SUBSTANCE POLICY: DRUGS/ALCOHOL

1. PRELIMINARY STATEMENT

This Procedure:

1.1 Sets forth Department policy concerning the use and possession of illegal drugs; use and possession of legally prescribed drugs in a manner or purpose other than that which is lawfully prescribed; and use and possession of alcohol by Department employees.

1.2 Sets forth prohibited conduct related to illegal drugs and alcohol.

1.3 Clarifies responsibility for enforcement of this policy.

1.4 Establishes conditions for mandatory testing for the presence of illegal drugs and/or alcohol.

2. POLICY

2.1 The mission of the New York City Fire Department (“FDNY” or the “Department”) Emergency Medical Service (“EMS”) Command is to provide timely, professional pre-hospital emergency medical care and transportation that is of the highest quality, administered with skill, compassion and dignity, to all who require such services within the City of New York. Additionally, the FDNY operates a 911 communications center to efficiently and effectively receive, prioritize, dispatch, and coordinate the response of resources to medical emergencies. The efficient performance of this mission demands the highest level of mental and physical fitness, stamina and alertness.

2.2 The lives of citizens and first responders are dependent upon the fitness, stamina and alertness of EMS employees. Drugs and alcohol alter alertness, judgment, physical agility and the ability to fulfill one’s work responsibilities. Any impairment of the employee’s physical and mental capabilities increases the danger of accidents and injuries, not only to the employee, but also to other first responders and to the public.

2.3 The FDNY must do all it can to ensure that its employees remain drug free. The Department believes that a random drug testing program is one of the most effective ways to deter Emergency Medical Service personnel from using such substances.

2.4 Accordingly, this procedure sets forth the Department's policy with respect to alcohol and illegal drugs. The purposes of this policy are as follows:

2.4.1 To ensure the safety of all employees.

2.4.2 To prevent accidental injury to persons or property caused by impaired ability.
2.4.3 To promote good health and job fitness of all employees.

2.4.4 To provide assistance to any employee who seeks the Fire Department's help in overcoming addiction to, dependence upon or problems with alcohol or drugs.

2.4.5 To maintain the reputation of the Fire Department and its employees as responsible public servants worthy of public trust.

2.5 All employees are required to be familiar with and to follow the policies and procedures set forth in this Operating Guide Procedure (“OGP”).

2.6 All employees must be cognizant that time is of the essence with respect to substance-related misconduct, and that their duties as set forth below in Section 7 must be fulfilled immediately.

2.7 Violation of this policy may result in disciplinary action up to, and including termination. A range of penalties is set forth in Section 9, below.

3. SCOPE

3.1 This policy is applicable to all members of the Department in EMS Titles.

4. DEFINITIONS

4.1 Alcohol: any substance, including medication that contains alcohol in any amount.

4.2 Illegal drugs include:

4.2.1 Marijuana (cannabis) as currently defined in Section 3302 of the N.Y.S. Public Health Law.

4.2.2 Any substance listed in Section 3306 of the N.Y.S. Public Health Law (including, but not limited to, amphetamines, anabolic steroids, barbiturates, cocaine, codeine, hashish, heroin, LSD, mescaline, methadone, methylenedioxymethamphetamine (ecstasy), morphine, narcotics, opiates, PCP, tranquilizers) that are:

A. obtained without a lawful prescription, or

B. used in a manner or for a purpose other than that which is lawfully prescribed.

4.2.3 Any substance used in a manner prohibited by Federal, State and local laws, rules and regulations.
4.3 **Level of alcohol that elicits a positive test result:** .05 of one percent or more by blood alcohol content as shown by chemical analysis of blood or if testing is by urine analysis, at a level of 50 mg/dl or higher.

4.4 **Levels of illegal drugs that elicit a positive test result:**

<table>
<thead>
<tr>
<th>Substance</th>
<th>Urine EMIT Test Level</th>
<th>Urine GC/MS Confirmation Test Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Methadone</td>
<td>300 ng/ml</td>
<td>300 ng/ml</td>
</tr>
<tr>
<td>2. Opiates</td>
<td>2000 ng/ml</td>
<td>2000 ng/ml</td>
</tr>
<tr>
<td>2.a. 6MAM (Heroin)</td>
<td></td>
<td>10 ng/ml</td>
</tr>
<tr>
<td>3. Cocaine</td>
<td>300 ng/ml</td>
<td>150 ng/ml</td>
</tr>
<tr>
<td>4. Barbiturates</td>
<td>200 ng/ml</td>
<td>200 ng/ml</td>
</tr>
<tr>
<td>5. Benzodiazepine</td>
<td>300 ng/ml</td>
<td>300 ng/ml</td>
</tr>
<tr>
<td>6. Darvon</td>
<td>300 ng/ml</td>
<td>300 ng/ml</td>
</tr>
<tr>
<td>7. PCP</td>
<td>25 ng/ml</td>
<td>25 ng/ml</td>
</tr>
<tr>
<td>8. Amphetamines</td>
<td>1000 ng/ml</td>
<td>500 ng/ml</td>
</tr>
<tr>
<td>9. THC</td>
<td>50 ng/ml</td>
<td>15 ng/ml</td>
</tr>
<tr>
<td>10. Methaqualone</td>
<td>300 ng/ml</td>
<td>300 ng/ml</td>
</tr>
</tbody>
</table>

4.5 Positive test result: A laboratory test result that is certified by the Medical Review Officer, or his or her designee, after reviewing the laboratory report and the completed Drug and/or Alcohol Testing Questionnaire (BHS-1 form) or the Random Drug Testing Questionnaire (T-1 form), as applicable.

4.6 Premises: any FDNY division or battalion office, firehouse, EMS facility, or other location owned, leased or operated by FDNY including parking facilities adjacent to such premises.

4.7 Substance: alcohol or illegal drugs as defined in Sections 4.1. and 4.2.

4.8 Substance Test: A test for the presence of alcohol and/or illegal drugs analyzed by a laboratory facility licensed by the New York State Department of Health to perform forensic toxicology and approved by the Department.

4.9 Use: any absorption, inhalation, injection or any other means of ingestion of alcohol or illegal drug(s).

4.10 Reasonable Suspicion: A determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, performance indicators, or body odors of the covered employee made by a Fire Department or other City Official.
5. PERMISSIBLE CONDUCT

5.1 It is not a violation of this policy for an EMS employee to possess, administer, transport or deliver controlled substances or be in possession of drug paraphernalia, so long as the employee is performing their official duties and has legal authorization to possess, administer, transport or deliver such substances or paraphernalia.

6. PROHIBITED CONDUCT

6.1 The following conduct by employees is strictly prohibited:

A. Use, positive test result, possession, attempted possession, sale, transport or delivery of any illegal drug as defined in Section 4 while on-duty or off-duty, or while in uniform, or while in any Department premises, property or vehicle(s), except as otherwise provided in Section 5.

B. Use, possession, sale, transport or delivery of any drug paraphernalia (e.g., hypodermic needles used to inject illegal substances) while on-duty, or while in uniform, or while in any Department premises, property or vehicle(s), except as otherwise provided in Section 5.

C. Use, positive test result, possession, sale, transport or delivery of alcohol or related paraphernalia (e.g., beer taps, beer kegs) while on-duty, or while in uniform, or while in any Department premises, property or vehicle(s).

D. Any use of prescription medications, illegal drugs or alcohol that can lead to impairment while on duty.

E. Refusal to cooperate in any substance test ordered by the Fire Department pursuant to this policy, including the completion and signing of any required forms.

7. DUTIES REGARDING SUBSTANCE POLICIES

Duties of All Employees

7.1 Every employee (who is on-duty or is off-duty and present in any Department premises, property or vehicle) who reasonably suspects or knows of a violation of this policy is required to report the violation immediately to the supervisor on-duty at the location of the violation or, if appropriate, to the next level supervisor. Any employee who fails to report a suspected or known violation of this policy shall be subject to disciplinary action.

Duties of All Supervisors

7.2 Every supervisor who is on-duty will be held accountable for ensuring the compliance of their subordinates with these policies. Failure on the part of supervisors to enforce these regulations will result in disciplinary action.
7.3 Every supervisor who reasonably suspects or knows that any employee has engaged in conduct prohibited by this OGP shall immediately:

A. Prohibit on and off-duty employees present at the time of discovery of any violation of this policy from leaving premises or the immediate area of the incident without permission of the investigating supervisor. If any employee is permitted to leave premises or the immediate area of the incident during an investigation, the investigating supervisor shall document the reason for the release in a report to be sent to the Chief of EMS Command via the chain of command.

B. Immediately relieve the on-duty employee(s) from emergency response duty.

C. Immediately have the affected unit(s) placed out of service.

D. Notify the Major Chief who shall designate an investigating supervisor or, if appropriate, the next superior officer.

E. Notify the Bureau of Investigations and Trials (“BIT”).

F. Complete an Unusual Occurrence Report (“UOR”) in accordance with OGP 102-01 (Unusual Occurrence).

7.4 Every supervisor who observes an employee exhibiting signs of alcohol or drug abuse listed in Section 10 of this OGP, shall consult with the Counseling Service Unit (“CSU”) and may refer the employee to the CSU.

Duties of Other FDNY Units and Personnel

7.5 After a suspected or known violation of this policy has been reported, EMS Command supervisors, Fire Staff Chief, other supervisors, Medical Officers, BIT and the Testing Unit are authorized to order testing for alcohol and/or illegal drugs. All testing ordered by an Officer, BHS, BIT or the Testing Unit may be conducted by BHS, BIT or the Testing Unit. All reasons for testing shall be properly documented by the person ordering the testing.

8. TESTING OF EMPLOYEES

All Employees

8.1 Employees may be ordered for testing by an EMS supervisor, Fire Staff Chief, BHS Medical Officer, BIT or the Testing Unit. Testing will be conducted according to the procedures set forth in Section 9.

The following employees shall be tested for the presence of illegal drugs and/or alcohol:

8.1.1 Every employee who has been arrested off-duty for any reason related to the prohibited conduct specified in Section 6.1.
8.1.2 Every employee whose on-duty conduct leads to a reasonable suspicion, as defined in Section 4.10 of this policy, that he or she is violating any provision of Section 6 of this policy.

8.1.3 Every employee who has been on disciplinary leave or suspension that resulted from (a) the alleged use or possession of alcohol (on-duty) or illegal drugs (on or off-duty), or (b) any violation of Section 6 of this OGP. BHS shall ensure that the testing takes place prior to the employee’s return to duty. Such testing may be conducted by BHS, BIT or the Testing Unit.

8.1.4 Every employee who has operated a Department vehicle that has been involved in a major motor vehicle accident as defined in OGP 107-03. The highest-ranking supervisor or Safety Battalion Chief who has responded to the accident shall ensure that the testing takes place in an expeditious manner and shall coordinate such testing with BIT or the Testing Unit. If any personnel required to be tested are immediately transported to a hospital, the Medical Officer on-duty shall ensure that the personnel transported are tested in an expeditious manner, and shall coordinate such testing with BIT, other required BHS personnel or the Testing Unit. The highest-ranking supervisor (or where applicable, the Medical Officer), shall document the reasons for the failure to test an employee in a written report to the Fire Commissioner and Chief of EMS Command.

8.1.5 Every Emergency Medical Technician, Paramedic, Lieutenant, Captain, Deputy Chief, Division Chief, Deputy Assistant Chief, Assistant Chief and Chief of EMS Command shall be subject to random drug testing.

8.1.6 Every employee who has signed an agreement to be tested for illegal drugs and alcohol, in accordance with the terms of such agreement.

8.2 PRE-TESTING PROCEDURES FOR EMPLOYEES WITH TESTING AGREEMENTS

8.2.1 Every employee who has signed an agreement to be tested for illegal drugs and alcohol in settlement of a disciplinary matter shall be tested according to the terms of the agreement at the discretion of the Department, without prior notice and in accordance with the testing procedures set forth in this policy.

8.2.2 After the start of the tour, Testing Unit personnel will verify that the selected employee is working. The employee is not to be notified until the tester arrives.

8.2.3 When the Testing Unit arrives at the work location, the supervisor on-duty shall direct the employee to report to the supervisor where the member will receive further instructions in connection with the testing to be administered. Employees subject to drug and alcohol testing pursuant to agreements with the Department may be tested while on-duty at any work location. Employees on light duty or administrative assignment, other than those assigned to Fire Department Headquarters, shall be tested at their respective work locations. Employees on light duty or administrative assignment at Fire Department Headquarters shall be tested at the Testing Unit.
8.2.4 Employees shall not make any public announcement over the intercom or otherwise regarding the arrival of the Testing Unit personnel assigned to conduct substance testing of employees.

8.3 RANDOM TESTING PROCEDURES

8.3.1 Selection Process

A. Using random-number-generating computer software, personnel from the Management Analysis and Planning (“MAP”) Unit shall generate a list of 50 names (numbered from 1 to 50) for each day of testing (“printout”). This selection process will be observed and certified by an employee of FDNY’s Compliance Unit. The MAP staff member and the Compliance Unit member present shall sign the printout. The printouts will provide the work location and tour information for each of the individuals selected.

B. MAP shall secure the printouts. A MAP staff member will then provide a copy of the printouts to the Deputy Commissioner for Legal Affairs or his or her designee within the Bureau of Legal Affairs in a sealed envelope with only the proposed testing date printed on the outside of the envelope in a timely fashion.

C. The Deputy Commissioner for Legal Affairs or his or her designee within the Bureau of Legal Affairs will have complete discretion to select the date and work tour for testing on an anonymous basis as to those being tested. Thus, the Deputy Commissioner or his or her designee within the Bureau of Legal Affairs must designate the work tour (Tour 1 - Night, Tour 2 - Day or Tour 3 - Evening), prior to being aware of the EMS employees selected for a particular day.

D. The Deputy Commissioner for Legal Affairs or his or her designee within the Bureau of Legal Affairs shall furnish the printout to the Testing Unit along with the date and work tour selected for testing.

E. Every employee who is on duty working that has been randomly selected for testing shall be tested as provided herein. Employees shall be deemed otherwise not available for testing if they are not on duty because of a regular day off, vacation, military or medical leave.
F. The first on-duty working employee selected randomly by this process and listed on the printout will be tested, unless due to exigent circumstances that employee is unavailable. If this occurs, the Testing Unit personnel will select the next employee on the printout, and proceed in this manner until identifying a working employee who is available for testing. If the employee selected for testing is working on an ambulance, that employee’s partner will also be tested. If the person selected for testing is not working on an ambulance, the Testing Unit may, after testing that person, continue down the list and test the next available person not working on an ambulance. If none of the 50 employees are available, then no random drug testing will occur. The Testing Unit will maintain records that an employee selected for testing was not available due to exigent circumstances or was otherwise not available for testing.

G. The employee listed on the printout will be deemed unavailable due to exigent circumstances if the employee’s unit is on assignment and does not transmit a 10-89, 10-97 or 10-98 signal within 90 minutes after the Testing Unit’s arrival at the testing location. If an employee’s unit does not transmit a 10-89, 10-97 or 10-98 signal within 90 minutes, then the Testing Unit will proceed to the next employee on the printout, as described in paragraph 8.3.1(F). The Testing Unit will maintain records as to the time of the Testing Unit’s arrival at the employee’s location.

H. The Testing Unit, MAP, and the Deputy Commissioner for Legal Affairs, and any other FDNY personnel shall maintain the printouts and designated test date and tours, in a manner that avoids prior notice to any unauthorized person. Unauthorized disclosure of such information will result in substantial penalties, up to and including termination.

I. Because the selection of employees is made on a random basis, some employees may never be tested during the course of a year, and other employees may be tested more than once.

8.3.2 Location Of Specimen Collection

**Testing of Working Employees** - Specimens may be collected at an EMS Station or other Fire Department facilities, such as the EMS Academy. In these circumstances, the Testing Unit will travel to the location of the EMS employee to obtain urine specimens. Upon arriving at the work location, the Testing Unit shall place the employee and his or her unit out-of-service. The Testing Unit will then contact the Resource Coordination Center (“RCC”) and indicate that the selected employee and his or her unit have been placed out-of-service while a specimen is collected from the randomly chosen employee. If the unit is in the field, on an available status, the Testing Unit shall request, via the RCC, that the subject unit be placed out-of-service and return to their Station/facility immediately. The RCC shall notify the respective Division/Deputy Chief and/or an on-duty Chief that the employee and his or her unit is out-of-service.
Testing of Off-Line Employees - For employees working in an off-line capacity, the Bureau Head of the unit where the selected employee is assigned will be instructed to inform the employee that he or she will be tested. Depending on the work location of the employee, Testing Unit personnel will either travel to the employee’s work location to collect the sample or the employee will be directed to report immediately to the Testing Unit for testing. If the employee is required to report to the Testing Unit, the Bureau Head is responsible for arranging for the transport of the selected employee to the Testing Unit and the return to his or her work location. In the event that the Bureau Head is unable to transport the employee, the Bureau Head will inform the Testing Unit and the Testing Unit will arrange for the transport.

8.3.3 Excusal From Random Drug Testing

Every employee selected for drug testing shall be tested on the date and at the time designated by the FDNY, pursuant to the procedures set forth herein. No employee’s request to be excused or re-scheduled (including emergency leaves), shall be granted without the approval of the Chief of EMS Command, except for the Chief of EMS Command. The Chief of EMS Command shall document all approved excusals. The Chief of EMS Command may only be excused or re-scheduled with the written approval of the Fire Commissioner.

8.3.4 Audit of Random Drug Testing

The Chief Compliance Officer shall periodically, but not less than six times a year, audit the selection, collection, and testing process.

8.4 GENERAL DRUG AND/OR ALCOHOL TESTING PROCEDURES

The Department shall test employees according to the following procedures.

8.4.1 Procedures for Specimen Collection

A. In all instances, the Department will make every effort to ensure the integrity of the testing procedure and the privacy and dignity of the employees being tested.

B. A request to an employee to provide urine or blood constitutes an order. Every employee shall comply with such orders. Employees must cooperate fully in providing urine or blood specimens and shall follow instructions given by a Department doctor, nurse, BIT personnel or Testing Unit personnel.

C. Trained personnel assigned to BIT or the Testing Unit will administer a urine test.

D. A doctor or a nurse assigned to the Bureau of Health Services (“BHS”) will administer any blood tests.
E. BHS, BIT or the Testing Unit shall confirm the identity of the employee being tested by checking the employee’s a) FDNY photo identification card, or b) a driver’s license that is valid in the State of New York.

F. Employees shall list on the Random Drug Testing Questionnaire (T-1 form) or the Drug and/or Alcohol Testing Questionnaire (BHS-1 form) a) all prescriptions, over-the-counter medications or dietary supplements ingested, inhaled or injected, or otherwise taken within the previous 96 hours; b) all food ingested within the previous 24 hours; and c) (BHS-1 form only) all substances containing alcohol consumed within the previous 24 hours. The information must be as specific and exhaustive as possible. Employees shall place the form in an envelope and seal the envelope. Where testing is conducted by BIT or the Testing Unit, BIT or the Testing Unit shall provide the sealed envelope containing the form to BHS.

8.4.2 Collection of Urine Samples

A. Prior to providing the specimen, the employee shall be given two collection bottles in sealed packaging. Employees shall provide enough urine for two samples, a total of approximately 60 milliliters of urine.

B. The employee being tested shall remove any outer garments (e.g., coat, jacket) that might conceal items or substances that could be used to tamper with a specimen. All personal belongings (e.g., purse, briefcase, pager, cellular phone, wallet) shall remain with any outer garments outside the stall where the specimen will be taken.

C. Every effort shall be made to prevent embarrassment to the person being tested by permitting the employee to provide his/her specimen in the privacy of a stall. For employees subject to random drug testing, every effort shall be made to preclude any person from directly observing the provision of the urine specimen. All other substance testing is conducted under direct observation by a staff member who is of the same sex as the employee who is providing the sample.

D. During random drug testing, the staff member supervising the test shall remain in the room, but outside the stall, until the specimen is provided.

E. In order to deter the dilution of specimens at the collection site, toilet-bluing agents shall be placed in the toilet tank or in the bowl by a member of BIT or the Testing Unit, so the water in the bowl remains blue while the specimen is provided.

F. The employee being tested shall be instructed not to flush the toilet until the specimen has been handed over to the staff member supervising the test.
G. The employee shall be given a reasonable amount of time to provide an adequate sample, up to two hours. During this time, the employee shall be permitted to consume water to assist in providing the specimen.

H. If, after two hours, the employee is unable to provide an adequate specimen for at least one sample, the employee will be immediately transported to BHS where a blood specimen shall be obtained. In the event that the testing must take place during evening or night tours, BHS personnel will travel to the employee’s place of work in order to obtain the blood specimen.

I. After providing the specimen and giving it to BIT or the Testing Unit staff, the employee being tested shall be permitted to flush the toilet, wash his or her hands and observe the chain of custody procedures.

J. If the staff member supervising the test has reasonable suspicion to believe that the employee providing the specimen has attempted to substitute a specimen or adulterate his/her specimen (including, but not limited to, abnormal color of the urine, particulate matter in the urine, or abnormal temperature of the urine), the staff member shall document the facts giving rise to that belief in writing and the employee being tested shall be directed immediately to provide another specimen under the direct observation of the staff member conducting the testing who is of the same sex, and both specimens shall be forwarded to the laboratory.

K. If the staff member supervising the test has expressed no reasonable suspicion, but the testing laboratory reports that the specimen has been adulterated, that fact shall provide the basis for disciplinary charges against the employee tested. If this occurs, the employee may be subject to additional testing under the direct observation of a Testing Unit staff member of the same sex.

L. Immediately after collecting the specimen the staff member supervising the test shall measure the temperature of the specimens and conduct a visual inspection to determine the specimen’s color and for signs of possible contaminants. Specimens shall be tightly capped, properly sealed with evidence tape and labeled in the presence of the employee tested who shall initial both the labels and any accompanying form(s). The BIT or Testing Unit shall transfer all urine specimens to the testing laboratory via courier. The storage, transportation and surrender of specimens to the laboratory for testing shall be under the strict supervision of the BIT or Testing Unit to maintain an unbroken chain of custody throughout the procedure.

M. Upon the request of the employee being tested, BIT, the Testing Unit or BHS shall provide a copy of any completed form(s) relevant to the test, including a copy of the chain of custody form to the tested employee.
8.4.3 FDNY Confirmation of Positive Test Results

A. Laboratory results will be reported to the Testing Unit.

B. The Testing Unit will provide all positive laboratory test results to the FDNY's Chief Medical Officer or his or her designated Medical Officer for review.

C. The Chief Medical Officer, or his or her designated Medical Review Officer, will review the positive laboratory test and the completed Random Drug Testing Questionnaire (T-1) form to determine whether or not the laboratory test result is positive. A test result will not be considered positive until the Chief Medical Officer, or his or her designated Medical Review Officer, certifies, by his/her signature, that such a result is correct. The Chief Medical Officer, or his or her designated Medical Review Officer, shall immediately notify the Assistant Commissioner of the Bureau of Investigation and Trials (“BIT”) of any positive test results.

8.4.4 Laboratory Procedures

A. Multiple procedures shall be conducted at recognized professional laboratories to assure the reliability of the results.

B. The laboratory shall test for illegal drugs as defined herein in Section 4.2., and/or for alcohol as defined herein. For random drug testing, the laboratory will only test for those illegal drugs listed in Section 4.4. The procedures employed shall include the Enzyme Multiplied Immunoassay Technique (EMIT) for urine and blood specimens.

C. The laboratory shall confirm all positive test results. The confirmatory test shall be different in technique and chemical principle from that of the initial test procedures to ensure reliability and accuracy. The authorized confirmation method includes the Gas Chromatography/Mass Spectrometry (GC/MS) for urine and blood specimens.

D. The Laboratory will also conduct tests on urine specimens to determine whether or not the sample has been adulterated.

E. The Department reserves the right to change the confirmation levels as the Department deems necessary.

8.4.5 Retention of Specimens

A. Positive specimens determined to contain drugs or alcohol will be preserved at the testing laboratory for a period of one year.

B. Negative specimens will not be maintained by the testing laboratory for more than two weeks.
8.4.6 Re-Testing Procedure

A. Any employee who has tested positive for any illegal drugs or for alcohol may, within 30 days of notification of such result, submit a Request for Drug and/or Alcohol Re-Test (T-3 Form) to the BIT or the Testing Unit, seeking that the specimen be re-tested by a laboratory other than the one that conducted the first test.

B. Such request shall be granted provided that:

1. The laboratory selected by the employee for re-test is certified by the New York State Department of Health and approved by the Department for such testing;

2. The employee had provided a specimen sufficient for additional testing;

3. The re-test by the second laboratory is performed solely at the employee’s expense;

4. The re-test by the second laboratory is performed on a specimen contributed at the same time as that specimen tested by the Department’s designated laboratory;

5. The specimen is transported directly from laboratory to laboratory without handling by the employee or any agent of the employee; and

6. The second laboratory provides the test results directly to the Department, which will notify

8.4.7 Record Retention

A. If the laboratory results are negative, the original copy of the results shall be retained in a file set aside for this purpose at the Testing Unit. However, no record of the testing shall be maintained in the individual employee’s personnel file.

B. If the laboratory results are positive, a copy of the results shall be retained by BIT or the Testing Unit and if retained by the Testing Unit, provided to BIT to use for disciplinary purposes.

8.4.8 Enforcement Of Testing Policy

A. The collection of specimens shall be administered by the BIT, or by the Testing Unit under the supervision of the Deputy Commissioner for Legal Affairs. Every employee who has been selected for testing shall participate and cooperate in the testing process, including following instructions of the BIT, Testing Unit and BHS personnel.
B. Any employee ordered to report to BIT, the Testing Unit or BHS for a drug and/or alcohol test shall do so on the date and at the time specified.

C. Any employee who fails to cooperate in drug and/or alcohol testing shall be subject to discipline, up to and including suspension and termination. Any employee who fails to report for drug and/or alcohol testing when ordered to do so shall also be subject to discipline, up to and including suspension and termination.

D. Any employee, who in any manner, interferes with the testing of another, shall be subject to discipline, up to and including suspension and termination.

E. Any supervisor who fails to cooperate in the drug and/or alcohol testing of any employee under his or her supervision shall be subject to discipline, up to and including suspension and termination.

F. Any employee who has tested positive for an illegal drug shall be disciplined, including suspension. The penalty for a first offense for both tenured and probationary employees is termination.

G. Any employee who has tested positive for alcohol while on-duty shall be disciplined, including suspension.

H. Any FDNY uniformed or civilian employee, who is found to have taken actions that result in prior notice to an unauthorized person, shall be subject to discipline, up to and including suspension and termination.

9. GUIDELINES FOR VIOLATIONS OF THIS POLICY

The Department regards violations of this Substance Policy as serious offenses, and has established penalty guidelines for its violation. These guidelines are designed to cover the most common infractions, but there may be cases that do not fit precisely within them. The Department reserves the right to depart from these guidelines as the exacerbating or extenuating circumstances of each individual case require. Moreover, settlement and testing agreements may contain additional conditions.

The following are guidelines only and are not meant to abrogate in any way the due process rights provided under the N.Y.S. Civil Service Law, the N.Y.C. Administrative Code or any applicable collective bargaining agreement. In addition, the Department's use of these guidelines will take into consideration any findings and recommendations made by an Administrative Law Judge after a N.Y.C. Office of Administrative Trials and Hearings trial, by a Hearing Officer after a disciplinary proceeding or by an arbitrator after binding arbitration.
9.1 **Suspensions**

**Pre-Penalty Administrative Action**

Employees may be suspended for up to thirty (30) days in the following situations:

- Any violation of Section 6 or 7 of this policy
- Positive test result for Illegal Drug or Alcohol (on-duty)
- Drug or Alcohol Related arrest
- DWI / DWAI arrest

9.2 **Any Violation of Section 6 of this Policy Relating to Alcohol**

*First Offense*: Up to 90 days pay, 2 years testing, referral to CSU, final warning for substance-related misconduct

*Second Offense*: Up to TERMINATION

9.3 **Positive Test Result for Illegal Drug/Refusal to Provide Specimen: Penalties**

*First offense*: TERMINATION

9.4 **Drug Related Arrest: Penalties**

Up to TERMINATION

9.5 **DWI / DWAI Convictions: Penalties**

*First Offense*: (not involving an accident or injuries):

15-30 days pay, 1 year of testing, referral to CSU, final warning for violations of substance-related misconduct

*First Offense*: (involving a motor vehicle accident, any injury or other aggravating factor(s)):

30 to 60 days pay, 2 years of testing, referral to CSU, final warning for violations of substance-related misconduct

*First Offense*: (resulting in the serious injury or death of any person):

Up to TERMINATION

*Second Offense*: Up to TERMINATION
Termination of Probationary EMS Personnel

9.6.1 A probationary employee of the EMS Command shall be terminated under the following circumstances:

A. Refusal to cooperate in a required substance test; or

B. Positive drug test indicating conduct prohibited by this policy.

9.6.2 A probationary employee of the EMS Command may be terminated for any violation of this policy.

POSSIBLE SIGNS OF ALCOHOL OR DRUG ABUSE

The following are some of the possible signs of alcohol or drug abuse. This list is not intended to be exhaustive, and is to be used as a guideline in assessing whether or not an employee has an alcohol or drug abuse problem. A supervisor may take one or more factors into consideration when making such a determination.

The most significant sign is a change in a person’s pattern of behavior.

Contact from Spouse or Other Family Member

A family member of an employee informs the Fire Department that the employee has an alcohol and/or illegal substance abuse problem, or that the employee is arriving to work under the influence of alcohol and/or an illegal substance.

Attendance

- Excessive sick leave
- Excessive lateness
- Excessive early departure

Vehicle Accidents

- Excessive off-duty auto accidents
- Excessive on-duty auto accidents

Physical Appearance

- Employee’s physical appearance has deteriorated (e.g., sloppy, unkempt, unshaven) when it was previously satisfactory
- Bloodshot Eyes
- Significant Weight Loss
• Drowsiness
• Vein Inflammation and Scarring
• Increased Smoking
• Always looks tired or worn out
• Wears sunglasses indoors
• Smells of Alcohol or Marijuana
• Unsteady gait
• Extremities shake

10.5 Work Related Conduct

• Inability to meet minimum requirements of job (e.g., employee fails to provide basic care to a patient or there are repeated delays in responding to incidents)
• Engages in unduly or unnecessarily dangerous behavior during emergency operations
• Suffers injuries when not engaged in emergency operations (e.g., while waiting in a vehicle or at a Station)
• Work performance is progressively poorer, but employee may sporadically demonstrate prior performance level
• Difficulty in concentrating, memory lapses
• Reports are inaccurate
• Overall performance may be unsatisfactory
• Repeatedly engages in misconduct
• Employee is accused of stealing by co-workers
• Based on past conduct, employee is not trusted to act in a safe manner during emergency operations

10.6 Interaction With Co-Workers and Supervisors

• Violent behavior
• Slurred speech
• Avoids contact with supervisors
• Avoids co-workers he/she was once friendly with

• Resents criticism

• Blames mistakes on others and poor equipment

• Inability to get along with other employees

• Increased talkativeness or hyperactivity

• Expression of anger/guilt

• Ignores directions of supervisors

• Unexplained or unusual reasons for not performing tasks at operations or for following directions of supervisors

10.7 **Personal Traits**

• Drowsiness

• Nervousness

• Tense and withdrawn

• Depression

• Irritability

• Lack of ambition

• Lack of motivation

• Lack of concentration or coordination

• Memory Loss

• Loss of appetite

• Euphoria

• Lethargy

• Belligerence
10.8 Personal Problems That Become Evident

- Employee receives calls, letters or legal papers from creditors at his or her place of employment
- Employee’s paycheck is subject to deductions from creditors or for child support
- Employee receives an order of protection at his or her place of employment
- Strained personal relationships are observed (e.g., when involved in personal telephone calls, employee exhibits hostility towards the party with whom he or she is speaking)
- Neighbor or member of the public calls the employee’s place of employment to complain about the employee
- Employee is arrested

BY ORDER OF THE FIRE COMMISSIONER AND CHIEF OF DEPARTMENT