds 0.04, the result is reported as positive initial test

The following are the levels of detection, expressed in nanograms per milliliter for substances in the current urine test panels. If a screening test result equals or exceeds the cutoff level shown, the laboratory's automatic action is to perform a confirmatory test. If the confirmatory test result equals or exceeds the cutoff level shown, the test is reported as positive by the laboratory. These cutoff levels are subject to change due to FMCSA regulations.

<b>Substance</b>	<b>Screening DHHS</b>	<b>Confirmatory DHHS</b>
Marijuana Metabolites	50	
Delta 9-THC		15
Cocaine Metabolites	300	
Benzoyllecgonine		150
Opiate Metabolites	300	
Morphine		300
Codeine		300
Phencyclidine	25	25
Amphetamines	1000	
Amphetamine		500
Methamphetamine		500

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

## Appendix C

### Alcohol and Drug Testing Procedures

#### 1. Notification

- a. The employee will be notified in private that he or she was randomly selected to provide a urine and/or breath specimen to be testing for the presence of drugs and/or alcohol.
- b. Employees selected to be tested pursuant to TBTA's Drug Testing Policy and Procedure shall continue to be on the clock during the testing procedures.
- c. The employee's supervisor will review the Request for Medical Examination form with the employee. The employee must verify that the employee has his or her driver's license and their TBTA I.D. card before leaving the facility.
- d. The employee will report immediately (arrive within one hour of notification) to the MTA NYCTA MAC closest to their facility or if it after 2:00 p.m. a weekend or holiday to MAC #1.
- e. When the employee arrives at the MAC the employee must identify themselves to security personnel and tell them they are there for a random drug/alcohol screening. When the employee arrives at the actual collection site they must identify themselves as a TBTA employee.
- f. If the employee is chosen randomly for alcohol and drug testing, the employee will provide a breath sample prior to providing a urine specimen.

#### 2. Preparation for Breath Alcohol Testing

- a. When the employee enters the alcohol testing location, the Breath Alcohol Technician (BAT) will require him or her to provide positive identification (e.g., through use of a photo I.D. card or identification by the Authority's representative). On request by the employee, the BAT shall provide positive identification to the employee.
- b. The BAT shall explain the testing procedure to the employee.

#### 3. Procedures for Screening Tests

- a. The BAT shall complete Step 1 on the Breath Alcohol Testing Form. The employee shall then complete Step 2 on the form by signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- b. An individually sealed mouthpiece shall be opened in the view of the employee and BAT and attached to the Evidential Breath Tester (EBT) in accordance with the manufacturer's instructions.
- c. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- d. The BAT shall ensure, before the screening test is administered to each employee that he/she and the employee read the sequential test number displayed by the EBT.
- e. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper evident tape).
- f. If the EBT prints the test results directly on the form, the BAT shall show the employee the results displayed on the EBT.
- g. If any case in which the result of the screening tests is a breath alcohol concentration of less than 0.04, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- h. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
- i. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with the rules, the test is invalid and the Authority and employee shall so be advised.
- j. No further testing is authorized. The BAT shall transmit the result of less than 0.04 to the Authority in a confidential manner and the Authority shall receive and store the information so as to ensure that confidentiality is maintained as required by the rules.
- k. If the result of the screening test is an alcohol concentration of 0.04 or greater, a confirmation test shall be performed.
- l. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**4. Procedures for Confirmation Tests**

- a. The BAT shall instruct the employee not to eat, drink, put any object or substance in his/her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact, that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
- b. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
- c. A new mouthpiece shall be used for the confirmation test.
- d. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using the instrument, which shall be taken out of service. However, testing may proceed on another instrument. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is completed and the EBT is found to be within tolerance limits.
- e. Before the confirmation test is administered for each employee, the BAT shall ensure that he or she and the employee read the sequential test number displayed by the EBT.
- f. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
- g. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

displayed on the EBT. The BAT shall then affix the test result displayed on the EBT. The BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).

- h. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
- i. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- j. If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section.
- k. If a test result printed by the EBT does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the confirmation test (see paragraph (e) of this section), the BAT shall note the disparity in the "Remarks:" section. Both the employee and the BAT shall initial and sign the notation. In accordance with the rules, the test is invalid and the employee shall be so advised.
- l. The BAT shall transmit all results to the Authority in a confidential manner.

**5. Refusals to Test and Uncompleted Test**

- a. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the Authority.
- b. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

**6. Inability to Provide an Adequate Amount of Breath**

- a. In any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition the following procedures shall be

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b>	<b>ADM 01-15-02</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

followed.

- b. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the Authority.
- c. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the Authority.
- d. If the employee attempts and fails to provide an adequate amount of breath, the Authority shall proceed as follows:
- e. The Authority shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.
- f. If the MRO determines, in his/her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the Authority a written statement of the basis for his/her conclusion.
- g. If the MRO, in his/her reasonable medical judgment, is unable to make a determination concerning employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The MRO shall provide a written statement of the basis for his/her conclusion to the Authority.

**7. Preparation for Drug Testing**

- a. When an employee arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the Authority's representative). If the employee's identify cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.
- b. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The employee may retain his or her

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.
- c. The employee shall be instructed to wash and dry his or her hands prior to urination.
  - d. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, a faucet, a soap dispenser, a cleaning agent or any other materials which could be used to adulterate the specimen.
  - e. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container. The employee shall have a maximum of three hours to provide a complete specimen.
  - f. The collection site person shall note any unusual behavior or appearance of the employee on the urine custody and control form.
  - g. In the exceptional event that the Authority-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures; A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the employee not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.
  - h. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml. If the individual is unable to provide at least 45 ml of urine, the collection site person shall instruct the employee to drink no more than 24 ounces of fluids in order to produce more urine.
  - i. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml. shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml. shall be poured into the other bottle, to be used as the split specimen. If a single specimen bottle is used as

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b>	<b>ADM 01-15-02</b>	<b>Amendment Number:</b>	<b>0</b>
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b>	<b>0</b>

collection container, the collection site person, in the presence of the donor, shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).

- j. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.

**8. Testing of the Split Specimen**

- a. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.
- b. Then the MRO informs the laboratory in writing that employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
- c. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
- d. Action required by DOT agency regulations as the result of a positive drug test (e.g., removal duty) is not stayed pending the result of the test of the split specimen.
- e. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall void the test, and report the void and the reasons for it to the Authority and the employee.

**9. Post Collection**

- a. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
- b. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used, must accurately reflect the temperature of the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

- c. A specimen temperature outside the range of 32.5° - 38°C or 90.5°F- 100°F constitutes a reason to believe that the individual has altered or substituted the specimen. In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.
- d. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.
- e. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
- f. Whenever there is reason to believe that a particular employee has altered or substituted the specimen. A second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
- g. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled.
- h. As provided below, the specimen shall be sealed {by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.
- i. The collection site person and the employee being tested shall be present at the same time during collection procedures.
- j. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him/her.
- k. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
- l. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

fact the specimen he/she provided.

- m. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.
- n. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.
- o. The employee must have the collection site person indicate on their (G46) Request for Medical Examination form the time they completed testing and then return immediately to their facility to resume his/her tour of duty.

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

**Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants  
and Lieutenants**

<b>Chapter Number:</b> ADM 01-15-02	<b>Amendment Number:</b> 0
<b>Date:</b> March 2015	<b>Revision Number:</b> 0

**Appendix D**

The Employee Assistance Program is:

Corporate Counseling Associates

475 Park Avenue South

New York, NY 10016

Contact: Any Counselor

24-hour Hot Line: (800) 833-8707

Any employee or family member may self-refer in confidence to the EAP.

Important note: The EAP is, by conscious decision by the Authority, a "broad-brush" program. Because hundreds of Authority families utilize the service for various problems of living, there is no drug or alcohol stigma connected with a visit to the EAP.

<b>National Hotline Numbers</b>		
Alcohol and Drug Referral Hotline		1-800-252-6465
National Cocaine Hotline		1-800-262-2463
Narcotics Anonymous	(Regional Office)	(212) 929-6262
National A.I.D.S. Hotline	(English)	1-800-342-2437
	(Spanish)	1-800-7432

**MTA BRIDGES & TUNNELS  
ADMINISTRATION DEPARTMENT**

<b>Alcohol and Drug Testing Policy and Procedure for Bridge and Tunnel Sergeants and Lieutenants</b>		
<b>Chapter Number:</b>	<b>ADM 01-15-02</b>	<b>Amendment Number:</b> 0
<b>Date:</b>	<b>March 2015</b>	<b>Revision Number:</b> 0

## Appendix E

### **CLASSES OF REPORTABLE PRESCRIPTION AND PATENT MEDICATIONS**

Below is a list of prescription drugs and patent medicines as referenced in this Policy. Employees who have consumed any of the prescription drugs described are required to report such consumption to the MRO using Form (Prescriber's Report and Recommendation). **The list is intended only as a guide and is not all-inclusive.** Employees should confer with the MRO regarding any questions on medications that are not listed.

#### **ANALGESICS**

Aspirin with codeine, Codeine, Darvocet, Darvon, Demerol, Dilaudid, Empirin Compound w/codeine, evo-Dromoran, Methadone, Morphine, Percocet, Percodan, Soma Compound w/codeine, Talacet, Talwin, Tylenol w/codeine, Vicodin.

#### **ANTI-MOTION-SICKNESS**

Antivert, Dramamine, Marezine, Phenergan, Transderm-Scop.

#### **TRANQUILIZERS & SEDATIVES**

Ativan, Benadryl, Centrax, Compazine, Dalmane, Diazepam, Equanil, Halcion, Haldol, Libritabs, Librium, Limbitrol, Paxipam, Prolixin, Serax, Stelazine, Thorazine, Tranxene, Valium, Valrelease, Xanax.

#### **ANTIDEPRESSANTS**

Adapin, Amitriptyline, Asendin, Deprol, Desyrel, Elavil, Endep, Etrafon, Libitrol, Lithium, Ludiomil, Marplan, Nardil, Norpramin, Pamelor, Parnate, Pertofrane, Sinequan, Surmontil, Tofranil, Triavil, Vivactil.

#### **BARBITURATES**

Alurate, Butisol, Dilantin, Mebaral, Nembutal, Pentobarbital, Phenobarbital, Seconal, Sedapap, Tuinal.

#### **SKELETAL MUSCLE RELAXANTS**

Flexeril, Parafon, Soma

#### **NON-PRESCRIPTION COUGH & COLD REMEDIES, ANTIHISTMINES**

(Not required to be reported, but employees should pay particular attention to labels indicating drowsiness or restrictions regarding driving and/or working around machinery, and adjust their dosage accordingly.)

Benadryl, Bromfed, Chlortrimeton, Comtrex, Contact, Deconamine, Dimetapp, Dristan, Drixoral, Extendryl, Fedahist, Kronofed, Naldecon, Nalamine, Novafed, Omade, Rondec, Rynatan, Sinubid, Sinulin, Tavist-D.



# Bridges and Tunnels

## Prescriber's Report and Recommendation

Fax completed form to:

**Robert J. Nadig, M.D.**  
**331 West 57<sup>th</sup> Street, Suite 307**  
**New York, New York 10019**  
**FAX: 1-888-806-2674**

**Instructions:** Employee fills in this section, presents form to physician (M.D. or D.O. only). Print clearly.

Employee's Name (Print): \_\_\_\_\_ Job Title: \_\_\_\_\_ Facility: \_\_\_\_\_ TBTA ID# \_\_\_\_\_

Day Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

To My Doctor (M.D. or D.O.):

Please provide the information requested below for use by MTA Bridges and Tunnels' Medical Review Officer (MRO). This is necessary because of safety concerns involving the use of medications by Maintainers, CDL holders, Bridge and Tunnels Officers, Sergeants and Lieutenants in safety sensitive positions.

I herewith authorize you to release this information to the MTA Bridges and Tunnels' MRO, and thank you for your assistance in this matter.

\_\_\_\_\_  
 Date Employee's Signature

**Doctor (M.D. or D.O.): Complete this section. Return to employee or send directly to MRO.**

**Report:** This verifies that I have prescribed the following medication(s) for the above-named patient

(if more space is needed check [ ] and use back of form): (if none-please state none)

MEDICATION and date prescribed (Please Print Clearly)	STRENGTH & NUMBER OF PILLS	DIRECTIONS	DURATION(days/weeks) (If PRN, end date required)

**Recommendation:** I further certify and attest that, with full knowledge of the patient's job description and duties, in my opinion this patient may safely consume these medications at the dosage listed above while on duty or subject to duty.

**REQUIRED:** The medication(s) above is (are) prescribed for the following diagnosis(es):

Signature of Prescriber (M.D. or D.O.): \_\_\_\_\_ Print Name Clearly: \_\_\_\_\_

Print Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Date: \_\_\_\_\_

### GUIDELINES ON REASONABLE SUSPICION TESTING

#### **AUTHORIZED SUPERVISORS SHOULD READ ALL INFORMATION BELOW PRIOR TO SENDING AN EMPLOYEE FOR A REASONABLE SUSPICION TEST**

- An employee shall be required to submit to an alcohol and controlled substance test when a trained supervisor has reasonable suspicion to believe that the employee has violated the alcohol or controlled substance prohibitions of the Federal Motor Carrier Safety Administration (FMCSA) rules or the Authority's internal rules or policies.
- The determination that reasonable suspicion exists to require an alcohol and controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the affected employee.
- The observations may include indications of the chronic and/or withdrawal effects of controlled substance.
- The required observations for reasonable suspicion testing shall be made by a supervisor who is trained in accordance with FMCSA rules.
- The supervisor's decision must be made promptly, using the following steps:
  - Remember that the primary issue is **safety**. Employees believed to be under the influence of a prohibited substance are an immediate hazard to themselves and to others. Whether management subsequently obtains proof to substantiate reasonable suspicion of substance abuse is secondary to assuring safety.
  - The first steps are observing and interviewing, then documenting.
- **Observe** – Observations reported by others, even anonymously, must be confirmed by the supervisor's own observations. **Hearsay is not an acceptable basis for a reasonable suspicion referral.** If witnesses saw a specific event or behavior, the supervisor should ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was substance abuse-related behavior? On what basis did they reach their conclusions?
- The supervisor should observe the employee. What can the supervisor observe and objectively document as it related to physical signs and symptoms, emotional state, physical evidence, and related facts?

## Attachment B

- **Interview** – After observing any of the factors described above giving rise to reasonable suspicion, a supervisor may ask the employee to explain the suspected behavior and describe the events that took place from his or her perspective. A persuasive explanation should not deter or prevent you from requiring a test if you have a reasonable belief that prohibited drug use or alcohol misuse is involved. Denial should be an expected reaction. If an employee knows he/she will test positive, he/she may give many explanations and protests, wanting to avoid testing. As a result, a reasonable suspicion decision must be based on objective observations. Remember, a request for the urine specimen and a breath test is not an accusation; it is merely a request for additional objective data.

Before you begin the interview, remove the employee from the vehicle or workplace and talk to him/her in a private setting.

It is important to respect the dignity and privacy of employee during the interview.

- **Review Observations** – During the conversation, observe physical and behavioral symptoms. Be sure to document any characteristics or observations that bear upon the determination to test. The FHWA rules only require that one supervisor make the reasonable suspicion referral. However, if possible, a second supervisor at the site should be asked to confirm the observation.
- **Make the Reasonable suspicion Decision** – Based upon your observations and interview, decide whether there is reason to suspect that the employee has violated the relevant alcohol and controlled substances prohibitions. If so, complete the Request For Medical Examination Of Employee Form (G46). It is essential that all reasonable steps be taken to have the breath alcohol test administered within two (2) hours following the determination, a record must be made of the reason(s) the alcohol test was not promptly administered. If the alcohol test is not administered within eight (8) hours following the determination, attempts to administer the test must cease and a record must be made of the reason(s) for not administering the test.
- **Inform the Employee** – After you have made the reasonable suspicion decision, explain to the employee that you believe that he or she may not be fit for duty and that he or she will be escorted to and from the pertinent MAC collection site. Inform the employee of the consequences of refusal and that he or she is being relieved from duty.

## Attachment B

- **Document Events** – Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion test by using the “Supervisor’s Report and Observations of Reasonable Suspicion Form” provided in this book. The signs and symptoms to look for are more fully described in the fact sheets and the “Americans for a Drug Free America” booklet in the back of the Facility book. The FMCSA requires that the documentation must be completed within twenty-four (24) hours of sending the employee for the test.
- **Return to duty** – The tested employee will not be permitted to resume his/her duties until the Facility Director or designee has received written authorization from the Designated Employee Representative.



## Bridges and Tunnels

**Supervisor's Report and Observations of  
Reasonable Suspicion  
Drug and Alcohol Testing Program**

Date and Time of Occurrence/Observation: \_\_\_\_\_

Place./Location of Incident/Event: \_\_\_\_\_

Employee's Name: \_\_\_\_\_

Job/Position

Title: \_\_\_\_\_ ID#: \_\_\_\_\_

**SUPERVISOR, PLEASE CHECK ALL APPROPRIATE BOXES****1. REASONABLE SUSPICION****• PHYSICAL SIGNS (Change in employee's normal behavior)**

<input type="checkbox"/> Slurred speech	<input type="checkbox"/> Excessive sweating	<input type="checkbox"/> Staggering walk
<input type="checkbox"/> Odor of Alcoholic Beverage	<input type="checkbox"/> Drowsiness	<input type="checkbox"/> Odor of Marijuana
<input type="checkbox"/> Irritability	<input type="checkbox"/> Nervousness	<input type="checkbox"/> Red Eyes
<input type="checkbox"/> Disoriented	<input type="checkbox"/> Shaky hands (tremors)	<input type="checkbox"/> Excessive talkativeness

**• ABILITY TO WALK?**

<input type="checkbox"/> Unable to	<input type="checkbox"/> Falling	<input type="checkbox"/> Swaying	<input type="checkbox"/> Sagging
<input type="checkbox"/> Grasping for support	<input type="checkbox"/> On hands and knees		<input type="checkbox"/> Normal

**• ABILITY TO STAND?**

<input type="checkbox"/> Swaying	<input type="checkbox"/> Rigid	<input type="checkbox"/> Unable to	<input type="checkbox"/> Other
<input type="checkbox"/> Normal	<input type="checkbox"/> Feet wide apart for balance	<input type="checkbox"/> Continual leaning for Support	

**• SPEECH?**

<input type="checkbox"/> Shouting	<input type="checkbox"/> Rambling	<input type="checkbox"/> Incoherent	<input type="checkbox"/> Boisterous	<input type="checkbox"/> Slow
<input type="checkbox"/> Slurred	<input type="checkbox"/> Crying	<input type="checkbox"/> Whispering	<input type="checkbox"/> Other	<input type="checkbox"/> Normal

**• Demeanor?**

<input type="checkbox"/> Fighting	<input type="checkbox"/> Indifferent	<input type="checkbox"/> Excited	<input type="checkbox"/> Hysterical	<input type="checkbox"/> Calm
<input type="checkbox"/> Polite	<input type="checkbox"/> Sleepy	<input type="checkbox"/> Cooperative	<input type="checkbox"/> Irritable	<input type="checkbox"/> Confuse
<input type="checkbox"/> Irritable				

**• ACTIONS?**

<input type="checkbox"/> Punching	<input type="checkbox"/> Kicking	<input type="checkbox"/> Resisting	<input type="checkbox"/> Profanity	<input type="checkbox"/> Normal
<input type="checkbox"/> Threatening		<input type="checkbox"/> Difficult to Awaken		

**• EYES?**

<input type="checkbox"/> Bloodshot	<input type="checkbox"/> Watery	<input type="checkbox"/> Droopy eyelids	<input type="checkbox"/> Normal
<input type="checkbox"/> Wearing glasses	<input type="checkbox"/> and/or Contacts	<input type="checkbox"/> Fixed in a blank state	<input type="checkbox"/> Dilated pupils
<input type="checkbox"/> Constricted pupils			

**• CLOTHING?**

<input type="checkbox"/> Mussed	<input type="checkbox"/> Dirty	<input type="checkbox"/> Partly Dressed	<input type="checkbox"/> Vomited on
<input type="checkbox"/> Defecated in same		<input type="checkbox"/> Urinated in same	<input type="checkbox"/> Normal

**• FACE?**

<input type="checkbox"/> Flushed	<input type="checkbox"/> Pale	<input type="checkbox"/> Normal
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• **MOVEMENT OF HANDS?**

Fumbling  Slow  Wringing of hands  
 Excessive Movement  Normal

**2. JOB PERFORMANCE**

- Employee's Job title \_\_\_\_\_ was he/she performing the job at the time?
- Is the Employee ill?  Yes  No. If yes, what are the employee complaints?

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Did you see him/her operating a vehicle?  YES  NO

Or in a vehicle  YES  NO

Was the Vehicle:

Zig-zagging  Excessive Speed  
 On wrong side of roadway  Too slow  
 Lights not on  Operated disobeying traffic rules

Is employee able to perform job?  YES  NO

If no, Why?

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• **OTHER OBSERVATIONS:**

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Print Supervisor's Name: \_\_\_\_\_

# Attachment C

**Print Supervisor's Title:** \_\_\_\_\_

**Supervisor's Signature:** \_\_\_\_\_

GUIDELINES ON POST-ACCIDENT TESTING

**READ ALL INFORMATION BELOW PRIOR TO SENDING AN EMPLOYEE FOR A POST-ACCIDENT TEST.**

Post-Accident Testing must be conducted under the following circumstances:

1. As soon as practicable following an accident involving a commercial motor vehicle\*, the Authority shall test for alcohol and controlled substances each surviving Authority driver who was performing safety-sensitive functions with respect to the vehicle: (a) if the accident involved the loss of human life; or (b) if the driver receives a citation under state or local laws for a moving traffic violation arising from the accident (where there is bodily injury requiring immediate medical treatment away from the scene of the accident, or disabling damage requiring the vehicle to be transported away by a tow truck).

As per our collective bargaining agreements, employees who operate a commercial motor vehicle must submit to a post-accident alcohol and drug test in those situations where employees are involved in a commercial motor vehicle accident which results in serious physical injury necessitating transportation to a hospital for medical treatment unless the Authority has determined that the accident was not the fault of the employee who was operating the vehicle.

2. The need for a post-accident test is presumed. Any decision not to administer a test must be based on the determination, using the best information available at the time, that a human being did not die or that the commercial motor vehicle driver was not cited for a moving traffic violation arising from the accident within such time that a test could be conducted.
3. Do not delay necessary medical attention for injured employees following an accident in order to get them to a post-accident test.
4. An alcohol test will be administered, under normal circumstances, within two (2) hours following the accident, but under no circumstance, more than eight (8) hours after the accident. If an alcohol test is not administered within two hours following the accident, the supervisor must prepare (and forward to the Designated Employee Representative) a written statement explaining the reason why the test was not promptly administered. **After eight hours, all attempts to test the driver must cease.**
5. No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first. Remind the driver of this requirement.
6. Immediately after the alcohol test, the collection site personnel will administer a controlled substances test.

## Attachment D

7. Additionally, all employees subject to testing must remain available for the urine drug test for up to thirty-two (32) hours following the accident, by ensuring that their immediate supervisor knows of their whereabouts during that period.
  8. If an employee was taken to a medical facility for treatment, he/she may be taken for post-accident testing after being released, if the employee is still within the test window limits (eight hours for alcohol and thirty-two hours for controlled substances).
  9. Failure to remain available for testing is considered a refusal to be tested. A refusal will be treated as a positive test result.
  10. Supervisors must complete a Request for Medical Examination of Employee (G46) Form for their employees and have them escorted as follows: Monday through Friday, 8:00 a.m. – 3:40 p.m., to the nearest MAC site; after 3:40 p.m., weekends, and holidays, to MAC #1 at 180 Livingston Street, Brooklyn.
  11. All employees must be escorted to and from the collection site for Post-Accident testing.
  12. In lieu of administering a post-accident test, the results of a drug or alcohol test administered by on-site state or local police or other public safety officials acting under their own independent authority to test, may be substituted if the results are obtained from such officials.
  13. The tested employee will not be permitted to resume his/her duties until the Facility Director or designee has received written authorization from the Designated Employee Representative and that the alcohol and controlled substance test results are negative.
- \* Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle--
- (1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - (2) Has a gross combination weight rating of 26,001 or more pounds; or
  - (3) Is designed to transport 16 or more passengers, including the driver; or
  - (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

## Attachment E

### **Medical Assessment Center 1**

Location: 180 Livingston Street, 5th Floor, Brooklyn, NY 11201  
Telephone: 347-643-8277/8274/8276 FAX: 347-643-8269/8268  
Hours of Operation: Monday - Friday (8 am - 4 pm)

Directions to MAC: Take "A", "C", "G" to Hoyt/Schermerhorn Street or "2", "3" to Hoyt Street.

### **24-Hour Laboratory: 180 Livingston Street, Brooklyn, NY 11201, Room 5035**

Telephone: 347-643-8282/8283/8284/8285 FAX : 347-643-8267  
Hours of Operation: 24 hours, 7 days/week

### **Medical Assessment Center 3**

Location: 3961 10th Avenue, New York, NY 10034  
Telephone: 212-544-3201 FAX: 212-544-3168  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Use Manhattan-bound "A" Train to 207th Street, the last stop. Facing the fare booth, use stairway on the right and exit on 211th Street. Walk east on 211th Street to 10th Avenue, or take the Bronx bound "1" train to 207th Street and 10th Avenue.

### **Medical Assessment Center 5**

Location: 2556 McDonald Avenue (Avenue X), Brooklyn, NY 11223  
Telephone: 718-714-3123/3124 FAX: 718-714-3878  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Use Coney Island-Stillwell Ave bound "F" train (third car from back) to Avenue X Station. Go down stairway to right and exit on McDonald Avenue diagonally to entrance gate. Go in and make left turn to MAC #5 entrance.

### **Medical Assessment Center 7**

Location: 735 Bay Street, Staten Island, NY 10304  
Telephone: 718-818-8760 FAX: 718-818-8761/8798  
Hours of Operation: Monday-Friday (8 am-4 pm) **Employees must arrive prior to 2 pm**

Directions to MAC: Subway to Staten Island Ferry. Staten Island Ferry to St. George Terminal. From St. George Terminal and Ramp A Bay 1, take the Grant City via Bay St. via Ft. Wadsworth bound S51 bus. Get off at Bay St. & Vanderbilt Ave or take Staten Island Railroad (last car) from St George Station towards Tottenville to Clifton Station. Go down stairway and exit on Bay Street. Walk straight ahead to MAC 7 entrance.

# Memorandum



**Date:** August 6, 2012

**To:** All Non-Represented and Administrative Employees

**From:** James Ferrara, President – MTA Bridges and Tunnels

A handwritten signature in black ink, appearing to read "James Ferrara", written over the "From:" line.

**Re:** Authority Drug and Alcohol Free Workplace Policy

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MTA Bridges and Tunnels (“the Authority”) explicitly prohibits the use, possession or consumption of alcohol in any form, or the consumption of illegal drugs or substances, while on Authority property on or off duty, or on Authority business, or while operating an Authority vehicle. “Prohibited substances” include all illegal drugs, alcohol in any form, or prescription drugs not taken in accordance with a prescription given expressly to the employee by his or her physician. Employees are prohibited from reporting to work while under the influence of “prohibited substances.”

This policy will be strictly enforced. Violations of this policy may result in disciplinary action up to and including dismissal from service.

The use or possession of prohibited substances in the workplace includes but is not limited to the following:

- The use, possession, solicitation for, or sale of narcotics or other illegal drugs, alcohol, or prescription medication without a prescription, while on Authority property on or off duty, or on Authority business, or while operating an Authority vehicle on or off duty.
- The unlawful manufacture, distribution or dispensing of a controlled substance, while on Authority property on or off duty, or on Authority business.
- Being impaired or under the influence of prohibited substances while on Authority property on or off duty, or on Authority business, or while operating an Authority vehicle on or off duty.

The Authority also prohibits operation of an Authority vehicle on or off duty while the employee is under the influence of a prescription or over-the-counter medication or drug that impairs the employee’s ability to operate the vehicle.

Employees who believe they have or may have a substance abuse concern or problem are encouraged to use the Employee Assistance Program (EAP). The EAP may be reached at 800-833-8707 or [www.ccainc.com](http://www.ccainc.com).

# MTA Bus Company



## **MTA BUS COMPANY'S DRUG & ALCOHOL POLICY STATEMENT**

### **INTRODUCTION**

The MTA Bus Company (MTA Bus) is committed to operating and maintaining an alcohol-free and drug-free workplace to provide a safe environment for its passengers and employees. The following Policy Statement replaces and supersedes any drug and alcohol statement that may have been previously applied to any MTA Bus employee.

MTA Bus policies, consistent with federal and state law, prohibit all employees from using, possessing or being under the influence of alcohol during an employee's tour of duty, while an employee is on MTA Bus premises or otherwise engaged in MTA Bus business and/or when such use would make them unfit to report for duty or to be on duty. State law also prohibits the use of alcohol by a bus operator within six (6) hours of beginning service, regardless of any effects. MTA Bus policies prohibit the unlawful manufacture, distribution, dispensation, possession or use of controlled substances at the workplace. In addition, the unlawful use of any drug or controlled substance at any time is also prohibited.

MTA Bus requires all employees to abide by the terms of these policies as a condition of employment. Violation of the alcohol, drugs and controlled substance policies is considered to be a major offense. Employees who violate these policies will be disciplined, with punishment up to and including termination from employment.

MTA Bus performs drug and alcohol tests of employees who perform safety-sensitive functions pursuant to Federal Transit Administration regulations. Safety-sensitive designations are subject to change by the Drug and Alcohol Program Manager pursuant to and in accordance with Federal Transit Administration regulations. All MTA Bus employees are subject to drug and alcohol testing in additional circumstances pursuant to internal policy and/or collective bargaining agreements. Employees are encouraged to familiarize themselves with policies covering their titles. Questions about MTA Bus' anti-drug and alcohol misuse program should be directed to the Corporate Occupational Health Officer, Occupational Health Services, New York City Transit, who serves as the Drug and Alcohol Program Manager.

Employees placed under arrest, while on or off duty, for an alleged violation, among other things, of any criminal drug statutes, are required to notify their immediate supervisor, in writing, immediately. This applies to all incidents of an alcohol or drug related arrest. Upon conviction of any criminal drug statute, employees are required to notify their immediate supervisor, in writing, within five (5) days of such conviction. An arrest, conviction or failure to report such may lead to disciplinary action.

This Policy Statement is divided into two (2) primary sections. Part I addresses drug and alcohol testing that occurs pursuant to Federal Transit Administration regulations. Part II addresses drug and alcohol testing that is conducted under MTA Bus' own authority pursuant to internal rules, policy instructions and collective bargaining agreements. Part I addresses only "safety-sensitive" employees as defined

under federal regulations. Please consult Appendix I to determine whether a particular employee is “safety-sensitive” and subject to FTA testing. Part II addresses *all* MTA Bus employees, regardless of their status under federal law. MTA Bus, under its own authority, tests all employees in circumstances not required by federal law. Part II also addresses the disciplinary consequences of drug and alcohol positives and other violations of the rules. Because a MTA Bus employee may at some point in his or her career be transferred or seek to transfer to a safety-sensitive position, it is important to read this Policy Statement both Parts I and II for a full understanding of the federal testing program and the program conducted under MTA Bus’ own authority. As indicated in the section of this Policy Statement entitled “NOTICE OF ADOPTION BY THE AGENCY’S GOVERNING BOARD AND INSTRUCTION ON FEDERAL PREEMPTION”, MTA Bus recognizes that FTA drug and alcohol rules preempt any state or local requirement that conflicts with the federal rule or thwarts its proper application.

## PART I

### **MTA Bus Company Drug & Alcohol Testing: Federal Transit Administration (FTA) Program**

#### **THE OMNIBUS ACT**

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees in the mass transit industry. The rules generally require implementation beginning on January 1, 1995 for large employers (generally, 50 or more safety-sensitive employees) and January 1, 1996 for small employers.

#### **THE RULES**

The Federal Transit Administration (FTA) has issued rules requiring alcohol misuse prevention programs, including alcohol testing of safety-sensitive employees. The FTA also has issued an anti-drug rule requiring drug testing of safety-sensitive transit employees. The DOT rules include a drug and alcohol testing procedures rule (49 CFR, Parts 40 and 655 as amended) that establishes procedures for urine drug testing and alcohol breath testing.

#### **EMPLOYEES AFFECTED BY THESE RULES**

Employees who perform safety-sensitive functions are covered by these regulations. The FTA has determined that "Safety-Sensitive" functions are performed by those who:

- Operate revenue service vehicles including when not in revenue service.
- Operate non-revenue service vehicles that require drivers to hold CDLs.
- Dispatch or control revenue service vehicles.
- Maintain revenue service vehicles or equipment used in revenue including maintaining the right of way.
- Provide security and carry a firearm.

These categories include supervisors who perform these functions. MTA Bus, as required by the FTA regulations, has exhaustively reviewed the actual duties performed by employees to determine which employees perform safety-sensitive functions and, accordingly, are subject to FTA mandated drug and alcohol testing. The current list of safety-sensitive titles is appended to this Policy Statement.

In addition, by **MTA Bus policy**, both FTA covered and non-covered employees are subject to testing in additional circumstances which is discussed in Part II.

#### **PROHIBITED ALCOHOL USE**

Because alcohol is a legal substance, the **FTA** rules define specific prohibited alcohol-related conduct. "Alcohol" includes the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol use means the consumption of any beverage,

mixture, or preparation, including any medication, containing alcohol. Performance of safety-sensitive functions is prohibited:

- While having an alcohol concentration of 0.02 or greater as indicated by an alcohol breath test.
- While using alcohol regardless of source.
- Within four (4) hours after using alcohol regardless of source.

In addition, refusing to submit to an alcohol test and using alcohol within eight (8) hours after an accident or until tested (for employees required to be tested) is prohibited.

In addition, by **MTA Bus policy**, both safety-sensitive and non safety-sensitive employees are prohibited from possessing, using or being under the influence of alcohol while on duty which is discussed in Part II.

## **REQUIRED ALCOHOL TESTS**

The following **FTA** alcohol tests are required:

- **Post-accident** – an accident is defined as an occurrence associated with the operation of a vehicle in which 1) an individual dies; 2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; 3) the mass transit vehicle involved is a bus, electric bus, van, or automobile, in which one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle; 4) the mass transit vehicle involved is a rail car, trolley car, trolley bus or vessel, and is removed from revenue service. For accidents involving fatalities, each surviving safety sensitive employee operating the mass transit vehicle at the time of the accident must be tested. Safety sensitive employees not in the vehicle (e.g. maintenance personnel), whose performance could have contributed to the accident (as determined by the transit agency using the best information available at the time of the accident) must be tested. For non-fatal accidents involving a bus, electric bus, van or automobile, employers shall test each safety sensitive employee operating the mass transit vehicle at the time of the accident unless their behavior can be completely discounted as a contributing factor to the accident. Safety sensitive employees in non-fatal accidents involving rail cars, trolley cars, trolley buses or vessels on duty in the vehicle at the time of the accident must be tested unless their behavior can be completely discounted as a contributing factor to the accident. For non-fatal accidents, the employer shall test any other safety sensitive employee whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the accident. Post accident alcohol tests must be performed as soon as practicable, but no later than eight (8) hours after the accident. If the test is not administered within two (2) hours following the accident, the employer must still attempt to administer the test and must also prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the accident then an instruction must be prepared and maintained on file indicating the reason why the test was not performed.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to obtain necessary emergency medical care.

- **Reasonable suspicion** - conducted when one trained supervisor can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observation of specific behavior, speech or appearance of the covered employee. Reasonable Suspicion alcohol tests must be performed as soon as practicable, but no later than eight (8) hours after the determination. If the test is not administered within two (2) hours following the determination, the employer must prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test is not administered within 8 hours following the determination then an instruction must be prepared and maintained on file indicating the reason why the test was not performed.
- **Random** - conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions. (see Random Alcohol Testing, discussed below)
- **Return-to-duty and Follow-up** - conducted when an individual who has violated the prohibited alcohol conduct standards returns to performing safety-sensitive duties or may be directed following a verified prior FTA positive drug test or refusal. Frequency and duration of the testing period beyond 12 months is determined by the Substance Abuse Professional (SAP). Follow-up tests are unannounced and at least 6 tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty and may include drug testing.

**Note:** In addition, **MTA Bus policy** requires alcohol testing in **additional circumstances for both FTA covered and non-FTA covered employees** as discussed in Part II.

## ALCOHOL TESTING REFUSALS

### Actions Considered to be a Alcohol Test Refusal under 49 CFR, Part 40.261

Action	All Test Categories
1. Fail to appear for a test within a reasonable time as directed by the employer	Refusal
2. Fail to remain at the test site until the testing process is complete	Refusal
3. Fail to provide an adequate amount of saliva or breath	Refusal
4. Fail to provide a sufficient breath specimen when directed and there is no adequate medical explanation for the failure	Refusal
5. Fail to undergo a medical examination as directed to do so	Refusal
6. Fail to sign the certification at Step II of the Alcohol Testing Form	Refusal
7. Fail to cooperate with any part of the testing process	Refusal

## RANDOM ALCOHOL TESTING

The selection of employees for random alcohol testing, pursuant to FTA regulations, is accomplished by a scientifically validated method by means of a computer program. Some employees may be tested more than once each year; some may not be tested at all depending on the random selection. Random tests are spread reasonably throughout the year and are continuous throughout the year, and during all hours of operation of the service, which at MTA Bus is 24 hours per day, 7 days per week. Random alcohol testing must be

conducted just before, during, or just after an employee's performance of safety-sensitive duties. The employee is randomly selected for testing (usually from a "pool" of employees subject to testing). The testing dates and times are unannounced and are with unpredictable frequency throughout the year. Each year, the number of random alcohol tests conducted by MTA Bus must equal at least 10% of all the safety-sensitive employees.

## **ALCOHOL TESTING PROCESS**

The rules require breath testing using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). Two (2) breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result with less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The employee and the individual conducting the breath test, called a Breath Alcohol Technician (BAT), complete the alcohol testing form to ensure that the results are properly recorded. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results. A "positive" alcohol test is one in which both the screening test and the confirmation test are at 0.04 or greater. The confirmation test results determine any actions to be taken. Testing procedures that ensure accuracy, reliability and confidentiality of test results are outlined in 49 CFR Part 40. These procedures include training and proficiency requirements for Breath Alcohol Technicians, quality assurance plans for the breath testing devices (including calibration), requirements for a suitable test location, and protection of employee test records. A breath alcohol test will be deemed invalid and therefore "cancelled" where 1) the next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the Quality Assurance Plan (QAP) from the known value of the test standard; 2) the BAT does not observe the minimum 15-minute waiting period prior to the confirmation test; 3) the BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test; 4) the BAT does not sign FTA required forms; 5) the BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result; 6) An EBT fails to print a confirmation test result; or 7) on a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

Failure to appear for a test without an acceptable reason will be treated as a refusal. When an employee receives notification to appear for testing, he/she should proceed immediately to the test site. Any employee who fails to arrive at the test site within a reasonable amount of time after being notified shall be presumed to be a refusal and therefore a positive under the FTA. The employee shall have the burden of substantiating his/her reason for not arriving at the collection site within a reasonable time. A failure to meet the burden of proof will result in the "refusal" standing.

A covered employee who remains subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his/her location if he/she leaves the scene of the accident prior to submission to such test shall be deemed by the employer to have refused to submit to testing. A written or verbal refusal to provide a required breath specimen or to sign the DOT-required testing forms also constitutes a refusal. In addition, employees who fail to cooperate with the testing process in a way that prevents the completion of the test and/or who provide insufficient breath shall be deemed a refusal where the Medical Review Officer (MRO) determines that no valid medical reasons

exists for such failure. Refusal to take a test is considered to be a "positive" and may have further disciplinary consequences, up to and including dismissal.

MTA Bus reserves the right to use oral fluid Alcohol Screening Devices (ASDs) from the National Highway Traffic Safety Administration conforming products list to conduct alcohol screening tests in accordance with the provisions of 49 CFR Part 40, Subparts K and L.

## **EFFECTS, SIGNS, SYMPTOMS OF ALCOHOL MISUSE AND METHODS OF INTERVENTION**

Alcohol misuse can lead to violence at home or in the workplace. It can also result in missed work, poor judgment, at-home or on-duty accidents, and trouble with law enforcement. It can also cause malnutrition, brain damage, cancer, heart disease, liver damage, ulcers, gastritis, damage to adrenal and pituitary glands and birth defects. Signs and symptoms of alcohol misuse may include: dulled mental processes, lack of coordination or unsteady gait, slowed reaction time, slurred speech, odor of alcoholic beverage on breath, sleepy condition, memory lapses, the "shakes or tremors", personality changes, an inability to control drinking and a denial that alcohol use is a problem, and a preoccupation with alcohol.

Intervention is an effort to halt the pattern of an individual's use of alcohol and other drugs. Friends and family may intervene with care and concern and, where met with resistance, stronger methods of intervention may be necessary. These include peer intervention, professional counseling, the use of hotlines and group discussions. Another form of intervention is where alcohol use is evident on the job and the employer refers the employee to treatment as a condition of his/her continued employment.

## **THE CONSEQUENCES OF ALCOHOL MISUSE**

Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Employees who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by a SAP and have complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, employees who have any alcohol concentration of 0.02 or greater in their breath but less than 0.04, when tested just before, during or just after performing safety-sensitive functions, must also be removed from performing such duties for 8 hours.

For employees performing safety-sensitive functions who test at a level of 0.04 or greater, the result is deemed positive and requires referral to a SAP. The employee may not be returned to a safety-sensitive position until recommended by a SAP.

If an employee's behavior or appearance suggests alcohol misuse, a reasonable suspicion alcohol test must be conducted. If a breath test cannot be administered, the employee must be removed from performing safety-sensitive duties for at least 8 hours. There may be additional consequences for alcohol misuse such as discipline in accordance with MTA Bus policy or collective bargaining agreements (see Part II).

## **REHABILITATION**

Employees who violate the alcohol misuse or drug use rules will be referred to a SAP for evaluation. New York City Transit's Employee Assistance Program (EAP known as Work Life Services) through its professional staff, serves as the agency's substance abuse professionals (Appendix II). Pursuant to FTA regulations, SAPs are required to be a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor

(certified by the NAADAC (National Association of Alcoholism and Drug Abuse Counselors Certification Commission or the ICRC) and have clinical knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Where there is a verified positive drug or alcohol test result, or where the employee is deemed a refusal, the Substance Abuse Professional's role is to: 1) conduct an initial evaluation to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse; 2) determine the types of assistance needed by the employee and recommend a course of action to the employee; 3) determine whether the employee (a) has followed the course of action recommended by the SAP, (b) has successfully completed the course of treatment, and (c) is ready to return to safety sensitive duties; 4) determine whether the Return-to-duty test, and subsequent follow-up tests, will be for drugs only, alcohol only, or both drugs and alcohol; 5) determine the frequency and duration of follow-up testing for each covered employee on an individual, case-by-case basis. At a minimum, the SAP must require a frequency and duration of 6 tests during the first 12 months back to work. That frequency may be increased or reduced at any time during the course of follow-up testing. The SAP determines a follow up testing program that is individual and tailored to the circumstances of the employee, and which may continue for as long as 60 months, but no longer. After 12 months, the SAP determines whether to continue or terminate the follow-up testing program, and adjusts the frequency and duration as appropriate. This requirement implies that there will be a one-year evaluation of the employee, with subsequent modification to the follow-up program as appropriate. The SAP maintains records related to the referral and return to duty and follow up testing, including: (a) records pertaining to a determination by a substance abuse professional concerning a covered employee's need for referral for assistance in resolving problems associated with prohibited drug use and alcohol misuse; (b) records concerning a covered employee's entry into and completion of the program of treatment recommended by the substance abuse professional.

The SAP must present a written report to MTA Bus at the time the SAP recommends that employee is ready to take a return-to-duty test and return to a safety sensitive position if the return-to-duty test is negative. The SAP's report, outlining the employee's ability to demonstrate successful compliance to MTA Bus will be in letter format with the SAP's official letterhead, signed by the SAP, and contains the following: 1) the employee's name and social security number; 2) employer's name and address; 3) reason for initial assessment (specific violation of the rules and the violation date); 4) date(s) of initial assessment and brief synopsis of the rehabilitation plan; 5) name and practice or program providing the treatment; 6) inclusive dates of the employee's treatment program; 7) clinical characterization of the employee's participation in the treatment program; 8) the SAP's clinical determination as to the employee's demonstration of successful compliance; 9) follow-up testing plan; 10) the SAP's telephone number.

The FTA requires that safety-sensitive employees who test positive for drugs and/or alcohol in an FTA test be referred to a Substance Abuse Professional (SAP) for evaluation and appropriate referral even when the employee is dismissed and not eligible for restoration to duty under MTA Bus policy. This requirement applies to both probationary and non-probationary employees.

## **RULE ENFORCEMENT**

Employers are required to keep detailed records of their alcohol misuse prevention programs. The DOT agencies conduct inspections or audits of employers' programs.

## **BENEFITS OF PREVENTING ALCOHOL MISUSE**

There are significant safety benefits from preventing alcohol misuse. These rules will help prevent tragic, costly transportation accidents as well as help to improve worker productivity, decrease health care costs, and lessen worker absences.

Although the rules will be costly to implement because there are so many employees subject to testing, the DOT has carefully balanced safety, individual rights, and costs. The potential safety benefits to employees, employers, and the public outweigh the costs.

## **DRUG TESTING**

The **FTA** has issued a rule requiring drug testing of safety-sensitive transit employees also beginning in January 1995. The drug testing rules cover the same categories of safety-sensitive employees as the alcohol testing rules – reasonable suspicion; post-accident; random; return-to-duty; and follow-up – and *also include* pre-employment testing.

The following **FTA** drug tests are required:

- **Pre-employment** – Candidates for employment must produce a negative drug test result prior to being hired (i.e. going on the payroll) and if the test is cancelled, the candidate must retake and produce a negative test result before being hired. Pre-employment testing is also required when employees transfer to a safety-sensitive position. Transferees must provide a verified negative drug test result prior to performing a safety sensitive function. In addition, testing is performed following an extended absence of 90 or more consecutive calendar days regardless of the reason.
- **Post-accident** – an accident is defined as an occurrence associated with the operation of a vehicle in which 1) an individual dies; 2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; 3) the mass transit vehicle involved is a bus, electric bus, van, or automobile, in which one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle; 4) the mass transit vehicle involved is a rail car, trolley car, trolley bus or vessel, and is removed from revenue service. For accidents involving fatalities, each surviving safety sensitive employee operating the mass transit vehicle at the time of the accident must be tested. Safety sensitive employees not in the vehicle (e.g. maintenance personnel), whose performance could have contributed to the accident (as determined by the transit agency using the best information available at the time of the accident) must be tested. For non-fatal accidents involving a bus, electric bus, van or automobile, employers shall test each safety sensitive employee operating the mass transit vehicle at the time of the accident unless their behavior can be completely discounted as a contributing factor to the accident. Safety sensitive employees in non-fatal accidents involving rail cars, trolley cars, trolley buses or vessels on duty in the vehicle at the time of the accident must be tested unless their behavior can be completely discounted as a contributing factor to the accident. For non-fatal accidents, the employer shall test any other safety sensitive employee whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the accident. Post accident drug tests must be performed as soon as practicable, and within 32 hours after the accident.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to obtain necessary emergency medical care.

- **Reasonable suspicion** - conducted when one trained supervisor can articulate and substantiate contemporaneous physical, behavioral and performance indicators of probable drug use or alcohol misuse by observation of specific behavior, speech or appearance of the covered employee.
- **Random** - conducted on a random unannounced basis for safety sensitive employees. (See explanation of the random testing process, discussed later in this Policy Statement.)
- **Return-to-duty and Follow-up** - conducted when an individual who has a verified prior FTA positive drug test or refusal returns to performing safety sensitive duties or may be directed following an FTA verified positive alcohol test or refusal. Frequency and duration of the testing period is determined by the SAP. Follow-up tests are unannounced and at least 6 tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty and may include alcohol testing. Employees reporting for a Return-to-Duty After a Positive or Follow-up test will be subject to direct observation as mandated by FTA regulations.

In addition, **MTA Bus policy** requires drug testing in **additional circumstances for both FTA covered and non-FTA covered employees** as discussed in Part II.

## **DRUG TESTING PROCEDURES**

The DOT drug and alcohol testing procedures rule (49 CFR Part 40) sets forth the procedures for drug testing in all the transportation industries. Drug testing is conducted by analyzing an employee's urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). For primary specimen analysis, MTA Bus has contracted with a DHHS certified laboratory. The employee provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody documents, and prepares the specimen and accompanying paperwork for shipment to the drug testing laboratory.

The specimen collection procedures and chain of custody documents ensure that the specimen's security, proper identification, and integrity are not compromised. When an individual arrives at the collection site, the collection site person must ensure that the individual is positively identified as the employee selected for testing (e.g. through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person must not proceed with the collection. An intact Chain of Custody must be maintained throughout the testing process. After checking the sufficiency, appearance and temperature of the specimen, the collector will pour the urine into the two specimen bottles for the split collection. The collection site person must place securely on each bottle a tamper proof seal and preprinted identification label which contains the date, the individual's specimen number and any other identifying information provided by the employer. The individual must initial the identification label on each specimen bottle for the purpose of certifying that it is the specimen collected from him or her. Federally approved Chain of Custody documents are used at MTA Bus for FTA required tests. Those chain of custody forms are distinct from Chain of Custody Forms that are used for testing that is conducted under MTA Bus' own authority by collective bargaining agreement or policy instruction.

If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee will be notified by the MRO that the employee has a confirmed, verified positive test and that the employee has 72 hours to request the split specimen be sent to another DHHS certified laboratory to have it analyzed for the presence of the drug found in the primary sample. MTA Bus contracts with several, DHHS certified

laboratories, for split specimen analysis. If the employee makes the request within 72 hours of the time the employee has actual knowledge of the MRO's verification of a positive on the primary specimen, the MRO will direct, in writing, the laboratory to provide the split specimen to another DHHS certified laboratory for analysis. Only the MRO can initiate this action. This split specimen procedure essentially provides the employee with an opportunity for a "second opinion". If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) detected in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, or if the results of the split sample test are not scientifically adequate, the MRO shall declare the original test to be "cancelled" and report the reasons to the employee, the employer and the DOT. A "cancelled test" is neither positive nor negative.

## DRUG TESTING REFUSALS

### Actions Considered to be a Drug Test Refusal under 49 CFR, Part 40.191

Action	Pre-Employment	All Test Categories Except Pre-Employment
1. Fail to appear for a test within a reasonable time as directed by the Employer	Not a Refusal	Refusal
2. Fail to remain at the test site until the testing process is complete	Refusal, if individual leaves after testing process has commenced	Refusal
3. Fail to provide a urine specimen	Refusal, if individual fails to provide a specimen once the testing process has commenced	Refusal
4. Fail to permit direct observation of a specimen when required	Refusal	Refusal
5. Fail to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure	Refusal	Refusal
6. Fail or decline to take a second test when directed to do so	Refusal	Refusal
7. Fail to undergo a medical examination when directed to do so	Refusal if employer has made a contingent offer of employment	Refusal

8. Fail to cooperate with any part of the testing process (DER makes final refusal determination)	Refusal	Refusal
9. The MRO reports that you have a verified adulterated or substituted test result	Refusal	Refusal
10. For an observed collection, fail to follow the observer's instructions to permit the observer to determine whether there is a prosthetic or other device that could be used to interfere with the collection process	Refusal	Refusal
11. Possess or wear a prosthetic or other device that can be used to interfere with the collection process	Refusal	Refusal
12. State to the collector or MRO that the specimen is either adulterated or substituted	Refusal	Refusal

Failure to appear for a test without an acceptable reason will be treated as a refusal. When an employee receives notification to appear for testing, he/she should proceed immediately to the test site. Any employee who fails to arrive at the test site within a reasonable amount of time after being notified shall be presumed to be a refusal and therefore a positive under the FTA. The employee shall have the burden of substantiating his/her reason for not arriving at the collection site within a reasonable time. A failure to meet the burden of proof will result in the "refusal" standing.

A covered employee who remains subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his/her location if he/she leaves the scene of the accident prior to submission to such test shall be deemed by the employer to have refused to submit to testing. Where the employee subject to post-accident testing is required to assist in the resolution of the accident or receives medical attention following the accident, post-accident testing is stayed during that period. A written or verbal refusal to provide a required urine specimen or to sign the DOT-required testing forms also constitutes a refusal. In addition, employees who fail to cooperate with the testing process and/or are unable to provide a minimum of 45 cc of urine within three (3) hours of the commencement of the testing process shall be deemed a refusal where the Medical Review Officer determines that no valid medical reasons exists for such failure. Refusal to take a test is considered to be a "positive" and may have further disciplinary consequences, up to and including dismissal.

## **DRUGS TESTED**

The **FTA** requires that all urine specimens be analyzed for the following drugs:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates (including 6 Acetylmorphine)
5. Phencyclidine (PCP)
6. MDMA

In addition, under **MTA Bus policy**, for non-FTA tests, urine specimens are analyzed for additional drugs to those listed above as discussed in Part II.

The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GCMS) analysis.

### **FTA DRUG TESTING CUT-OFF LEVELS FOR SCREENING AND CONFIRMATION TESTING**

The FTA has promulgated the following minimum cut off levels for the minimum quantity of drug that must be detected in the initial and confirmation tests:

	<i>Screen (ng/ml)</i>	<i>Confirmation (ng/ml)</i>
Marijuana (THC metabolite):	50	15
Cocaine	150	100
Amphetamines	500	250
Opiates	2,000	2,000
6 Acetylmorphine	10	10
Phencyclidine (PCP)	25	25
MDMA	500	250

### **REVIEW AND INTERPRETATION OF THE LABORATORY RESULTS**

MTA Bus, pursuant to FTA regulations employs the services of Medical Review Officers (MRO) who in accordance with FTA regulations, are licensed physicians who have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant biomedical information. All drug test results are reviewed and interpreted by the MRO before they are reported to the employer. If the laboratory reports a positive result to the MRO, the employee will be directed to see the MRO for an interview to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer. A dilute negative result will be considered final with no additional testing required. A dilute positive result will be considered final and subject the employee to all regulations regarding a positive drug test. All dilute test results will be reported as such to the DER whether they be positive or negative.

### **PROHIBITED DRUG USE**

The drug rules prohibit any unauthorized use of controlled substances. Illicit use of drugs by **FTA** covered employees is prohibited on or off duty. By **MTA Bus policy**, illicit use of drugs by **any** employee is prohibited on or off duty as discussed in Part II.

### **THE CONSEQUENCES OF A POSITIVE DRUG TEST**

As with an alcohol misuse violation, an FTA covered employee must be removed from safety-sensitive duty if he/she has a positive drug test result. An employee cannot be returned to safety-sensitive duties until he/she has been evaluated by a SAP and/or MRO, complied with recommended rehabilitation, and has a

negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use is required, and may include testing for alcohol.

The FTA requires that FTA covered employees who test positive for drugs and/or alcohol in an FTA test be referred to a SAP for evaluation and appropriate referral even when the employee is dismissed and not eligible for restoration to duty under MTA Bus policy. This requirement applies to both probationary and non-probationary employees.

There may also be disciplinary consequences for both FTA covered and non-covered employees in accordance with MTA Bus policy or applicable collective bargaining agreements.

An applicant who has previously tested positive must document successful completion of a SAP mandated evaluation, referral and education/treatment program.

## **RANDOM DRUG TESTING**

Employers are responsible for conducting random, unannounced drug tests. The selection of employees for random testing, pursuant to FTA regulations, is accomplished by a scientifically validated method by means of a computer program. The total number of tests conducted each year must equal at least 25% of the number of FTA covered employees. Some employees may be tested more than once each year; some may not be tested at all depending on the random selection. Random tests are spread reasonably throughout the year and are continuous throughout the year, and during all hours of operation of the service, which at MTA Bus is 24 hours per day, seven (7) days per week. Random testing for drugs does not have to be conducted in immediate time proximity to performing safety-sensitive functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty. Once an employee is selected by for random testing through the computer selection process, there is no managerial discretion in selection or notification to employees of the requirement for testing. Once notified of selection for testing, an employee must immediately proceed to a collection site to accomplish the urine specimen collection.

## **REQUIRED EMPLOYEE EDUCATION AND TRAINING**

MTA Bus provides information on drug use, alcohol misuse and treatment resources to FTA covered and non-covered employees. MTA Bus provides one hour of training for employees on the dangers of controlled substances use and alcohol misuse. All supervisors of FTA covered employees must attend at least one hour of training of the signs and symptoms of drug abuse on reasonable suspicion testing and at least one hour of training of the signs and symptoms of alcohol misuse and reasonable suspicion testing. This training is necessary to assist supervisors in making appropriate determinations for reasonable suspicion testing.

## **RECORDS, SPECIMEN STORAGE AND CONFIDENTIALITY OF EMPLOYEES' TESTING RECORDS**

Federal rules require that the testing laboratory report test results to the MRO within an average of five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported, it shall be reviewed and the test certified as an accurate report by the responsible individual. The report is required to identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number). The laboratory is required to report as negative all specimens that are negative on the initial test or negative on

the confirmation test. Only specimens confirmed positive are reported positive for a specific drug. The MRO may request a quantitation level that the laboratory must supply. The MRO is required to report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but is not permitted to disclose the quantitation of test results to the employer. However, the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test. Reports from laboratories to the MRO may be made by electronic means in a confidential manner but may not be provided verbally by telephone.

Employee drug and alcohol testing results and records are available to the employee and are maintained under strict confidentiality by the employer, the testing laboratory, and the Medical Review Officer. They cannot be released to others without the written consent of the employee. Exceptions to these confidentiality provisions are limited to DOT agencies when license or certification actions are required or to a decision maker in arbitration, litigation or administrative proceedings arising from a positive test. Statistical records and reports are maintained by employers and testing laboratories. This information is aggregated data and is used to monitor compliance with the rules and to assess the effectiveness of the testing programs.

## **PART II**

### **MTA Bus Company Drug & Alcohol Testing: MTA Bus Company Non-Federal Program**

#### **THE RULES AND POLICY STATEMENT GOVERNING AGENCY-BASED TESTING**

To the extent that any provisions of the MTA Bus policy, rules and/or collective bargaining agreements are inconsistent with federal regulations, they are considered modified to conform to such regulations.

These rules are separate and distinct from but not in conflict with the Federal Transit Administration (“FTA”) issued rules described in Part I.

#### **EMPLOYEES AFFECTED BY THESE RULES**

All MTA Bus employees are covered by this policy as a condition of employment.

#### **REQUIRED ALCOHOL TESTS**

The following **MTA Bus** alcohol tests are required.

- Post Accident/Incident testing, when directed by members of supervision following any accident or unusual incident that occurs while on duty where it is reasonable to conclude that drug/alcohol use could have contributed to the accident. An “Accident” is an unexpected or unintentional occurrence that results in property damage or personal injury. An “Accident” shall include all motor vehicle accidents involving a company vehicle driven by an MTA Bus employee that result in property damage or personal injuries. An “Unusual Incident” is an event which interrupts normal procedures of the company.
- Reasonable Suspicion, when supervision or management has reason to believe the employee is impaired.
- Follow-up testing after a prior positive test and based on a SAP’s recommendation.

#### **NON-DOT ALCOHOL TESTING PROCESS**

The DOT drug and alcohol testing procedures rule (49 CFR Part 40) sets forth the procedures for alcohol testing in all the transportation industries. MTA Bus has adopted the DOT regulations of alcohol testing (49 CFR 40) for all Non-DOT alcohol testing under MTA Bus authority. Federally approved Chain of Custody documents are used at MTA Bus only for FTA required tests. Those chain of custody forms are distinct from Chain of Custody Forms that are used for testing that is conducted under MTA Bus’ own authority which are entitled “NON-DOT.”

MTA Bus Non-DOT alcohol tests require breath testing using evidential breath testing devices (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). A screening breath test is conducted first. Any result with less than 0.02 alcohol concentration is considered a "negative" test and no further testing is done. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. A “positive” alcohol test is one in which both the screening test and the confirmation test are each at 0.04 or greater.

Failure to appear for a test without an acceptable reason will be deemed a refusal. Employees who appear for testing more than a reasonable period of time (as determined by MTA Bus in its sole discretion) after being directed without an acceptable reason for the delay may be treated as having refused the test and/or appropriately disciplined. A written or verbal refusal to provide a required breath specimen or to sign required testing forms also constitutes a refusal. In addition, employees who fail to cooperate with the testing process in a way that prevents the completion of the test shall be deemed to have refused the test. Employees who provide insufficient breath and/or a physician has determined, through a medical evaluation, that there was no adequate medical explanation for the failure shall also be deemed to have refused the test. Failure to undergo a medical examination or evaluation as directed by MTA Bus as part of the "insufficient breath procedures" also constitutes a refusal. Refusal to take a test is considered to be a "positive" and may have further disciplinary consequences, up to and including dismissal.

## **PROHIBITED ALCOHOL USE**

MTA Bus prohibits any the use of alcohol by **any** employee while on duty and while operating a company vehicle for any purpose. MTA Bus employees are prohibited from consuming alcohol after an accident or unusual incident until they have completed the post accident/incident testing process.

## **THE CONSEQUENCES OF A POSITIVE TEST**

Violations of this policy will result in disciplinary action up to and including dismissal.

## **REHABILITATION**

Employees who violate the alcohol misuse or drug use rules will be referred to Work Life Services.

## **RULE ENFORCEMENT**

MTA Bus' internal standards must be strictly enforced by supervisors and managers. There is zero tolerance for drug use and alcohol misuse violations at MTA Bus. The riding public and all employees have a right to expect a drug and alcohol free transit system.

## **NON-DOT DRUG TESTING**

**Drug testing is required for all MTA Bus employees for** reasonable suspicion; post-accident/incident; return-to-duty; and follow-up testing.

MTA Bus also requires drug testing in the following circumstances for all employees performing safety-sensitive duties: biennial and/or annual periodic physicals; when directed by members of supervision following any accident or unusual incident that occurs while on duty where it is reasonable to conclude that drug/alcohol use could have contributed to the accident; unannounced recheck after a prior positive.

## **NON-DOT DRUG TESTING PROCEDURES**

The DOT drug and alcohol testing procedures rule (49 CFR Part 40) sets forth the procedures for drug testing in all the transportation industries. MTA Bus has adopted the DOT procedures of drug testing (49 CFR 40) for all Non-DOT drug testing under MTA Bus authority. Federally approved Chain of Custody documents are used at MTA Bus only for FTA required tests. Those chain of custody forms are distinct

from Chain of Custody Forms that are used for testing that is conducted under MTA Bus' own authority, which are entitled "Non-DOT".

## **DRUGS TESTED**

**MTA Bus** requires that for all tests conducted under its own (non-federal) authority, urine specimens be analyzed for the following drugs:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates, including heroin and four additional prescription opioids (hydrocodone, hydromorphone, oxycodone and oxymorphone)
5. MDMA
6. Phencyclidine (PCP)
7. Barbiturates
8. Methadone
9. Benzodiazepines
10. Dilantin (solely for Bus Operator titles during periodic medical examinations)

The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GCMS) analysis.

## **REVIEW AND INTERPRETATION OF THE LABORATORY RESULTS**

All drug test results are reviewed and interpreted by the Medical Review Officer (MRO) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the employee will be directed to see the MRO for an interview to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer. A dilute negative result will be considered final with no additional testing required. A dilute positive result will be considered final and subject the employee to all regulations regarding a positive drug test. All dilute test results will be reported as such to the DER whether they be positive or negative.

## **PROHIBITED DRUG USE**

MTA Bus prohibits any unauthorized use of controlled substances and the illicit use of drugs by **any** employee on or off duty.

## **THE CONSEQUENCES OF A POSITIVE TEST**

Any employee will be removed from service if he/she has a positive drug test result. An employee cannot be returned to duty until he/she has been evaluated by a SAP, and/or the MRO, complied with recommended rehabilitation, is recommended by a SAP for return to work and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use is required.

There may also be disciplinary consequences for both **FTA covered and non-covered employees** in accordance with MTA Bus policy or applicable collective bargaining agreements.

## **NOTICE OF ADOPTION BY THE AGENCY'S GOVERNING BOARD AND STATEMENT ON FEDERAL PREEMPTION**

This policy statement has been adopted by the Metropolitan Transportation Authority's governing board and is in full force and effect subject to future amendment and revision as necessary. Pursuant to 49 CFR Part 40 and Part 655.6 [Preemption of State and local laws]: (a) except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that: (1) compliance with both the state or local requirement and any requirement in this part is not possible; or (2) compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part. (b) this part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public. Also, to the extent that any provisions of the MTA Bus policy, rules and/or collective bargaining agreements are inconsistent with federal regulations, they are considered modified to conform with such regulations.

## **Appendix I**

**Safety Sensitive Titles  
MTA Bus Company**

<b>Title</b>
<b>Bus Maintenance Supervisor</b>
<b>Bus Operator</b>
<b>Cleaner/Helper*</b>
<b>Dispatcher</b>
<b>Helper</b>
<b>Maintainer</b>
<b>Stock Worker</b>

**\*Hired after June 9, 2009**

**Appendix II**

**Substance Abuse Professionals for the MTA Bus Company**

**New York City Transit Authority  
Work Life Services (an Employee Assistance Program)  
177 Livingston Street – 4<sup>th</sup> Floor  
Brooklyn, New York 11201  
(347) 643-7376**

**Transport Workers Local 100  
Union Assistance Program  
519 8<sup>th</sup> Avenue, 7<sup>th</sup> Floor, South  
New York, New York 10018  
(212) 736-357**

# MTA Long Island Rail Road

**I. PURPOSE**

The purpose of this Corporate Policy and Procedure (Policy) is to explain the responsibilities of all employees of the MTA Long Island Rail Road (LIRR) to maintain a drug and alcohol-free workplace and to comply with all applicable laws and regulations and LIRR rules. This Policy also describes the resources available to employees with drug and/or alcohol problems and explains the LIRR's commitment to encourage voluntary treatment before an employee jeopardizes his/her safety, the safety of others or the employee's continued employment with the LIRR. This Policy also explains the circumstances and the manner in which the LIRR conducts drug and/or alcohol testing of employees in compliance with applicable laws and LIRR rules.

**II. SCOPE**

This Policy:

- A. Applies to all LIRR employees. Compliance with this Policy is a condition of employment. Consent to drug and/or alcohol testing, pursuant to this Policy and applicable laws and regulations, is implied by accepting or continuing employment with the LIRR.
- B. Does not supersede the applicability and enforceability of other LIRR agreements, rules, policies and applicable laws and regulations, with which employees must comply;
- C. Does not supersede the LIRR's rights and obligations set forth in 49 C.F.R. §240, et seq., concerning the eligibility, training, testing, certification and monitoring of all locomotive engineers;
- D. Does not create a contract, express or implied, and may be changed at the sole discretion of the LIRR in whole or in part at any time; and
- E. Nothing in this Policy prohibits the LIRR from taking disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of, or reasonable suspicion of a violation of this Policy.

**IV. DEFINITIONS****A. Substances**

- 1. **Alcohol** - The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
- 2. **Controlled Substances** - All substances listed in Schedules I to V as set forth in 21 C.F.R. 802 Parts 1301-1316, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include Narcotics/Opiates, Depressants, Stimulants, Hallucinogens, and Cannabis.
- 3. **Drug** - Any substance other than alcohol that has known mind or function-altering effects on humans; specifically, including any psychoactive substance, including but not limited to, controlled substances.
- 4. **Intoxicant** - Any agent that produces intoxication, including but not limited to a drug or toxic substance or alcoholic beverages.



5. **Over-the-Counter (OTC) medications** - Medications that do not require a prescription that can be purchased from pharmacies or other retail establishments.
6. **Prescription drugs** - Medications prescribed by a licensed medical practitioner for a specific course of treatment.

#### **B. Employee Classifications**

1. **Covered Employees** - Employees who perform service subject to the Hours of Service Act (49 U.S.C. § 20101, *et seq.*) (Covered Service), both represented and non-represented, who are required to comply with this Policy and with the alcohol and drug prohibitions and provisions in 49 C.F.R. Part 219 of the Federal Railroad Administration (FRA) regulations. This category includes the following positions: (a) Block Operator, Train Dispatcher, Train Director, and their Assistants; (b) Locomotive Engineer and Locomotive Engineer Trainee; (c) Conductor, Assistant Conductor, and Collector; (d) Electrician (Car Mover, and ASC Qualified); (e) Signal Foreman, Assistant Signal Foreman, Signal Maintainer, Signal Inspector, Signaller, Assistant Signaller, and Signal Helper.
2. **Commercial Motor Vehicle Drivers (Commercial Drivers)** - Employees who perform service requiring a commercial driver's license (CDL) issued by a state authorizing operation of a commercial motor vehicle (a) weighing in excess of 26,000 pounds; or (b) that has a gross combination weight of 26,001 or more pounds, inclusive of a towed unit with a gross weight rating more than 10,000 pounds; or (c) carrying sixteen (16) or more passengers, or (d) transporting placardable hazardous material. These employees are required to comply with this Policy and with the alcohol and drug prohibitions and provisions in 49 C.F.R. Part 382 of the Federal Motor Carrier Safety Administration (FMCSA) regulations. This category includes non-represented employees performing service as Commercial Drivers.
3. **Safety-Sensitive Employees** - Employees who perform service in job titles where the tasks performed are so fraught with risks of injury that even a momentary lapse of attention can have disastrous or irremediable consequences to the employee or others. A list of the job titles the LIRR has designated as Safety Sensitive may be obtained from the Department of Human Resources (Human Resources). This definition includes non-represented employees performing Safety Sensitive tasks.
4. **Non-Safety-Sensitive Employees** - Employees who perform low or no risk tasks where non-performance of those tasks would not present immediate danger to the employee or others.
5. **Medical Review Officer (MRO)** - A licensed physician designated by the LIRR who is responsible for receiving and reviewing laboratory results generated by the LIRR's drug testing program and evaluating medical explanations for certain drug test results.
6. **Co-Worker** - Another employee of the LIRR including a working Supervisor directly associated with a yard or train crew, such as a Conductor or Yard Foreman, but not including any other Supervisor, special agent, or officer, and including a representative of the employee's collective bargaining unit.
7. **Substance Abuse Professional (SAP)** - A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction



counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. For purposes of this Policy, an LIRR Employee Assistance Professional (EAP) Counselor is the SAP.

8. **Supervisor** - An officer, manager, or other employee of the LIRR who is responsible for supervising or monitoring the conduct or performance of one (1) or more employees. This definition includes both represented and non-represented supervisors.

C. **Other**

1. **Pre-Placement** - Human Resources will schedule a pre-placement drug test for those applicants or employees who have received offers to perform service for the LIRR as a Covered Employee, Commercial Driver, or a Safety-Sensitive employee. No employee may perform service as a Covered, Commercial Driver, or Safety-Sensitive employee prior to passing a drug test administered by the LIRR Medical Facility.

2. **Reasonable Suspicion**

- a. All employees are subject to drug and/or alcohol testing when Reasonable Suspicion exists.
- b. The decision to conduct the test when Reasonable Suspicion exists must be based on signs and symptoms of alcohol or drug abuse, i.e., specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Testing should occur when a Supervisor is able to document one (1) or more of the following criteria:
  - Staggered gait, difficulty walking
  - Slurred speech
  - Drowsiness/sleepiness
  - Odor of an intoxicant
  - Disorientation (time/place/person)
  - Rapid mood swings with no apparent reason
  - Poor coordination or body control
  - Direct observation of use of an intoxicant or controlled substance

These criteria also apply to the direct observation necessary for a Supervisor to corroborate and investigate a co-worker report.

- c. At least one (1) Supervisor who has completed the LIRR Training Course, "Identifying the Troubled Employee," must make the required observations before sending an employee for Reasonable Suspicion drug and/or alcohol testing.
- d. **Documentation** - Within a reasonable time following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the Assistant Director-Employee Services or designee.

**3. Reasonable Cause**

- a. The LIRR will test any employee for drugs and/or alcohol following an accident/incident as defined in Section IV.C.6. of this Policy, giving rise to Reasonable Cause testing of Covered Employees as set forth in Section V.E.3. of this Policy.
- b. The LIRR will test any employee for drugs and/or alcohol following an accident/incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the accident/incident.

**4. Follow-up Testing**

- a. Any employee who has engaged in conduct in violation of the FRA regulations, the FMCSA regulations and/or this Policy must pass a drug and/or alcohol test in order to return to his/her position.
- b. Employees are subject to unannounced follow-up drug and/or alcohol testing as directed by federal laws and regulations or as directed by the SAP or as a condition of discipline.
- c. **Return-to-Duty Physical Examinations** - Covered, Commercial Drivers, and Safety Sensitive employees who have been absent from work for any reason for thirty (30) days or more will be subject to drug and/or alcohol testing as part of a return-to-duty physical examination.

**5. Verified Positive Test Result**

- a. For a drug test, a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 C.F.R. Part 40 - "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."
  - b. For an alcohol breath test, an initial breath or saliva test performed on a Department of Transportation (DOT) approved "Evidential Breath Testing" or "Saliva Screening Test" device. A result of .02 or higher on the initial breath or saliva test will be confirmed by a second breath test on a DOT-approved "Evidential Breath Testing" device.
- 6. Accident/Incident** - An event or occurrence related to a LIRR operation that is required to be reported, including: fatality, injury, or illness; collision, derailment, and similar events involving the operation of on-track equipment that resulted in monetary damage in excess of the current reporting threshold; and impact between rail on-track equipment and highway users at crossings.

**D. Resources**

- 1. Employee Assistance Program (EAP)** - A confidential counseling program provided by the LIRR where an SAP qualified by experience, education, and training (a) counsels persons affected by alcohol and/or substance abuse and evaluates their recovery; and (b) provides alcohol and drug awareness training to Supervisors.



2. **"Identifying the Troubled Employee"** - A training course given by the LIRR and required for all Supervisors which provides instruction on the requirements of the FRA regulations, the FMCSA regulations, and LIRR policies and rules regarding drug and alcohol use and testing.

## V. PROCEDURES

The policy of the LIRR is to maintain a drug and alcohol-free workplace throughout the LIRR, which includes all sites where LIRR business is conducted. LIRR vehicles and vehicles where LIRR business is being conducted are considered LIRR property. Drug and/or alcohol testing may be performed to ensure compliance with this Policy and with applicable federal regulations. The circumstances when testing may occur are set forth in Section V. of this Policy.

### A. Early intervention, Treatment and Rehabilitation Resources

The LIRR recognizes that alcoholism and drug dependencies are treatable illnesses. Therefore, an employee who is affected by an alcohol or substance use problem is encouraged to voluntarily seek confidential assistance through the EAP by self-referral or co-worker referral **before** being charged with conduct deemed by the LIRR sufficient to warrant dismissal, i.e., **before** being notified of being tested i.e., random testing, follow-up testing, reasonable suspicion/cause testing and/or being charged with a violation of this Policy or of applicable law(s) and regulations. The LIRR provides the following resources to employees to encourage their voluntary referral.

1. **EAP** - An employee may seek the confidential services of the EAP regarding his/her use of controlled substances or alcohol or may be referred by another employee, family member, Supervisor, or by a representative of the employee's collective bargaining unit (union representative).
2. **Health Insurance Benefits** - The LIRR's group health insurance plans include coverage for alcohol and/or drug abuse treatment.
3. **Co-Worker Report** - A report by a co-worker to a Supervisor that an employee was apparently unsafe to work with or was, or appeared to be, in violation of this Policy. The name of the co-worker will be confidential and the co-worker who made the report will not be called as a witness should a subsequent administrative or disciplinary action be required. If the employee who is the subject of a Co-Worker Report is referred to the EAP, accepts such referral and follows the EAP's recommendation(s) disciplinary action may be held in abeyance.

### B. Prohibited Conduct

1. All employees are prohibited from using alcoholic beverages, intoxicants or controlled substances, or from being under the influence or impaired by same, while subject to duty or while on duty.
2. All employees are prohibited from possessing alcohol while on duty.



3. All employees are prohibited from illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off duty.
4. All employees are prohibited from possessing drug paraphernalia in the workplace.
5. Covered Employees and Commercial Drivers may use prescription and/or Over-the-counter medications **if**: (1) such use is brought to the attention of the LIRR MRO or his/her designee by the employee; (2) the medication is prescribed or authorized by the employee's licensed medical practitioner (see Sec. IV.A.6.) **and**; (3) the MRO or---his/her designee has made a good faith judgment that use of the substance as prescribed is consistent with the safe performance of the employee's duties. The determination of the MRO or his/her designee is final and binding.
6. All employees, whether on or off duty, are prohibited from consuming alcohol on LIRR property.
7. All employees, whether on or off duty, are prohibited from possessing an open container of an alcoholic beverage on LIRR property.
8. All employees are prohibited from consuming alcohol during working hours, including meal and break periods.
9. No alcoholic beverages are permitted at LIRR-sponsored functions.
10. All employees, whether on or off duty, are prohibited from possessing or consuming alcohol while wearing an LIRR uniform.
11. All employees, whether on or off duty, are prohibited from possessing or being under the influence of or impaired by alcohol on non-public LIRR property (i.e., shops, tracks, towers, offices, etc.)
12. Employees may not violate customers' rules of conduct.
13. When there is Reasonable Cause or when an employee is suspected of having used or being under the influence of or impaired by alcohol, intoxicants or a controlled substance while on duty, the employee may be required to take a breath and/or urinalysis test in accordance with FRA regulations. Employees who are requested to take a breath and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Policy.
14. All employees are prohibited from refusing to cooperate or from intentionally interfering with the LIRR's efforts to enforce this Policy or related federal regulations, including, but not limited to, refusing to submit to a drug and/or alcohol test conducted pursuant to this Policy or federal regulations, or tampering with the integrity of a breath, saliva, or urine sample in connection with such tests.

#### **C. Consequences of Engaging in Prohibited Conduct**

1. Employees determined to be in violation of this Policy will be subject to dismissal. At the discretion of the LIRR, employees may be offered a suspension of nine (9) months without pay. Employees represented by collective bargaining agreements will be required to sign a Trial Waiver and a Last Chance Agreement upon their first violation



of this Policy. Employees determined to be in violation of this Policy on a subsequent occasion will be dismissed.

2. Pursuant to the federal Drug-Free Workplace Act, 41 U.S.C. §8102, *et seq.*, employees convicted of violating a criminal drug statute in the workplace, must report the conviction to their department heads within five (5) days of the conviction. Employees convicted of violating a criminal drug statute in the workplace or who fail to report such a conviction may be subject to disciplinary action, up to and including dismissal.
3. Employees may be subject to disciplinary action, up to and including dismissal, if the LIRR is notified of off-duty misconduct that can be established relating to alcohol and/or drug abuse (e.g., a drug-or alcohol-related conviction) or the employee's illegal manufacturing, distribution, dispensing or possession of controlled substances.

**D. Drug and Alcohol Testing**

1. All employees are subject to drug and/or alcohol testing as required by this Policy and/or applicable federal laws and regulations.
2. As set forth in 49 C.F.R. Part 219, the FRA requires and/or permits the LIRR to conduct drug and/or alcohol testing of Covered Employees in the following situations: (1) Pre-placement (including transfers to Covered Service); (2) when there is Reasonable Suspicion; (3) when there is Reasonable Cause; (4) Post-Accident; (5) Random; and (6) Follow-up.
3. As set forth in 49 C.F.R. Part 382, the FMCSA requires and/or permits the LIRR to conduct drug and/or alcohol testing of Commercial Drivers: (1) Pre-placement (including transfers to Commercial Driver positions), (2) when there is Reasonable Suspicion; (3) Post-Accident; (4) Random; and (5) Follow-up.
4. The LIRR may conduct drug and/or alcohol testing of all employees: (1) when there is Reasonable Suspicion; (2) when there is Reasonable Cause; and (3) Follow-up.
5. The LIRR may conduct testing of Safety Sensitive Employees, Covered Employees and Commercial Drivers: (1) Pre-placement; (2) as part of a Periodic Physical Examination; and (3) as part of a Return-to-Duty Physical Examination.
6. Employees and applicants who are tested under Pre-Placement, Reasonable Suspicion, Reasonable Cause, Follow-Up, and Return-to-Duty guidelines will be re-tested if the initial test results are negative-diluted.
7. Subject to federal regulations, the LIRR is not required to conduct drug and/or alcohol testing before taking disciplinary action, up to and including dismissal, for a violation of this Policy.

**E. Covered Employees****1. Circumstances When Testing Will be Performed**

**Pre-Placement** - Human Resources will schedule a pre-placement drug test for those applicants or employees who have received offers to perform service for the LIRR as a Covered Employee. No employee may perform service as a Covered Employee prior to passing a drug test administered by the LIRR Medical Facility.

**2. Reasonable Suspicion**

a. Guidelines for Covered Employees When Reasonable Suspicion Testing is Conducted Pursuant to FRA Regulations.

- i. When Reasonable Suspicion exists, drug and/or alcohol testing is mandatory pursuant to 49 C.F.R. Part 219.
- ii. For all employees, the decision to conduct the test must be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.
- iii. **Alcohol Test** - At least **one** (1) Supervisor who has completed the LIRR Training Program, "Identifying the Troubled Employee," must make the required observation before sending a Covered Employee for an alcohol test.
- iv. **Drug Test** - At least **two** (2) Supervisors, one (1) of whom has completed the LIRR Training Program, "Identifying the Troubled Employee," must make the required observation before sending a Covered Employee for a drug test.
- v. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation of the Covered Employee. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.

b. Covered Employees may not be tested after they have been released from duty.

**3. Reasonable Cause**

a. Guidelines for Covered Employees When Reasonable Cause Testing is Conducted Pursuant to FRA Regulations

Reasonable Cause drug and/or alcohol testing will be conducted for Covered Employees under the following circumstances:

- i. **Accident/Incident** - The Covered Employee has been involved in an accident/incident reportable under 49 C.F.R. Part 225, and a Supervisor has a reasonable belief, based upon specific, articulable facts that the employee's acts and/or omissions contributed to the occurrence or severity of the accident/incident; or
- ii. **Rule Violation** - The employee has been directly involved in one (1) or more of the following Operating Rule violations or errors.



- Non-compliance with a train order, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:
    - Occupancy of a block or other segment of track to which entry was not authorized;
    - Failure to clear a track to permit opposing or following movement to pass;
    - Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);
  - Failure to protect a train as required by a rule consistent with 49 C.F.R. §218.37 (including failure to protect a train that is fouling an adjacent track);
  - Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour;
  - Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;
  - Failure to apply or stop short of derail as required;
  - Failure to secure sufficient hand brakes;
  - Entering a crossover before both switches are lined for movement; or
  - In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.
- iii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within two (2) hours of an accident/incident. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services, or designee with documentation as to the reason why the test was not promptly conducted. No testing may be performed after expiration of eight (8) hours from the time of the accident/incident.
- iv. Covered Employees may not be tested after they have been released from duty.
- v. **Documentation** - The Supervisor must document the date, time, and place of the occurrence, giving rise to testing, as well as the reason for testing, and send a copy of such documentation to the Assistant Director-Employee Services, or designee.
- b. **Guidelines Applicable to Covered Employees Where Reasonable Cause Testing is Conducted Pursuant to this Policy**

Reasonable Cause drug and/or alcohol testing will be conducted for Covered Employees under the following circumstances:



Where there is an accident/incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the accident/incident.

#### 4. Post-Accident Testing

The FRA regulations set forth in 49 C.F.R. Part 219, Subpart C on the control of alcohol and drug use require toxicological testing after accidents that involve one (1) or more of the circumstances described below:

- a. **Major train accident** - Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one (1) or more of the following:
  - i. A fatality;
  - ii. Release of hazardous material lading from railroad equipment accompanied by:
    - An evacuation; or
    - A reportable injury resulting from the hazardous material release, e.g. from fire, explosion, inhalation, or skin contact with the material); or
  - iii. Damage to railroad property of \$1,000,000 or more.
- b. **Impact accident** - An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5 that involves damage in excess of the current reporting threshold resulting in:
  - i. A reportable injury; or
  - ii. Damage to railroad property of \$150,000 or more.
- c. **Fatal train incident** - Any train incident that involves a fatality to any on-duty railroad employee.
- d. **Passenger train accident** - Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

**Exceptions** - No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident, the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

In the event of an accident requiring a toxicological test, a Supervisor must contact the Assistant Director-Employee Services or designee to advise of the use of a toxicological test kit and the need for a replacement.

#### 5. Random Testing

Random testing of Covered Employees is performed by the LIRR pursuant to applicable FRA regulations and in accordance with the procedures set forth in the LIRR's Plan for Random Selection for and Scheduling of Random Drug and Alcohol Testing ("Plan"). A copy of the Plan is available for inspection in Human Resources.



## 6. Follow-up Testing

- a. Each employee who has engaged in conduct in violation of the FRA regulations, the FMCSA regulations and/or this Policy must pass a drug and/or alcohol test in order to return to his/her position.
- b. That employee is also subject to unannounced follow-up drug and/or alcohol testing as directed by federal law and regulations and a SAP.

## 7. Periodic Physical Examinations

Covered Employees whose positions require Periodic Physical Examinations may be subjected to drug testing as part of those examinations if the examination occurs on the randomly selected monthly test date.

## 8. Return-to-Duty Physical Examinations

Covered Employees who have been absent from work for any reason for thirty (30) days or more will be subject to drug and/or alcohol testing as part of a Return-to-Duty physical examination.

## 9. Voluntary/Co-Worker Referral

- a. **Voluntary Referral** - An employee will be classified as a "Voluntary Referral" from the time he/she seeks assistance through the EAP, provided said assistance is requested before the employee has been charged with conduct deemed by LIRR sufficient to warrant dismissal. A Voluntary Referral may maintain an employment relationship with the LIRR subject to the conditions and procedures of Federal regulations and LIRR policies.

The EAP will handle the referral and all subsequent counseling and treatment, as confidential except in the following circumstances: the employee, at any time, refuses to cooperate in a recommended course of counseling and/or treatment; or the employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

At the time a Voluntary Referral requests assistance through the LIRR for an alcohol or drug problem, he/she will be granted a leave of absence from the LIRR of up to forty-five (45) days, if - necessary to complete primary treatment and establish control over the employee's alcohol or drug problem.

A Voluntary Referral will be returned to service on the recommendation of a SAP and the successful completion of a return to duty medical examination. Approval to return to service will not be unreasonably withheld.

- b. **Voluntary Referral - Locomotive Engineers or Candidates for Certification** - With respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived to the extent that the LIRR shall receive from the EAP Professional/SAP official notice of the Substance Abuse disorder and shall suspend or revoke the certification as appropriate, if the employee, at any time, refuses to comply with the recommended course of counseling or treatment.
- c. **Co-Worker Referral** - An employee may maintain an employment relationship with the LIRR, and be classified as a Voluntary Referral, following an alleged first offense of the LIRR's Alcohol and Drug Policy, provided the alleged violation is



brought to the attention of the LIRR by the employee's co-worker, Supervisor or a representative of the employee's collective bargaining unit. The co-worker must report that the employee was apparently unsafe to work with or was, or appeared to be, in violation of the LIRR's Alcohol and Drug Policy. The employee must accept a referral to the EAP to be considered a Voluntary Referral.

The LIRR EAP Professional/SAP will schedule the necessary interviews with the employee and complete an evaluation within ten (10) calendar days of the date the employee contacted the EAP with the request to be evaluated. In the event that LIRR EAP Professional/SAP is unavailable to conduct the evaluation, the employee will be referred to an external SAP for the evaluation that must be completed within twenty (20) days of the date the employee contacted the EAP/SAP.

The employee will be granted a leave of absence from the LIRR for the period of up to forty-five (45) days, if necessary to complete primary treatment and establish control over the employee's alcohol or drug problem.

The employee will be returned to service on the recommendation of the SAP and the successful completion of a return-to-service medical examination. Approval to return to service will not be unreasonably withheld.

Covered employees returning to service must successfully complete the Federal return to duty requirements including a Federal return to-duty test(s) and Federal follow-up tests for up to five (5) years per the SAP's recommendation.

- d. **Co-Worker Referral - Locomotive Engineers or Candidates for Certification -**  
The policy of confidentiality for certified locomotive engineers or a candidates for certification is waived to the extent that the LIRR shall receive from the EAP official notice of the Substance Abuse disorder and shall suspend or revoke the certification as appropriate if the person at any time refuses to comply with the recommended course of counseling or treatment.

**E. Commercial Drivers**

**Circumstances When Testing Will Be Performed**

**1. Pre-Placement**

Human Resources will schedule a pre-placement drug test for those applicants or transferees that have received offers to perform service for the LIRR as a Commercial Driver. No employee may perform service as a Commercial Driver prior to passing a drug test administered by the LIRR Medical Facility.

**2. Reasonable Suspicion**

**a. Guidelines Applicable to Commercial Drivers Where Reasonable Suspicion Testing is Conducted Pursuant to FMCSA's Regulations**

- i. All Commercial Drivers are subject to drug and/or alcohol testing when Reasonable Suspicion exists. A Commercial Driver may not be subjected to any testing under the FMCSA regulations unless the Supervisor's observation is made just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive functions. For all employees, the decision to conduct the test must be based on specific, contemporaneous, articulable



observations of the appearance, behavior, speech, or body odors of the employee.

ii. **Alcohol Testing** - At least one Supervisor who has completed the LIRR's Training Program, "Identifying the Troubled Employee," must make the required observation before sending a Commercial Driver for a test. The LIRR must make all reasonable efforts to conduct alcohol testing within two (2) hours of the observed behavior. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to why the test was not promptly administered. No alcohol testing may be performed after the expiration of eight hours from the time of observation.

iii. **Drug Testing** - At least one Supervisor who has completed the LIRR's Training Program, "Identifying the Troubled Employee," must make the required observation before sending a Commercial Driver for a test. The LIRR must conduct a drug test within twenty-four (24) hours of the observed behavior. If testing is not conducted within twenty-four (24) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to why the test was not promptly administered.

### 3. Reasonable Cause

a. **Guidelines Applicable to All Commercial Drivers Where Reasonable Cause Testing is Conducted Pursuant to this Policy.** The LIRR will test:

- i. Any Commercial Driver for drugs and/or alcohol following an accident giving rise to Reasonable Cause testing of Covered Employees as set forth in Section V.E.3. of this Policy.
- ii. Any employee for drugs and/or alcohol following an accident/incident involving a motorized vehicle where the accident/incident was not due to mechanical failure or the negligent action of a motorist other than the employee and the employee was driving a motorized vehicle involved in an accident/incident which (1) results in the loss of human life or (2) causes bodily injury to the employee or others requiring medical attention away from the **scene** or (3) **results in a vehicle being transported away from the scene.**
- iii. Any employee for drugs and/or alcohol when there is an accident/incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the accident/incident.

### 4. Post-Accident Testing

The FMCSA regulations set forth in 49 C.F.R. § 382.303 on the control of alcohol and drug use require toxicological testing as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce. The LIRR shall test for alcohol and controlled substances for each surviving driver:

- a. Who was performing safety-sensitive functions with respect to the vehicle, if the accident/incident involved the loss of human life; or



- 
- b. Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
- i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - ii. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

**Alcohol Tests** - If a test required by this section is not administered within two (2) hours following the accident/incident, the LIRR shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident/incident, the LIRR shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

**Controlled Substance Tests** - If a required test is not administered within thirty-two (32) hours following the accident/incident, the LIRR shall cease attempts to administer a controlled substance test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident/incident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident/incident or to obtain necessary emergency medical care.

**Exceptions** - No test shall be conducted for:

- i. An occurrence involving only boarding or alighting from a stationary motor vehicle;
- ii. An occurrence involving only the loading or unloading of cargo; or
- iii. An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR Part 382.303 § 571.3) unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR Part 382.303 § 177.823.

In the event of an accident requiring toxicological testing, a Supervisor must contact the Assistant Director-Employee Services or designee.

##### 5. Random Testing

Random testing of Commercial Drivers - is performed by the LIRR pursuant to applicable FMCSA regulations and in accordance with the Plan.

**6. Follow-up Testing**

Each employee who has engaged in conduct in violation of the FRA regulations, the FMCSA regulations and/or this Policy must pass a drug and/or alcohol test in order to return to his or her position.

In addition, the employee is subject to unannounced follow-up drug and/or alcohol testing as directed by federal laws and regulations and a SAP or as a condition of discipline.

**7. Return-to-Duty Physical Examinations**

Commercial Drivers who have been absent from work for any reason for thirty (30) days or more will be subject to drug and/or alcohol testing as part of a return-to-duty physical examination.

**G. Safety Sensitive Employees****1. Pre-Placement**

Human Resources will schedule a pre-placement drug test for those applicants or transferees who have received offers to perform service for the LIRR as a Safety Sensitive employee. No employee may perform service as a Safety Sensitive employee prior to passing a drug test administered by the LIRR Medical Facility.

**2. Reasonable Suspicion**

All Safety Sensitive employees are subject to drug and/or alcohol testing when Reasonable Suspicion exists.

**3. Reasonable Cause**

**Guidelines Applicable to All Safety Sensitive Employees Where Reasonable Cause Testing is Conducted Under this Policy.** The LIRR will test:

- a. Any Safety Sensitive employee for drugs and/or alcohol following an accident/incident giving rise to Reasonable Cause testing of Covered Employees as set forth in Section V.E.3.a. of this Policy.
- b. Any employee for drugs and/or alcohol following an accident/incident where the accident/incident was not due to mechanical failure or the negligent action of an employee other than the Safety Sensitive Employee and the Safety Sensitive Employee was involved in an accident/incident which (1) results in the loss of human life or (2) causes bodily injury to the employee or others requiring medical attention away from the scene.
- c. Any employee where there is an accident/incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the accident/incident.

**4. Follow-up Testing**

- a. Each employee who has engaged in conduct in violation of the FRA regulations, the FMCSA regulations and/or this Policy must pass a drug and/or alcohol test in order to return to his/her position.

- b. In addition, the employee is subject to unannounced follow-up drug and/or alcohol testing as directed by federal laws and regulations and the SAP, or as a condition of discipline.

#### **5. Return-to-Duty Physical Examinations**

Safety Sensitive employees who have been absent from work for any reason for thirty (30) days or more will be subject to drug and/or alcohol testing as part of a return-to-duty physical examination.

### **H. Non-Safety Sensitive Employees**

#### **Circumstances When Testing Will Be Performed**

##### **1. Reasonable Suspicion**

##### **2. Reasonable Cause**

##### **3. Follow-up Testing**

- a. Each employee who has engaged in conduct in violation of this Policy must pass a drug and/or alcohol test to return to his/her position.
- b. In addition, that employee is subject to unannounced follow-up drug and/or alcohol testing as directed by federal law and regulations and the SAP or as a condition of discipline.

### **I. Test Procedures and Retests**

The LIRR and vendors hired by the LIRR to perform testing follow the procedures established by the DOT for drug and alcohol testing as set forth in 49 C.F.R. Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

Procedures for testing under LIRR authority utilize the same vendors and procedures, except LIRR determines the number and types of drugs tested as well as conditions under which testing will occur.

### **J. Confidentiality**

- 1. No Supervisor or employee may disclose to any individual any drug or alcohol use or testing information concerning any other employee, unless such disclosure is necessary for compliance with this Policy or federal law and regulations or unless the employee whose records are at issue executes a release specifically authorizing the disclosure of such information.
- 2. All records maintained in the course of carrying out the procedures described in this Policy and under federal drug and alcohol testing laws must be maintained in a separate, locked file.
- 3. If any employee discloses the information or records described above to any other individual for any reason, that employee may be subject to administrative or disciplinary action, up to and including dismissal.
- 4. Regarding Voluntary/Co-Worker Referral, confidentiality is waived when the employee, at any time, refuses to cooperate in a recommended course of counseling and/or treatment; or the employee is later determined, after investigation, to have been



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involved in an alcohol or drug-related disciplinary offense growing out of the subsequent conduct.

**VI. RELATED POLICIES**

MED-002 - Americans with Disabilities Act (ADA)  
LEAVE-003 - Family and Medical Leave Act (FMLA)

**VII. FORMS AND ATTACHMENTS**

None

**VIII. REVISION TRACKING**

June 2007

February 2008

April 2009

June 2014 - The Policy was scheduled for review per CP&P BPM-001 – Issuance of Corporate Policies and Procedures. Updated the reference number to the Drug-Free Workplace Act from 41 U.S.C. § 701 to 41 U.S.C. § 8102.

# MTA Metro-North Railroad

# Operating Procedure

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Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 1 of 14

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## I. SUMMARY

Metro-North Railroad is committed to operating and maintaining an alcohol-free and drug-free workplace to provide a safe environment for its employees and customers. All sites at which Company business is conducted, including all vehicles used for business purposes, are to be drug and alcohol-free.

Metro-North Railroad policies prohibit all employees from using or possessing alcohol during an employee's tour of duty, while an employee is on Metro-North Railroad property or otherwise engaged in Metro-North Railroad business and/or when such use would make him or her unfit to report for duty or to be on-duty. Metro-North Railroad policy prohibits the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances in the workplace. Additionally, the unlawful use of any drug or controlled substance at any time is prohibited.

Metro-North Railroad requires all employees to abide by the terms of these policies as a condition of employment. Employees who violate these policies are subject to disciplinary action, up to and including termination from employment at Metro-North Railroad.

Metro-North Railroad conducts alcohol and drug testing of employees under the circumstances required by federal regulations and/or as specified herein. Employees are encouraged to familiarize themselves with the alcohol and drug testing procedures covering their respective job titles.

This Operating Procedure provides a general overview of the United States Department of Transportation ("DOT") drug use and alcohol misuse prevention rules for the commercial transportation industries that apply to Metro-North Railroad and its employees. This Operating Procedure also sets forth rules and procedures of Metro-North Railroad addressing alcohol and substance abuse that are in addition to the applicable DOT rules. Covered employees and Commercial Motor Vehicle Drivers are advised to consult the specific rules published by the DOT agencies for the detailed DOT agency requirements applicable to them. Represented employees should also familiarize themselves with applicable provisions of collective bargaining agreements. Materials related to drug and alcohol policies are issued regularly and are available to any employee by accessing Metro-North Railroad's Intranet, or by contacting a supervisor or the Human Resources Department.

Metro-North Railroad will hold any employee who engages in the illegal use of drugs or who suffers from a drug-use or an alcohol-use disorder to the same qualification standards for employment or job performance and behavior (such as attendance) to which the Company holds its other employees, even if unsatisfactory performance, behavior, or rule or policy infractions are related to the employee's drug and/or alcohol use. Metro-North Railroad encourages all employees to voluntarily seek assistance with alcohol and drug related problems and provides a qualified Employee Assistance Program ("EAP") for all employees.

This Operating Procedure does not supersede the applicability and enforceability of other agreements, rules, policies and regulations. Employees must comply with all agreements, rules, policies and regulations applicable to their employment and must at all times satisfy the performance standards applicable to their employment.

This Operating Procedure does not supersede the Company's rights and obligations set forth in the Code of Federal Regulations concerning the certification and procedures of locomotive engineers and conductors.

Nothing in this Operating Procedure prohibits Metro-North Railroad from taking administrative or disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of, or reasonable suspicion of a violation of, this Operating Procedure.



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 2 of 14

---

## II. PROHIBITED EMPLOYEE CONDUCT

All sites at which Company business is conducted, including all vehicles used for business purposes, are to be drug and alcohol-free workplaces.

1. On-Duty Use of Alcohol/Controlled Substances. All employees are prohibited from using alcoholic beverages, intoxicants or controlled substances while subject to duty or while on-duty.
2. Possession of Alcohol. All employees are prohibited from possessing an open container of an alcoholic beverage while subject to duty or while on-duty.
3. Alcohol Prohibition at Sponsored Functions. Alcoholic beverages are prohibited at Metro-North Railroad sponsored functions.
4. On or Off-Duty Illegal Controlled Substance Activity, including Possession/Use. All employees are prohibited from illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off-duty.
5. Possession of Drug Paraphernalia. All employees are prohibited from possessing drug paraphernalia in the workplace.
6. Use of Medications by Safety Sensitive Employees. Safety Sensitive Employees' (as defined below in Section IV) use of prescription and/or over-the-counter ("OTC") medications is subject to the following requirements:
  - a. Prescriptions
    1. The use of any orally-administered prescription medication is required to be brought to the attention of a Metro-North Railroad Medical Review Officer ("MRO") or designee by the employee before performing service. Safety Sensitive Employees have an obligation to provide such notice as soon as practicable after receiving the prescription from the employee's licensed medical professional. Each department with safety-sensitive employees must designate alternative point(s) of contact to receive such notice in the event the Medical Office is closed or the MRO is otherwise unavailable, and, upon receipt of such notice, the point of contact should confer with the Human Resources Department regarding appropriate next steps to determine the employee's suitability for service.
    2. Prior to obtaining a prescription from his or her licensed medical practitioner, a Safety Sensitive Employee is expected to advise the licensed medical practitioner of the safety-sensitive classification of his or her job title and of his or her safety-sensitive duties.
    3. The MRO or designee, is required to make a determination regarding the risk, if any, created by the Safety Sensitive Employee's use of the prescribed medication while under the influence of such medication and to advise the Employee whether he or she should refrain from reporting for duty (or from continuing to perform his or her duties) while using or under the influence of such medication. Such a determination of the MRO or designee is final and binding.
    4. Performance of service by Safety Sensitive Employees while using or under the influence of a prescription medication in violation of these procedures is prohibited. Safety Sensitive Employees who fail to comply with these procedures are subject to discipline, up to and including dismissal.
  - b. OTC Medications
    1. The use of certain orally-administered OTC medications, whether at the suggestion of a licensed medical professional or otherwise, may also have an adverse and unacceptable impact upon the Safety Sensitive Employee's performance of his or her job-related responsibilities.
    2. On an annual basis, the MRO will publish and post on the Metro-North Railroad Intranet site a list of the most commonly used OTC medications that, when taken as instructed, would not



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 3 of 14

---

- be expected to have an impact upon the job-related performance of Safety Sensitive Employees.
3. With respect to any orally administered OTC medication that does not appear on the MRO's list, Safety Sensitive Employees are required to follow the notice and authorization procedures set forth above under Section II.6(a) (1) and (3). Any questions regarding the possible impact of an OTC medication should be directed to the MRO.
  4. In the event a Safety Sensitive Employee, while using such an OTC drug that does not appear on the list published by the MRO, experiences drowsiness, fatigue, or other side effects that create concern regarding the safety impacts of use of such OTC drug by the Safety Sensitive Employee in connection with the performance of his/her safety-sensitive duties, s/he must contact his or her supervisor or the employer's MRO immediately and follow his or her direction as to the Safety Sensitive Employee's fitness for duty for the shift they are working or next scheduled to work, and obtain advance authorization and review under Section II.6.(a) (1) and (3) of the use of such OTC drug in connection with any future report to duty while using or under the influence of such OTC drug.
  5. Safety Sensitive Employee performance of service while using or under the influence of an OTC medication in violation of these requirements is prohibited.
7. Refusal to Test, Cooperate or Intentional Interference with Operating Procedure. All employees are prohibited from refusing to cooperate or from intentionally interfering with Metro-North Railroad's efforts to enforce this Operating Procedure or related federal regulations, including, but not limited to, refusing to submit to a drug and/or alcohol test conducted pursuant to this Operating Procedure or federal regulations, or tampering with the integrity of a breath or urine sample in connection with such tests.

### III. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

1. Discipline/Dismissal. Employees violating this Operating Procedure are subject to discipline, up to and including dismissal.
2. Reasonable Cause Testing: Refusal or Detection of Prohibited Substance. When there is Reasonable Cause (as set forth below in Section VII), an employee must take a breath, and/or urinalysis test in accordance with Federal Railway Administration ("FRA") regulations. Employees who are requested to take a breath, and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Policy.
3. Reasonable Suspicion Testing: Refusal of Test or Detection of Prohibited Substance. When there is Reasonable Suspicion (as set forth below in Section VII) that an employee has used alcohol, intoxicants or a controlled substance while on-duty or while on-duty is under the influence of same, the employee may be required to take a breath, and/or urinalysis test in accordance with Federal Railroad Administration ("FRA") regulations or Company Policy. Employees who are requested to take a breath, and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Operating Procedure.
4. Workplace Violation of Criminal Drug Statute. Under the federal Drug-Free Workplace Act, 41 USC §701, et seq., employees convicted of violating a criminal drug statute in the workplace, must report the conviction to Metro-North Railroad's Human Resource Department – Planning & Administration Division located at 420 Lexington Avenue, 12<sup>th</sup> Floor within five (5) days of the conviction. Employees convicted of such a violation or who fail to report such a conviction may be subject to disciplinary action, up to and including dismissal. An employee who has been convicted of such a violation must contact Metro-North's EAP Department to arrange for an in-person evaluation. No employee will be permitted by Metro-North Railroad to return to work following such a conviction without first receiving a written



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 4 of 14

---

evaluation from MNR's Occupational Health Services department ("OHS") authorizing his or her return to duty.

5. **Off-Duty Misconduct.** Employees may be subject to disciplinary action, up to and including dismissal, if Metro-North Railroad is notified of off-duty misconduct that can be established relating to alcohol and/or drug abuse (for example, a drug or alcohol related conviction) or the employee's illegal manufacturing, distribution, dispensing, or possession of controlled substances. In accordance with Metro-North Railroad's Operating Procedure Number 21-028, any person employed by Metro-North Railroad who is arrested and charged with a felony or misdemeanor (for example, Driving While Impaired) must immediately notify the railroad. This notification must be made in writing to the Human Resources Department – Planning & Administration division located on the 12<sup>th</sup> Floor, 420 Lexington Ave. The employee must provide a copy of the court document setting forth the felony or misdemeanor charges within 10 calendar days of the arrest to Human Resources Planning & Administration division. An employee who has been convicted of a felony or misdemeanor that is drug or alcohol related must contact EAP to arrange for an in-person evaluation. Such an employee may not return to work prior to receiving a return to duty evaluation with OHS and receiving written authorization to return to work.
6. Past or present involvement in a rehabilitation program, EAP, or with other treatment practitioners cannot serve as a defense nor mitigate the circumstances of alleged violations of Company rules, policies or laws.

## IV. EMPLOYEE CLASSIFICATIONS RELEVANT TO TESTING PROGRAM

1. **Covered Employees:** Employees who are assigned to perform service subject to the Hours of Service Act [45 USC §§ 61, et seq.] ("Covered Service") are classified as Covered Employees. Covered Employees are required to comply with this Operating Procedure and with the alcohol and drug prohibitions and provisions in 49 CFR § 219 of FRA regulations. The category of Covered Employees includes the following positions: (a) Locomotive Engineers, (b) Conductors and Assistant Conductors, (c) Rail Traffic Controllers, (d) Yardmasters, while performing work covered by the Hours of Service Act, (e) Signal Workers, and (f) Mechanical Department positions performing work covered by the Hours of Service Act. This also includes non-agreement employees performing work subject to the Hours of Service Act.
2. **Commercial Motor Vehicle Drivers** ("Commercial Drivers"): Employees who occupy a job title that Metro-North Railroad has determined requires a commercial driver's license ("CDL") issued by a state authorizing operation of a commercial motor vehicle described in 49 CFR § 382.107 are classified as Commercial Motor Vehicle Drivers ("Commercial Drivers"). Commercial Drivers are required to comply with this Operating Procedure and with the alcohol and drug prohibitions and provisions in 49 CFR § 382 of the Federal Motor Carrier Safety Administration ("FMCSA") regulations. This category includes non-agreement employees performing service as Commercial Drivers.
3. **Safety-Sensitive ("SS") Employees:** Safety Sensitive Employees are those employees who perform service in job titles which the Company has determined involve tasks so fraught with risks of injury that even a momentary lapse of attention can have disastrous or irremediable consequences to the employee or others. A list of the job titles the Company has designated as Safety-Sensitive is maintained by the Human Resources Department. Job titles of Covered Employees and Commercial Drivers are included within the Safety Sensitive classification. This definition also includes agreement and non-agreement employees in other job titles designated as Safety-Sensitive.
4. **Non-Safety-Sensitive ("Non-SS") Employees:** Employees who do not perform service in job titles classified as Covered Employee, Commercial Driver, or Safety-Sensitive Employee. Such



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 5 of 14

---

employees perform low risk tasks where non-performance of those tasks would not present immediate danger to employees or others.

## 5. Other Defined Employees under the Procedure:

- a. Peer or Co-Worker: Any employee or union representative who is not the supervisor of an employee suspected of being in violation of this Operating Procedure.
- b. Supervisor: An officer, manager, or other employee of the Company who is responsible for supervising or monitoring the conduct or performance of one or more employees. This definition includes both agreement and non-agreement supervisors.
- c. Medical Review Officer ("MRO"): A licensed physician designated by Metro-North to receive laboratory results produced by the laboratory retained by the Company, to evaluate drug and/or alcohol tests, and to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. An MRO may also be a licensed physician assigned to assess the safety risks of use of prescription and/or OTC medications by Safety Sensitive Employees.
- d. Substance Abuse Professional ("SAP"): A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. The SAP must meet the requirements of 49 CFR § 40.281. For purposes of this Operating Procedure, the Company's EAP Counselor is the "SAP."
- e. Designated Employer Representative ("DER"): An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The "DER" also receives test results and other communications for the employer, consistent with the requirements of 49 CFR § 40.

## V. ADDITIONAL DEFINITIONS

### 1. SUBSTANCES

- a. ALCOHOL: The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
- b. CONTROLLED SUBSTANCES: All substances listed in Schedules I to V as set forth in 21 CFR Part 1308, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include but are not limited to:
  - i. Narcotics/Opiates – Opium, Morphine, Codeine, Heroin, Hydromorphone, Meperidine (Demerol), Methadone, Oxycodone, Hydrocodone, Suboxone,
  - ii. Depressants – Chloral Hydrate, Barbiturates, Benzodiazepines, Methaqualone (Qualudes), Glutethimide (Doriden),
  - iii. Stimulants – Cocaine, Amphetamines, Phenmetrazine (Preludin), Methylphenidate (Ritalin), Methamphetamine
  - iv. Hallucinogens – LSD, Mescaline and Peyote, Amphetamine Variants, Phencyclidine (PCP), Phencyclidine Analogies
  - v. Cannabis – Marijuana, Tetrahydrocannabinol (THC), Hashish and Hashish Oil



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 6 of 14

---

- c. **DRUG**: Any substance other than alcohol that has known mood or function-altering effects on humans, including but not limited to, controlled substances.
  - d. **INTOXICANT**: Any agent that produces intoxication, such as a drug or toxic substance or alcoholic beverages.
  - e. **OVER-THE-COUNTER (OTC) DRUGS**: Medications that do not require a prescription and that can be purchased from pharmacies or other retail establishments.
  - f. **PRESCRIPTION DRUGS**: Medication prescribed by licensed medical personnel or dentists for a specific course of treatment.
2. **RESOURCES**:
- a. **Employee Assistance Program ("EAP")**: A confidential counseling program provided by the Company where licensed professionals assist employees and their immediate family members with various work/life issues. Each EAP counselor is a certified Substance Abuse Professional ("SAP") qualified to evaluate and counsel persons affected by alcohol and/or substance abuse problems and to provide the appropriate treatment and follow-up recommendations. Additionally, the EAP provides alcohol and substance abuse awareness training to Company managers and supervisors.
  - b. **Substance Awareness Field Education ("SAFE")**: A "Reasonable Suspicion: Signs and Symptoms of Substance Abuse" training course, given by Metro-North Railroad, which provides instruction on the requirements of Federal regulations, Company policies and rules regarding drug and alcohol use and testing.
3. **VERIFIED POSITIVE TEST RESULT**:
- a. For a **drug** test: a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 CFR § 40 – "Procedures for Transportation Workplace Drug and Alcohol Testing Programs".
  - b. For an **alcohol breath** test: an initial breath test performed on a DOT-approved "Evidential Breath Testing" device, with a result of .02% or higher, confirmed by a second breath test conducted with the same device within the prescribed time limit, with a reading of .02% or higher constitutes a Metro-North Railroad verified positive test result.
4. **DEFINED TYPES OF DRUG/ALCOHOL TESTING**:
- a. **PRE-EMPLOYMENT/PRE-PLACEMENT TESTING**: a drug test for those transferees or job applicants who have received offers to perform service for the Company in a job title classified as: Covered Employee, Commercial Driver, or Safety-Sensitive Employee. No employee may perform service as a Covered, Commercial Driver, or Safety-Sensitive employee before successfully passing a pre-placement drug test scheduled and administered under the direction of Metro-North Railroad's Human Resources Department.
  - b. **REASONABLE SUSPICION TESTING**: a drug and/or alcohol test that must be based on specific, current, articulable observations of the appearance, behavior, speech, or body odors



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 7 of 14

---

that are usually associated with drug and/or alcohol use that leads the supervisor to believe that the employee is unable to perform their essential job duties. All employees are subject to drug and/or alcohol testing when reasonable suspicion exists. Section VII.2, 3 and 4 below provides additional detail concerning Reasonable Suspicion Testing in the contexts of (i) Company authority testing; (ii) Covered Employee-Federally Mandated Testing; and (iii) Commercial Driver Federally Mandated Testing.

- c. **REASONABLE CAUSE TESTING:** a drug and/or alcohol test following an accident/incident as defined in Section VII. 5 and 6 of this Operating Procedure and definitions in the Code of Federal Regulations. The Company will test any employee for drugs and/or alcohol following an accident/incident meeting specific criteria and/or when a Supervisor has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or the severity of the accident/incident.
- d. **FITNESS for DUTY TESTING:** a drug and/or alcohol test with a physical assessment that is performed when an employee indicates that he/or she is unable to perform their essential job duties secondary to a medical condition.
- e. **POST-ACCIDENT TESTING:** a drug and/or alcohol test after an accident that meets specific criteria set forth in 49 CFR § 219 and § 382.
- f. **RANDOM TESTING:** a drug and/or alcohol test performed randomly under applicable Federal regulations and in accordance with the procedures set forth in Metro-North Railroad's Plan for Random Selection for and Scheduling of Random Drug and Alcohol Testing (the "Plan"). Covered Employee and Commercial Driver Employees are subject to Random Testing.
- g. **RETURN-to-DUTY TESTING:** a drug and/or alcohol test performed if a Covered, Commercial Driver or Safety-Sensitive Employee has been absent from work for any reason for 14 days or more (or a lesser time period specified in a collective bargaining agreement). Directly observed testing, as mandated and described in 49 CFR Part 40 ("Direct Observation Procedures"), will apply to employees returning to duty after having previously failed a drug and/or alcohol test. The observer will be of the same gender as the employee being tested.
- h. **FOLLOW-UP TESTING:** an unannounced drug and/or alcohol test performed under applicable Federal regulations and at the direction of the SAP, after an employee has engaged in conduct in violation of the CFR, and/or this Operating Procedure.

## VI. SUMMARY OF EMPLOYEE CLASSIFICATIONS SUBJECT TO VARIOUS TYPES OF DRUG AND ALCOHOL TESTING:

Metro-North Railroad employees are subject to drug and/or alcohol testing as required or authorized by this Operating Procedure and/or by applicable federal regulations.

### A. FEDERALLY MANDATED TESTING

Federal regulations require Metro-North to conduct drug and alcohol testing under identified circumstances, as summarized below. (Definitions of each of the types of identified circumstances are contained in Section V.4 above and further details provided in Section VII.)



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 8 of 14

---

1. Covered Employees. As set forth in 49 CFR § 219, the FRA requires Metro-North Railroad to conduct drug and/or alcohol testing of Covered Employees in the following defined situations:
  - a. Pre-employment (including transfers to Covered Service)
  - b. Reasonable Suspicion,
  - c. Post-Accident,
  - d. Random,
  - e. Return to Duty, and
  - f. Follow-up
  
2. Commercial Drivers. As set forth in 49 CFR § 382, the Federal Motor Carrier Safety Act requires Metro-North Railroad to conduct drug and/or alcohol testing of Commercial Drivers in the following defined situations:
  - a. Pre-employment (including transfers to Commercial Driver positions)
  - b. Reasonable Suspicion,
  - c. Post-Accident,
  - d. Random,
  - e. Return to Duty, and
  - f. Follow-up

## B. COMPANY AUTHORITY TESTING:

In addition, Metro-North Railroad pursuant to this Operating Procedure may determine to conduct drug and alcohol testing in defined circumstances, as stated herein ("Company authority testing").

1. All Metro-North Employees (without regard to Employee Classification). Pursuant to this Operating Procedure, Metro-North Railroad may conduct Company authority drug and/or alcohol testing of any Metro-North employee, without regard to the employee's job classification under Section IV, in the following defined circumstances:
  - a. Reasonable Suspicion,
  - b. Reasonable Cause, or
  - c. Follow-up.
  
2. Safety Sensitive Employees. *In addition to the circumstances set forth above for Company authority testing relating to Metro-North employees generally*, Metro-North may conduct Company authority testing of Safety-Sensitive employees in any of the following defined circumstances:
  - a. Pre-placement,
  - b. Periodic Physical Examination,
  - c. Return-to-Duty Physical Examination.
  
3. Covered Service Employees; Commercial Drivers. *In addition to the circumstances set forth above for Company Authority testing relating to All Metro-North Employees generally (see B.1) and Company Authority testing of Metro-North Safety Sensitive Employees (see B.2)*, Metro-North may conduct Company authority testing of Covered Service Employees or Commercial Drivers in any of the defined circumstances in which federally mandated testing would apply to such employee classification.



# Operating Procedure

---

Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 9 of 14

---

## VII. CIRCUMSTANCES WHEN TYPES OF TESTING WILL BE PERFORMED

### 1. Pre-Employment/Pre-Placement

- a. The Human Resources Department will schedule a pre-placement drug test for those applicants or transferees who have received offers to perform service for Metro-North Railroad as (1) Covered Employees, (2) Commercial Drivers, or (3) Safety-Sensitive Employees.
- b. No employee may perform service as a (1) Covered Employee, (2) Commercial Driver, or (3) Safety-Sensitive Employee before passing a drug test administered by OHS.

### 2. Reasonable Suspicion – Company Authority

- a. All employees are subject to drug and/or alcohol testing where Reasonable Suspicion exists.
- b. For all employees, the decision to conduct the test must be based on specific, current, articulable observations of the appearance, behavior, speech, or body odors of the employee. Testing should occur when the Supervisor reasonably suspects that an employee has used drug or alcohol on duty or is working under the influence of drugs or alcohol by observing one or more of the following criteria (these criteria are applicable as well to the direct observation necessary for a Supervisor to corroborate and investigate a co-worker report):
  - i. Staggered gait, difficulty walking
  - ii. Slurred speech
  - iii. Drowsiness/sleepiness
  - iv. Odor of an intoxicant
  - v. Disorientation (time/place/person)
  - vi. Rapid mood swings for no apparent reason
  - vii. Poor coordination or body control
  - viii. Bizarre behavior
  - ix. Direct observation of use of an intoxicant or controlled substance.
- c. At least one Supervisor who has completed SAFE training (Signs & Symptoms) must make the required observations before sending an employee for alcohol testing. In the case of sending an employee for drug testing, at least one Supervisor must make the required observations and a second Supervisor, after conferring, must agree on the articulable symptoms being conveyed. In the event that the employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the Manager of Random Testing with the information.
- d. Documentation: Within a reasonable time (in most cases, the time for completion and submission of the documentation should not exceed **24 hours**) following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the Director of Operating Rules.
- e. During Off Hours, in the event a basis exists for a Reasonable Suspicion Test, the supervisor on duty is to call the Operations Control Center at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The supervisor must articulate the signs and symptoms he has observed. The Chief RTC will promptly call the Alcohol and Drug Technician on-duty and dispatch them to the field location. If there are any problems or issues, the Manager of Random Testing should be immediately contacted.



# Operating Procedure

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Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 10 of 14

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## 3. Reasonable Suspicion – Covered Employees subject to FRA Regulations

- a. When Reasonable Suspicion exists with respect to a Covered Employee, drug and/or alcohol testing is mandatory under 49 C.F.R. § 219 (also mandatory for ALL employees).
- b. Alcohol Test: At least one Supervisor who has completed SAFE must make the required observation before sending a Covered Employee for an alcohol test.<sup>1</sup> In the event that the employee cannot be transported to a facility for testing, the supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the Manager of Random Testing with the information.
- c. Drug Test: At least two Supervisors, one of whom has completed SAFE, must make the required observation before sending a Covered Employee for a drug test.<sup>2</sup> In the event that the employee cannot be transported to a facility for testing, the supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the Manager of Random Testing with the information.
- d. The Company must make diligent efforts to conduct a drug and/or alcohol test within two hours<sup>3</sup> of the initial observation of the Covered Employee. If testing is not conducted within two hours, the Supervisor must provide the Director of Operating Rules with documentation as to the reason why the test was not promptly conducted. Absolutely no testing may be performed after the expiration of eight hours from the time of observation.<sup>4</sup>
- e. Covered Employees may not be tested after they have been removed from service.

## 4. Reasonable Suspicion – Commercial Drivers subject to FMCSA Regulations

- a. A Commercial Driver may not be subjected to any testing under the FMCSA regulations unless the Supervisor's observation is made just before, during, or just after the time the Commercial Driver is performing safety-sensitive functions.
- b. Alcohol Testing: At least one Supervisor who has completed SAFE must make the required observation before sending a Commercial Driver for a test. The Company must make all reasonable efforts to conduct alcohol testing within two hours of the observed behavior. If testing is not conducted within two hours, the Supervisor must provide the Director of Operating Rules with documentation as to why the test was not promptly administered. Absolutely no alcohol testing may

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1 §219.300 (b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with §219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.

2 §219.300 (b)(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with §219.11(g).

3 §219.300 (d)(1) If a test required by this section is not administered within two hours following the determination under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not properly administered.

4 §219.300 (d)(1) If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Records must be submitted to FRA upon request of the FRA Administrator.



# Operating Procedure

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Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 11 of 14

---

be performed after the expiration of eight hours from the time of observation. In the event that the employee cannot be transported to a facility for testing, the supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the Manager of Random Testing with the information.

- c. Drug Testing: At least one Supervisor who has completed SAFE must make the required observation before sending a Commercial Driver for a test. The Company must conduct a drug test within 24 hours of the observed behavior. If testing is not conducted within 24 hours, the supervisor must provide the Director of Operating Rules with documentation as to why the test was not promptly administered. In the event that the employee cannot be transported to a facility for testing, the supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the Manager of Random Testing with the information.

## 5. Reasonable Cause – Company Authority for Safety-Sensitive Employees

- a. The Company may test any Safety-Sensitive Employee for drugs and/or alcohol following an incident or accident giving rise to Reasonable Cause testing of Covered Employees as set forth in Section VII-6, below.
- b. The Company may also test any employee for drugs and/or alcohol following an accident involving a motorized vehicle where the accident was not due to mechanical failure or the negligent action of a motorist other than the Safety-Sensitive Employee and the Safety-Sensitive Employee was driving a motorized vehicle involved in an accident which (1) results in the loss of human life or (2) causes bodily injury to himself or others requiring medical attention away from the scene or (3) results in a vehicle being transported away from the scene.

## 6. Reasonable Cause – DOT or FRA Regulations

- a. Accident or Incident - The Covered Employee has been involved in an accident or incident reportable under 49 C.F.R. § 225, and a Supervisor has a reasonable belief, based upon specific, articulable facts that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or
- b. Rule Violation<sup>5</sup> - The employee has been directly involved in one of the following operating rule violations or errors.
- i. Non-compliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:
- a. Occupancy of a block or other segment of track to which entry was not authorized;
- b. Failure to clear a track to permit opposing or following movement to pass;
- c. Moving across a railroad crossing at grade without authorization; or
- d. Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);
- ii. Failure to protect a train as required by a rule consistent with 49 C.F.R. § 218.37 (including

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<sup>5</sup> §219.301 (3).



# Operating Procedure

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Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 12 of 14

---

- iii. failure to protect a train that is fouling an adjacent track);
  - iii. Operation of a train at a speed that exceeds the maximum authorized speed by at least ten miles per hour or by 50 percent of such maximum authorized speed, whichever is less;
  - iv. Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;
  - v. Failure to apply or stop short of derail as required;
  - vi. Failure to secure a hand brake or failure to secure sufficient hand brakes;
  - vii. Entering a crossover before both switches are lined for movement; or
  - viii. In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.
- c. The Company must make diligent efforts to conduct the drug and/or alcohol test within **two hours** of an accident or incident. If testing is not conducted within two hours, the Supervisor must provide the Director of Operating Rules with documentation as to the reason why the test was not promptly conducted. **Absolutely no testing may be performed after expiration of eight hours from the time of the accident or incident.**
- d. Covered Employees may not be tested after they have been removed from service.
- e. Documentation - The Supervisor must document the date, time, and place of the occurrence giving rise to testing, as well as the reason for testing, and send a copy of such documentation to the Director of Operating Rules.

## 7. Post-Accident Testing

- a. Covered Employees: The FRA regulations on the control of alcohol and drug use require toxicological testing after accidents that meet specific criteria set forth in 49 C.F.R § 219, Subpart C. In the event of such an accident, a Supervisor must contact the Director of Operating Rules or the Chief Safety and Security Officer for specific instructions.
- b. Commercial Drivers: The FMCSA regulations on the control of alcohol and drug use require toxicological testing after accidents and incidents that meet specific criteria set forth in 49 C.F.R. § 382.303. In the event of an accident, a Supervisor must contact the Director of Operating Rules or the Chief Safety and Security Officer for specific instructions.

## 8. Random Testing

- a. Covered Employees: Random testing of Covered Employees is performed by the Company under applicable FRA regulations and in accordance with the procedures set forth in Metro-North's Plan for Random Selection and Scheduling of Random Drug and Alcohol Testing (the "Plan"). A copy of the Plan is available for inspection in the Operating Rules and Human Resources Departments.
- b. Commercial Drivers: Random testing of Commercial Drivers is performed by the Company under applicable FMCSA regulations and in accordance with the Plan.

## 9. Follow-up Testing

- a. An employee who has engaged in conduct in violation of the FRA (as described in §219.104) regulations, the FMCSA regulations and/or this Operating Procedure must pass a drug and/or alcohol test in order to return to his or her position.
- b. In addition, such an employee is subject to unannounced follow-up drug and/or alcohol testing as directed by federal rules and regulations and the Company's Medical OHS and/or EAP.



# Operating Procedure

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Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 13 of 14

---

## 10. Periodic Physical Examination Testing

Covered, Commercial Drivers and Safety-Sensitive Employees whose positions require periodic physical examinations will be subjected to drug testing as part of those examinations.

## 11. Return-to-Duty Physical Examination Testing

Covered, Commercial Drivers and Safety-Sensitive Employees who have been absent from work for any reason for 14 days or more will be subjected to drug and/or alcohol testing as part of a return-to-duty physical examination.

## VIII. TEST PROCEDURES AND RETESTS

The Company and vendors hired by the Company to perform testing shall follow the procedures established by the Department of Transportation ("DOT") for all drug and alcohol testing conducted under this Operating Procedure. These procedures are set forth in 49 C.F.R. Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

## IX. CONFIDENTIALITY

1. No Supervisor or employee may disclose to any individual any drug or alcohol use or testing information concerning any other employee, unless such disclosure is necessary for compliance with this Operating Procedure or federal law and regulations or unless the employee whose records are at issue executes a release specifically authorizing the disclosure of such information.
2. All records maintained in the course of carrying out the procedures described in this Operating Procedure and under federal drug and alcohol testing laws must be maintained in a separate, dedicated, locked file as appropriate with EAP, OHS, or Random Testing Program.
3. If any employee discloses the information or records described above to any other individual for any reason, that employee may be subject to administrative or disciplinary action, up to and including dismissal.
4. Referrals:
  - a. Self-Referral – An employee will be considered a "voluntary self-referral" from the time he/she seeks assistance through the EAP. All information and subsequent counseling and/or treatment in the case of a voluntary self-referral shall remain confidential and seeking assistance as a Voluntary Self-Referral will not impact an individual's employment status, except in circumstances as provided below.
    - i. If the self-referring employee has been or is charged with conduct deemed sufficient to warrant discipline, disclosure limited to the employee's compliance or non-compliance with EAP recommendations shall be subject to disclosure and may be taken into account in determining discipline and any employment consequences arising in connection with such discipline.
    - ii. If the self-referring employee is employed in a job title that is classified as Covered Service or is otherwise Safety Sensitive and in the EAP's professional judgment, a self-referring employee appears to **be a threat to the safety of the traveling public or his or her co-workers**, Metro-North Railroad, upon the recommendation of EAP, can take protective action which may include removing the employee from service until the treatment recommendations are met. If an



# Operating Procedure

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Title: **Alcohol and Substance Abuse**  
Effective Date: February 15, 1986  
Revised Date: March 17, 2015

Number: **21-012**  
Page 14 of 14

---

employee refuses to comply with the recommended course of treatment, Metro-North Railroad can suspend or revoke the employee's certification.

- b. Co-Worker Referral – a report by a co-worker to a Supervisor that an employee was apparently unsafe to work with or was, or appeared to be, in violation of this Operating Procedure. The name of the reporting co-worker will be kept confidential and that individual will not be called as a witness should a subsequent administrative or disciplinary action be required. If the employee who is the subject of a Co-Worker Referral is referred to EAP, accepts that referral and follows EAP's recommendation(s), disciplinary action may be held in abeyance.

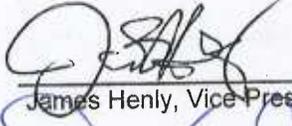
## X. ADMINISTRATION

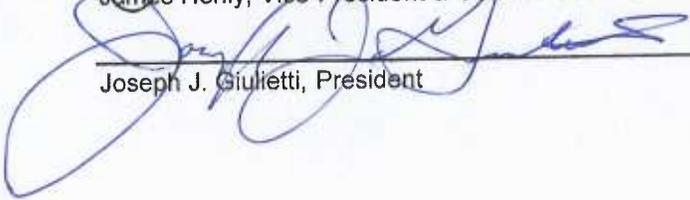
The Vice President, Human Resources, is responsible for interpretation of this Operating Procedure.

This Operating Procedure sets forth only guidelines and does not constitute a contract, express or implied. Metro-North Railroad expressly reserves the right to change or cancel this procedure at its sole discretion at any time.

Approved:

  
Katherine Betries-Kendall, Vice President, Human Resources

  
James Henly, Vice President & General Counsel

  
Joseph J. Giulietti, President



# MTA New York City Transit

## **NEW YORK CITY TRANSIT AUTHORITY'S DRUG AND ALCOHOL POLICY STATEMENT**

### **INTRODUCTION**

The New York City Transit Authority (NYCTA), including MaBSTOA, SIRTOA and the South Brooklyn Railway, is committed to operating and maintaining an alcohol-free and drug-free workplace to provide a safe environment for its passengers and employees. The following policy statement updates drug and alcohol policy statements in effect since 1993.

NYCTA policies, consistent with federal and state law, prohibit all employees from using, possessing or being under the influence of alcohol during an employee's tour of duty, while an employee is on NYCTA's premises or otherwise engaged in NYCTA business and/or when such use would make them unfit to report for duty or to be on duty. State law also prohibits the use of alcohol by a bus operator within six (6) hours of beginning service, regardless of any effects. NYCTA policies prohibit the unlawful manufacture, distribution, dispensation, possession or use of controlled substances at the workplace. In addition, the unlawful use of any drug or controlled substance at any time is also prohibited. Controlled substances are any drug or substance listed in Public Health Law, Section 3306, including but not limited to marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (angel dust), opium, opiates, methadone, cocaine, quaaludes, amphetamines, seconal, codeine, phenobarbital, or valium.

There are significant safety benefits from preventing drug use and alcohol misuse. These rules will help prevent tragic, costly transportation accidents as well as help to improve worker productivity, decrease health care costs, and lessen worker absences. Although the rules are costly to implement because there are so many employees subject to testing, the Department of Transportation (DOT) has carefully balanced safety, individual rights, and costs. The potential safety benefits to employees, employers, and the public outweigh the costs.

NYCTA requires all employees to abide by the terms of these policies as a condition of employment. Violation of the alcohol, drugs and controlled substance policies is considered to be a major offense. Employees who violate these policies will be disciplined, with punishment up to and including termination from employment.

NYCTA performs drug and alcohol tests of employees who perform safety-sensitive functions pursuant to Federal Transit Administration (FTA) regulations. Safety-sensitive designations are subject to change by the Drug and Alcohol Program Manager pursuant to and in accordance with FTA regulations. All NYCTA employees are subject to drug and alcohol testing in additional circumstances pursuant to internal policy and/or collective bargaining agreements. Employees are encouraged to familiarize themselves with policies covering their titles. Questions about NYCTA's anti-drug and alcohol misuse program should be directed to the Corporate Occupational Health Officer, Occupational Health Services who serves as the Drug and Alcohol Program Manager.

Employees placed under arrest, while on or off duty, for an alleged violation of any criminal drug statute (among other things), are required to notify their immediate supervisor, in writing, immediately. This applies to all incidents of an alcohol or drug related arrest. Additionally, upon conviction of any criminal drug and/or alcohol statute, employees are required to notify their immediate supervisor, in writing, within five (5) days of such conviction. A conviction or failure to report such may lead to disciplinary action.

This Policy Statement is divided into two (2) primary sections. Part I addresses drug and alcohol testing that occurs pursuant to FTA regulations. Part II addresses drug and alcohol testing that is conducted under NYCTA's own authority pursuant to internal rules, policy instructions and collective bargaining agreements. Part I addresses only "safety-sensitive" employees as defined under federal regulations. Please consult Appendix I to determine whether a particular title in which an employee serves is "safety-sensitive" and subject to FTA testing. Part II addresses *all* NYCTA employees, regardless of their status under federal law or the title to which they are appointed. The NYCTA, under its own authority, tests all employees in circumstances not required by federal law. Part II also addresses the disciplinary consequences of drug and alcohol positives and other violations of the rules. Because a NYCTA employee may at some point in his or her career be transferred or seek to transfer to a safety-sensitive position, it is important to read this Policy Statement both Parts I and II for a full understanding of the federal testing program and the program conducted under NYCTA's own authority. As indicated in the section of this Policy Statement entitled "NOTICE OF ADOPTION BY THE AGENCY'S GOVERNING BOARD AND INSTRUCTION ON FEDERAL PREEMPTION", NYCTA recognizes that FTA drug and alcohol rules preempt any state or local requirement that conflicts with the federal rule or thwarts its proper application.

## **REQUIRED EMPLOYEE EDUCATION AND TRAINING**

The NYCTA provides information on drug use, alcohol misuse and treatment resources to all employees both FTA covered and non-covered employees. In addition, NYCTA provides one hour of training for employees on the dangers of controlled substances use and alcohol misuse. All supervisors of FTA-covered employees must attend at least one hour of training of the signs and symptoms of drug abuse on reasonable suspicion testing and at least one hour of training of the signs and symptoms of alcohol misuse and reasonable suspicion testing. This training is necessary to assist supervisors in making appropriate determinations for reasonable suspicion testing.

## **PART I – NYCTA DRUG AND ALCOHOL TESTING: FEDERAL TRANSIT ADMINISTRATION (FTA) PROGRAM**

### **THE OMNIBUS ACT**

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees in the public transportation industry. The rules generally required implementation beginning on January 1, 1995 for large employers (generally, 50 or more safety-sensitive employees) and January 1, 1996 for small employers.

### **THE REGULATIONS**

The FTA has issued regulations requiring alcohol misuse prevention programs, including alcohol testing of safety-sensitive employees. The FTA also has issued regulations requiring drug testing of safety-sensitive transit employees. The DOT rules include a drug and alcohol testing procedures rule (49 CFR, Parts 40 and 655 as amended) that establishes procedures for urine drug testing and alcohol breath testing.

### **EMPLOYEES AFFECTED BY FTA REGULATIONS**

Employees who perform safety-sensitive functions are covered by these regulations. The FTA has determined that “Safety-Sensitive” functions are performed by those who:

- Operate revenue service vehicles including when not in revenue service
- Operate non-revenue service vehicles that require drivers to hold Commercial Drivers Licenses
- Dispatch or control revenue service vehicles
- Maintain revenue service vehicles or equipment used in revenue including maintaining the right of way
- Provide security and carry a firearm

These categories include supervisors who perform these functions. The NYCTA, as required by the FTA regulations, has exhaustively reviewed the actual duties performed by employees to determine which employees perform safety-sensitive functions and, accordingly, are subject to FTA mandated drug and alcohol testing. The current list of safety-sensitive titles is appended to this Policy Statement as Appendix I.

In addition, by **NYCTA policy**, both FTA covered and non-covered employees are subject to testing in additional circumstances which is discussed in Part II.

## ALCOHOL

### **EFFECTS, SIGNS, SYMPTOMS OF ALCOHOL MISUSE AND METHODS OF INTERVENTION**

Alcohol misuse can lead to violence at home or in the workplace. It can also result in missed work, poor judgment, at-home or on-duty accidents, and trouble with law enforcement. It can also cause malnutrition, brain damage, cancer, heart disease, liver damage, ulcers, gastritis, damage to adrenal and pituitary glands and birth defects. Signs and symptoms of alcohol misuse may include: dulled mental processes, lack of coordination or unsteady gait, slowed reaction time, slurred speech, odor of alcoholic beverage on breath, sleepy condition, memory lapses, the “shakes or tremors”, personality changes, an inability to control drinking and a denial that alcohol use is a problem, and a preoccupation with alcohol.

Intervention is an effort to halt the pattern of an individual’s use of alcohol and other drugs. Friends, co-workers and family may intervene with care and concern and, where met with resistance, stronger methods of intervention may be necessary. These include peer intervention, professional counseling, the use of hotlines and group discussions. Another form of intervention is where alcohol use is evident on the job and the employer refers the employee to treatment as a condition of his/her continued employment.

### **PROHIBITED ALCOHOL USE**

Because alcohol is a legal substance, the **FTA** rules define specific prohibited alcohol-related conduct. “Alcohol” includes the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. Performance of safety-sensitive functions is prohibited:

- While having an alcohol concentration of 0.02 or greater as indicated by an alcohol breath test
- While using alcohol regardless of source
- Within four (4) hours after using alcohol regardless of source

In addition, refusing to submit to an alcohol test and using alcohol within eight (8) hours after an accident or until tested (for employees required to be tested) is prohibited.

In addition, by **NYCTA policy**, both safety-sensitive and non safety-sensitive employees are prohibited from possessing, using or being under the influence of alcohol while on duty (which is discussed in Part II).

## REQUIRED ALCOHOL TESTS

The following **FTA** alcohol tests are required:

- **Post-accident** – an accident is defined as an occurrence associated with the operation of a vehicle in which 1) an individual dies; 2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; 3) the public transportation vehicle involved is a bus, electric bus, van, or automobile, in which one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle; or 4) the public transportation vehicle involved is a rail car, trolley car, trolley bus or vessel, and is removed from revenue service. For accidents involving fatalities, each surviving safety-sensitive employee operating the public transportation vehicle at the time of the accident must be tested. Safety-sensitive employees not in the vehicle (e.g. maintenance personnel), whose performance could have contributed to the accident (as determined by the transit agency using the best information available at the time of the accident) must be tested. For non-fatal accidents involving a bus, electric bus, van or automobile, employers shall test each safety-sensitive employee operating the public transportation vehicle at the time of the accident unless their behavior can be completely discounted as a contributing factor to the accident. Safety-sensitive employees in non-fatal accidents involving rail cars, trolley cars, trolley buses or vessels on duty in the vehicle at the time of the accident must be tested unless their behavior can be completely discounted as a contributing factor to the accident. For non-fatal accidents, the employer shall test any other safety-sensitive employee whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the accident. Post-accident alcohol tests must be performed as soon as practicable, but no later than eight (8) hours after the accident. If the test is not administered within two (2) hours following the accident, the employer must still attempt to administer the test and must also prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the accident then a statement must be prepared and maintained on file indicating the reason why the test was not performed.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to obtain necessary emergency medical care.

- **Reasonable suspicion** – conducted when a trained supervisor can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observation of specific behavior, speech or appearance of the covered employee. Reasonable Suspicion alcohol tests must be performed as soon as practicable, but no later than eight (8) hours after the determination. If the test is not administered within two (2) hours following the determination, the employer must prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the determination then a statement must be prepared and maintained on file indicating the reason why the test was not performed.
- **Random** – conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions. (See Random Alcohol Testing, discussed below).

- **Return-to-duty and Follow-up** – conducted when an individual who has violated the prohibited alcohol conduct standards returns to performing safety-sensitive duties or may be directed following a verified prior FTA positive drug test or refusal. Frequency and duration of the testing period beyond 12 months is determined by the Substance Abuse Professional (SAP). Follow-up tests are unannounced and at least six (6) tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty and may include drug testing.

**Note:** In addition, NYCTA policy requires alcohol testing in **additional circumstances for both FTA covered and non-FTA covered employees** as discussed in Part II.

## ALCOHOL TESTING REFUSALS

### Actions Considered to be a Alcohol Test Refusal under 49 CFR, Part 40.261

Action	All Test Categories
1. Fail to appear for a test within a reasonable time as directed by the employer	Refusal
2. Fail to remain at the test site until the testing process is complete	Refusal
3. Fail to provide an adequate amount of saliva or breath	Refusal
4. Fail to provide a sufficient breath specimen when directed and there is no adequate medical explanation for the failure	Refusal
5. Fail to undergo a medical examination as directed to do so	Refusal
6. Fail to sign the certification at Step II of the Alcohol Testing Form	Refusal
7. Fail to cooperate with any part of the testing process	Refusal

## RANDOM ALCOHOL TESTING

The selection of employees for random alcohol testing, pursuant to FTA regulations, is accomplished by a scientifically validated method by means of a computer program. Some employees may be tested more than once each year; some may not be tested at all, depending on the random selection. Random tests are spread reasonably throughout the year and are continuous throughout the year, and during all hours of operation of the service, which at the NYCTA is 24 hours per day, seven days per week. Random alcohol testing must be conducted just before, during, or just after an employee's performance of safety-sensitive duties. The employee is randomly selected for testing (from a "pool" of employees subject to testing). The testing dates and times are unannounced and are with unpredictable frequency throughout the year. Each year, the number of random alcohol tests conducted by the employer must equal at least 10% of all the safety-sensitive employees.

## ALCOHOL TESTING PROCESS

The rules require breath testing using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). Two (2) breath tests are required to determine if a person has a prohibited alcohol concentration. The employee and the individual conducting the breath test, called a Breath Alcohol Technician (BAT), complete the alcohol testing

form to ensure that the results are properly recorded. A screening test is conducted first. Any result with less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results. A “positive” alcohol test is one in which both the screening test and the confirmation test are at 0.04 or greater.

The confirmation test results determine any actions to be taken. Testing procedures that ensure accuracy, reliability and confidentiality of test results are outlined in 49 CFR Part 40. These procedures include training and proficiency requirements for BATs, quality assurance plans for the breath testing devices (including calibration), requirements for a suitable test location, and protection of employee test records.

A breath alcohol test will be deemed invalid and, therefore, “cancelled” where 1) the next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the Quality Assurance Plan (QAP) from the known value of the test standard; 2) the BAT does not observe the minimum 15-minute waiting period prior to the confirmation test; 3) the BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test; 4) the BAT does not sign FTA required forms; 5) the BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result; 6) an EBT fails to print a confirmation test result; or 7) on a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

Failure to appear for a test without an acceptable reason will be treated as a refusal. When an employee receives notification to appear for testing, he/she must proceed immediately to the test site. Any employee who fails to arrive at the test site within a reasonable amount of time after being notified shall be presumed to be a refusal and therefore a positive under the FTA. The employee shall have the burden of substantiating his/her reason for not arriving at the collection site within a reasonable time. A failure to meet the burden of proof will result in the “refusal” standing.

A covered employee who remains subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his/her location if he/she leaves the scene of the accident prior to submission to such test shall be deemed by the employer to have refused to submit to testing. A written or verbal refusal to provide a required breath specimen or to sign the DOT-required testing forms also constitutes a refusal. In addition, employees who fail to cooperate with the testing process in a way that prevents the completion of the test and/or who provide insufficient breath shall be deemed a refusal where the Medical Review Officer (MRO) determines that no valid medical reasons exists for such failure. Refusal to take a test is considered to be a "positive" and may have further disciplinary consequences, up to and including dismissal.

NYCTA reserves the right to use oral fluid Alcohol Screening Devices (ASDs) from the NHTSA conforming products list to conduct alcohol screening tests in accordance with the provisions of 49 CFR Part 40, Subparts K and L.

## **THE IMMEDIATE CONSEQUENCES OF ALCOHOL MISUSE**

Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Employees who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by an SAP and have complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, employees who have any alcohol concentration of 0.02 or greater in their breath but less than 0.04, when tested just before, during or just after performing safety-sensitive functions, must also be removed from performing such duties for eight (8) hours. For employees performing safety-sensitive functions who test at a level of 0.04 or greater, the result is deemed positive and requires referral to an SAP. The employee may not be returned to a safety-sensitive position until recommended by an SAP.

If an employee's behavior or appearance suggests alcohol misuse, a reasonable suspicion alcohol test must be conducted. If a breath test cannot be administered, the employee must be removed from performing safety-sensitive duties for at least eight (8) hours.

## **ADDITIONAL CONSEQUENCES OF ALCOHOL MISUSE**

There may be additional consequences for alcohol misuse, including potential discipline up to and including termination, as set forth in the collective bargaining agreement and/or the NYCTA Policy/Instruction relevant to each individual's employment. Appendix III to this Policy Statement provides a high-level summary of the consequences for various employee groups but is not intended to be a substitute for consulting the applicable collective bargaining agreement and/or Policy/Instruction.

## **REHABILITATION**

See **REHABILITATION: FTA PROGRAM**, see page 15.

## **RULE ENFORCEMENT**

Employers are required to keep detailed records of their alcohol misuse prevention programs. The DOT agencies conduct inspections or audits of employers' programs.

## **DRUG TESTING**

### **PROHIBITED DRUG USE**

The drug rules prohibit any unauthorized use of controlled substances. Illicit use of drugs by FTA covered employees is prohibited on or off duty. By NYCTA policy, illicit use of drugs by any employee is prohibited on or off duty as discussed in Part II.

The FTA has issued rules and regulations requiring drug testing of safety-sensitive transit employees also beginning in January 1995. The drug testing rules include the same testing triggers as the alcohol testing rules – reasonable suspicion; post-accident; random; return-to-duty and follow-up; and *also include* pre-employment testing.

The following FTA drug tests are required:

- **Pre-employment** – candidates for employment must produce a negative drug test result prior to being hired (i.e. going on the payroll). If the test is cancelled, the candidate must retake and produce a negative test result before being hired. Pre-employment testing is also required when employees transfer to a safety-sensitive position. Transferees must provide a verified negative drug test result prior to performing a safety-sensitive function.
- **Post-accident** – an accident is defined as an occurrence associated with the operation of a vehicle in which 1) an individual dies; 2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; 3) the public transportation vehicle involved is a bus, electric bus, van, or automobile, in which one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle; or 4) the public transportation vehicle involved is a rail car, trolley car, trolley bus or vessel, and is removed from revenue service. For accidents involving fatalities, each surviving safety-sensitive employee operating the public transportation vehicle at the time of the accident must be tested. Safety-sensitive employees not in the vehicle (e.g. maintenance personnel), whose performance could have contributed to the accident (as determined by the transit agency using the best information available at the time of the accident) must be tested. For non-fatal accidents involving a bus, electric bus, van or automobile, employers shall test each safety-sensitive employee operating the public transportation vehicle at the time of the accident unless their behavior can be completely discounted as a contributing factor to the accident. Safety-sensitive employees in non-fatal accidents involving rail cars, trolley cars, trolley buses or vessels on duty in the vehicle at the time of the accident must be tested unless their behavior can be completely discounted as a contributing factor to the accident. For non-fatal accidents, the employer shall test any other safety-sensitive employee whose performance could have contributed to the accident as determined by the employer using the best information available at the time of the accident. Post-accident drug tests must be performed as soon as practicable, and within 32 hours after the accident.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to obtain necessary emergency medical care.

- **Reasonable suspicion** – conducted when a trained supervisor can articulate and substantiate contemporaneous physical, behavioral and performance indicators of probable drug use or alcohol misuse by observation of specific behavior, speech or appearance of the covered employee.
- **Random** – conducted on a random unannounced basis for safety-sensitive employees. (See explanation of the random testing process, discussed later in this Policy Statement).
- **Return-to-duty and Follow-up** – conducted when an individual who has a verified prior FTA positive drug test or refusal returns to performing safety-sensitive duties or may be directed following an FTA verified positive alcohol test or refusal. Frequency and duration of the testing period is determined by the SAP. Follow-up tests are unannounced and at least 6 tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty and may include alcohol testing.

Employees reporting for a Return-to-Duty After a Positive or Follow-up test will be subject to direct observation as mandated by FTA regulations.

In addition, NYCTA policy requires drug testing in **additional circumstances for both FTA covered and non-FTA covered employees** as discussed in Part II.

## **DRUG TESTING PROCEDURES**

The DOT drug and alcohol testing procedures rule (49 CFR Part 40) sets forth the procedures for drug testing in all the transportation industries. Drug testing is conducted by analyzing an employee's urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). For primary specimen analysis, NYCTA has contracted with a DHHS certified laboratory. The employee provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody documents, and prepares the specimen and accompanying paperwork for shipment to the drug testing laboratory.

The specimen collection procedures and chain of custody documents ensure that the specimen's security, proper identification, and integrity are not compromised. When an individual arrives at the collection site, the collection site person must ensure that the individual is positively identified as the employee selected for testing (e.g. through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person must not proceed with the collection. An intact Chain of Custody must be maintained throughout the testing process. After checking the sufficiency, appearance and temperature of the specimen, the collector will pour the urine into the two (2) specimen bottles for the split collection. The collection site person must place securely on each bottle a tamper proof seal and preprinted identification label which contains the date, the individual's specimen number and any other identifying information provided by the employer. The individual must initial the identification label on each specimen bottle for the purpose of certifying that it is the specimen collected from him or her. Federally approved Chain of Custody documents are used at NYCTA for FTA required tests. Those chain of custody forms are distinct from Chain of Custody Forms that are used for testing that is conducted under NYCTA's own authority by collective bargaining agreement or policy instruction.

If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee will be notified by the MRO that the employee has a confirmed, verified positive test and that the employee has 72 hours to request the split specimen be sent to another DHHS-certified laboratory to have it analyzed for the presence of the drug found in the primary sample. NYCTA contracts with several DHHS-certified laboratories for split specimen analysis. If the employee makes the request within 72 hours of the time the employee has actual knowledge of the MRO's verification of a positive on the primary specimen, the MRO will direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. Only the MRO can initiate this action. This split specimen procedure essentially provides the employee with an opportunity for a "second opinion". If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) detected in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, or if the results of the split sample test are not scientifically adequate, the MRO shall declare the original test to be "cancelled" and report

the reasons to the employee, the employer and the DOT. A “cancelled test” is neither positive nor negative.

**DRUG TESTING REFUSALS**

<b>Actions Considered to be a Drug Test Refusal under 49 CFR, Part 40.191</b>		
<b>Action</b>	<b>Pre-Employment</b>	<b>All Test Categories Except Pre-Employment</b>
1. Fail to appear for a test within a reasonable time as directed by the employer	Not a Refusal	Refusal
2. Fail to remain at the test site until the testing process is complete	Refusal, if individual leaves after testing process has commenced	Refusal
3. Fail to provide a urine specimen	Refusal, if individual fails to provide a specimen once the testing process has commenced	Refusal
4. Fail to permit direct observation of a specimen when required	Refusal	Refusal
5. Fail to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure	Refusal	Refusal
6. Fail or decline to take a second test when directed to do so	Refusal	Refusal
7. Fail to undergo a medical examination when directed to do so	Refusal if employer has made a contingent offer of employment	Refusal

8.	Fail to cooperate with any part of the testing process (DER makes final refusal determination)	Refusal	Refusal
9.	The MRO reports that you have a verified adulterated or substituted test result	Refusal	Refusal
10.	For an observed collection, fail to follow the observer's instructions to permit the observer to determine whether there is a prosthetic or other device that could be used to interfere with the collection process	Refusal	Refusal
11.	Possess or wear a prosthetic or other device that can be used to interfere with the collection process	Refusal	Refusal
12.	State to the collector or MRO that the specimen is either adulterated or substituted	Refusal	Refusal

Failure to appear for a test without an acceptable reason will be treated as a refusal. When an employee receives notification to appear for testing, he/she must proceed immediately to the test site. Any employee who fails to arrive at the test site within a reasonable amount of time after being notified shall be presumed to be a refusal and therefore a positive under the FTA. The employee shall have the burden of substantiating his/her reason for not arriving at the collection site within a reasonable time. A failure to meet the burden of proof will result in the "refusal" standing.

A covered employee who remains subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, shall be deemed by the employer to have refused to submit to testing. Where the employee subject to post-accident testing is required to assist in the resolution of the accident or receives medical attention following the accident, post-accident testing is stayed during that period. A written or verbal refusal to provide a required urine specimen or to sign the DOT-required testing forms also constitutes a refusal. In addition, employees who fail to cooperate with the testing process and/or are unable to provide a minimum of 45 cc of urine within three (3) hours of the commencement of the testing process shall be deemed a refusal where the MRO determines that no valid medical reasons exists for such failure.

Refusal to take a test is considered to be a “positive” and may have further disciplinary consequences, up to and including dismissal.

## **DRUGS TESTED**

The FTA requires that all urine specimens be analyzed for the following drugs:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines (including MDMA)
4. Opiates (including 6 Acetylmorphine)
5. Phencyclidine (PCP)

In addition, under NYCTA policy, for non-FTA tests, urine specimens are analyzed for additional drugs to those listed above, as discussed in Part II. The specimen testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using gas chromatography/mass spectrometry (GCMS) analysis.

## **FTA DRUG TESTING CUT-OFF LEVELS FOR SCREENING AND CONFIRMATION TESTING**

The FTA has promulgated the following minimum cut off levels for the minimum quantity of drug that must be detected in the initial and confirmation tests:

	<i>Screen (ng/ml)</i>	<i>Confirmation (ng/ml)</i>
Marijuana (THC metabolite):	50	15
Cocaine	150	100
Amphetamines	500	250
Opiates	2000	2000
6 Acetylmorphine	10	10
Phencyclidine (PCP)	25	25
MDMA	500	250

## **REVIEW AND INTERPRETATION OF THE LABORATORY RESULTS**

The NYCTA, pursuant to FTA regulations, employs the services of Medical Review Officers who, in accordance with FTA regulations, are licensed physicians who have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate an individual’s confirmed positive test results together with his or her medical history and any other relevant biomedical information. All drug test results are reviewed and interpreted by the MRO before they are reported to the employer. If the laboratory reports a positive result to the MRO, the employee will be directed to see the MRO for an interview to determine if there is an alternative medical explanation for the drugs found in the employee’s urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer. A dilute negative result will be considered final with no additional testing required. A dilute positive result will be

considered final and subject the employee to all regulations regarding a positive drug test. All dilute test results will be reported as such to the Designated Employer Representative (DER) whether they be positive or negative.

### **THE IMMEDIATE CONSEQUENCES OF A POSITIVE DRUG TEST**

As with an alcohol misuse violation, an FTA-covered employee must be removed from safety-sensitive duty if he/she has a positive drug test result. An employee cannot be returned to safety-sensitive duties until he/she has been evaluated by an SAP and/or MRO, complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use is required, and may include testing for alcohol.

The FTA requires that FTA-covered employees who test positive for drugs and/or alcohol in an FTA test be referred to an SAP for evaluation and appropriate referral even when the employee is dismissed and not eligible for restoration to duty under NYCTA policy. This requirement applies to both probationary and non-probationary employees.

### **ADDITIONAL CONSEQUENCES OF A POSITIVE DRUG TEST**

There may be additional consequences **for both FTA-covered and non-covered employees**, including potential discipline up to and including termination, as set forth in the collective bargaining agreement and/or the NYCTA Policy/Instruction relevant to each individual's employment. Appendix III to this Policy Statement provides a high-level summary of the consequences for various employee groups but is not intended to be a substitute for consulting the applicable collective bargaining agreement and/or Policy/Instruction.

A candidate who has previously tested positive must document successful completion of an SAP mandated evaluation, referral and education/treatment program.

### **RANDOM DRUG TESTING**

Employers are responsible for conducting random, unannounced drug tests. The selection of employees for random testing, pursuant to FTA regulations, is accomplished by a scientifically validated method by means of a computer program. The total number of tests conducted each year must equal at least 25% of the number of FTA-covered employees. Some employees may be tested more than once each year; some may not be tested at all depending on the random selection. Random tests are spread reasonably throughout the year and are continuous throughout the year, and during all hours of operation of the service, which at the NYCTA is 24 hours per day, seven days per week. Random testing for drugs does not have to be conducted in immediate time proximity to performing safety-sensitive functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty. Once an employee is selected by for random testing through the computer selection process, there is no managerial discretion in selection or notification to employees of the requirement for testing. Once notified of selection for testing, an employee must immediately proceed to a collection site.

## **REHABILITATION: FTA PROGRAM**

Employees who violate the alcohol misuse or drug use rules will be referred to an SAP for evaluation. NYCTA's Employee Assistance Program, known as Work Life Services (WLS), through its professional staff, serves as the agency's Substance Abuse Professionals. Under collective bargaining agreements with the Transport Workers Union, Local 100 and Locals 726 and 1056 of the Amalgamated Transit Union, each Union's "Union Assistance Program," through their respective professional staffs, serve as the agency's SAPs for first-time marijuana positives (see Appendix II). Pursuant to FTA regulations, SAPs are required to be a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the NAADAC (National Association of Alcoholism and Drug Abuse Counselors Certification Commission or the ICRC) and have clinical knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Where there is a verified positive drug or alcohol test result, or where the employee is deemed a refusal, the SAP's role is to: 1) conduct an initial evaluation to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse; 2) determine the types of assistance needed by the employee and recommend a course of action to the employee; 3) determine whether the employee (a) has followed the course of action recommended by the SAP, (b) has successfully completed the course of treatment, and (c) is ready to return to safety-sensitive duties; 4) determine whether the Return-to-duty test, and subsequent follow-up tests, will be for drugs only, alcohol only, or both drugs and alcohol; 5) determine the frequency and duration of follow-up testing for each covered employee on an individual, case-by-case basis. At a minimum, the SAP must require a frequency and duration of six (6) tests during the first twelve months back to work. The frequency may be changed at any time during the course of follow-up testing as long the minimum requirement of six (6) tests during the first twelve months is met.

The SAP determines an individualized follow-up testing program that is tailored to the circumstances of the employee, and which may continue for as long as 60 months, but no longer; 6) after 12 months, determine whether to continue or terminate the follow-up testing program, and adjust the frequency and duration as appropriate. The SAP may require a one-year evaluation of the employee; 7) the SAP maintains records related to the referral and return-to-duty and follow-up testing, including: (a) records pertaining to a determination by the SAP concerning a covered employee's need for referral for assistance in resolving problems associated with prohibited drug use and alcohol misuse; (b) records concerning a covered employee's entry into and completion of the program of treatment recommended by the SAP.

The SAP must present a written report to the NYCTA at the time the SAP recommends that employee is ready to take a return-to-duty test and return to a safety-sensitive position if the return-to-duty test is negative. The SAP's report, outlining the employee's ability to demonstrate successful compliance to the NYCTA will be in letter format with the SAP's official letterhead, signed by the SAP, and contains the following: 1) the employee's name and social security number; 2) the employer's name and address; 3) reason for initial assessment (specific violation of the rules and the violation date); 4) date(s) of initial assessment and brief synopsis of the rehabilitation plan; 5) name and practice or program providing the treatment; 6) inclusive dates of the employee's treatment program; 7) clinical characterization of the employee's participation

in the treatment program; 8) the SAP's clinical determination as to the employee's demonstration of successful compliance; 9) follow-up testing plan; 10) the SAP's telephone number.

The FTA requires that safety-sensitive employees who test positive for drugs and/or alcohol in an FTA test be referred to an SAP for evaluation and appropriate referral even when the employee is dismissed and not eligible for restoration to duty under NYCTA policy. This requirement applies to both probationary and non-probationary employees.

### **RECORDS, SPECIMEN STORAGE AND CONFIDENTIALITY OF EMPLOYEES'** **TESTING RECORDS**

Federal rules require that the testing laboratory report test results to the MRO within an average of five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported, it shall be reviewed and the test certified as an accurate report by the responsible individual. The report is required to identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number). The laboratory is required to report as negative all specimens that are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive are reported positive for a specific drug. The MRO may request a quantitation level that the laboratory must supply. The MRO is required to report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but is not permitted to disclose the quantitation of test results to the employer. However, the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test. Reports from laboratories to the MRO may be made by electronic means in a confidential manner but may not be provided verbally by telephone.

Employee drug and alcohol testing results and records are available to the employee and are maintained under strict confidentiality by the employer, the testing laboratory, and the MRO. They cannot be released to others without the written consent of the employee. Exceptions to these confidentiality provisions are limited to DOT agencies when license or certification actions are required or to a decision maker in arbitration, litigation or administrative proceedings arising from a positive test. Statistical records and reports are maintained by employers and testing laboratories. This information is aggregated data and is used to monitor compliance with the rules and to assess the effectiveness of the testing programs.

## **PART II – NYCTA DRUG AND ALCOHOL TESTING: NYCTA (NON-FEDERAL) PROGRAM**

### **THE RULES AND POLICY INSTRUCTIONS GOVERNING AGENCY-BASED TESTING**

In addition to the FTA-required program outlined in Part I, NYCTA has its own drug and alcohol rules applicable to *all* employees, regardless of their status under federal law or the title to which they are appointed, as set forth in NYCTA Policy/Instructions, rules and/or collective bargaining agreements. To the extent that any provisions of the NYCTA policies, rules and/or collective bargaining agreements are inconsistent with federal regulations, they are considered modified to conform with such regulations. These rules are separate and distinct from, but not in conflict with, the FTA rules described in Part I. Please consult the matrices attached in Appendix III as a quick reference for determining under what circumstances testing occurs and the consequences of positive test results under both federal and non-federal testing. Appendix III is not intended to be a substitute for consulting the applicable collective bargaining agreement, rules and/or Policy/Instruction.

### **EMPLOYEES AFFECTED BY THESE RULES**

All employees, whether serving in safety-sensitive or non-safety-sensitive positions, are covered by internal policies and collective bargaining agreement provisions as a condition of employment.

### **RULE ENFORCEMENT**

NYCTA's internal standards must be strictly enforced by supervisors and managers. The NYCTA has a zero tolerance policy for drug use and alcohol misuse violations. The riding public and all NYCTA employees have a right to expect a drug and alcohol free transit system.

## **ALCOHOL**

### **PROHIBITED ALCOHOL USE**

All employees are prohibited from using, possessing or being under the influence of alcohol during an employee's tour of duty, while an employee is on NYCTA's premises or otherwise engaged in NYCTA business and/or when such use would make them unfit to report for duty or to be on duty.

### **REQUIRED ALCOHOL TESTS**

The following NYCTA alcohol tests are required. These are in addition to FTA tests for safety-sensitive employees that are enumerated in Part I:

- When directed by members of supervision following any accident or unusual incident that occurs while on duty where it is reasonable to conclude that drug/alcohol use could have contributed to the accident
- When supervision or management has reason to believe the employee is impaired
- Unannounced recheck after a prior positive test (mandated Follow-up testing)

## **ALCOHOL TESTING PROCESS**

NYCTA's rules, policy instructions and collective bargaining agreements require breath testing using evidential breath testing devices (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). A screening breath test is conducted first. Any result with less than 0.02 alcohol concentration is considered a "negative" test and no further testing is done. If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted. A "positive" alcohol test is one in which both the screening test and the confirmation test are each at 0.04 or greater. Under some collective bargaining agreements, a positive for alcohol occurs when the result is 0.05 or greater. Please refer to the appended matrices covering your title. Some collective bargaining agreements require blood testing for confirmation testing. Some require a second breath analysis. Even where an FTA test is conducted, some safety-sensitive employees, based on their collective bargaining agreements, will have an additional blood test not required under federal rules. The results of the blood tests in federal tests are not germane to making a positive finding under federal rules but may be germane in determining the disciplinary consequences that an employee may face for a positive finding.

Failure to appear for a test without an acceptable reason will be deemed a refusal. When an employee receives notification to appear for testing, he/she must proceed immediately to the test site. Any employee who fails to arrive at the test site within a reasonable amount of time after being notified shall be presumed to be a refusal and therefore a positive under NYCTA policy. The employee shall have the burden of substantiating his/her reason for not arriving at the collection site within a reasonable time. A failure to meet the burden of proof will result in the "refusal" standing. A written or verbal refusal to provide a required breath specimen or to sign required testing forms also constitutes a refusal. In addition, employees who fail to cooperate with the testing process in a way that prevents the completion of the test and/or who provide insufficient breath shall be deemed a refusal where the MRO determines that no valid medical reasons exists for such failure. Refusal to take a test is considered to be a "positive" and may have further disciplinary consequences, up to and including dismissal.

NYCTA reserves the right to use oral fluid Alcohol Screening Devices (ASDs) from the National Highway Traffic Safety Administration conforming products list to conduct alcohol screening tests in accordance with the provisions of 49 CFR Part 40, Subparts K and L.

## **THE CONSEQUENCES OF A POSITIVE TEST**

Violations of this policy will result in disciplinary action up to and including termination as set forth in the collective bargaining agreement and/or the NYCTA Policy/Instruction relevant to each individual's employment. Appendix III to this Policy Statement provides a high-level summary of the consequences for various employee groups but is not intended to be a substitute for consulting the applicable collective bargaining agreement and/or Policy/Instruction.

## **REHABILITATION**

Employees who violate the alcohol misuse rules may be referred to WLS or the appropriate UAP as provided for in the applicable collective bargaining agreement or Policy/Instruction.

## **DRUG TESTING**

NYCTA has issued rules and policy instructions and has entered into collective bargaining agreements that require drug testing of all NYCTA employees under certain circumstances. The NYCTA-issued drug testing rules cover the same categories of employees as the NYCTA-issued alcohol testing rules – reasonable suspicion; post-accident; return-to-duty; and follow-up – and *also include* pre-employment testing.

**NYCTA policy** requires drug testing in the **following circumstances for both FTA-covered and non-FTA covered employees:** back-to-work physical following extended illness, suspension or unauthorized absence (21 or more days); biennial and/or annual periodic physicals; when directed by members of supervision following any accident or unusual incident that occurs while on duty where it is reasonable to conclude that drug/alcohol use could have contributed to the accident; and unannounced recheck after a prior positive (mandated follow-up testing).

## **PROHIBITED DRUG USE**

NYCTA policy, rules and regulations prohibit any unauthorized use of controlled substances; illicit use of drugs by **any** employee is prohibited on or off duty.

## **DRUG TESTING PROCEDURES**

Drug testing is conducted by analyzing an employee's urine specimen. The analysis is performed at laboratories certified and monitored by DHHS. The employee provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody documents, and prepares the specimen and accompanying paperwork for shipment to the drug testing laboratory.

If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee will be notified by the MRO that the employee has a confirmed, verified positive test. The employee has between three (3) and five (5) weeks (depending on the policy or collective bargaining agreement covering his/her employment) to contact the Office of Labor Relations to request the split specimen be sent to another DHHS certified laboratory to have it analyzed for the presence of the drug found in the primary sample. This split specimen procedure essentially provides the employee with an opportunity for a "second opinion."

Failure to promptly appear for a test without an acceptable reason will be treated as a refusal. An employee who remains subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, shall be deemed by the employer to have refused to submit to testing. In addition, employees who fail to cooperate with the testing process and/or are unable to provide a minimum of 45 cc of urine within three (3) hours of the commencement of the testing process shall be deemed a refusal where the MRO determines that no valid medical reasons exists for such failure. Refusal to take a test is considered to be a "positive" and may have further disciplinary consequences, up to and including dismissal.

## **DRUGS TESTED**

NYCTA requires that for all tests conducted under its own (non-federal) authority, urine specimens be analyzed for the following drugs:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates, including heroin and four (4) additional prescription opioids (hydrocodone, hydromorphone, oxycodone and oxymorphone)
5. MDMA
6. Phencyclidine (PCP)
7. Barbiturates
8. Methadone
9. Benzodiazepines
10. Dilantin (solely for the Bus and Train Operator titles during periodic medical examinations)

The specimen testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using gas chromatography/mass spectrometry (GCMS) analysis.

Urine specimens are analyzed only for drugs using DOT-DHHS approved protocols.

## **REVIEW AND INTERPRETATION OF THE LABORATORY RESULTS**

All drug test results are reviewed and interpreted by the MRO before they are reported to the employer. If the laboratory reports a positive result to the MRO, the employee will be directed to see the MRO for an interview to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer. A dilute negative result will be considered final with no additional testing required. A dilute positive result will be considered final and subject the employee to all regulations regarding a positive drug test. All dilute test results will be reported as such to the DER whether they be positive or negative.

## **THE CONSEQUENCES OF A POSITIVE DRUG TEST**

In addition to FTA requirements, any employee will be removed from service if he/she has a positive drug test result. An employee cannot be returned to duty until he/she (a) has been evaluated by WLS or, under limited circumstances, UAP, where applicable, and/or the MRO, (b) has complied with recommended rehabilitation, (c) is recommended by WLS/UAP for return to work, and (d) has a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use is required.

There may be additional consequences for **both FTA-covered and non-covered employees**, including potential discipline up to and including termination, as set forth in the collective bargaining agreement and/or the NYCTA Policy/Instruction relevant to each individual's employment. Appendix III to this Policy Statement provides a high-level summary of the

consequences for various employee groups but is not intended to be a substitute for consulting the applicable collective bargaining agreement and/or Policy/Instruction.

## **REHABILITATION**

Employees who violate the drug use rules may be referred to WLS or the appropriate UAP as provided for in the applicable collective bargaining agreement or Policy/Instruction.

## **NOTICE OF ADOPTION BY THE AGENCY'S GOVERNING BOARD AND STATEMENT ON FEDERAL PREEMPTION**

This policy statement has been adopted by the Metropolitan Transportation Authority's governing board and is in full force and effect subject to future amendment and revision as necessary. Pursuant to 49 CFR Part 40 and Part 655.6 [Preemption of State and local laws]: (a) except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that: (1) compliance with both the state or local requirement and any requirement in this part is not possible; or (2) compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part. (b) this part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public. Also, to the extent that any provisions of the NYCTA policy, rules and/or collective bargaining agreements are inconsistent with federal regulations, they are considered modified to conform with such regulations.

## Appendix I

### Safety Sensitive Titles New York City Transit Authority

#### Department of Subways

ASSISTANT RAILROAD SIGNAL SPECIALIST  
ASSISTANT RAILROAD SIGNAL SPECIALIST OP.  
ASSISTANT TRAIN DISPATCHER  
ASSISTANT TRAIN DISPATCHER (CONSOLE OPS.)  
ASSISTANT TRAIN DISPATCHER PERB CONF.  
ASSOCIATE RAILROAD SIGNAL SPECIALIST I  
ASSOCIATE RAILROAD SIGNAL SPECIALIST II  
ASSOCIATE RAILROAD SIGNAL SPECIALIST OP. I  
ASSOCIATE RAILROAD SIGNAL SPECIALIST OP. II  
CAR INSPECTOR (ASSIGNMENT A)  
CAR INSPECTOR B  
CAR MAINTAINER B  
CAR MAINTAINER TRAINEE  
CONDUCTOR (CONSTRUCTION FLAGGING)  
CONDUCTOR (REVENUE VEHICLE)  
ELECTRONIC SPECIALIST  
DISPATCHER RAPID TRANSIT (CONSOLE OPS)  
DISPATCHER RAPID TRANSIT OPS.  
GENERAL SUPERINTENDENT - RCC  
LIGHT MAINTAINER  
LINE SUPERINTENDENT - RCC  
MAINTENANCE SUPERVISOR - STRUCTURE A  
MAINTENANCE SUPERVISOR - STRUCTURE E  
POWER CABLE MAINTAINER  
POWER DISTRIBUTION MAINTAINER  
POWER MAINTAINER B  
RAILROAD TRACK CLEANER  
ROAD CAR INSPECTOR  
SIGNAL MAINTAINER  
SIGNAL MAINTAINER TRAINEE  
STRUCTURE MAINTAINER A  
STRUCTURE MAINTAINER B  
STRUCTURE MAINTAINER C  
STRUCTURE MAINTAINER D  
STRUCTURE MAINTAINER E  
SUPERINTENDENT – RCC  
TELEPHONE MAINTAINER  
TOWER OPERATOR  
TRACKWORKER  
TRACKWORKER (DUAL RATE)  
TRACKWORKER (SPECIALIST)

TRAIN DISPATCHER PERB CONF.  
TRAIN OPERATOR (REVENUE VEHICLE)  
TRAIN OPERATOR (WORK TRAIN)  
TRAIN OPERATOR (YARD)  
TRAIN SERVICE SUPERVISOR  
TRAIN SERVICE SUPERVISOR (CONSOLE OPS.)  
TRAIN SERVICE SUPERVISOR PERB CONF.  
TRANSIT ELECTRICAL APPRENTICE  
TRANSIT ELECTRICAL HELPER (LIGHTING)  
TRANSIT ELECTRICAL HELPER (POWER)  
TRANSIT ELECTRICAL HELPER (POWER DISTRIBUTION)  
TRANSIT ELECTRICAL HELPER (SIGNALS)  
TRANSIT ELECTRICAL HELPER (TELEPHONES)  
TRANSIT ELECTRICAL HELPER (VENTILATION & DRAINAGE)  
TRANSIT ELECTRO-MECH MTR V&D  
YARD DISPATCHER

## **SIRTOA**

3<sup>RD</sup> RAIL MAINTAINER  
3<sup>RD</sup> RAIL HELPER  
AGENT OPERATOR  
APP. GENERAL MECHANIC  
CAR MAINTAINER  
CONDUCTOR - SIRTOA  
ELECTRONIC EQUIPMENT MAINTAINER  
EQUIPMENT MAINTAINER  
EQUIPMENT MAINTAINER HELPER  
GENERAL MECHANIC  
LEAD CARMAN  
LEAD MACHINIST  
LEAD MAINTAINER ELECTRICIAN  
LINE SUPERVISOR 3<sup>RD</sup> RAIL  
LINE SUPERVISOR BRIDGES & BUILDING  
LINE SUPERVISOR POWER  
LINE SUPERVISOR SIGNALS  
LOCOMOTIVE ENGINEER  
MACHINIST  
MAINTAINER ELEC. HELPER B&B  
MAINTAINER ELECTRICIAN B&B  
MAINTAINER ELECTRICIAN MECH  
PIPEFITTER  
POWER MAINTAINER  
ROAD CAR INSPECTOR  
ROAD CAR INSPECTOR ELECTRIC  
SIGNAL HELPER  
SIGNAL MAINTAINER  
SIGNAL MAINTAINER - SIRTOA

SR. EQUIPMENT MAINTAINER  
TRACK WALKER  
TRACKWORKER  
TRACKWORKER MACHINE OPERATOR  
TRAIN DISPATCHER  
TRAIN DISPATCHER - SIRTOA

### **Department of Buses**

BUS MAINTAINER A  
BUS MAINTAINER B  
BUS MAINTAINER BODY  
BUS MAINTAINER CHASSIS  
BUS OPERATOR (NON-REVENUE VEHICLE)  
BUS OPERATOR (REVENUE VEHICLE)  
DISPATCHER (SURFACE TRANSIT)  
DISPATCHER I (SURFACE)  
DISPATCHER I (SURFACE TRANSIT)  
MECHANICAL HELPER  
LINE SUPERVISOR - P&E  
LINE SUPERVISOR - SURFACE  
MAINTAINER HELPER B  
MAINTENANCE SUPERVISOR - BUSES  
MECHANICAL MAINTAINER C  
PLANT & EQUIPMENT MAINTAINER  
PLANT & EQUIPMENT MAINTAINER - CARPENTRY  
PLANT & EQUIPMENT MAINTAINER - ELECTRICAL  
PLANT & EQUIPMENT MAINTAINER - HVAC  
PLANT & EQUIPMENT MAINTAINER - MASONRY  
PLANT & EQUIPMENT MAINTAINER - PLUMBING  
TRANSIT MECHANICAL APPRENTICE

### **Office of the Executive Vice President**

COLLECTING AGENT

**Note:** List is subject to change

## **Appendix II**

### **Substance Abuse Professionals for New York City Transit Authority**

**New York City Transit Authority  
Work Life Services (an Employee Assistance Program)  
177 Livingston Street - 4<sup>th</sup> Floor  
Brooklyn, New York 11201  
(347) 643-7376**

**Transport Workers Local 100  
Union Assistance Program  
519 8<sup>th</sup> Avenue, 7<sup>th</sup> Floor, South  
New York, New York 10018  
(212) 736-3579**

**Amalgamated Transit Union Local 1056  
Union Assistance Program  
147 West 13<sup>th</sup> Street  
New York, New York 10011  
(212) 924-9281**

**Amalgamated Transit Union 726  
Union Assistance Program  
162 Ridgcrest Avenue  
Staten Island, New York 10312  
(718) 605-4187**

**Appendix III**  
**Drug & Alcohol Matrices**  
**New York City Transit Authority**

**Drugs and Controlled Substances**

**Consequences of testing positive for all employees (including FTA-covered employees)<sup>1</sup>**

<b><u>First Time Positive</u></b>	<b>Marijuana</b>	<b>All Other Drugs and Controlled Substances</b>
All employees with less than one year of service:	Dismissal without opportunity for restoration.	Dismissal without opportunity for restoration.
All other hourly employees (except SIRTOA):		
Tested for all reasons except random or incident/accident with injury	Leave of absence until approved by WLS/UAP <sup>2</sup> to return to duty and pass a NYCTA administered drug test. The employee is permitted to use accrued leave balances.	Dismissal with opportunity for restoration upon approval of WLS and pass a NYCTA administered drug test.
Random Testing	Leave of absence until approved by WLS/UAP to return to duty and pass a NYCTA administered drug test. The employee is permitted to use accrued leave balances.	Leave of absence until approved by WLS to return to duty and pass a NYCTA administered drug test. The employee is permitted to use accrued leave balances.
Other non-represented employees, managers, and represented employees that do not have drug and alcohol provisions as part of their collective bargaining agreement and SIRTOA employees:	Dismissal with opportunity for restoration upon approval of WLS and pass a NYCTA administered drug test.	Dismissal with opportunity for restoration upon approval of WLS and pass a NYCTA administered drug test.

Master Page # 251 of 303 - Corporate Governance Committee Meeting 3/23/2015

**All Drugs and Controlled Substances**  
**(including marijuana)**

**Second Time Positive**

All hourly employees (except SIRTOA):

Tested for all reasons including Random

One year or less after restoration to duty following first positive test

Dismissal without opportunity for restoration.

More than one year after restoration to duty following first positive test

Dismissal from service with opportunity for restoration to an available budgeted non-safety sensitive position upon completion of WLS and passing a NYCTA administered drug test.

Non-represented employees, managers, and represented employees without drug and alcohol provisions as part of their collective bargaining agreement and SIRTOA employees:

Dismissal without opportunity for restoration.

**Third Time Positive**

All employees:

Tested for all reasons including Random

Dismissal without opportunity for restoration.

**Refusal to Take Drug Test**

All employees:

Tested for all reasons except Random

Dismissal without opportunity for restoration.

Random Testing

Employee is to be treated as if found positive and in addition is subject to appropriate discipline for failure to comply with a direct order for which the penalty may be dismissal.

**Positive Test Following an  
Incident/Accident Resulting in  
Harm or Injury to Any Person**

All employees:

Dismissal without opportunity for restoration.

1. Probationary NYCTA employees who have a permanent underlying Civil Service title with NYCTA will be returned to that title and then be subject to the consequences set forth herein. Probationary NYCTA employees who do not have a permanent underlying Civil Service title with NYCTA will be subject to the consequences set forth herein, except that such employees will not be eligible for restoration under any of the provisions of this matrix.
2. WLS refers to a Substance Abuse Professional from NYCTA's Work Life Services. UAP refers to a Substance Abuse Professional utilized by a Union Assistance Program. All hourly employees who test positive for marijuana as their first positive test are referred to their respective Union Assistance Program.

## Alcohol

### **Immediate Consequences of testing positive for all FTA-covered employees**

#### FTA-covered Employees

#### Consequences

#### Alcohol level by Breath Analysis:

0.02 to less than 0.04

Not permitted to perform safety sensitive duties for the next 8 hours.

0.04 to less than 0.05

Immediately removed from safety-sensitive duties and referred to WLS. Leave of absence until approved by WLS to return to duty. The employee may utilize leave balances. (Exception: for SSSA represented employees who test 0.04 or greater on a breath analysis test, the following matrix applies).

0.05 or greater

Immediately removed from safety-sensitive duties and referred to WLS. If eligible to return to safety sensitive duties under policy and/or collective bargaining agreement, the employee is not returned until approved by WLS. See the following matrix for additional consequences if the 0.05 or greater is confirmed by a blood alcohol test.

## Alcohol

### **Disciplinary consequences of testing positive at various levels or refusal for all employees (including FTA-covered employees)<sup>1</sup>**

#### **First Time Positive<sup>2</sup>**

All employees with less than one year of service:

Dismissal without opportunity for restoration

All other hourly employees (except SIRTOA):

Tested for all reasons except Random or incident/accident testing with injury

Disciplinary suspension of thirty (30) days and return to work upon approval of WLS and pass a NYCTA administered alcohol test.

Random Testing

Leave of absence until approved by WLS to return to duty and pass a NYCTA administered alcohol test.

Other non-represented employees, managers, and represented employees that do not have drug and alcohol provisions as part of their collective bargaining agreement:

Tested for all reasons except incident testing with injury

Dismissal with opportunity for restoration upon completion of WLS and pass an Authority administered alcohol test.

Other SIRTOA employees (except managers):

Tested for all reasons except incident testing with injury

Disciplinary suspension of thirty (30) days and return to work upon approval of WLS and pass a NYCTA administered alcohol test.

#### **Second Time Positive**

All hourly employees (except SIRTOA):

Tested for all reasons including random

One year or less after restoration to duty following first positive test

Dismissal without opportunity for restoration.

More than one year after restoration to duty following first positive test

Dismissal from service with opportunity for restoration to an available budgeted non-safety sensitive position upon completion of WLS and passing a NYCTA administered alcohol test.

Non-represented employees, managers, and represented employees that do not have drug and alcohol provisions as part of their collective bargaining agreement and SIRTOA employees:

Dismissal without opportunity for restoration.

**Third Time Positive**

All employees:

Tested for all reasons including Random

Dismissal without opportunity for restoration.

**Refusal to Take Alcohol Test**

All employees:

Tested for all reasons including Random

Employee considered a positive and in addition is subject to appropriate discipline which may include dismissal.

**Positive Test Following an Incident/Accident Resulting in Harm or Injury to Any Person**

All employees:

Dismissal without opportunity for restoration.

1. Probationary NYCTA employees who have a permanent underlying Civil Service title with NYCTA will be returned to that title and then be subject to the consequences set forth herein. Probationary NYCTA employees who do not have a permanent underlying Civil Service title with NYCTA will be subject to the consequences set forth herein, except that such employees will not be eligible for restoration under any of the provisions of this matrix.

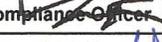
2. For the purposes of this matrix, a "positive" for alcohol is 0.05 or greater, confirmed by a blood alcohol test pursuant to policy and/or collective bargaining agreement. For SSSA represented employees, a "positive" for alcohol is 0.04 or greater by a breath analysis test.

# Staff Summary

Subject <b>Travel and Business Expense Policy</b>
Department <b>Corporate Compliance</b>
Department Head Name <b>Lamond W. Kears</b>
Department Head Signature 
Project Manager Name <b>Lamond W. Kears</b>

Date <b>March 25, 2015</b>
Vendor Name <b>N/A</b>
Contract Number <b>N/A</b>
Contract Manager Name <b>N/A</b>
Table of Contents Ref # <b>N/A</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Governance	3/23/15	X		
2	Board	3/25/15	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal 		
2	Chief Compliance Officer 		
3	Chief Financial Officer 		
4	Chief of Staff 		

**Purpose:**

To obtain Board authorization of proposed revisions to the All-Agency Travel and Business Expense Policy.

**Discussion:**

Pursuant to Public Authority Law Section 2824, Board members of state authorities are required to establish written policies and procedures on policies regarding travel. The MTA All-Agency Travel and Business Expense Policy was last revised in March 2014.

Based upon a recent review, several substantive and non-substantive revisions to the Policy are proposed. These substantive revisions would (1) require employees to submit their travel reimbursement report within 30 days from the conclusion of travel, (2) establish procedures for the use of the MTA corporate card and (3) allow the MTA Chief Compliance Officer to grant a waiver of this Policy Directive in the best interest of the MTA.

**Recommendation:**

It is recommended that the Board approve the proposed revisions to the All-Agency Travel and Business Expense Policy.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 1 of 19

### I. PURPOSE

The purpose of this All-Agency Policy Directive is to establish a standardized policy for employees of MTA Headquarters and its Constituent Agencies (collectively, to be referred to as the “Authority”) when incurring, recording, approving and claiming reimbursement for eligible travel and business expenses.

### II. SCOPE

This Policy Directive applies to all employees of the MTA including MTA Headquarters (including the Business Service Center), MTA Long Island Rail Road, MTA Capital Construction, MTA Bridges and Tunnels, MTA Bus Company, MTA Metro-North Railroad, MTA New York City Transit, and all future subsidiary/affiliated entities of the MTA.

### III. DEFINITIONS

1. Agency Head: An “Agency Head” is defined as including: the Chairman/Chief Executive Officer and Agency Presidents.
2. Authorized Signer: An individual who has been granted the authority to approve employee expense documents and travel authorization requests.
3. Business Meal: A meal (breakfast, lunch, dinner, or other) whereby the attendees’ principal function is to conduct Authority business and a meal of the type considered a business meal under Section IV(A)(6)(b).
4. Constituent Agencies: For the purposes of this policy, the group of agencies referred to as “Constituent Agencies” include: MTA Long Island Rail Road; MTA Metro-North Commuter Railroad; MTA New York City Transit; MTA Staten Island Railway; MTA Bridges and Tunnels; MTA Capital Construction; MTA Bus Company and all future subsidiary/affiliated entities of the MTA.
5. Foreign Travel: Travel outside the Continental United States is considered “Foreign Travel.”

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 2 of 19

6. Local Travel: Travel inside the New York Metropolitan area is considered “Local Travel.”
7. Official Station: A location within 35 miles of the office where an employee is regularly assigned is her/her “Official Station.”
8. Out-of-Area Travel: Travel outside the New York Metropolitan area or an employee’s Official Station; and beyond the boundaries of the States of New York, New Jersey and Connecticut is considered “Out-of-Area Travel.”
9. Per Diem Allowance: A payment made to reimburse, without receipts, the personal meal expenses of an Authority employee, payable under certain conditions on days when the employee is in travel status is a “Per Diem Allowance.”
10. Travel Status: An employee who travels outside his/her Official Station for at least three consecutive hours on Authority business on a regular workday, authorized holiday or weekend is in “Travel Status.” Employees of the Long Island Rail Road and Metro-North Commuter Railroad must see “SPECIAL NOTE”, below, for proper determination of travel status designation.

### SPECIAL NOTE:

Long Island Rail Road employees must travel outside of their Official Station and outside of the Borough of Queens and the Counties of Nassau and Suffolk to be considered in any type of travel status.

Metro-North Commuter Railroad employees must travel at least 35 miles beyond Metro-North territory to qualify for any type of travel status designation.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 3 of 19

### IV. POLICY

#### A. GENERAL

1. Policy Authority: This policy takes precedence over all other policies of any MTA Constituent Agency regarding reimbursement of employee travel and business expenses.
2. Categories of Expenditures: This policy instruction covers the general categories of expenditures related to business travel and meal expenses, such as, transportation, lodging, per diem meals, business meals, and other miscellaneous expenses.
3. Actual and Necessary Expenses: Reimbursement for travel and business expenses will be made only for actual and necessary expenses incurred in the performance of official duties and upon submission of properly documented and approved employee expense reports as outlined in this policy instruction.
4. Travel Arrangements through Travel Agent: Except as set forth herein, employees must make all arrangements for lodging and transportation (excluding local travel) through the Authority's official Travel Agent. Amtrak train tickets may be purchased directly from Amtrak without use of the Travel Agent provided such tickets are purchased at a widely available discount rate. Employees can make lodging reservations directly at a location if they are attending conferences, seminars or meeting at that location and the travel agent is unable to book alternative lodging that is cost effective (after taking into account the cost of travel to alternative lodging and other factors). Travel arrangements secured by any other means must be fully explained and justified in writing by the employee and approved according to the Agency-specific procedures covered in Section V.
5. Discounted, No Cost or Reimbursed Travel: Prior to accepting discounted or no cost travel arrangements or travel arrangements reimbursed by a source other than MTA, Employees should review Sections 2.01, 3.03, and 3.08 of the MTA All Agency Code of Ethics or consult their Agency Ethics Officer.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 4 of 19

6. Emergency Situations:

- a. During an emergency situation or under extraordinary circumstances, expenses which normally would be disallowed may be considered for reimbursement. The employee must provide a complete explanation of the emergency and the need for the expense, and obtain approval from the respective Agency Head or his/her designee. This documentation must be submitted along with the employee's expense report.
- b. In addition to the general discretion provided in paragraph a above, during the period of an emergency declared by the Governor of the State of New York or the MTA Chairman or a weather event requiring the employee to be on duty as determined by the employee's supervisor, meals for Authority employees who are required to be on duty during such emergency period or weather event are considered "business meals" that are reimbursable pursuant to Section IV (F) with the approval of the Agency Head or the MTA Chief of Staff. A description of the emergency and the reason why the employee was required to be on duty must be included with the expense report. Such meal expenses are reimbursed at actual cost; however, the reimbursable cost per person shall not exceed the per diem meal allotment for that location.

B. AUTHORIZATION

1. General: All employee travel and business expense reports must be approved by the employee's Supervisor or, if the Supervisor is not authorized to approve such expenses, by the next highest individual in the employee's chain of command designated as the Authorized Signer to approve expense documents.
2. Expense Reports of Agency Heads: Travel and business expense reports of Agency Heads must be approved by the MTA Chairman/CEO or his/her designee.
3. Reports Covering Business Meals for More than One Employee: Travel and business expense reports covering business meals for more than one employee must be submitted by the highest-ranking employee and approved according to this policy.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 5 of 19

4. Expenditures Requiring Prior Approval: All business travel must be approved in advance. Requests for travel must be made by an employee by completing an Agency-designated travel request form. In addition, prior approval is required for cash advance requests; expenses to be directly billed to the Authority; interview and relocation expenses; and other special circumstances as described in this policy instruction. See the respective section of this policy to determine the approval requirements.

### C. METHODS OF PAYMENT

1. Payment by Employees: Employees are expected to pay for their business and travel expenses at the time they are incurred. Payment in advance is permitted if necessary to secure reservations and/or advantageous rates.
2. Direct Billing: Direct billing to the Authority is permitted when advantageous to the Authority. Arrangements for direct billing are subject to prior approval. See Section V, Agency-specific procedures for the required approvals.
3. Cash Advances: An Employee may request a cash advance to cover anticipated business and travel expenditures eligible for reimbursement under this policy instruction. No cash advances will be granted for interview and relocation expenses. Requests for cash advances must be made using an Agency-designated form and must be approved according to the Agency-specific procedures. Cash advances needed for out-of-area travel must be approved by the Agency Head, or designee.

Cash advances will be disbursed through payroll. Refunds of unused portions of cash advances from employees will be accepted only by personal check, money order, or bank check. Cash will not be accepted.

If the trip is canceled or postponed, appropriate documentation must be filed and the cash advance must be returned within five business days of notification of the cancellation or postponement.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 6 of 19

4. Credit Cards: Employees who have been authorized to purchase goods and services for business and travel purposes with an Authority credit card must account for these purchases by filing expense reports. Expense reports must be filed even in those instances when no additional business expenses are incurred. Authority credit cards are not to be used for personal items.

### D. DOCUMENTATION

1. Use of Travel Request Form: Plans for travel must be documented and requested, in specific detail, by the employee on an Agency-designated travel request form.
2. Use of Expense Report Form: Travel and business expenses must be reported on an Agency-designated employee expense report form.
3. Actual Expenditures: Unless specifically exempted herein, all reimbursements for employee expenses must be based on actual expenditures and must be supported by receipts or other acceptable documentation.
4. Acceptable Documentation: Acceptable documentation may include ticket stubs; paid receipts; invoices indicating dates and amounts of payment; original cardholder's copies of validated credit card charge vouchers; or copies of the employee's canceled checks. With the exception of canceled checks, original documents, not copies, must be submitted.
5. Statement of Purpose: A specific statement of the business purpose must be included on the employee's expense report. General statements such as "on official business," "by direction of supervisor," or "in connection with duties as director of division" will not suffice.
6. Conventions and Conferences: Travel vouchers for expenses incurred when attending conventions and conferences must be supported by program literature setting forth the opening and closing dates of the convention.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 7 of 19

7. Documentation of Authorization: Copies of any documents approved by an appropriate Agency official authorizing the travel must be attached to the employee's expense report.
8. Cash Advances: Cash advances must be requested using the appropriate BSC cash advance request form. The approved form must be attached to the expense report along with related schedules and other documentation.
9. Separate Reports: Separate reports should be filed for each business trip. Requests for reimbursement for different types of expenses (local business meals; business travel and out-of-town business meals; interview and relocation expenses) should be submitted on separate employee expense report forms.
10. Timeliness of Report Submission: Employee expense reports must be submitted ~~no more than 30 days from the conclusion of travel in accordance with the time frames established by the respective Agency Head or his/her designee. See Section V, Agency specific Procedures, for timing requirements regarding the filing of expense reports.~~

### E. TRAVEL (GENERAL POLICY)

1. Official Business: Reimbursement for travel and business expenses of employees will be made only for actual and necessary expenses in the performance of official duties upon proper documentation.
2. Out-of-Area Travel: Employees who are planning out-of-area travel for business must obtain prior written approval of their respective Agency Head or his/her designee. Employees, who usually travel to Washington, D.C. or other out-of-area locations, should request blanket approval from their Agency Head or his/her designee. Out of area travel costing more than \$1,500 or by an Agency Head requires the prior written approval of MTA's Chief of Staff.
3. Travel: Except as provided above in Section IV. A.4, all Authority business travelers must make arrangements for all lodging and transportation needs (excluding local travel) through the Authority's official Travel Agent. Travel

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 8 of 19

must be by the most cost effective route reasonably possible, and must be by either coach, economy, or equivalent discount fare unless (a) the trip is of an emergency nature and coach, economy or equivalent discount fares are not available; or (b) a business purpose necessitates late night and/or over-night travel or requires continuous air travel in excess of six hours in duration. Any travel by other than coach, economy, or equivalent fare must be approved in writing in advance by the Agency Head or his/her designee. Unless so approved, an employee shall assume any extra expense incurred.

It is important that travelers make airline reservations as much in advance as possible to secure the lowest possible fare.

### F. BUSINESS MEALS (TRAVEL AND NON-TRAVEL STATUS)

1. **Business Purpose:** Business meal expenses are reimbursable only when the principal purpose of the meeting or meal is to transact Authority business. Business meetings should, whenever possible, be scheduled in such a way as to avoid the need to provide meals for those in attendance. A statement of the business purpose must be set forth on the expense report.
2. **Attendance:** A list of attendees present at the business meal must be included with the expense report.

The cost of food at a business meeting attended only by Authority employees must be approved by an Agency Head and the MTA Chief of Staff to be eligible for reimbursement. If a business meal involves consultants and/or contractors hired by the Authority, prior approval of the Agency Head is required to be eligible for reimbursement.

3. **Responsibility to Report Meals:** Business meal expenses must be reported by the highest-ranking employee in attendance.
4. **Documentation:** Original receipts must be attached to the travel and business expense report.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 9 of 19

5. Maximum Allowance: Business meal expenses are reimbursed at actual cost; however, such cost per person can not exceed the per diem meal allotment for that location.

### G. PER DIEM MEAL ALLOWANCE (DOMESTIC TRAVEL)

1. Eligibility: Employees in travel status are eligible for a per diem allowance (or a portion thereof) to cover certain meals, subject to the following limits on time of departure and return:

When departing from home or office at the beginning of a trip before the following hours:

Breakfast	6:00 a.m.
Dinner	6:00 p.m.

When returning to home or office at the conclusion of a trip after the following hours:

Breakfast	8:00 a.m.
Dinner	8:00 p.m.

Foreign travelers should see Foreign Travel Expense section for per diem allowance discussion.

2. Ineligibility within Employee's Official Station: No per diem meal allowance shall be allowed while an employee is within his or her official station or place of residence, regardless of the departure or arrival times of a particular trip.
3. Ineligibility of Meal Reported as Business Meal: An employee who has been included in an employee expense report requesting reimbursement for a business meal is not eligible for a per diem allowance for the same meal.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 10 of 19

4. Documentation: The per diem allowance is payable upon approval of an employee expense report. No receipts are required. The per diem allowance pertains only to an employee's personal meal expenses; business meals involving non-MTA Headquarters or Constituent Agency personnel are discussed in Section IV-F.
5. Maximum Allowance: The Authority uses the maximum allowable per diem meal allowances for domestic travel set by U.S. General Service Administration (GSA). Links to current and prior year GSA rates as well as other travel related information can be found on MTA's intranet at [www.mtahq.org/travel/index.html](http://www.mtahq.org/travel/index.html). GSA rates are established based upon a fiscal year beginning October 1. Authority employees must use the rates that were in effect during the date of travel. (Example: if you travel on November 1, 2013 use the GSA rate that would be in effect on that date which would be for fiscal year 2014)
6. It is the policy of the Authority that lunch expenses while in domestic travel status shall remain the obligation of the employee.
7. An employee who has been included in a business meal for which reimbursement is sought under the employee expense policy is not eligible for a per diem allowance for the same meal.

### H. TRANSPORTATION

1. Intercity Travel: (Plane, Train, or Bus)
  - a. Travel must be arranged through the authorized MTA Travel Agency except as authorized above in Section IV.A.4. Travel generally shall be by either coach, economy, or equivalent discount fare. All other travel at rates other than coach, economy, or equivalent rates must be approved in advance by the Agency Head or his/her designee to secure reimbursement.
  - b. The employee must attach the passenger's portion of used tickets and must return any unused tickets.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 11 of 19

2. Local Travel: (Mass Transit, Taxicabs, etc.)
  - a. The use of established mass transit lines is encouraged.
  - b. If it is necessary to use taxicabs, receipts must be submitted for expenses of \$10 or more (including tips).
  - c. If receipts are not available for individual taxicab rides or mass transit fares of \$10 or more, the employee must explain the circumstances when submitting his/her expense report.
3. Automobiles
  - a. Official Cars: If travel by an automobile is required, employees are encouraged to use official vehicles. The MTA All-Agency Policy, 11-037, regarding use of official automobiles must be followed.
  - b. Personal Cars: Employees, with approval of their supervisors, will be reimbursed for the use of personal cars at the mileage rate established at intervals by the Authority. This mileage rate, as calculated, includes costs for depreciation, gasoline, oil, maintenance and repairs, and insurance. The current mileage rate can be found on the BSC Travel and Expense Reimbursement Form.
  - c. Tolls and Parking Fees: Tolls and parking fees are reimbursable at actual cost. Receipts must be submitted for expenses of \$10 or more. Long-term parking fees (4 or more consecutive days) must be justified as cost effective and reimbursement for long-term fees requires pre-approval.
4. Rental Cars
  - a. Justification: Car rental expenses will not be reimbursed unless cost savings based on alternative modes of transportation and/or business necessity can be substantiated. Compact cars should be chosen unless a larger car is justified.
  - b. Arrangements: If an employee has been approved to use a rental car while on a business trip, arrangements to rent a car must be made through the Authority's

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 12 of 19

official Travel Agent.

- c. Documentation: The signed car rental agreement, other appropriate receipts and the justification must be submitted with documentation.
- d. Drop-Off Charges: Drop-off charges for one-way rentals should be avoided, if possible, by obtaining a vehicle assigned to the destination city. Advance reservations and/or early inquiry will assist in obtaining such vehicles.
- e. Insurance: When renting a car in a domestic location, collision insurance and third-party liability insurance coverage available through the car rental company should not be selected and will not be reimbursed. Employees are covered for any accidents that occur through:

MTA Self Insurance  
Risk Management  
347 Madison Avenue  
New York, New York 10017

This address should be given to the rental car agency if it is requested.

When renting a car in a foreign location, employees are advised to purchase collision insurance and third-party insurance coverage if available through the rental company. These insurance costs are reimbursable to the employee.

- f. Weekly or Discount Rates: If the use is sufficiently long to justify a weekly or other discount rate, efforts should be made to secure such a rate.

### I. LODGING

- 1. Official Business: Hotel and motel room expenses shall be reimbursed when incurred in the conduct of official business.
- 2. Arrangements: Reservations for hotel/motel stays should be made through the Authority's official Travel Agent, unless attending a conference or other event occurring at the hotel. See Section IV A 4 above.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 13 of 19

3. Government Rates: State or Government discount rates shall be secured whenever possible.
4. Weekly or Monthly Rates: If the stay is sufficiently long to justify a weekly or monthly rate, efforts should be made to secure such rates.
5. Documentation: Original hotel bills and receipts for hotel and motel room expenses must be attached to the travel and business expense report.
6. Tax-Exemption: Lodging accommodations on official business are exempt from payment of occupancy tax in New York State. In addition, Metro-North Commuter Railroad employees are exempt from paying occupancy tax in the State of Connecticut. Employees will not normally be reimbursed for any ineligible taxes included in their bills for lodging. Employees can obtain tax exemption forms to supply to vendors from their respective Agency Comptroller's Office ~~and/or (Accounts Payable Manager)~~.
7. Advance Payment: Requests for a check from MTA Headquarters or a Constituent Agency to make an advance payment for hotel accommodations or registration fees must be made by submitting the applicable agency form to the Agency Comptroller and approved in advance.
8. Ineligible Costs: When the cost of lodging has been included in the cost of a program reimbursable under this policy, no reimbursement will be made for lodging substituted at additional cost.
9. Maximum Allowance: Lodging costs are reimbursed at actual but reasonable cost.

### J. EXTENDED OR WEEKEND STAYS; TRAVELING WITH SPOUSE OR OTHERS

1. Extended or Weekend Stays: Any extension of business travel to include weekends or any days prior or following the minimum time necessary to accomplish Authority business is subject to prior written approval. Such approval

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 14 of 19

must be attached to the related employee expense reports. If such an extension will result in increased costs for the Authority, prior approval must be requested from the respective Agency Head or his/her designee. Reimbursement for meals and lodging for authorized extended or weekend stays would apply.

2. Extensions Resulting in Cost Savings: If the extension of business travel beyond the normal length of time necessary will result in overall savings to the Authority when all costs are considered, an analysis of the cost savings using the lowest rates available must be included in the request for approval of the extension. Expenses incurred during the extended portion of trip will be reimbursed only when savings to the Authority can be substantiated.
3. Traveling with Spouse or Others: Expenses incurred on behalf of a spouse or other person who is not involved in the conduct of Authority business, or expenses incurred while on vacation or personal leave, will not be reimbursed. Such expenses should be deducted from the related expense reports.

### K. TELEPHONE AND SIMILAR SERVICES

1. Business Calls and Similar: Employees will be reimbursed for all business calls, telegrams, express mail, facsimile transmissions, or similar expenditures required in the performance of their official duties. Receipts for these expenses must be included as supporting documentation with the employee's expense report.
2. Personal Calls: Reimbursement for personal telephone calls is limited to two per day while in travel status. The calls must be reasonable in length in order to obtain full reimbursement.

### L. FOREIGN BUSINESS TRAVEL

1. Foreign travelers can use a per diem rate for reimbursement of meals and incidental travel costs such as laundry and dry cleaning. The Authority uses the foreign travel per diem rates of the U.S. State Department. The rates are available from the MTA Comptroller's Department or from the following Internet website: [http://aoprals.state.gov/web920/per\\_diem.asp](http://aoprals.state.gov/web920/per_diem.asp) Reimbursement for partial day travel should follow the same allocation method as defined for the domestic per

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 15 of 19

diem allowance.

2. Other allowable expenses related specifically to foreign travel include the cost of passports and visas, the cost of immunizations and inoculations (if required or recommended), the cost of car rental insurance coverage, travelers' check fees, currency exchange fees, travel fees and taxes, and airport fees and taxes.
3. It is important that all currency exchange transactions are supported by documentation which reflects the exchange rates used for the transactions. Acceptable documentation will include the exchange rate per the credit card statement or, if not available, the Wall Street Journal rate on the last day of the trip.
4. Lodging costs are reimbursed at actual but reasonable cost.

### M. OTHER REIMBURSABLE EXPENSES

Expenses not specifically listed in the preceding paragraphs shall be reimbursable when incurred for business purposes as follows:

1. Laundry and Dry Cleaning: On domestic trips lasting more than three days, employees will be reimbursed for the actual cost of such services when incurred and paid for after the third day in travel status. Foreign travelers are reimbursed for laundry and dry cleaning costs through the per diem allowance which includes a portion of the rate for incidental cost items.
2. Baggage Checking and Tips: Baggage checking, tips, and normal gratuities are reimbursable. Tips related to another expense such as meals, taxi fare, etc. should be reported in the total cost of the related expenses.
3. Other Miscellaneous Expenses: Reimbursement for any other category of expenditures is subject to the interpretation of the Agency Comptroller.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 16 of 19

### N. INTERVIEW & RELOCATION EXPENSES

Employees and job candidates eligible for the reimbursement of certain travel, lodging, meal, or other expenses pursuant to the All-Agency Interview and Relocation Policy (11-001) should refer to that policy instruction for further details. Nothing in the Travel and Business Expense Policy shall be interpreted as in any way superseding or mitigating the requirements of the Interview and Relocation Policy.

### O. UNALLOWABLE EXPENSES

The following categories of expenditures are eligible for reimbursement only on an exceptional basis, or under the special circumstances outlined in this policy instruction.

1. Direct Billing: No employee may incur business expenses to be billed directly to the Authority, except for the authorized use of Authority credit cards for air travel or gasoline, or as otherwise authorized in advance.
2. Expenses Incurred on Behalf of Spouse or Others: The costs of travel, lodging, meals, or other expenses for a spouse, dependent, or other person who is not performing official Authority business and who accompanies an employee on a business trip are not reimbursable.
3. Personal, Recreational or Entertainment Expenses: Costs incurred for personal, recreational or entertainment purposes, or while on vacation or personal leave, even when such leave has been approved as an extension of approved business travel, are not reimbursable.
4. Commuting Costs: Transportation costs incurred for commuting between the employee's residence and official work station are not reimbursable.
5. Expenses Eligible for Third-Party Recovery: Business expenses which are legitimately recoverable from a third-party are not reimbursable. Such expenses and recovery must be explained on the employee's expense report.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 17 of 19

6. Personal Losses: Reimbursement is not allowed for losses of personal property or the loss of funds or tickets.
7. Substituted Lodging: Costs for this item included in a seminar or other package is not allowed.
8. Clothing, Valet Service, and Similar: Reimbursement for clothing, toiletries, barbering, or similar personal goods or services is not allowed. Laundry and dry cleaning or valet services are reimbursed at actual cost for domestic trips only after an employee has been in travel status for at least three consecutive days, as explained in Section IV-M.1., and as part of the per diem allowance for foreign trips.
9. Alcoholic Beverages: The cost of alcoholic beverages, of any kind, are not reimbursable.
10. Personal Car Expenses: Repairs or maintenance costs of any kind are not reimbursable. Expenses for gasoline, motor oil and other automobile fluids are not reimbursable. These types of expenses are included when the standard mileage rate of reimbursement is calculated and determined.
11. Insurance, Fines and Fees: Reimbursement is not allowed for personal credit cards fees, fines for traffic/parking violations, third-party liability insurance on automobile rentals, or travel insurance.

### P. RESPONSIBILITIES

1. Agency Comptrollers: Each Agency Comptroller is responsible for overall administration of this Policy Directive for his/her respective agency, ~~and for ensuring that all expenditures included in employee expense reports are in accordance with Authority policy.~~
2. MTA Comptroller: The MTA Comptroller is responsible for administration of this policy for MTA Headquarters, for providing policy interpretation to the Constituent Agencies, and for establishing effective reimbursement rates.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 18 of 19

3. Agency Heads: Exceptions to this policy may be approved in writing by the respecting Agency Head or his/her designee based on the recommendation of the Agency Comptroller.
4. MTA Chairman and Chief Executive Officer: The MTA Chairman/CEO or his/her designee has the authority to grant exceptions to this policy without the recommendation or approval of another Agency Head in circumstances deemed by the MTA Chairman/CEO to warrant special consideration.
5. Authorized Signers: Authorized Signers are responsible for informing their staffs of this policy instruction; for controlling expenditures by careful examination of travel requests and expense reports; and for insuring that only reasonable expenses actually incurred and directly related to Authority business are reported.
6. All Employees: Employees are responsible, prior to incurring any expenses or submitting expense reports, for seeking appropriate authorization from their supervisors and/or clarification from their respective Agency Comptroller's Office of any exceptional circumstances or expenditures.

### Q. CORPORATE CARD USAGE-TRAVEL EXPENSES

Only appropriate travel expenses as outlined in this Policy Directive may be charged to the card.

The cards are to be used to pay only those expenses relating to travel costs incurred when traveling on official MTA business. Employees may not use travel cards to make personal purchases, even if they intend to reimburse the MTA for those expenses.

An expense report must be submitted detailing all expenses including all card charges. Revocation of an individual's travel card will occur upon repeated delays in the submission of expense reports. Expense reports must be submitted for all charges.

Improper or unauthorized charges will result in mandated reimbursement to the MTA by the employee and may result in suspension or loss of privileges related to the card, and/or disciplinary action.

# All Agency Policy Directive

## TRAVEL AND BUSINESS EXPENSE

Policy Number	Responsible Agency/Department	Effective Date	Page
11-022	Chief of Staff	TBD	Page 19 of 19

### V. **WAIVER**

The MTA Chief Compliance Officer may grant a waiver of this Policy Directive in the best interest of the MTA. Such waiver must be in writing and be based upon a written request from the employee's Agency head or their designee.

### VI. **ADDITIONAL REQUIREMENTS**

MTA Headquarters and each of its Constituent Agencies shall issue Agency-specific procedures consistent with this Policy Directive for the recording and claiming of reimbursement for eligible employees travel and business expenses.

# Staff Summary

<b>Subject</b> <b>Public Authorities Law Required Policies</b>
<b>Department</b> <b>Corporate Compliance</b>
<b>Department Head Name</b> <b>Lamond W. Kears</b>
<b>Department Head Signature</b> 
<b>Project Manager Name</b> <b>Lamond W. Kears</b>

<b>Date</b> <b>March 25, 2015</b>
<b>Vendor Name</b> <b>N/A</b>
<b>Contract Number</b> <b>N/A</b>
<b>Contract Manager Name</b> <b>N/A</b>
<b>Table of Contents Ref #</b> <b>N/A</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Governance	3/23/15	X		
2	Board	3/25/15	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal 		
2	Chief Compliance Officer 		
3	Chief of Staff 		

**Purpose:**

To obtain Board ratification and approval for certain existing policies of the MTA and its Agencies.

**Discussion:**

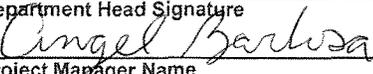
Public Authorities Law Section 2824 requires the MTA Board to “establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the chief executive and senior management.” The Act also requires that the MTA Board establish a travel policy.

The MTA and its Agencies have existing policies (set forth in the attached exhibit book) addressing employee salary, compensation, time and attendance, travel and expenses and reimbursements. Most of these policies are All-Agency Policy Directives; others are agency-specific. All of these policies were approved by the Board in 2006 but subsequent revisions have not consistently been presented to the Board for approval. The Board is being asked to ratify and approve all of the revisions to these policies since the 2006 Board approval. Going forward, any subsequent revisions to these policies as they exist today will be presented the Board for its review and approval.

**Recommendation:**

It is recommended that the Board ratify and approve the policies contained in the exhibit book.

# Staff Summary

<b>Subject</b> All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services
<b>Department</b> MTA Business Service Center
<b>Department Head Name</b> Angel Barbosa, Chief Procurement Officer
<b>Department Head Signature</b> 
<b>Project Manager Name</b>

<b>Date</b> March 25, 2015
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
	Corporate Governance	3/23/15			
	Board	3/25/15			

Internal Approvals			
Order	Approval	Order	Approval
1	Chief of Staff 		
2	Legal 		
3	Chief Compliance Officer 		

**Purpose:**

To obtain Board approval of the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services.

**Discussion:**

Public Authorities Law Section 2879 requires the MTA to annually review and approve its All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services. These guidelines were last approved by the Board at its March 2014 meeting, however the last revision by the Board was at its July 2013 meeting.

There are no proposed revisions to either guidelines.

**Recommendation:**

It is recommended that the MTA Board approve the annexed All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services.



## ALL AGENCY PROCUREMENT GUIDELINES

Adopted by the Board on March 25~~6~~, 201~~5~~<sup>4</sup>

These guidelines apply to the Metropolitan Transportation Authority ("MTA"), the New York City Transit Authority ("Transit"), the Long Island Rail Road Company ("LIRR"), The Metro-North Commuter Railroad Company ("MNCRR"), Staten Island Rapid Transit Operating Authority ("SIRTOA"), Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA"), MTA Capital Construction ("MTACC"), MTA Bus Company ("MTA Bus"), and to the Triborough Bridge and Tunnel Authority ("Bridges and Tunnels") insofar as they are consistent with the provisions of law applicable to Bridges and Tunnels (each of which is referred to severally and together, as the "Authority").

### **Article I - Applicability of Guidelines**

This policy applies to i) purchase contracts for supplies, materials or equipment ("purchase contracts"); ii) public work contracts ("public work contracts"); and iii) leases of equipment with or without an option to purchase, computer software licenses and maintenance agreements, printing contracts (where editorial services do not predominate), and to any other contract which is not otherwise classified under these guidelines or the All Agency Guidelines for Procurement of Services ("miscellaneous procurement contracts"). In the event a proposed contract contains elements of more than one type of contract under these Guidelines or the All Agency Guidelines for Procurement of Services, the elements which predominate shall determine the type of contract for purposes of both Guidelines.

### **Article II - Delegation of Authority**

The Chairman, the presidents of the Authorities, or the designated representative or representatives thereof (each defined for purposes of these guidelines as an "Authorized Officer") are hereby empowered with respect to purchase contracts, public work contracts, and miscellaneous procurement contracts to be entered into by the respective Authority acting on its own behalf or as agent for MTA, as follows:

- A. to establish procedures which shall be competitive to the extent deemed practicable by the Authorized Officer, for the award of purchase contracts estimated to involve the expenditure of \$15,000 or less and public work contracts estimated to involve the expenditure of \$25,000 or less;
- B. to establish procedures for the award of miscellaneous procurement contracts regardless of the estimated expenditure, which procedures shall provide for Board approval of the award if the contract provides for the estimated expenditure of more than \$25,000 and is not awarded pursuant to sealed competitive bidding. A majority of the members of the Board in attendance at a meeting at which a quorum is present shall be required to approve the resolution authorizing such award;

- C. for purchase contracts estimated to involve the expenditure of more than \$15,000 and public work contracts estimated to involve the expenditure of more than \$25,000:
  - 1. to determine the criteria for the evaluation of bids which may include but are not limited to unit or aggregate amount bid, life cycle costs or savings (including but not limited to costs or savings associated with installation, energy use, maintenance, operation, salvage and disposal), discounts and costs of maintenance and inspection services;
  - 2. to determine whether a contract required to be advertised in the New York State contract reporter is exempt from such requirement on the basis of a need to award the contract on an emergency or critical basis;
  - 3. to advertise for, solicit and open bids;
  - 4. to record the name of each bidder and the amount(s) bid;
  - 5. to determine the lowest responsive and responsible bidder, including, in the event two or more responsible bidders submit identical bids which are the lowest bids, to award the contract to any of such bidders or obtain new bids from such bidders;
  - 6. to reject all bids when it is determined to be in the public interest to do so;
  - 7. to award the contract.
  
- D. to determine whether a bidder or prospective bidder should be ineligible to act or bid as a contractor or act as a subcontractor for a fixed or indefinite period of time with respect to contracts of the Authority in question.
  
- E. in addition to the other authorizations set forth elsewhere in this document, to establish guidelines governing the qualifications of bidders for public works and public contracts, and to fix the standards for the prequalification of bidders entering into such contracts, for the East Side Access Project in accordance with Section 1265-a.2(c) of the Public Authorities Law.

### **Article III - Award of Contracts Without Competitive Bidding**

- A. A purchase contract estimated to involve the expenditure of more than \$15,000 and a public work contract estimated to involve the expenditure of more than \$25,000 may be awarded without competitive bidding under the circumstances set forth below, provided that the Authorized Officer recommends such an action and the Board adopts a resolution declaring competitive bidding to be impractical or inappropriate and states the reasons therefore, and summarizes any negotiations that have been conducted. Except in a situation specified in Article III (A) (1), such resolution shall be approved by two-thirds of the members of the Board then in office. A declaration under Article III (A) (1) shall require approval by a majority of the members of the Board in attendance at a meeting at which a quorum is present.

1. The existence of an emergency involving danger to life, safety or property which requires immediate action and cannot await competitive bidding; or when the item to be purchased is essential to the efficient operation of or the adequate provision of service and, as a consequence of an unforeseen circumstance, such purchase cannot await competitive bidding. Competitive bidding is hereby declared to be impractical and inappropriate in any of the foregoing situations where an Authorized Officer must take appropriate action and cannot await action by the Board; provided, however, that notice of such action shall be given to the Board at its next scheduled meeting together with a statement of the reasons for such action and a request for ratification by the Board.
2. The item to be purchased is available only from a single responsible source provided, however, that a notice of the Authority's intent to purchase such item without competitive bidding shall be posted on the Authority's website, and, if bids have not been solicited for such item within the preceding twelve months, a notice must be published pursuant to Article VI(A) hereof. Any notices required by this paragraph shall set forth the Authority's intent to purchase the item without competitive bidding because the item is available from only one source and invites any firm which believes it can provide the item to so inform the Authority and to provide the Authority with additional information which confirms that it can supply the item.
3. Competitive bids are solicited and
  - a. no responsive bid is received; or
  - b. only a single responsive bid is received, and the Authorized Officer rejects the bid.
4. With respect to a product or technology, the Authority wishes to:
  - a. experiment with or test it;
  - b. experiment or test a new source for it; or
  - c. evaluate its service or reliability.

Such a contract may not be awarded until at least thirty days after the date the Board has declared competitive bidding to be impractical or inappropriate.

5. The item is available through an existing contract between a vendor and any of the following and the resolution adopted by the Board includes a determination that, and the reasons, why, it is in the public interest to do so:

- a. An Authority or any other public authority provided such contract had been awarded through a process of competitive bidding or a competitive request for proposals;
- b. The State of New York, The City of New York, or (except for Transit and MaBSTOA) the County of Nassau.

It is hereby determined that competitive bidding is inappropriate and, because of the likelihood that a competitive process will not result in better commercial terms, that it is in the public interest to purchase an item through an existing contract of the State of New York, The City of New York or an Authority, , where price and other commercial terms specified in such contract are satisfactory to the Authorized Officer. Such a determination shall be documented in writing by the Authorized Officer.

6. The Authority determines that it is in the public interest to award the contract through a competitive request for proposals ("RFP") in accordance with the procedures set forth in Article IV. For purposes of this subsection, a competitive RFP shall mean a method of soliciting proposals and awarding a contract on the basis of a formal evaluation of the characteristics which are deemed relevant to the Authority's operations, such as quality, cost, delivery schedule and financing, against stated selection criteria. Where the RFP involves the purchase or rehabilitation of rail cars, transit cars or buses, the selection criteria may also include the extent to which the performance of all or a portion of the contract will involve the use of sites within the State of New York or the use of goods produced or services provided within the State of New York.
- B. Under the MTA Small Business Mentoring Program, a non-federally funded public work contract that is designated by the Authority as a small business mentoring program contract within the meaning of Section 1265-b(1)(e) of the Public Authorities Law, may be awarded in accordance with the provisions of Section 1265-b of the Public Authorities Law, notwithstanding any other provision of law or these guidelines. A public work contract that is partially or wholly federally funded, subject to Department of Transportation regulations and estimated to involve an expenditure of not more than \$3 million, may be awarded pursuant to the MTA Small Business Federal Program established under 49 CFR 26.39 in accordance with the competitive procedures established under that Program, notwithstanding any other provision of law or these guidelines. The Chairman or his designee is authorized to designate which eligible public work contracts shall be small business mentoring program or small business federal program contracts.
  - C. A contract, in an amount not to exceed \$200,000 for the purchase of goods, for public works or for a miscellaneous procurement that is not federally funded, may be awarded pursuant to Section 2879(3)(b)(i) of the Public Authorities Law without competitive bidding or other formal competitive process, notwithstanding any other provision of law or these guidelines, where either (i) the contract

involves goods or technology that are recycled or remanufactured or (ii) the proposed award is to a small business concern or a certified minority or women-owned business enterprise (“MWBE”). The Chairman or his designee shall determine which contracts are appropriate for such types of procurements in consultation with the Authorized Officer of the appropriate agency. In the case of contracts that are designated pursuant to Section 2879(3)(b)(i) for award to eligible small business concerns or MWBEs, there shall be notice of the proposed contract on the Authority website inviting responsive bids or proposals from qualified small business concerns and MWBEs. Notice of such procurement shall also be provided to identified organizations that represent or regularly notify small business concerns or MWBEs of the type of procurement opportunity that is the subject of the award. Awards pursuant to Section 2879(3)(b)(i) shall be made to the bidder or proposer determined to have submitted the bid or proposal that is most advantageous to the Authority, price and any other relevant factors considered. An award proposed to be made to a bidder or proposer other than the lowest responsible, responsive bidder or proposer shall require approval by a majority of the Board at which a quorum is present. The Chairman or his designee, in consultation with the Authorized Officer of the appropriate agency, may reject all offers and withdraw the designation of a contract as one to be awarded pursuant to Section 2879(3)(b)(i) if the Chairman or his designee determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority.

#### **Article IV - Requests for Proposals**

A contract authorized pursuant to Article III (A)(6) may be awarded after the issuance of an RFP in the following manner:

- A. Public notice shall be given of the RFP in accordance with the procedures specified in Article VI(A) and (B). In addition to the information required under Article VI(C), the public notice must include a statement of the selection criteria. Such notice shall also be provided to professional and other organizations that represent or regularly notify certified MWBEs of the type of procurement opportunity that is the subject of the RFP. The Authority may engage in a selection process involving multiple steps such as requests for qualifications, requests for technical proposals and requests for quotations. After the publication of the notice, any or all of the selection criteria specified in the advertisement may be changed, provided that, if the change is material, proposers and potential proposers who, prior to the deadline for the receipt of proposals, have expressed an interest in the RFP, shall be informed of the change and afforded the opportunity to modify their proposals.

- B. After receipt of the proposals, an Authority may:
1. change the selection criteria provided that, if the change is material, all proposers are informed of the change and afforded the opportunity to modify their proposals;
  2. request that any of the proposers make a presentation. If it does so, it is not required to afford such opportunity to all proposers;
  3. negotiate with any of the proposers. If it does so, it is not required to negotiate with all proposers;
  4. reject any proposal at any time; and
  5. reject all proposals, in which event the Authority may decide to take no further action, solicit new proposals or solicit bids.
- C. A contract may be awarded pursuant to an RFP only after adoption of a resolution by a 2/3 vote of the Board members then in office (the "award resolution").  
The award resolution:
1. must be recommended to the Board by the Authority's Authorized Officer;
  2. must identify all proposers;
  3. must set forth the substance of the proposals received;
  4. must, as applicable, summarize the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals; and
  5. must set forth the criteria upon which the selection was made.
- D. The award resolution may be adopted simultaneously with or subsequent to the adoption of the resolution declaring that competitive bidding is impractical or inappropriate because it is in the public interest to use the RFP process specified in the opening paragraph of Article III hereof (the "RFP authorizing resolution"), provided that, if the RFP authorizing resolution and the RFP award resolution are adopted simultaneously or within less than thirty days of each other, the contract may be executed by the Authority no less than thirty days after the adoption of the RFP authorizing resolution.

#### **Article V - Qualified Products Lists ("QPL")**

The Board hereby determines that for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization as to various supplies, materials and equipment which are purchased by the Authorities and authorizes the establishment of a qualified products list ("QPL") identifying such supplies, materials and equipment as hereinafter provided. A purchase contract for an item which has been included on a QPL duly established and maintained by an Authority, may be entered into by that Authority as hereafter set forth:

- A. The Authorized Officer of the Authority determines as to a specific item that, for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization.

- B. The QPL is reviewed no less than two times per year. The purpose of this review is to evaluate whether to add or delete items or vendors to or from the QPL.
- C. A notice is published by the Authority no less than one time per year in a general circulation newspaper and in the New York State contract reporter which:
  - 1. advertises the existence of the QPL;
  - 2. states that the QPL is available for public inspection; and
  - 3. specifies the name and address of the Authority's office which may be contacted in regard to the procedure for the compilation of the QPL.
- D. A contract for an item on the QPL may be awarded:
  - 1. without competitive bidding if only one source for the item is specified on the QPL;
  - 2. by competitive sealed bidding but without advertising provided the invitation to bid is sent to all vendors listed on the QPL for the particular item;
  - 3. by competitive sealed bidding after advertising the bid pursuant to Article VI (A) of these procedures.
- E. Two or more Authorities may utilize the same QPL provided that such Authorities jointly comply with the provisions of this Article.

#### **Article VI - Advertising**

Except as provided in subsection D of this Article and Article II(C)(2), in those instances where advertising is required under these Guidelines:

- A. For purchase contracts in the actual or estimated amount in excess of \$15,000 for all Authorities and for public work contracts in the estimated amount in excess of \$25,000, the advertisement shall be published at least once in a newspaper of general circulation in the area served by the Authority and in the New York State contract reporter provided that, if the contract is to be awarded without the solicitation of competitive bids or RFP, the timing of the publication in the New York State contract reporter shall be determined by an Authorized Officer;
- B. The first publication shall be no less than fifteen business days prior to the planned bid opening date and the second publication shall be within a reasonable period prior to the planned bid opening date.
- C. The advertisement must contain, as applicable, a statement of: (i) the time and place where bids received will be publicly opened and read; (ii) the name of the contracting Authority; (iii) the contract identification number; (iv) a brief description of the public work supplies, materials, or equipment sought, the location where work is to be performed, goods are to be delivered or services

provided and the contract term; (v) the address where bids or proposals are to be submitted; (vi) the date when bids or proposals are due; (vii) a description of any eligibility or qualification requirement or preference; (viii) a statement as to whether the contract requirement may be fulfilled by a subcontracting, joint venture or co-production arrangement; (ix) any other information which the Authority deems useful to potential contractors; and (x) the name, address, and telephone number of the person to be contacted for additional information. In addition, if a purchase contract is involved, the advertisement in the New York State contract reporter shall also include a statement as to whether the goods sought had in the immediately preceding three year period been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law.

- D. Advertisement in a general circulation newspaper and in the New York State contract reporter is not required if the Authority regularly purchases the particular supplies, material or equipment and bids are solicited from a list of potential suppliers for the item which has been established and maintained as set forth in Article VII hereof.
- E. In addition to the above advertisements, the Authority shall provide notice to professional and other organizations that regularly notify certified MWBEs of the type of procurement opportunity that is the subject of the solicitation.

#### **Article VII - Contractor Outreach**

The Authority shall encourage firms to be interested in competing for Authority contracts. The Authority shall do so in the following manner:

- A. Suppliers Lists for Purchase Contracts: The Authority shall compile a list of potential sources of supplies, materials or equipment which it regularly purchases. Such list must be compiled in accordance with the following procedures:
  - 1. Advertisements must be periodically placed in one or more publications which are likely to be read by manufacturers, suppliers and others who deal in the item including firms which may be minority or woman owned businesses, which set forth a general description of categories of items which are regularly procured by the Authority and invites firms to advise the Authority in writing of their interest in being placed on the suppliers list for specific items or categories of items.
  - 2. A periodic effort:
    - i) must be undertaken to identify potential bidders for the item who are not on the list including minority or woman owned businesses. Such effort shall include the use of the Authorities' websites, use of appropriate publications, including those that serve minority and women's business

communities, other sources of information, and cooperation with federal, state and local agencies and other Authorities. Where appropriate, a print or electronic letter shall be sent to a new potential bidder which invites it to request that it be added to the list and, if it does not wish to be added, requests that it indicate why.

ii) where appropriate, must be undertaken to identify firms which have not responded to bids or expressed an interest in remaining on a list. An effort should be made to contact such firms to determine why they have not bid, whether they are interested in remaining on the list and, if not, why not. A firm may be deleted from the list where it requests deletion, or where the circumstances indicate that it is unlikely that the firm is interested in remaining on the list.

3. The Authority will maintain lists of qualified and certified MWBEs, including professional firms that have expressed an interest in doing business with the Authority and ensure that such lists are updated regularly. The Authority will also consult the lists of certified MWBEs maintained by the New York State Department of Economic Development (“DED”).
4. An advertisement must be placed quarterly in the State Register and in the New York State contract reporter.
5. In the event it is not practicable to maintain a suppliers list for a specific item, such item shall be included in a broader category or other appropriate classification which reasonably includes the item, and a suppliers list shall be maintained with respect to the category or classification.

- B. Capital Program Purchase and Public Work Contracts: The Authority shall place an advertisement in the New York State contract reporter no less than four times per year which sets forth a general list of anticipated capital program purchase contracts and public work contracts, and the address of the Authority's office which may be contacted in order to be afforded the opportunity to compete for such contracts and for other Authority contracts. Advertisements will also be placed in publications that serve minority and women’s business communities.

### **Article VIII – Minority/Women Owned and Disadvantaged Business Enterprises**

The potential exists for disadvantaged/minority/women owned business enterprise involvement in Authority contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of DBEs under the Authority's federal program, and MBEs/WBEs under the New York State program set forth in Public Authorities Law §2879, Article 15-A of the Executive Law and these guidelines.

- A. The MTA Chief Diversity Officer ("Chairman's Designee") is responsible for overseeing the programs established by the MTA to promote and assist: i) the participation by certified MWBEs in procurement opportunities and facilitation of the award of procurement contracts to such enterprises; ii) the utilization of certified MWBEs as subcontractors and suppliers to Authority prime contractors; and iii) the utilization of partnerships, joint ventures ("JVs") or other similar arrangements between certified MWBEs and prime contractors. The Chief Diversity Officer reports directly to the Chairman in connection with the responsibilities set forth herein, and will participate in the procurement process either directly or through his or her designees.
- B. For contracts awarded pursuant to these Guidelines, the Authority shall establish appropriate goals for participation by certified MWBEs and for the utilization by prime contractors of MWBEs as subcontractors and suppliers. Statewide numerical participation target goals will be established by the Authority based on the findings of the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study.
- C. The Authority will conduct procurements in a manner that enables the Authority to achieve the maximum feasible portion of the goals set pursuant to Article VIII (B) above, including by taking the following actions: i) establishing measures and procedures to ensure that certified MWBEs are given the opportunity for maximum feasible participation in the performance of Authority contracts and to assist in the identification of those contracts that are best suited for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Authority contracts so as to facilitate the Authority's achievement of the maximum feasible portion of the MWBE goals; ii) designating the New York State Division of Minority and Women-owned Business Development ("DMWBD") to certify and decertify MWBEs for purposes of these guidelines; iii) setting forth in each contract solicitation the expected degree of MWBE participation based on potential subcontracting opportunities and the availability of certified MWBEs to respond competitively to those opportunities; iv) providing to prospective contractors in writing, or by identifying a link to a specific web site, a current list of MWBEs; v) with regard to joint ventures, allowing a bidder to count toward meeting its MWBE participation goal, the MWBE portion of the joint venture; vi) waiving a contractor's obligation relating to MWBE participation after a showing of good faith efforts to comply with the participation goal; and vii) verifying that MWBEs listed in a successful bid or proposal are actually participating to the extent listed in the project for which the bid or proposal was submitted. In implementing its MWBE programs, the Authority will also consider, where practicable: i) the severability of construction projects and other bundled contracts; ii) the implementation of a program that will enable the Authority to evaluate each contract to determine the appropriateness of the goal pursuant to the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study;

iii) compliance with the requirements of any federal law concerning opportunities for any MWBEs which effectuates the purpose of this section; and iv) consultation of the most recent disparity study.

### **Article IX - Change Orders**

- A. A change order which exceeds the lesser of \$750,000 or \$250,000 in the event such change order exceeds 15% of the adjusted contract value, may be entered into by an Authorized Officer, upon the approval of the Board pursuant to a resolution adopted in accordance with Article IX hereof. The submission to the Board shall include an explanation of the need for the change order. All other change orders shall be approved by an Authorized Officer; provided that a change order over \$250,000 must be approved by the Authority president or his or her designee. For purposes of this Article, the "adjusted contract value" shall mean the original amount of the contract plus the aggregate amount of all prior change orders (whether or not approved by the Board). This provision applies to all contracts subject to these Guidelines, including budget adjustments to estimated quantity contracts previously approved by the Board which exceed the threshold.
- B. Notwithstanding the foregoing, an Authorized Officer may enter into a change order in any of the following situations as determined by an Authorized Officer:
  - 1. The existence of an emergency; or
  - 2. There is a risk of a substantial increase in cost or delay if prompt action is not taken.
- C. The Chief Operating Officer shall establish policies with respect to the delegation of responsibilities set forth in this Article.

### **Article X - Form of Board Resolution**

- A. Except as otherwise required in Article III and Article IV(C), the procedure for the adoption by the Board and the format of a resolution pursuant to this policy shall be determined by the MTA Chairman. Provided, however, that any Board resolution sought pursuant to these Guidelines shall (i) identify the contract by vendor; (ii) briefly describe the substance of the contract; (iii) specify all the information required under the applicable provisions of this policy; and (iv) specify the estimated or actual cost to the Authority.
- B. To the extent practicable, the request for the resolution shall first be submitted to the standing committee of the Board responsible for the Authority.
- C. The MTA Chairman may modify the procedures in this Article for all Authorities.

## **Article XI - Miscellaneous**

- A. Any provision of this policy may be waived by the Chairman, an Authority President, or the Board except to the extent prohibited by law. A waiver may also be in the form of a ratification.
- B. No Board Committee action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these Guidelines.
- C. An Authority may not divide or split any contract or series of contracts for the purpose of avoiding the requirements of these Guidelines.
- D. If prior to the commencement of an Authority fiscal year, an Authorized Officer reasonably anticipates that, during the next fiscal year, the Authority will expend, in the aggregate, in excess of fifteen thousand dollars for a series of purchase contracts for the same or substantially similar good: i) such requirement shall be met pursuant to a requirements contract awarded pursuant to the applicable provisions of these guidelines; or ii) each such contract shall be awarded pursuant to the provisions of Article II(C), III, IV, V or Article VII of these Guidelines.
- E. If prior to the commencement of an Authority fiscal year, an Authorized Officer reasonably anticipates that, during the next fiscal year, the Authority will expend, in the aggregate, in excess of twenty-five thousand dollars for a series of contracts for same or substantially the same type of public work: i) such requirements shall be met pursuant to a requirements contract awarded pursuant to the provisions of Article II(C), III, or IV or a procedure determined by an Authorized Officer to be comparable to Article V or VII of these Guidelines; or ii) each such contract shall be awarded pursuant to the provisions of Article II(C), III, or IV or a procedure determined by an Authorized Officer to be comparable to Article V or VII.
- F. Nothing in these Guidelines shall preclude the Authority from accepting bids or proposals in an electronic format, to the extent permitted by law.
- G. A contract awarded by an Authority pursuant to these Guidelines may provide that the contract includes the requirements of one or more other Authorities.
- H. The Authority shall prepare a publicly available report no less frequently than annually, summarizing procurement activity by the Authority for the period of the report in accordance with the reporting requirements of Section 2879(6) of the Public Authorities Law.
- I. These guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.



**ALL AGENCY GUIDELINES  
FOR PROCUREMENT OF SERVICES**  
Adopted by the Board on March 25~~6~~, 201~~5~~4

These guidelines apply to the Metropolitan Transportation Authority ("MTA"), the New York City Transit Authority ("Transit"), the Long Island Rail Road Company ("LIRR"), the Metro-North Commuter Railroad Company ("MNCRR"), Staten Island Rapid Transit Operating Authority ("SIRTOA"), Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA"), MTA Capital Construction ("MTACC"), MTA Bus Company ("MTA Bus") and to the Triborough Bridge and Tunnel Authority ("Bridges and Tunnels") insofar as they are consistent with the provisions of law applicable to Bridges and Tunnels (each of which is referred to as the "Authority").

**Article 1-Applicability of guidelines**

This policy applies to contracts for services. A contract for services is either a personal service contract or a miscellaneous service contract.

- A. Personal services contracts generally involve retaining a consultant who specializes in one of the following:
- (1) Legal
  - (2) Financial
  - (3) Accounting
  - (4) Auditing
  - (5) Management
  - (6) Human Resources
  - (7) Investment
  - (8) Bonds
  - (9) Planning
  - (10) Analysis
  - (11) Training
  - (12) Data Processing
  - (13) Computer Systems
  - (14) Statistics
  - (15) Research
  - (16) Public and corporate relations
  - (17) Architecture
  - (18) Engineering
  - (19) Surveying
  - (20) Labor Relations

- (21) Real Estate
- (22) Legislation
- (23) Public Affairs
- (24) Marketing
- (25) Advertising
- (26) Records Management
- (27) Office services requiring specialized skills
- (28) Printing where editorial services predominate
- (29) Other Consulting, Professional or Technical Services

- B. A miscellaneous service contract is any contract for service which is not a: i) personal service contract; ii) public work contract; or iii) a miscellaneous procurement contract. Examples include but are not limited to contracts for guard service, custodial service and maintenance work performed by laborers, workers or mechanics which does not result in a substantial improvement to a building or other fixed asset.
- C. In the event a proposed contract contains elements of more than one type of contract under these guidelines or the All Agency Procurement Guidelines, the elements which predominate shall determine the type of contract for purposes of both Guidelines.

**Article II - Delegation of Authority**

The Chairman, the presidents of the Authorities or the designated representative or representatives thereof (each defined for purposes of these guidelines as an "Authorized Officer") are hereby empowered with respect to service contracts to be entered into by his/her respective Authority acting on its own behalf or as agent for the MTA, as follows:

- A. to implement these guidelines.
- B. to establish procedures which shall be in accordance with these guidelines to the extent deemed practicable by the Authorized Officer, for the award of: (i) a miscellaneous service contract estimated to involve the expenditure of \$15,000 or less; and (ii) a personal service contract estimated to involve the expenditure of \$25,000 or less, provided that the contract shall be advertised, Board approval of the award obtained and reported if otherwise required under these guidelines.
- C. to determine whether a miscellaneous service contract shall be awarded pursuant to the provisions of these guidelines or the provisions of the All Agency Procurement Guidelines, provided that, notwithstanding the vote otherwise required by the All Agency Procurement Guidelines, the vote of approval of a majority of the members of the Board present at a meeting at which a quorum is present shall in any event be required for the award of the following miscellaneous service contracts:
  - i) Without regard to whether or not the contract was awarded pursuant to

sealed competitive bidding, the actual or estimated amount of the contract is \$15,000 or more and the services will be rendered over a period in excess of one year.

- ii) Without regard to the period of performance of the services, the miscellaneous service contract provides for the expenditure of more than \$25,000 and was not awarded pursuant to sealed competitive bidding.

### **Article III - Policy**

It is the policy of the Authority to contract for personal and miscellaneous services when, because of factors such as timing, costs, qualifications or the nature of the services to be rendered, it is more beneficial for such services to be contracted for than performed by employees of the Authority.

Contractors shall be selected on a competitive basis except when competition is not required pursuant to these Guidelines or is waived as impractical or inappropriate.

### **Article IV - Advertising**

- A. Regardless of the selection process used, notice of a contract for the acquisition of services of any kind in the actual or estimated amount of \$15,000 or more shall be published at least one time in New York State Contract Reporter, except as provided in paragraph C of this Article. The publication shall be no less than fifteen business days prior to the planned date on which a bid or proposal is due, provided that if the contract is to be awarded without bids or proposals and advertising is required, the timing of the publication shall be, determined by an Authorized Officer.
- B. The notice must contain, as applicable, a statement of: i) the name of the contracting Authority; ii) the contract identification number; iii) a brief description of the services sought, the location where services are to be provided and the contract term; iv) the address where bids or proposals are to be submitted; v) the date when bids or proposals are due; vi) a description of any eligibility or qualification requirement or preference; vii) a statement as to whether the contract may be fulfilled by a subcontracting, joint venture or co-production arrangement; viii) any other information which the Authority deems useful to potential contractors; ix) the name, address and the telephone number of the person to be contacted for additional information; and x) a statement as to whether the services sought had, in the immediately preceding three year period, been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law.
- C. The advertisement is not required under the following circumstances:
  - i) In the event of an emergency or critical need for the services as determined by an Authorized Officer;

- ii) The contract is re-bid or re-solicited for substantially the same services within forty-five business days after the date bids or proposals were originally due;
  - iii) The contract is awarded to a not-for-profit provider of human services;
  - iv) The contract is awarded pursuant to the provisions of Article V(C)(1) or (2) (single or unique source) of these Guidelines.
- D. In addition to the above advertisements, the Authority shall provide notice to professional and other organizations that regularly notify certified minority and women owned business enterprises (“MWBES”) of the type of procurement opportunity that is the subject of the solicitation.

## **Article V - Selection of Personal Services Contractors**

### A. Requirements

The following are the requirements to be followed for selection of contractors for personal services, except for: i) contracts for architectural, engineering, and survey services (which are subject to paragraph B); ii) contracts equal to or less than \$25,000 (which may be entered into pursuant to the provisions of this paragraph or pursuant to procedures established by an Authorized Officer which shall be competitive to the extent deemed practicable by the Authorized Officer); and iii) contracts for services for which a competitive selection process is inappropriate pursuant to the provisions of paragraph C.

1. The Division/Department of the Authority requiring the services shall prepare a written statement containing a description of the services, the reasons why they are required, and the required or estimated schedule or duration of the services.
2. A request for proposals ("RFP") to perform the required services shall be sent to three or more firms to assure competition, including any DBE/WBE/MBE firms selected to receive the RFP pursuant to applicable Authority or New York State DBE/WBE/MBE programs, unless there are only two qualified firms or unless competition is waived as hereinafter provided. The RFP or notice thereof shall also be provided to professional and other organizations that represent or regularly notify certified MWBES of the type of procurement opportunity that is the subject of the RFP notice.
3. The RFP shall describe the services to be performed, any completion dates or time requirements, DBE/WBE/MBE requirements, if applicable, and the criteria to be utilized by the Authority in evaluating proposals and shall contain a requirement for a cost proposal and the date, time and place when proposals must be received.

4. The Authority may select one or more proposers with which to negotiate after evaluation of the proposals received. The award shall be made to the proposer or proposers whose proposal(s) will be the most advantageous to the Authority, price, qualifications and other factors considered, using the evaluation criteria specified in the RFP as the basis for the decision.

B. Architectural- Engineering and Survey Contracts

1. In the procurement of architectural, engineering and surveying services, the Authority shall determine whether to comply with the RFP procedures set forth in paragraph A or the "Brooks" method set forth in this paragraph, provided that if federal assistance is involved, the decision shall take into account applicable federal requirements.
2. The Authority shall encourage professional firms engaged in the lawful practice of the profession to submit an annual statement of qualifications and performance data. For each proposed project identified in accordance with Article V(A)(1), the Authority shall evaluate current statements of qualifications and performance data on file with the Authority. If desired and to the extent appropriate if federal assistance is involved, the Authority may conduct discussions with three or more professional firms regarding anticipated design concepts and proposed methods of approach to the assignment.
3. The Authority shall then evaluate whether a modification to the written statement prepared in accordance with subparagraph 1 of Paragraph A is appropriate, and shall then comply with the provisions of subparagraphs 2 and 3 of Paragraph A.
4. The Authority shall select from the proposals submitted, in order of preference, based upon the criteria established by the Authority, no less than three professional firms deemed to be the most highly qualified to provide the services required.
5. The Authority shall negotiate a contract with the highest qualified professional firm for architectural, engineering or surveying services at compensation which the Authority determines in writing to be fair and reasonable. In making this decision, the Authority shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. Should the Authority be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee it determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. The Authority shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the Authority shall formally terminate negotiations.

The Authority shall then undertake negotiations with the third most qualified professional firm. Should the Authority be unable to negotiate a satisfactory contract with any of the selected professional firms it shall select additional professional firms, in order of their competence and qualification and it shall continue negotiations in accordance with this subparagraph until an agreement is reached.

6. The provisions of this paragraph B shall apply only to engineering, architectural, or surveying services contracts in excess of \$25,000.00. Contracts for engineering, architectural or surveying services involving lesser amounts may be entered into pursuant to the provisions of this paragraph or pursuant to procedures established by an Authorized Officer which shall be competitive to the extent deemed practicable by the Authorized Officer.
- C. It is hereby determined that a competitive selection process is inappropriate and that a competitive process shall not be required in the following instances:
1. When the services are obtainable from one source only.
  2. When the provider of the services has unique or otherwise outstanding qualifications.
  3. When an emergency or other circumstances exist which make competition impracticable or inappropriate.
  4. Legal Services.
- D. Pursuant to Section 2879(3)(b)(i) of the Public Authorities Law, a contract in an amount not to exceed \$200,000, that is not federally funded, for personal services or miscellaneous services may be awarded without competitive procedures otherwise required by law or these Guidelines, where the proposed award is to a small business concern or a certified minority or women-owned business enterprise (“MWBE”). Contracts may be designated for solicitation and award pursuant to Section 2879(3)(b)(i) by the Chairman or the Chairman’s designee in consultation with the Authorized Officer of the appropriate agency. In the case of contracts that are designated pursuant to Section 2879(3)(b)(i) for award to eligible small business concerns or MWBEs, there shall be notice of the proposed contract on the Authority website inviting responsive bids or proposals from qualified small business concerns and MWBEs. Notice of such procurements shall also be provided to identified organizations that represent or regularly notify small business concerns or MWBEs, of the type of procurement opportunity that is the subject of the award. Awards pursuant to Section 2879(3)(b)(i) shall be made to the bidder or proposer determined to have submitted the bid or proposal that is most advantageous to the Authority, price and any other relevant factors considered. An award proposed to be made to a bidder or proposer other than the lowest responsible, responsive bidder or proposer, shall require approval by a majority of the Board at a meeting at which a quorum is present; in addition, the approval of the Board is required in any other instance in which it is required by law. The Chairman or his designee, in consultation with the Authorized Officer

of the appropriate agency, may reject all offers and withdraw the designation of a contract as one to be awarded pursuant to Section 2879(3)(b)(i) if the Chairman or his designee determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority. The requirements of Article IV and of Article V(B) shall not apply to contracts awarded in accordance with Section 2879(3)(b)(i).

- E. The Chairman, President, General Counsel, or Chief Procurement Officer of the Authority, or such individuals as they may designate, may give verbal authorization to contractors or consultants to commence the performance of contracts entered into pursuant to the provisions of this paragraph E, where prior written agreement is impracticable, provided, however, that the contract shall be reduced to writing as soon as practicable. Prior to issuing a verbal authorization for a federally assisted contract, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.

#### **Article VI – Minority/Women Owned and Disadvantaged Business Enterprises**

The potential exists for disadvantaged/minority/women owned business enterprise involvement in personal service and miscellaneous service contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of DBEs under the Authority's federal program, and MBEs/WBEs under the New York State program set forth in Public Authorities Law §2879, Article 15-A of the Executive Law and these guidelines.

- A. The MTA Chief Diversity Officer ("Chairman's Designee") is responsible for overseeing the programs established by the MTA to promote and assist: i) the participation by certified MWBEs in procurement opportunities and facilitation of the award of procurement contracts to such enterprises; ii) the utilization of certified MWBEs as subcontractors to Authority prime contractors; and iii) the utilization of partnerships, joint ventures ("JVs") or other similar arrangements between certified MWBEs and prime contractors. The Chief Diversity Officer reports directly to the Chairman in connection with the responsibilities set forth herein, and will participate in the procurement process either directly or through his or her designees.
- B. For contracts awarded pursuant to these Guidelines, the Authority shall establish appropriate goals for participation by certified MWBEs and for the utilization by prime contractors of MWBEs as subcontractors and suppliers. Statewide numerical participation target goals will be established by the Authority based on the findings of the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study.
- C. The Authority will conduct non-federally funded procurements in a manner that enables the Authority to achieve the maximum feasible portion of the goals set pursuant to Article VI(B) including taking the following actions: (i) establishing measures and procedures to ensure that certified MWBEs are given the opportunity for maximum feasible participation in the performance of Authority

contracts and to assist in the identification of those contracts that are best suited for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Authority contracts so as to facilitate the Authority's achievement of the maximum feasible portion of the MWBE goals; (ii) designating the New York State Division of Minority and Women-owned Business Development ("DMWBD") to certify and decertify MWBEs for purposes of these guidelines; (iii) setting forth in each contract solicitation the expected degree of MWBE participation based on potential subcontracting opportunities and the availability of certified MWBEs to respond competitively to those opportunities; (iv) providing to prospective contractors in writing or by identifying a link to a specific web site a current list of MWBEs; (v) with regard to JVs, allowing a bidder to count toward meeting its MWBE participation goal, the MWBE portion of the JV; (vi) waiving a contractor's obligation relating to MWBE participation after a showing of good faith efforts to comply with the participation goal; and (vii) verifying that MWBEs listed in a successful bid or proposal are actually participating to the extent listed in the project for which the bid or proposal was submitted. The Authority will also consider, where practicable: (i) the severability of service requirements and other bundled service contracts; (ii) the implementation of a program that will enable the Authority to evaluate each contract to determine the appropriateness of the goal pursuant to the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study; (iii) compliance with the requirements of any federal law concerning opportunities for any MWBEs which effectuates the purpose of this section; and (iv) consultation of the most recent disparity study.

#### **Article VII-Types of Provisions to be Contained in Service Contracts**

- A. The following types of provisions shall be contained in all personal services contracts, except that it is not necessary to include any provision which is inapplicable or unnecessary because of the nature or duration of the services to be performed, the location or locations where they are to be performed or the type of compensation being paid.
1. Description of Services
  2. Compensation
  3. Time for Performance or date of completion
  4. Liability of Contractor or Consultant; Indemnification of Authority
  5. Reports of Contractor or Consultant
  6. Ownership of Plans, Drawings or Other Products of the Performance of the Services
  7. Assignments; Subcontracts
  8. Maintenance of Records, Accounts
  9. Right of Authority to Inspect and/or Audit Books and Records of Contractor or Consultant
  10. Insurance Requirements
  11. Termination
  12. Monitoring of the Performance of Services
  13. Use of Authority Supplies, Facilities or Property

14. Use of Authority Personnel
  15. All Provisions required to be included in Authority contracts by Federal, State or Local Laws Ordinances, Codes, Rules or Regulations.
  16. Such modifications and additions as are appropriate in light of the specific circumstances presented.
- B. To the extent practicable, a verbal authorization to commence work and a writing which is not intended to constitute the final agreement, at a minimum shall:
1. Describe the services to be performed;
  2. Specify the amount of compensation to be paid or the rates or fees which will be utilized to determine such compensation; and
  3. Specify a date for completion or the anticipated duration of the services (except in instances where the nature of the services makes an estimate of the time required impossible or impracticable or where the contract is a retainer for the performance of services over an extended period of time on an "as-needed" basis and contains provisions allowing termination by the Authority at any time without cause).
- C. Miscellaneous service contracts shall contain those provisions of paragraph A and of other standard forms of contract deemed appropriate by an Authorized Officer.

#### **Article VIII - Responsibilities of Services Contractors**

A service contractor shall have the following responsibilities:

- A. To perform the contract in accordance with its terms;
- B. To perform the services required under the contract competently, efficiently, in a timely manner, at a reasonable cost and in a manner which is satisfactory to the Authority; and
- C. To cooperate with the Authority personnel who are directing, supervising or monitoring the performance of the services or who are assisting in their performance.

#### **Article IX - Contracts Involving Former Officers or Employees of the Authority**

The Authority may enter into contracts with any Authority's former officers or employees or with firms employing such officers or employees only to the extent permitted by Public Officers Law §73.

#### **Article X - Monitoring, of Service Contracts**

The Division/Department of the Authority requiring the services shall be responsible for monitoring the performance of the contract to assure that the contract is performed in accordance with its terms.'

## **Article XI Reporting of Service and Purchase Contracts**

- A. Each Division/Department of an Authority shall maintain records, for each fiscal year, of the following contracts entered into by the Authority at the request of such Division/Department: i) personal service contracts in the actual or estimated amount of \$15,000 or more; ii) miscellaneous service contracts in the actual or estimated amount of \$15,000 or more; and iii) purchase contracts in an actual or estimated amount of \$15,000 or more.
- B. The Authority's Authorized Officer shall designate a Division or Department which shall be responsible for preparing a report at the end of each fiscal year with respect to the foregoing contracts. With respect to each such contract, the report shall contain the following information:
1. Name of Contractor;
  2. Short description of the services involved;
  3. Amounts paid pursuant to the contract as of the end of such fiscal year;
  4. The selection process used;
  5. Status of the contract;
  6. If it was exempt from advertising in the New York State Contract Reporter pursuant to Article IV(C) of these Guidelines:
    - i) a statement to that effect; and
    - ii) the basis for such exemption; and
  7. Whether the contract was entered into with a New York State business enterprise or a foreign business enterprise, as those terms are defined in Public Authorities Law § 2879.
  8. Whether the contract was entered into with a New York State certified minority or women-owned business enterprise.
  9. Referrals to and penalties imposed by the Director of DMWBD pursuant to Executive Law § 316.
- C. Each Authority shall submit a copy of such report to the board of the Authority upon its completion.

## **Article XII-Personal Service Contracts Requiring Approval of the Board**

The following personal service contracts shall require the approval of the Board of the Authority by resolution approved by a majority of the members present at a meeting at which a quorum is in attendance and shall be reviewed by the Board on an annual basis:

- A. Personal Service Contracts of all Authorities except for Bridges and Tunnels: All personal service contracts entered into by an Authority in the actual or estimated amount of \$20,000 or more;

- B. Personal Service Contracts of Bridges and Tunnels: All personal services contracts entered into by Bridges and Tunnels in the actual or estimated amount of \$15,000 or more where the services will be rendered over a period in excess of one year; and
- C. Miscellaneous service contracts: See Article II(C) of these guidelines.

### **Article XIII-Change Orders**

An Authority may enter into a change order or amendment to a personal service or miscellaneous service contract provided that approval of the Board of the Authority by a resolution approved by a majority of the members present at a meeting at which a quorum is in attendance, shall be required in the following circumstances:

- A. The contract did not equal or exceed the applicable monetary or durational threshold for board approval set forth in Article XII or Article II of these guidelines and the applicable threshold is equaled or exceeded as a result of the change order or amendment. This provision applies to all contracts subject to these Guidelines, including budget adjustments to estimated quantity contracts previously approved by the Board which exceed the threshold.
- B. The contract was approved by the Board and the change order or amendment, including any change orders or amendments since Board approval was last obtained, results in a substantial change in the contract as determined by an Authorized Officer. Notwithstanding the foregoing, Board approval of change orders shall only be required if the change order is over \$750,000, or over \$250,000 if the change order exceeds 15% of the adjusted contract value, provided that a change order over \$250,000 must be approved by the Authority president or his or her designee.
- C. The miscellaneous service contract was awarded pursuant to the All-Agency Procurement Guidelines and the change order or amendment equals or exceeds the requirements for Board approval under Article IX of the All Agency Procurement Guidelines.
- D. Notwithstanding the foregoing, an Authorized Officer may enter into a change order or amendment in any of the following situations as determined by an Authorized Officer,
  - 1. The existence of an emergency; or
  - 2. The risk of a substantial increase in cost or delay if prompt action is not taken.
- E. The Chief Operating Officer shall establish policies with respect to the delegation of responsibilities set forth in this Article.

#### **Article XIV – Miscellaneous**

- A. Any provision of these guidelines may be waived by the Chairman, an Authority President or the Board, or such individuals as they may designate, except to the extent prohibited by law. A waiver may also be in the form of a ratification. If a contract is federally assisted, prior to issuing a waiver, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.
- B. No Board committee procedure or action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these Guidelines.
- C. A contract awarded by an Authority pursuant to the provisions of these Guidelines may provide that the contract includes the requirements of one or more other Authorities.
- D. An Authority may contract for a service available through an existing contract between a contractor and the State of New York or the City of New York or another Authority if: i) the existing contract was awarded pursuant to a process of competitive sealed bids or a competitive request for proposals; ii) the Authority's Authorized Officer determines that the price and other commercial terms specified in the contract are satisfactory; and iii) if board authorization would otherwise be required under these Guidelines, the Board adopts a resolution by a majority vote of the members of the Board present meeting at which a quorum is in attendance which sets forth the reasons why a competitive process is impractical or inappropriate and authorizes the Authority to enter into the contract.
- E. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under or by reason, of any requirement or provision thereof.
- F. Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these Guidelines.
- G. Where applicable federal, state or local laws, ordinances, codes, rules or regulations contain requirements which are in conflict with or which impose greater obligations upon the Authority than these Guidelines, then such requirements shall take precedence over those contained herein.
- H. The Authority shall prepare a publicly available report no less frequently than annually, summarizing procurement activity by the Authority for the period of the report, in accordance with the reporting requirements of Section 2879(6) of the Public Authorities Law.

- I. Nothing in these guidelines shall preclude the Authority from accepting bids or proposals in an electronic format, to the extent permitted by law.