

Staff Summary

Subject Federal Drug and Alcohol Policy
Department Safety and Security
Department Head Name Patrick Warren
Department Head Signature
Project Manager Name John Mueller

Date May 24, 2023
Vendor Name N/A
Contract Number N/A
Contract Manager Name N/A
Table of Contents Ref # N/A

Board Action					
Order	To	Date	Approval	Info	Other
1	Board	5/24/23	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Corporate Compliance		
2	Legal 		
3	Labor & Employment Rel.		
4	Chief Administrative Officer 		

Purpose:
To obtain Board approval of the MTA’s revised Federal Drug and Alcohol Policy.

Discussion:
The Metropolitan Transportation Authority (“MTA”) is fully committed to operating and maintaining an alcohol and drug-free workplace to provide a safe environment for employees of the MTA and the customers they serve. This Policy applies to all members of the MTA’s Police Department, who, as part of their job duties, carry a firearm for security purposes and are therefore required to undergo drug and alcohol testing pursuant to federal regulations (49 CFR Part 655 as amended, and 49 CFR Part 40, as amended). This Policy supersedes all prior policies on this subject.

Revision to this policy complies with 49 CFR Part 655, as amended, and 49 CFR Part 40, as amended. This policy replaces MTA Federal Substance Abuse Policy (12/16/15) applicable to MTA HQ safety sensitive employees (MTA PD). Changes were made to bring the policy up to date and include identification of the current contact person and updating the list of controlled drugs and current drug and alcohol testing levels.

This policy requires approval by the MTA Board of Directors

Recommendation:
It is recommended that the Board approve the revised Federal Drug and Alcohol Policy.

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I. Purpose and Scope

The Metropolitan Transportation Authority (“MTA”) is fully committed to operating and maintaining an alcohol and drug-free workplace to provide a safe environment for employees of the MTA and the customers they serve. This Policy applies to all members of the MTA’s Police Department, who, as part of their job duties, carry a firearm for security purposes. This Policy supersedes all prior policies on this subject.

This policy complies with 49 CFR Part 655, as amended, and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the office of the Designated Employer Representative (DER) and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website <http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655. Consent to drug and/or alcohol testing pursuant to this Policy is implied by accepting or continuing employment.

All MTA employees including, but not limited to, the MTA Police Department are subject to the provisions of the Drug-Free Workplace Act of 1988, which is addressed in MTA’s separate Policy. As provided in that policy, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace.

In addition, MTA may perform drug testing not specifically required under the applicable federal regulations. Such testing may include that required by the States of New York and Connecticut for qualification of individuals for police officer positions. Any such testing will be performed under the MTA’s authority and not pursuant to federal law. Specifically, drug testing required by FTA requires testing for the substances specified under Part 40, Section 40.85. MTA may conduct testing for substances included in the federal panel, as well as additional substances. If such testing occurs, it will be conducted under MTA’s own authority and not under FTA authority or pursuant to FTA regulations.

II. Definitions

- Covered Employees:** Every person, including an applicant or transferee, who performs or will perform a “safety-sensitive function” as defined in 49 CFR Part 655, section 655.4, including:
 - Operating a revenue service vehicle, in or out of revenue service
 - Operating a non-revenue vehicle requiring a commercial driver’s license
 - Controlling movement or dispatch of a revenue service vehicle
 - Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service

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- Carrying a firearm for security purposes

See Exhibit A for a list of covered safety-sensitive positions by job title. Covered employees are also referred hereto as “Members” or “safety-sensitive employees”.

2. **Illegal Drugs:** Those substances specified in 49 CFR Part 40 Section 40.85, including cocaine, phencyclidine (“PCP”), amphetamines, marijuana, and opioids.
3. **Controlled substances:** All substances listed in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. sec. 812), and further defined in 21 CFR Sections 1308.11 through 1308.15. Controlled substances include, but are not limited narcotics, depressants, stimulants, hallucinogens, and cannabis.
4. **Drugs:** Any substance other than alcohol that has known mind or function altering effects in humans, including but not limited to, controlled substances.
5. **Alcohol:** The intoxicating ingredient in beverage alcohol, ethyl alcohol, or other low weight molecular weight alcohols including methyl or isopropyl alcohol.
6. **Designated Employer Representative (DER):** An employee authorized by the MTA to take immediate actions to remove employees from safety sensitive duties, or causes employees to be removed from these duties, and to make required decisions in the testing and evaluation processes. For MTA Police Department, Alexander Lindsay (the Commanding Office of Internal Affairs), or any individual the Chief of Police may assign, will serve as DER.

III. General Guidance/Reporting Convictions

1. All MTA covered employees must comply with all laws, agreements, rules, policies and regulations applicable to their employment, including but not limited to the collective bargaining agreement between the MTA and the Police Benevolent Association (the “PBA Agreement”), and must at all times satisfy the performance standards applicable to their employment.
2. The MTA states expressly that nothing in this Policy prohibits it from taking administrative or disciplinary action, up to and including dismissal, and under its own authority, with or without conducting drug and/or alcohol testing, when there is a violation of this Policy. The MTA also states expressly that this Policy does not create a contract, promise or contractual right, express or implied. The MTA reserves the right to change this Policy in whole or in part at any time.
3. **Reporting Convictions:** In accordance with the Drug-Free Workplace Act of 1988, a covered employee convicted of violating a criminal drug statute must report the conviction to the Chief of Police or their designee within five calendar days of the conviction. Covered employees

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convicted of violating a criminal drug statute or who fail to report such conviction may be subject to disciplinary and/or administrative action, up to and including dismissal.

IV. Prohibited Behavior

1. Use of illegal drugs is prohibited at all times.
2. All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.02 or higher; however a concentration of 0.04 or higher is deemed a violation under applicable federal regulations.
3. Members are also prohibited from engaging in the following conduct:
 - a. Reporting to work if under the influence of drugs or alcohol.
 - b. Illegally manufacturing, distributing, selling, dispensing, possessing or using any controlled substances or illegal drug paraphernalia, on or off duty, on or off MTA property. Members may, however, possess controlled substances or illegal drug paraphernalia in the course of taking official police action consistent with Police Department procedures, including but not limited to performing undercover assignments or seizing evidence during an arrest. Consistent with Section X, members are prohibited from using any controlled substance at any time, whether on or off duty, unless medically authorized.
 - c. Consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call Member has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call Member claims the ability to perform their safety-sensitive function, they must take an alcohol test with a result of less than 0.02 prior to performance of safety-sensitive functions.
 - d. Possessing or consuming alcohol in the workplace and consuming alcohol during work hours, including meal and break periods, unless such conduct is required in the course of the Member’s official duties, consistent with Police Department procedures, including, but not limited to, use or possession while performing undercover assignments or possession while seizing evidence during an arrest. However, in no case may a Member’s alcohol concentration equal .02 or greater while on duty.
 - e. Consuming alcohol within four (4) hours prior to reporting to work and prior to commencing performance of safety-sensitive job functions.

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- f. All covered employees required to take a post-accident test are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until the employee submits to the post-accident drug and alcohol test, whichever occurs first.

V. Consequences of Violations

1. Positive Drug Test, Alcohol Greater or Equal to .04 BAC, or Test Refusal:

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the Member will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional. The Member shall be disciplined by the MTA, acting under its own authority, in accordance with the MOU between the MTA Police Benevolent Association (PBA) dated November 12, 2002, and attached to this policy as Exhibit B (as may be amended). Discipline assessed by the MTA may delay or negate the return of the employee to safety-sensitive duties. A Member allowed by the MTA to return to safety-sensitive functions shall be required to pass a drug and/or alcohol test upon recommendation from the SAP before returning to their position. In addition, the Member will be subject to unannounced follow-up drug and/or alcohol testing as directed by the SAP. The number and duration of the follow-up testing must be no fewer or shorter than the minimum requirements set forth in the regulations issued by the FTA.

- 2. BAC Greater than .02 but less than .04: Following a BAC of 0.02 or greater, but less than 0.04, the Member will be immediately removed from safety-sensitive duties until the start of their next regularly scheduled duty period (but for not less than eight hours) unless a retest results in the Member’s alcohol concentration being less than 0.02. The Member shall be disciplined by the MTA, acting under its own authority, in accordance with the MOU between the MTA Police Benevolent Association (PBA) dated November 12, 2002, and attached to this policy as Exhibit B (as may be amended). Discipline assessed by the MTA may delay or negate the return of the employee to safety-sensitive duties.

- 3. All other violations of Policy: A Member who violates any of the prohibitions set forth in this Policy may be subject to (a) drug and/or alcohol testing pursuant to this Policy, and/or (b) removal from safety-sensitive duties, and/or (c) administrative and/or disciplinary action up to and including dismissal, under the authority of the MTA.

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VI. Circumstances for Testing.

A. Pre-Employment Testing

A negative pre-employment drug test result is required before a covered employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before the employee can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a SAP referral, evaluation, and treatment plan meeting DOT requirements.

B. Reasonable Suspicion Testing

All covered employees shall be subject to a drug and/or alcohol test when the MTA has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

C. Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

1. Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee at the time of the

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accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by MTA using the best information available at the time of the decision, will be tested.

2. Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident
- (3) The vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, unless the covered employee can be completely discounted as a contributing factor to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by MTA supervision using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available to test, or will be considered to have refused to test.

The MTA must make diligent efforts to conduct an alcohol and/or drug test as quickly as possible following the accident. If alcohol testing is not performed within two hours, supervision must provide the Chief of Police or their designee with documentation as to the reason why the test was not promptly conducted.

Absolutely no alcohol testing may be performed after 8 hours since the accident.

Drug testing may not be conducted after 32 hours of the accident. If eight hours have passed since the accident and no alcohol testing has been performed, or if 32 hours have passed since the accident and no drug testing has been performed, the supervisor must provide the Chief of Police with documentation explaining why testing was not performed.

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Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

D. Random Testing

Random drug and alcohol tests are unannounced and must be unpredictable by the employees selected to test. The dates for administering random tests must also be spread reasonably throughout the calendar year consistent with all time periods when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at www.transportation.gov/odapc/random-testing-rates.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

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

Each covered employee who is notified of selection for random drug or random alcohol testing must **immediately** proceed for testing as instructed by supervision.

E. Return to Duty Testing

Any Member who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug test result and/or an alcohol test result of less than 0.02. Any return-to-duty drug and alcohol testing will be directly observed. MTA will also conduct return to duty drug and/or alcohol tests for all Members returning to duty after any violation of this Policy. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

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F. Follow-Up Testing

Covered employees returning to safety-sensitive duty following a return-to-duty test will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP.

A covered employee may only be subject to follow-up alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be subject to follow-up drug testing anytime while on duty. All follow-up drug and alcohol tests will be directly observed. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

VII. Testing Procedures

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

A. Dilute Urine Specimen

If there is a negative dilute test result, MTA will conduct one additional retest immediately. The result of the second test will be the test of record.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

B. Split Specimen

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request the MRO to direct testing of the split specimen at a second laboratory. The split specimen test will be conducted in a timely fashion.

VIII. Test Refusals

As a covered employee, you have refused to test if you:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the DER.

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2. Fail to remain at the testing site until the testing process is complete. An individual who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
3. Fail to attempt to provide a breath or urine specimen.
4. In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of a provision of a specimen.
5. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
6. Fail or decline to take a second test as directed by the collector, MRO or DER.
7. Fail to undergo a medical evaluation as required by the MRO or DER.
8. Fail to cooperate with any part of the collection or testing process.
9. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
10. Possess or wear a prosthetic or other device that can be used to tamper with the collection process.
11. Adulteration or substitution of a specimen to the collector or MRO.
12. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
13. Fail to remain readily available for testing following an accident.

A covered employee that refuses to take a drug and/or alcohol test will incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to a SAP.

IX. Voluntary Self-Referral/Performance

A. Self Referral

Any employee who has a drug abuse and/or alcohol misuse problem and has not been notified of the requirement to submit to testing, or has not refused a drug or alcohol test, may voluntarily refer her or himself to the confidential Employee Assistance Program (EAP) who

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will refer the individual to a Substance Abuse Professional (SAP) for evaluation and treatment.

The SAP will evaluate the employee and make a specific recommendation(s) regarding the appropriate education and/or treatment. All employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.

Any covered employee who admits to a drug and/or alcohol problem will immediately be removed from their safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program. Pursuant to the PBA collective bargaining agreement, the MTA’s Family and Medical Leave Policy or other applicable policies, the covered employee may request, and the MTA may approve, a leave of absence for purposes of rehabilitation for drug abuse and/or alcohol misuse. Nothing in this Policy requires the MTA to offer a covered employee a leave of absence in lieu of taking immediate administrative and/or disciplinary action, up to and including dismissal.

B. Performance Requirements

The MTA will hold every covered employee who engages in the illegal use of drugs or alcohol misuse to the same qualification standards for employment or job performance and behavior (such as attendance) to which the MTA holds its other employees.

Past or present involvement in a rehabilitation program, EAP or with other treatment providers cannot serve as a defense nor mitigate the circumstances of alleged violations of MTA rules, policies or laws, including but not limited to rules applicable to the MTA Police Department.

X. Prescription/Over the Counter Medication Use

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected (or cautions against the use or operation of machines, heavy equipment or automobiles) must be reported to the MTA’s Medical Review Officer (MRO) by completing and faxing the Notice of Prescription and/or Over-The-Counter Medication(s) Used Form (MTA PD Form #68) to the MRO at 212-878-0266. Members must report the use of these medications to the MRO at least two (2) hours before reporting to duty. For prescription drugs, the Member must also provide a written statement from a qualified medical practitioner identifying the drug is prescribed or authorized, and who has determined that such use will not affect the Member’s job performance. Medical advice should be sought, as appropriate, before taking such medication and before performing

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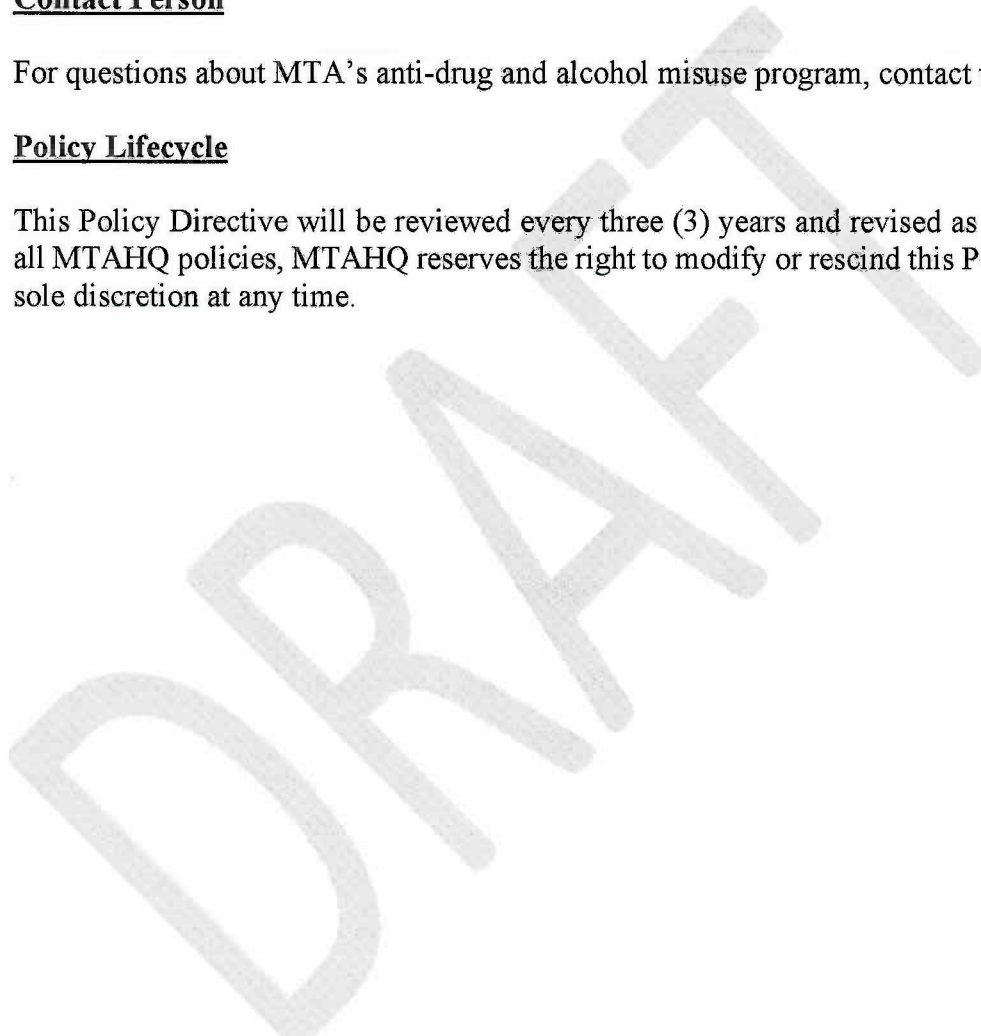
safety-sensitive duties. Prior to the Member submitting such a statement, in order to work, the Member must also certify that the drug will not affect their job performance. The MRO or their designee will then determine whether use of the substance as prescribed is consistent with the safe performance of the Member’s duties. The decision of the MRO or their designee is final and binding.

XI. Contact Person

For questions about MTA’s anti-drug and alcohol misuse program, contact the DER.

XII. Policy Lifecycle

This Policy Directive will be reviewed every three (3) years and revised as necessary. As with all MTAHQ policies, MTAHQ reserves the right to modify or rescind this Policy Directive at its sole discretion at any time.



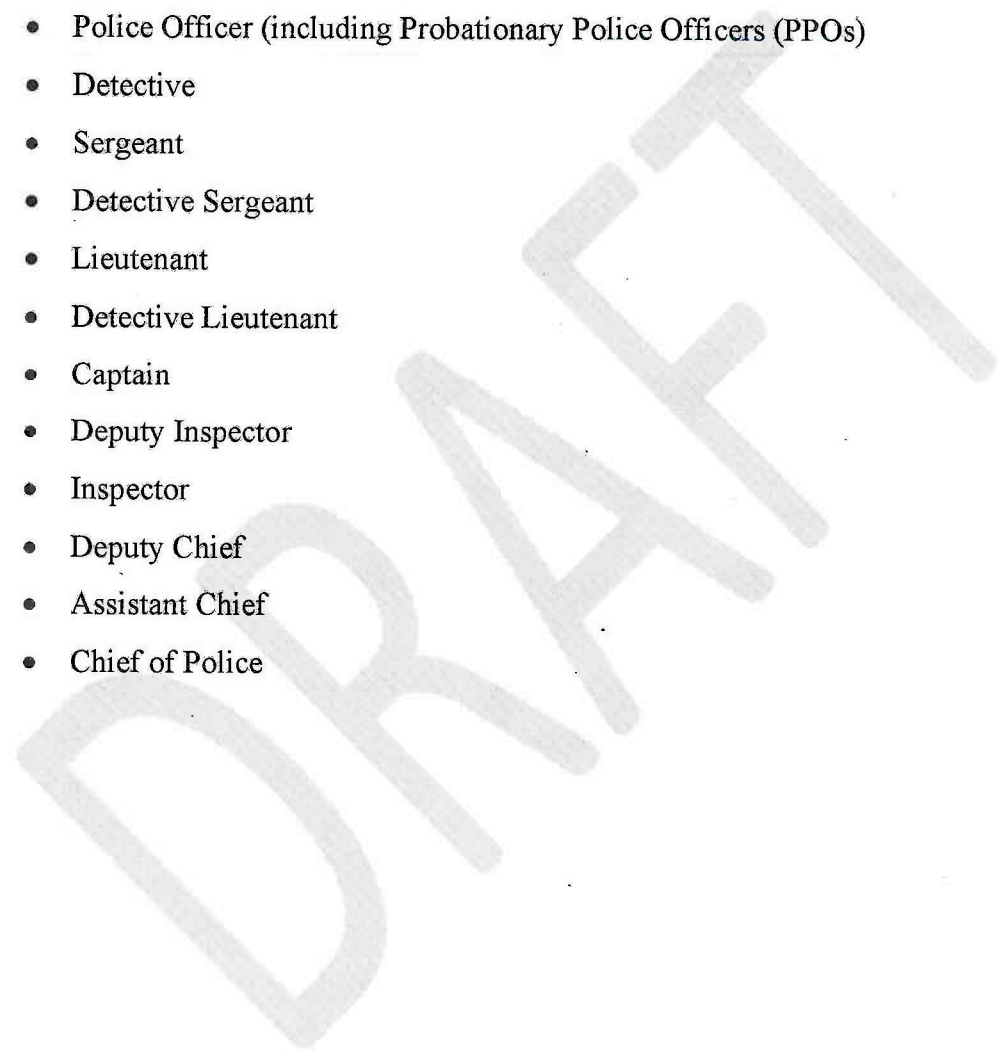
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Exhibit A

Safety-Sensitive Job Titles

- Police Officer (including Probationary Police Officers (PPOs))
- Detective
- Sergeant
- Detective Sergeant
- Lieutenant
- Detective Lieutenant
- Captain
- Deputy Inspector
- Inspector
- Deputy Chief
- Assistant Chief
- Chief of Police



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Exhibit B

Memorandum of Agreement

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Exhibit B

MEMORANDUM OF AGREEMENT

Disciplinary and Supplementary Testing Procedures/Guidelines

AGREEMENT made between the METROPOLITAN TRANSPORTATION AUTHORITY ("MTA") and the MTA POLICE BENEVOLENT ASSOCIATION ("PBA").

The parties agree to the following in connection with the MTA's testing obligation under the requirements of the United States Department of Transportation (USDOT) and Federal Transit Administration (FTA) regulations concerning drug and alcohol testing:

I. DISCIPLINARY GUIDELINES

(A) DRUG VIOLATIONS

The MTA and the PBA agree that discipline for a violation of the federal regulations of the US DOT or the FTA pertaining to drugs or the misuse of prescription drugs will be governed by the Trials and Appeals Article of the Police Officer and Superior Officer Collective Bargaining Agreements.

(S) ALCOHOL VIOLATIONS

1) Breath Alcohol Content (BAC) of between .02 and less than a .04

An officer who is confirmed positive for a Breath Alcohol Content (BAC) of between .02 and less than a .04 shall be disciplined in the following manner in addition to the requirements of the United States Department of Transportation (USDOT) and Federal Transit Administration (FTA):

a) The officer shall be either sent home or placed on restricted duty (without a firearm) for the remainder of their scheduled tour of duty at the discretion of the Police Department. The officer will be compensated for the remainder of their scheduled tour of duty.

b) An employee's first offense will result in a written warning and a mandatory evaluation by the Substance Abuse Professional (SAP) through the Employee Assistance Program (EAP). In the event the SAP recommends treatment the member will be obligated to comply with treatment recommendations as a term and condition of employment. The MTA will direct the SAP and the EAP to provide treatment recommendations that, to the extent possible, are covered by the employee's health insurance plan.

c) An employee's second offense will result in an immediate five (5) day suspension without pay and mandatory enrollment into a SAP recommended treatment program. The member will be obligated to comply with treatment recommendations as a term

period of six months shall begin. A confirmed positive result of .02 or greater will violate this probation and result in dismissal.

d) A third result of .04 or greater during the employee's career as a represented member of the Police Department will result in the immediate dismissal of the employee. The employer's disciplinary penalty of dismissal shall be final and binding and not subject to the grievance procedure of the collective bargaining agreement. The employee or the union may only grieve the validity of the result of the test.

3) **Four violations with Breath Alcohol Content (BAC) of .02 or greater**

An employee with four positive results for a BAC of .02 or greater will be dismissed from employment. The employer's disciplinary penalty of dismissal shall be final and binding and not subject to the grievance procedure of the collective bargaining agreement. The employee or the union may only grieve the validity of the result of the test.

4) **Refusal to take an Alcohol Test**

An employee who refuses to take an alcohol test as defined by the federal regulations governing the testing program shall be disciplined as if the employee were positive for a BAC of .04 or greater.

2. **SUPPLEMENTAL TESTING GUIDELINES AND PROCEDURES**

A) The parties agree that drug and alcohol testing of PBA members will take place at designated facilities. Those facilities currently include, but are not limited to, the LIRR Medical Office in Mineola, NY; the LI Bus Medical Office in Garden City, NY; and the MNRRT Medical Office in Manhattan, NY. These facilities may be expanded to meet the service needs of the Police Department.

B) Employees may utilize their health insurance benefit for alcohol dependency and substance abuse treatment, subject to the limits and normal deductibles of an employee's health insurance.

C) The MTA will assume the costs of administering the testing programs including the cost of testing the split samples for reconfirmation of the substance confirmed positive in the primary sample, return to duty tests, and followup tests.

D) The PBA Union office will be provided the testing location and scheduled start time of the random test by the Designated Employer Representative in advance of the scheduled start time. Union representatives will be designated as authorized to enter the testing sites used to conduct urine and breath collections to the extent allowed by the DOT and FTA regulations.

E) The MTA will only use evidential breath testing devices on the Conforming Products List for Instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705). All evidential breath testing devices will be maintained and calibrated to manufacturer's requirements. Documentation of maintenance and calibration of an EBT will be made available to the union for inspection upon request.

F) Supervisors may not determine there is reasonable suspicion to test an employee under the DOT and FTA regulations unless they have received the federally required training. A trained supervisor who determines that reasonable suspicion exists to test an employee will both verbally inform the employee of the physical observations that constitute their basis of reasonable suspicion and record their findings in writing.

G) The parties interpret the federal regulations to mean that members of the Department who do not carry a firearm for security purposes are not performing safety sensitive duties and therefore will not be subject to the US DOT/FTA alcohol and drug testing procedure. The MTA considers all members of the Department, on duty or taking law enforcement action off duty, within the MTA service Region, while carrying a firearm to be doing so for security purposes. The MTA considers members of the Department carrying a firearm off duty not to be performing a safety sensitive function unless they are taking law enforcement action within the MTA service region. Employees not performing safety sensitive duties on a daily basis such as employees assigned to training outside the MTA service area, employees absent from work for the day (i.e.: sick leave, jury duty, union release time, military leave, worker's compensation, vacation, etc.) and employees assigned to restricted duty assignments without a firearm, will remain in the random testing pool. The US DOT/FTA guidelines provide that these employees may only be tested if they are actually performing safety sensitive duties. Employees selected for random testing who are either assigned to non-safety sensitive duties for the duration of the work-day or are not performing safety sensitive duties for the duration of the work day will be considered unavailable for testing that day. The parties agree to be bound by any determinations of the US DOT or the FTA to the contrary.

H) Employees' required by the SAP of the EAP to participate in a rehabilitation program that requires their absence from work shall continue to be paid their scheduled hours of work as sick leave. An employee will be provided no more than six months of paid absence from work to participate in a treatment program. An employee requiring more than six months of absence from work to participate in a rehabilitation program mandated by the SAP of the EAP may continue their absence for an additional six months as an unpaid leave of absence. Employees will be allowed to use their paid leave banks to remain in pay status during this leave of absence.

IT IS THE PARTIES UNDERSTANDING THAT NONE OF THE PROVISIONS OF THIS AGREEMENT CONFLICT WITH THE FTA AND DOT REGULATIONS AS THEY CURRENTLY EXIST. IN THE EVENT THERE IS AN INADVERTANT CONFLICT OR THE REGULATIONS ARE AMENDED AND CONFLICT WITH THIS AGREEMENT THE PARTIES UNDERSTAND THAT THE FEDERAL REGULATIONS ARE CONTROLLING.

IN WITNESS WHEREOF the parties hereto signed this Memorandum of Agreement at New York, New York, on the ___th day of November, 2002.

For the
Metropolitan Transportation Authority

For the Police Benevolent Association

By: Margaret M. Connor
Margaret Connor
Director, Human Resources

By: Raymond G. Miller
Raymond G. Miller
President, PBA

Dated: November 12, 2002

Dated: November 7, 2002