

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking on Regulations
Relating to Passenger Carriers, Ridesharing, and
New Online-Enabled Transportation Services.

R. 12-12-011

**REPLY COMMENTS TO UBER TECHNOLOGIES, INC. RESPONSE TO ALJ'S ORDER TO
FILE AND SERVE ITS US SAFETY REPORT FOR 2017-2018 AND TO ANSWER
QUESTIONS REGARDING ALLEGED SEXUAL ASSAULT AND SEXUAL MISCONDUCT
INCIDENTS**

JEFFREY P. TUMLIN
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94013
(415) 701-4720

IVAR C. SATERO
Airport Director
San Francisco International Airport
International Terminal, 5th Floor
P.O. Box 8097
San Francisco, CA 94128
(650) 821-5006

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I. INTRODUCTION

In response to the December 19, 2019 Administrative Law Judge’s Ruling Ordering Uber Technologies, Inc. to File and Serve Its U.S. Safety Report for 2017-2018 and to Answer Questions Regarding Alleged Sexual Assault and Sexual Misconduct Incidents (“Ruling”), the San Francisco Municipal Transportation Agency (“SFMTA”) and the San Francisco International Airport (“Airport” or “SFO”), collectively “the City”, submit this response to Uber’s January 30, 2020 response.

II. COMMENTS

The comments below are made in response to issues raised by the US Safety Report, and also include other issues that the Commission should monitor. The City is very concerned about the high number of sexual assaults that were reported by Uber last year, as well as the nine reported murders and fifty-eight reported deaths.¹ As the City has articulated in past comments, “TNC customers and members of the public assume that TNC drivers are not sexual predators, violent felons or reckless drivers. They assume that if the government or a TNC company says the drivers are safe, then the drivers are safe. But hundreds of TNC customers in the United States have discovered their assumptions were wrong.”² The City urges the Commission to reconsider Decision 17-11-010 and require TNC drivers to submit to biometric-based criminal history records checks before driving members of the public. The State Legislature has made clear that the Commission has the authority to adopt additional standards that do not conflict with AB 1289.³

Uber’s U.S. Safety Report for 2017-2018 states that every U.S. driver undergoes a “thorough criminal history background check.”⁴ This is simply not true and misleads the public. In California, Uber simply contracts with a third-party vendor – Checkr – to conduct a background check after an initial motor vehicle review that verifies the status of a driver’s motor vehicle license, reviews the individual’s *driving* history, and checks whether the driver is subject to any *driving*-related restrictions.⁵ This process does not identify prior criminal convictions for disqualifying offenses. If

¹ <https://www.nytimes.com/2019/12/05/technology/uber-sexual-assaults-murders-deaths-safety.html>

² See, Opening Comments of San Francisco International Airport and the San Francisco Municipal Transportation Agency to Phase III.B Scoping Memo and Ruling of Assigned Commissioner Track 1 – Background Check Requirements, page 1.

³ See, Decision 17-11-010, page 2.

⁴ See, Uber’s U.S. Safety Report for 2017-2018, page 20.

⁵ *Id.* at page 21.

the Commission is truly concerned about public safety, the City urges it to adopt the background-check protocols articulated in the City's previously filed comments because the commercial background investigation firm that Uber uses fails to detect criminal histories for drivers who have disqualifying criminal histories.⁶

The role of the regulator is to enforce and administer programs that the regulator is charged with overseeing. Passenger safety should be an essential part of this role. While it is good to see that the Commission takes passenger safety seriously and it is laudable that the U.S. Safety Report was released, this is not enough. The Commission should develop best practices to ensure public safety and consumer protection. This would include requiring TNC drivers to submit to biometric-based criminal history records checks. The City also agrees with Uber - that *all* TNCs should share this type of information with both the Commission and the general public.⁷

Uber asks for input from all stakeholders regarding establishing best practices to monitoring safety. Best practices for safety include both the safety of passengers and drivers, while protecting the personal privacy for those involved. As the regulator of taxi cabs operating in San Francisco, the SFMTA fields complaints from the public, including riders and other users of the City's streets. The SFMTA has regulatory authority over taxi drivers, taxi companies and medallion holders. While the Airport does not regulate taxis and cannot prohibit errant taxi drivers from coming to the Airport, it routinely suspends taxi drivers from picking up passengers if drivers engage in inappropriate conduct, such as fighting or charging unauthorized fees. Under SFMTA's authority, the agency may impose monetary penalties or other penalties such as permit suspension or revocation on taxi drivers who violate the terms of their respective permit to ensure public safety and consumer protection. As the regulator of TNCs, SFMTA urges the Commission to employ additional methods to increase public

⁶ See, Opening Comments of San Francisco International Airport and the San Francisco Municipal Transportation Agency to Assigned Commissioner's Ruling Inviting/Instructing Party Comments on Background Checks of Prospective Transportation Network Company Drivers, p. 9-10, Appendix A, and Reply Comments of San Francisco International Airport and the San Francisco Municipal Transportation Agency to Assigned Commissioner's Ruling Inviting/Instructing Party Comments on Background Checks of Prospective Transportation Network Company Drivers, page 1 (two Uber drivers who had previous convictions for sex crimes gave 8,870 rides to consumers including unaccompanied children).

⁷ See, Response of Uber Technologies, Inc. to the December 19, 2020, ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve its US Safety Report, page 1.

safety and consumer protection. We believe that the benefits of the additional safety measures described below outweigh any of the costs associated with implementing them.

A. THE CITY'S BEST PRACTICES IN REGULATING TAXIS

The SFMTA has developed the following best practices to regulate taxi companies and their drivers to ensure public safety and consumer protection. Several of these best practices could easily be adopted by the Commission to further strengthen its regulatory role in ensuring the safe operations of TNCs.

1. Fingerprint Background Checks and Drug Screening

As discussed above, the City previously urged the Commission to require TNC drivers to undergo fingerprint-based criminal background checks that reveal past criminal convictions, just as San Francisco taxi drivers do. Unlike Social Security numbers, fingerprints cannot be forged or stolen. Given that neither fingerprint-based criminal history records nor background checks based solely on driver names and Social Security numbers are always complete, the City urges the Commission to adopt a hybrid solution, employing both fingerprint-based and driver name-based criminal background checks. Each has benefits and drawbacks, so employing both will ensure the most accurate results. Unlike a social security number, fingerprints cannot be faked, ensuring accurate identification. On the other hand, commercial background checks are more comprehensive, providing broader sources. Taken together, the hybrid solution will better protect members of the public.

In San Francisco, taxi drivers must undergo fingerprint-based background checks in order to apply to become a driver. The fingerprint-based background checks accesses both the CA DOJ database and the FBI's criminal database, which ensures that applicants' criminal histories are checked even if they have used aliases in the past. Fingerprinting also provides the SFMTA with Subsequent Arrest Notifications in the event a driver is later arrested, ensuring that public safety is continually protected by alerting the SFMTA when a taxi driver, who may have passed an initial screening, is subsequently arrested. Without this type of notification, regulators would be unaware of taxi drivers who have been arrested and accused of serious crimes. Upon notification of a subsequent arrest, SFMTA interviews the driver and takes action if appropriate, mindful of the critical distinction between an arrest and a conviction. Given the much larger number of TNC drivers compared to taxi

drivers, a hybrid criminal background check procedure would better help with screening out applicants with criminal histories who may otherwise be eligible to work as a TNC driver.

While the Commission has a zero-tolerance policy regarding drug and alcohol use, the results of an investigation into Uber's drivers revealed that, for 154 complaints related to drug or alcohol use received from the public including passengers, the vast majority of Uber drivers were neither suspended nor were the complaints Uber received investigated.⁸ San Francisco taxi drivers must also undergo drug and alcohol testing when they first apply and annually before their taxi driver permit is renewed. Should a driver fail a test, the driver is given the opportunity to undergo a substance abuse treatment program to become eligible to drive again. SFMTA has implemented a Taxi Driver Drug and Alcohol Testing Policy that provides clear guidelines for drivers who test positive for either drugs or alcohol. (See, Exhibit A.) SFMTA may also require testing based on reasonable suspicion between annual tests if appropriate.⁹ This standard is in alignment with California Vehicle Code requirements for Controlled Substances and Alcohol Testing, which is compliant with Federal Transportation Administration standards. Annual testing for drug or alcohol use coupled with the ability to require testing based on reasonable suspicion protects both passengers and the general public.

2. Ensuring Driver Compliance with Drive Time Limits

California Vehicle Code §21702 sets limits on the amount of time a person may drive a vehicle for hire.¹⁰ SFMTA reviews taxi driver driving times to ensure that drivers are in compliance with state law, regardless of which company or combination of companies for whom the driver may drive. If taxi companies were given the responsibility for self-monitoring the drive times for their respective drivers, drivers who work for more than one taxi company could easily avoid detection – which is currently the situation with respect to TNC drivers. TNCs are well aware that their drivers typically drive for the competition as well.

⁸ <https://www.cpuc.ca.gov/cpucblog.aspx?id=6442459448&blogid=1551>

⁹ See, Exhibit B, page 37, Section 7.2.3

¹⁰ **Driving Time Limits:** TNC drivers are prohibited from transporting passengers for compensation for more than 10 consecutive hours or for more than 10 hours spread over a total of 15 consecutive hours. After that period has elapsed, the driver must rest for at least 8 hours. In addition, compensated drivers cannot drive for more than 10 hours in a 24-hour period without an 8-hour rest.

On July 27, 2017, the SFMTA wrote to the Commission expressing serious concern regarding the public safety of citizens of and visitors to San Francisco citing numerous reports detailing how many TNC drivers were routinely exceeding the maximum amount of drive time permitted under Vehicle Code section 21702. (*See*, Exhibit B.) The letter pointed out the SFMTA’s concern about TNC drivers having insufficient sleep and becoming drowsy behind the wheel while working.

According to the Centers for Disease Control and Prevention, drowsy driving is a major safety problem in the United States.¹¹ The California Office of Traffic Safety points out that drowsy driving is similar to drunk driving.¹² According to the AAA Automobile Club, drowsy drivers are involved in 20% of fatal collisions in the United States.¹³ The risk of a serious collision increases every hour that a TNC driver continues to operate.¹⁴ Allowing overworked and tired drivers to drive puts public safety at risk. The Commission’s lack of regulatory enforcement to prevent this behavior from occurring is akin to allowing drunk drivers to continue to drive. The City urges the Commission to monitor drive time limits for TNC drivers across all platforms to ensure that drive time restrictions are enforced.

3. In-Vehicle Cameras

San Francisco regulations require a camera to be installed in any vehicle. The camera provides a measure of protection for both the driver and the passenger. Improper behavior by the taxi driver is recorded and the SFMTA can corroborate allegations made against the driver by reviewing the video recording. Drivers also receive a measure of protection because a video may exonerate a driver who may not have committed an alleged improper act. A camera may also provide evidence of a crime committed against a driver by a passenger. Cameras also act as a deterrent because the actions of both parties inside the vehicle are recorded. As full-time drivers, subject to drive time limits, taxi drivers spend a full week driving on the road, and camera recordings can assist drivers when they are not at fault for a vehicle collision. Conversely, if a taxi driver is at fault, camera recordings provide the members of the general public with evidence of such behavior, protecting innocent parties. Use of

¹¹ <https://www.cdc.gov/features/dsdrowsydriving/index.html>

¹² <https://www.ots.ca.gov/media-and-research/campaigns/drowsy-driving/>

¹³ <https://newsroom.aaa.com/2014/11/one-five-fatal-crashes-involve-drowsy-drivers/>

¹⁴ https://www.sfmta.com/sites/default/files/reports-and-documents/2018/05/5_sfmta_18-0207_cpuc_resolution_m-4831_puctra_user_fees.docx_2.pdf

dash cameras is widespread and no longer cost prohibitive to the average driver. Further, dash camera technology now uses cloud storage, giving the Commission and TNCs the ability to acquire video remotely from anywhere in the state. Dash camera usage has greatly increased and SFMTA urges the Commission to require that TNCs have a camera in every vehicle which is recording while the TNC is picking up or dropping off passengers, require TNCs to collect and retain video recordings with respect to any customer complaint, and make that video available to the Commission as warranted.

4. Complaint Investigations and Due Process

All complaints regarding taxis operating in San Francisco are investigated, including complaints by riders, members of the general public who are not passengers, other drivers, bike riders and pedestrians. The public is able to file a complaint about through multiple channels - by phone or online through 311, directly with the taxi company, via SFMTA's website, or email. In addition to fare information and vehicle ID, information on how to lodge a complaint is posted in multiple locations inside all taxi vehicles operating in San Francisco.

Complaints are investigated regardless of whether the complaint is anonymous or if the complainant is identified. During the complaint investigation, the privacy of complainants who do identify themselves is protected from disclosure.

After a complaint about a taxi is received, SFMTA conducts an investigation. The investigator interviews the complainant (if the complaint is not anonymous), the driver, and any other witnesses. Any video recordings of the incident are also reviewed, after which a determination is made as to whether a permit violation has occurred. If potential criminal activity is detected, the complaint is referred to the San Francisco Police Department. Any evidence gathered by the SFMTA is also provided to the police. SFMTA urges the Commission to adopt similar procedures to afford members of the public the opportunity to file complaints with the Commission and for the Commission to investigate those complaints in order to provide both passengers and the public a more transparent complaint investigation process.

Should a taxi driver receive an administrative citation for violating permit terms of their permit or medallion, they are provided with the opportunity to appeal the citation to a neutral hearing officer. Hearing procedures have been codified, and the SFMTA has the burden to prove the allegations by a

preponderance of the evidence. After conducting a hearing in which the accused is afforded the opportunity to testify and present evidence, the hearing officer issues a decision either overturning the citation or upholding it.

When the nature of the permit violation involves permit revocation, permit holders are afforded an additional level of review before the San Francisco Permit Board of Appeals, an independent body charged with reviewing permit appeals.

B. ADDITIONAL IMPROVEMENTS

1. Permitting Process

The Commission's TNC regulations focus on issues such as vehicle safety, background checks, insurance and consumer protection. In regulating tour and charter buses, the Commission takes public comment both when it is considering general rules for prospective applications and when it considers individual permit applications. These types of permits are typically issued for a specific geographic area.

In contrast, for TNCs the Commission takes public comment about general rules for prospective applications but does not accept public comment on individual TNC permit applications. TNC permit applications are considered and approved through an internal administrative process. TNC permits are also issued on a statewide basis, without accounting for differences in different market areas. The City urges the Commission to allow public comment on TNC permit applications and add transparency to the process for issuing and renewing TNC permits. Allowing public review and input would provide the Commission with information relevant to the safety of TNC passengers and the Commission could impose company-specific conditions that may be appropriate to address any risks that may be relevant to a particular applicant.

2. Regulating TNC Driving Behavior and Passenger Pick-Ups and Drop-Offs

TNC Driving Behavior

The rating system that TNCs themselves have established to determine which drivers are eligible to drive leads to unsafe behavior on the part of Participating Drivers. TNCs encourage every passenger to rate the driver for each ride, and negative ratings can lead to the driver being blocked

from using the platform. The rating system established by TNCs incentivizes dangerous driving maneuvers, such as making dangerous mid-block U turns, speeding, or driving in a transit-only lane, because Participating Drivers do not want to receive a negative rating. CPUC regulations for TNCs provide little to no TNC accountability for TNC Participating Driver behavior. The enforcement mechanism for this type of behavior is a moving violation issued to the Participating Driver themselves, with no accountability or responsibility given to the TNC. The result is Participating Drivers take unnecessary risks to achieve a high rating, subjecting themselves to moving violations, while the TNCs themselves face no consequences.

Safe & Legal Pick-ups and Drop-offs

In California, the TNCs generally do not provide any guidance to passengers regarding safe locations to for pick-ups or drop-offs. As a result, TNCs represent a disproportionate percentage of passenger loading and unloading problems in San Francisco. TNC drivers often pick up and drop off in in the middle of the street, at bus stops, in bike lanes, in travel lanes, or at other unsafe locations. The haphazard loading and unloading of passengers leads to additional safety challenges not only for the passenger but for other street users as well including (1) bicyclists who must exit bike lanes to maneuver around a stopped TNC, (2) other drivers who must deal with sudden stops and sudden reentry into traffic by TNCs, and (3) pedestrians who have to leave crosswalks to walk around stopped TNCs. The Commission should institute a discretionary permit review and seek public comment on triennial TNC permit renewal applications, as well as seeking input from other public agencies on issues including but not limited to rates of parking and traffic violations, rates of traffic collisions resulting in injury or death, rates of speeding, illegal U-turns or other moving violations that put the general public at risk, TNC methods for incentivizing good driving behavior, TNC methods for educating passengers about safe and legal loading locations, methods to ensure Participating Driver compliance with drive time limitations, methods to protect passenger and driver safety, and methods to prevent unlawful discrimination against Participating Drivers and passengers.

The expectation from passengers is that a TNC must stop to the precise location requested, regardless of whether that location is safe or legal to load or unload. This is not a safe business practice at all. Because airports are permitted to control their roadways, SFO moved TNC passenger

pick-ups to a central parking garage because of the congestion the TNCs were causing, which the Airport was concerned would lead to a safety issue.¹⁵ The Commission should partner with congested urban entities to require TNCs to communicate to both drivers and customers within their service app the expectation that customers will be picked up and dropped off in safe and legal stopping locations. The Commission should require TNC permittees to “geofence” unlawful pick up and drop off locations and should impose penalties for failure to inform drivers and passengers and for failure to enforce geofenced restrictions.

III. CONCLUSION

For the reasons set forth above, the City urges the Commission to strengthen its regulations to ensure the safe operations of TNCs by adopting the best practices used by the City for taxis, updating the TNC permit process to add greater accountability and transparency, and considering the safety of TNC driving behavior, including pick up and drop off activities, in CPUC permitting decisions.. Doing so would serve the Commission’s mandate to protect the public by ensuring that adequate and necessary regulations are in place while protecting the privacy rights of TNC passengers and drivers alike.

¹⁵ <https://www.sfchronicle.com/travel/article/SFO-Uber-Lyft-pick-ups-13807067.php>;
<https://www.rideshareconnection.com/passengers-guide-uber-lyft-pickups-drop-offs-sfo/>

Dated: February 20, 2020

Respectfully submitted,

By: _____ /s/
Jeffrey P. Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

By: _____ /s/
Ivar Satero
Airport Director
San Francisco International Airport

EXHIBIT A

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA) TAXI DRIVER DRUG AND ALCOHOL TESTING POLICY

1.0 PURPOSE

The purpose of this Policy is to assure Driver fitness for duty, and to protect the public from the risks posed by the use of Alcohol and Prohibited Drugs (as defined below) by: 1) taking appropriate action to assure that the City's Taxi Drivers are not impaired in their ability to perform in a safe, productive, and healthy manner; 2) encouraging Taxi Drivers to voluntarily seek professional assistance whenever personal problems, including alcohol or drug use, may adversely affect their ability to perform.

California Government Code section 53075.5 requires local entities regulating taxicabs to adopt a mandatory controlled substance and alcohol testing certification program with procedures that substantially comply with applicable regulations in Part 40 and Part 382 of Title 49 of the Code of Federal Regulations (CFR). This Taxi Driver Drug and Alcohol Testing Policy ("Policy") incorporates these federal requirements for Drivers, as well as other provisions, as noted. Compliance with this Policy and participation in the testing program is a requirement of each Taxi Driver and therefore is a condition of the Driver permit.

2.0 DEFINITIONS

2.1 Accident. An accident involving a taxicab in which:

- A. A person dies; or
- B. Within eight hours of the accident the Driver receives a citation under State or local law for a moving traffic violation arising from the accident, and 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. Disabling Damage to one or more vehicles as a result of the accident that required the motor vehicle to be transported from the scene by a tow truck or other motor vehicle.

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

2.3 Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low

molecular weight alcohols including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)

2.4 Breath Alcohol Technician. A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

2.5 Cancelled Test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

2.6 Dilute Specimen. A specimen with creatinine and specific gravity values that is lower than expected for human urine.

2.7 Direct Observation. Collection of a urine specimen performed while under the observation of a collector of the same gender as the individual providing the specimen, under the circumstances and according to the provisions set forth in 49 CFR Section 40.67.

2.8 Disabling Damage. Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

A. *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

B. *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers that make them inoperative.

2.9 DOT. The United States Department of Transportation.

2.10 DOT Procedures. "Procedure for Transportation Work Place Drug Testing Programs" published by the Office of Secretary of Transportation in 49 CFR Part 40.

2.11 DOT Regulations. Alcohol and Controlled Substances Testing Regulations

published by the Secretary of Transportation in 49 CFR Part 382.

2.12 Invalid Drug Test. The result of a drug test or a urine specimen that contains an unidentified adulterant or an unidentified substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

2.13 Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by a drug testing program and evaluating medical explanations for certain drug test results.

2.14 Non-negative Drug Test. A test result found to be Adulterated, Substituted, Invalid, or positive for drug/drug metabolites.

2.15 Performing (a Safety-Sensitive Function). A Covered Driver is considered to be Performing a Safety-Sensitive Function at any time in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

2.16 Positive Drug Test: A test result found to be Adulterated, Substituted, Invalid, or positive for Prohibited Drug/Prohibited Drug metabolites.

2.17 Positive Alcohol Test: A test revealing an Alcohol concentration of 0.04 or greater.

2.18 Primary Specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

2.19 Prohibited Drugs. The following substances: marijuana, amphetamines, methylenedioxymetamphetamine (MDMA), methylenedioxyamphetamine (MDA), opiates, phencyclidine (PCP), and cocaine.

2.20 Refuse (Refusal) to Submit. A refusal to take a drug test as set out in 49 CFR Section 40.191 or an Alcohol test as set out in 49 CFR Section 40.261.

2.21 Safety-Sensitive Function. All time from the time a Driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-Sensitive functions shall include:

- A. All time at company facility, or other property, or on any public property waiting to be dispatched, unless the Driver has been relieved from duty by company;

- B. All time inspecting equipment or otherwise inspecting, servicing, or conditioning any Taxi at any time;
- C. All time spent at the driving controls of a Taxi in operation;
- D. All time, other than driving time, in or upon any Taxi;
- E. All time loading or unloading a taxicab, supervising, or assisting in the loading or unloading of passengers, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for or compensation from passengers; and
- F. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

2.22 Service Agents. Any person or entity, other than the SFMTA or a Taxi Company, who provides services specified in 49 CFR Part 40 in connection with the drug and Alcohol testing requirements specified in this Policy. This includes, but is not limited to, collectors, Breath Alcohol Technicians, laboratories, TPAs, MROs, and SAPs.

2.23 Split Specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the Driver requests that it be tested following a verified positive test of the Primary Specimen or a verified Adulterated or Substituted test result.

2.24 Substance Abuse Professional (SAP). A licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders who evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

2.25 Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

2.26 Taxi Company. A Color Scheme Permit Holder as defined in Transportation Code Article 1100.

2.27 Taxi Driver; Driver. A Taxi Driver who holds an “A-Card” or “Driver Permit” issued by the SFMTA to operate a taxi or ramp taxi in the City.

2.28 Third Party Administrator (TPA). A contractor hired by the SFMTA to administer

all aspects of the Taxi Driver drug and alcohol testing program.

3.0 APPLICABILITY

This Policy applies to all Taxi Drivers regulated by the SFMTA. Under this Policy all Taxi Drivers will be subject to pre-permit, permit renewal, reasonable suspicion, post-accident, return-to-duty and follow-up testing for Prohibited Drugs, and to reasonable suspicion, post-accident and return-to-duty and follow-up Alcohol testing. This Policy will be applied in an unbiased and impartial manner.

4.0 OPPORTUNITIES FOR REHABILITATION

4.1 Rehabilitation After a Positive Alcohol or Drug Test. When a Taxi Driver tests positive for Prohibited Drugs or over 0.04 for Alcohol, the SFMTA will suspend the Driver's A-Card, and the Third Party Administrator will refer the Driver to a SAP. If a Driver wishes to return to work as a Taxi Driver, he/she must properly follow the rehabilitation program prescribed by the SAP. The SAP will provide a written release to the Third Party Administrator certifying the Driver's eligibility to be considered for return to work only after the Driver has signed a return-to-work agreement. The return-to-work agreement shall outline the terms and conditions of continuing care and follow-up drug testing, which shall be the terms and conditions under which the SFMTA lifts the suspension of the Driver's A-Card.

The requirements for referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a permit issuance drug test or who test positive for Prohibited Drugs on a permit issuance test.

4.2 Cost of Rehabilitation. The SFMTA will not pay for the SAP's services, or for rehabilitation services, and will not require Taxi Companies to pay for such services. Instead, Drivers will be responsible for the cost of such services.

5.0 PROHIBITED SUBSTANCES

"Prohibited Substances" addressed by this Policy include the following:

5.1 Prohibited Drugs. No Taxi Driver will work under the influence of Prohibited Drugs. Any Taxi Driver discovered to be in violation of these prohibitions is required to cease operation of the taxicab immediately.

5.2 Alcohol. The possession and consumption of beverages containing Alcohol, or

substances, including any medication, containing Alcohol such that Alcohol is present in the body while Performing Safety-Sensitive Functions as a Taxi Driver, is prohibited

5.3 Legally Prescribed and Over-the-Counter Drugs. Prescriptions and over the counter drugs can adversely affect a Driver's job performance. However, the use of Legally Prescribed Drugs and over-the-counter drugs is permitted under the circumstances below. Legally Prescribed Drugs include those drugs approved and authorized by a physician for use during the course of medical treatment. For prescription drugs, the physician must issue a written prescription that clearly indicates the Driver's name, drug type, and proper dosage. If a Driver is taking prescription and/or over the counter drugs, he/she must obtain a signed note from a physician that the use of this drug(s) at the prescribed or authorized dosage is consistent with the safe performance of the Driver's duties. This note must be presented to the Taxi Company before driving a taxi. The authorized use of Legally Prescribed Drugs does not include the use of prescribed Prohibited Drugs.

In the event it is determined by the MRO that a Driver is taking or is under the influence of a prescribed medication that will reasonably impair the Driver's ability to safely and adequately perform their job, the Driver will not be allowed to drive until the condition requiring the taking of the medication is resolved or the Driver is no longer taking the medication.

6.0 PROHIBITED CONDUCT

6.1 Alcohol Use/Hours of Compliance. The following applies to the consumption of Alcohol by Taxi Drivers:

- A. No Taxi Driver should report for duty or remain on duty when his or her ability to perform Safety-Sensitive Functions is adversely affected by Alcohol while on duty or when his or her blood alcohol concentration is 0.04 or greater.
- B. No Taxi Driver shall use alcohol while on duty or while driving.
- C. No Taxi Company supervisor, manager, or other employee who has actual knowledge that any Driver Performing Safety-Sensitive Functions has an Alcohol level of .04 or greater, is using Alcohol while Performing Safety-Sensitive Functions, has tested positive for Alcohol, has used Alcohol within four hours prior to Performing a Safety-Sensitive Function, or has Refused To Submit to testing, shall not permit the Driver to perform or continue to Perform a Safety-Sensitive Function..
- D. No Driver shall drive within four hours after having consumed Alcohol.
- E. After an Accident, a Driver shall refrain from Alcohol use for eight hours or until a post-Accident alcohol test has been administered, whichever comes first. This prohibition relating to Alcohol includes over-the-counter medications and medical prescriptions that contain Alcohol. Drivers are advised to notify their physicians at the

time medication is prescribed as to be in compliance with the work place requirement to avoid Alcohol consumption in any form.

6.2 Prohibition Against Driving. No Taxi Driver shall Perform a Safety-Sensitive Function under the following circumstances:

- A. After testing positive or Refusing to Submit to Testing, a Taxi Driver shall not perform their functions unless he or she is referred for evaluation and testing, is approved and authorized to return to duty by a SAP, and the SFMTA has lifted the suspension of the Driver's A-Card.
- B. No Driver who has a Prohibited Drug or Alcohol testing violation shall Perform a Safety-Sensitive Function. No Taxi Company shall permit a Driver who has such a violation to perform any driving duties.
- C. If a Taxi Driver's drug test is reported as "negative dilute," the Taxi Driver will be immediately sent for another drug test. If the second test result is negative dilute, the result will be accepted and no further testing will be performed, unless directed by the MRO. Certain Dilute specimens may require retest under Direct Observation under 49 CFR Part 40. A required Direct Observed test will be performed by a person of the same gender as Driver.
- D. A Taxi Company must remove a Taxi Driver from his or her duties until the start of his or her next regularly scheduled duty period, but not less than 24 hours following administration of the test, if the Taxi Driver has a confirmed Alcohol concentration of greater than 0.02 and less than 0.04.

6.3 Refusal to Submit. A Taxi Driver, who Refuses to Submit to Prohibited Drug or Alcohol testing, as required, shall be prohibited from Performing or continuing to Perform Safety-Sensitive Functions. A Refusal to Submit to drug or Alcohol testing constitutes a verified positive drug or Alcohol test result. Any conduct or behavior as defined in the following list constitutes a Refusal to Submit and will be deemed a verified positive drug or Alcohol test:

- A. Failure to appear for any drug test (except a permit issuance or permit renewal) as directed by the SFMTA within a reasonable time, and failure to appear (for Alcohol testing within two hours of notification that he or she must be tested;
- B. Except for a permit issuance or permit renewal test, failure to remain at the testing site until the testing process is complete, or leaving the testing site before the testing process commences;

- C. Failure to permit the observation or monitoring of a specimen collection in the case of a Direct Observation drug test;
- D. Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- E. Failure or declining to take a second drug test that the TPA or collection site personnel has directed the Taxi Driver to take;
- F. Failure to sign the certification at Step 2 of the alcohol testing form (“ATF”);
- G. Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);
- H. The MRO reports a verified Adulterated or Substituted test result;
- I. Anytime the Taxi Driver is directed to provide another urine specimen because the temperature of the original specimen was out of the accepted temperature range of 90 degrees to 100 degrees F;
- J. Anytime the Taxi Driver is directed to provide another specimen because the original specimen appeared to have been tampered with;
- K. Anytime a collector observes materials brought to the collection site or the Taxi Driver’s conduct clearly indicates an attempt to tamper with the specimen;
- L. Anytime the Taxi Driver is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was Invalid and the MRO determined that there was not an adequate medical explanation for the result;
- M. Anytime the Taxi Driver is directed to provide another specimen because the MRO determined that the original specimen was positive, Adulterated or Substituted, but had to be cancelled because the test of the Split Specimen could not be performed;
- N. Anytime the Driver possesses or wears a prosthetic or other device that could be used to interfere with the collection process;
- O. The Driver admits to the MRO or collector that the he or she Adulterated or Substituted a specimen;

- P. Failure to follow the Observer's instructions during a Direct Observation collection, including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device could be used to interfere with the collection process.

7.0 TESTING FOR PROHIBITED SUBSTANCES

7.1 Procedures for Testing

7.1.1 General. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability, and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). Testing for Prohibited Drugs and Alcohol on Taxi Drivers shall be conducted in accordance with the procedures set forth in 49 CFR Part 40, as amended. Non-federal Custody and Control Forms (CCF) (urine) and Alcohol Testing Forms (ATF) (breath) will be used. The procedures that will be used to test for the presence of illegal drugs or Alcohol misuse are designed to protect the Taxi Driver and the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct Taxi Driver.

7.1.2 Testing for Prohibited Drugs. The Third Party Administrator shall collect urine samples from Drivers to test for Prohibited Drugs. The Collector will split each urine sample collected into a Primary and a Split Specimen. The urine samples will be sent under seal, with required chain-of custody-forms, to a laboratory approved by DHHS. At the laboratory, all specimens are placed in secure storage. An initial drug screen will be conducted on each Primary Specimen.

For those specimens that are not negative, a confirmatory gas Chromatography/Mass Spectrometry (GS/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40. The specimen could be considered Adulterated or Substituted based on criteria established by DOT and DHHS. If the result of the test of the Primary Specimen is positive Adulterated, Substituted or Invalid, the Primary and Split Specimen will be retained in frozen storage for at least one year.

7.1.3 Specimen Validity Testing. Specimen validity testing is the evaluation of the specimen by the laboratory to determine if it is consistent with normal urine. Validity testing determines if the specimen contains adulterants or foreign substances, if the urine was diluted, or if the specimen was substituted, based on criteria established by DOT and DHHS. Validity testing is conducted on all specimens. Specimens that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term

frozen storage for at least 365 days as required by Part 40.

7.1.4 Alcohol Testing. Tests for alcohol concentration on Drivers will be conducted with a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) or as otherwise authorized by Part 40. In order to maintain quality assurance, EBTs must be externally calibrated in accordance with the plan developed by the manufacturer of the device. If the initial test (screening test) on an employee indicates an alcohol concentration of equal to 0.02 or greater, a second test will be performed to confirm the results of the initial test and must be conducted 15 minutes after the initial test. The confirmation test must be conducted using an EBT that prints out the test results, and the date and time the procedure was performed. The EBT also prints a sequential test number along with the name and serial number of the EBT. Alcohol testing will be administered for all Taxi Drivers under the following circumstances:

- A. Reasonable suspicion
- B. Post-Accident
- C. Optional return-to-duty (Drivers will be responsible for costs)
- D. Optional follow-up (Drivers will be responsible for costs)

7.1.5 Medical Review Officer (MRO). All drug testing results shall be interpreted and evaluated by an MRO, who shall be a licensed physician. The MRO shall comply with the drug testing procedures set forth in 49 CFR Part 40, as amended.

When the laboratory reports a confirmed positive, Adulterated, Substituted, or Invalid test, it is the responsibility of the MRO to: (a) within 24 hours after verifying the test, contact the Driver and inform him or her of the Positive, Adulterated, Substituted, or Invalid test result; (b) afford the Driver an opportunity to discuss the test results with the MRO; (c) review the Driver's medical history, including any medical records and biomedical information provided; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. If the Driver indicates that he or she has a medical explanation for the positive, Adulterated, Substituted, or Invalid test, he or she has up to five days to provide this information to the MRO.

The MRO has the authority to verify a positive or Refusal to Submit to testing without interviewing the Driver if: (a) the Driver refuses to discuss the test result with the MRO, (b) if the SFMTA or Taxi Company has successfully directed the Driver to contact the MRO, and the Driver has not made contact with the MRO within 72 hours, or (c) if neither the MRO nor SFMTA or Taxi Company has made contact with the Driver within 10 days of the date that the MRO received the test result from the laboratory.

The MRO shall not convey test results to the SFMTA or Taxi Company until the MRO has

made a definite decision that the test result was positive, Adulterated, Substituted, Invalid or negative. The MRO may request the laboratory to conduct additional analyses of the original sample in order to verify the accuracy of the test result.

The MRO will report the test to the SFMTA or Taxi Company as either negative, positive, a Refusal to Submit due to Adulteration or Substitution, or Cancelled (Invalid). When the MRO reports the results of the verified positive test to the SFMTA, the MRO will disclose the drug(s) for which there was a positive test. The MRO will also provide additional, clarifying information to the SFMTA for tests that are confirmed as a Refusal to Submit due to Adulteration or Substitution, or are Cancelled. The MRO may only reveal the quantitative amount of a positive drug test result to the SFMTA, Driver, or the decision maker in a lawsuit, grievance or other proceeding initiated by the Driver and arising from a verified positive drug test result.

When the MRO has verified a test positive or a Refusal to Submit as a result of Adulteration or Substitution, the MRO shall inform the Driver that he or she has 72 hours to request a test of the Split Specimen.

7.1.6 Direct Observation. The employer is required to conduct a directly observed collection when:

- A. The laboratory reports an invalid specimen and the MRO reports that there was not an adequate medical explanation for the result.
- B. Because the split specimen test could not be performed (e.g., split, lost, inadequate volume).
- C. The MRO reports a negative-dilute result with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL.
- D. The test is a return-to-duty or follow-up test.

Note: A Driver may not “volunteer” to have his or her specimen collected under direct observation.

7.2 Types of Testing. The SFMTA requires the following types of testing for Prohibited Substances for Taxi Drivers: permit issuance, permit renewal, reasonable suspicion, post-accident, optional return-to-duty, and optional follow-up testing.

7.2.1 Permit Issuance Testing. All Taxi Driver permit applicants shall undergo urine drug testing prior to issuance of a permit by the SFMTA. At the time they apply for a Taxi Driver permit, SFMTA will notify all applicants that they will be required to submit to a drug test if they are considered otherwise qualified for driving a taxicab and that they will

be required to comply with the terms and conditions of this Policy. No applicant for a permit will be issued a permit, unless he or she passes a drug test.

7.2.2 Permit Renewal Testing. Taxi Drivers will be subject to annual drug testing upon permit renewal, which is scheduled during the Driver's birth month; however, any prior negative test result shall be accepted for one year as meeting a requirement for periodic permit renewal testing if the Driver has not tested positive subsequent to a negative test. Failure to submit to permit renewal testing shall result in a non-renewal of the permit.

7.2.3 Reasonable Suspicion Testing. All Drivers shall be subject to reasonable suspicion testing, to include appropriate urine and/or breath testing, when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with short-term effects of substance abuse. Reasonable suspicion tests for the presence of alcohol shall only be made just prior, during or immediately after performance of a Safety-Sensitive Function.

Reasonable suspicion determinations will be made by a Taxi Company employee who is trained to detect and document the signs and symptoms of drug and alcohol use and who reasonably concludes that the Taxi Driver may be adversely affected or impaired in his or her work performance due to prohibited substance abuse or misuse.

A written report describing the Taxi Driver's condition will be completed, dated and signed by a trained supervisor who either substantiated or was consulted about the report of reasonable suspicion. Copies of the report will be given to the Taxi Driver, and the trained employee will order the Driver to submit to drug testing.

In any reasonable suspicion circumstance, the Taxi Company will transport the Driver to the appropriate collection site facility and await the completion of the collection process. After the testing has been completed, the Taxi Company will transport the Driver back to the company premises. During the time period the Taxi Driver waits for the results, the Driver must not be allowed to drive a Taxi until his or her test is confirmed as negative. If the Taxi Driver's drug test comes back positive, then a spouse, family member, or someone else will be contacted to transport the Taxi Driver back to his or her residence. If no one is available, the Taxi Company will arrange to transport the Driver home by Taxi or other means. If the reasonable suspicion test is negative, the Taxi Company will reimburse the Driver the cost of any Taxi fare paid by the Driver for transport back to his or her residence.

7.2.4 Post-Accident Testing.

- A. **Testing Requirement.** Post-accident testing for Prohibited Substances shall be required of every Driver involved in an Accident as defined in Section 2, above.
- B. **Procedure.** Following an Accident, all Taxi Drivers shall remain readily available for testing. A Driver who fails to remain readily available, including notifying a supervisor of his or her location if he or she leaves the scene of the Accident prior to submitting to testing, may be deemed to have Refused to Submit to testing. The drug test shall occur as soon as practicable but not later than 32 hours after the Accident. An Alcohol test must be administered as soon as practicable following the Accident; if the Alcohol test is not administered within eight hours of the Accident, no test shall be given. Nothing in this section shall delay medical attention for the injured following an Accident or prohibit a Driver 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 when appropriate approval is given. The results of a breath or blood test for the use of Alcohol or a urine test for the use of Prohibited Drugs, conducted by federal, state or local officials having independent authority to test (e.g., local law enforcement if accident occurs in a remote area), shall be acceptable, provided that such tests conform to applicable federal, state or local requirements, and that the results of the tests are obtained by the Third Party Administrator and/or the Taxi Company.
- C. **Table.** The following table summarizes when a post-Accident test is required:

Type of Accident involved	Citation issued to the Driver	Test must be performed
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow-away	YES	YES
	NO	NO

7.2.5 Return-to-Duty Testing/Follow-up Testing. Any Taxi Driver who has failed a drug test or tested in excess of 0.04 on an Alcohol test, or who has Refused to Submit to testing, must pass the return-to-duty tests ordered by the SAP at his or her own cost before the SFMTA will lift the suspension of the Driver's A-Card. The Driver also must have successfully completed the SAP recommendations and sign a return-to-work agreement, if required by the SAP, before the SFMTA lifts the suspension. Return-to-

duty and follow-up drug tests will be conducted using Direct Observation collection procedures.

7.2.6 Taxi Driver-Requested Drug Retesting. Any Taxi Driver who questions the results of a required drug test under Section 7.0 of this Policy may, within 72 hours of having been notified of a verified positive test, request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. Each urine sample shall be a minimum of 45 ml. The sample will be split at the time of collection into 30 ml. for the Primary Specimen test and 15 ml. for a re-test if the Primary Specimen tests positive. The additional test must be conducted on the Split Sample that was provided at the same time as the original sample. The method of collecting, storing, and testing the Split Sample shall be consistent with the procedures set forth in 49 CFR Part 40, as amended. The Taxi Driver's request for a re-test must be made to the MRO within 72 hours of notice of the initial test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the Taxi Driver. If the analysis of the Split Specimen fails to confirm the presence of the drug(s) detected in the Primary Specimen, or if the Split Specimen is unavailable, inadequate for testing, or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the SFMTA, the applicable Taxi Company, and the TPA. The Split Specimen test shall be paid for by the Taxi Driver.

8.0 CONSEQUENCES – Taxi Drivers and Taxi Companies

8.1 Positive Test Result. An Alcohol concentration of 0.04 or greater will be considered a positive Alcohol test and in violation of this Policy. The SFMTA shall summarily suspend the A-Card of a Driver who has (a) a positive drug test, as confirmed by the MRO or (b) a confirmed positive Alcohol test. The SFMTA shall then, at the Driver's request, refer the Driver for evaluation by a SAP who will inform the Driver of educational and rehabilitation programs available.

8.2 Compliance with Testing Requirements. A Refusal to Submit to testing shall be considered a positive result, and the SFMTA shall suspend the A-Card of a Driver who refuses to submit.

8.3 Return to Work. The SFMTA shall lift the suspension of the a Driver after the SAP has determined that the Driver has successfully complied with the prescribed rehabilitation program, the Driver has tested negative for Prohibited Drugs or Alcohol, and the Driver has signed a return-to-work agreement.

9.0 RETURN-TO-WORK CONDITIONS

Drivers may not return to work unless they have obtained a release-to-work statement from an approved SAP, have tested negative for drugs and/or Alcohol, have signed a return-to-work agreement, and the SFMTA has lifted the suspension of the Driver's A-Card.

Following the Driver's satisfactory completion of the SAP recommendation and a negative return-to-duty test, the SAP will provide the SFMTA and the TPA with a written statement of completion, along with a continuing care plan that may include a follow-up testing schedule.

10.0 TRAINING AND EDUCATION

All Taxi Drivers shall receive educational materials provided by the SFMTA that explain the requirements of the Policy, which will include distribution of informational material on substance abuse, and distribution of the Taxi Company's policy regarding the use of prohibited drugs. Drivers must sign a statement acknowledging receipt of these materials.

Those Taxi Company employees participating in reasonable suspicion testing will be required to have at least two hours of training to explain the criteria for reasonable cause testing paid for by the companies, including at least an hour on the physical, behavioral and performance indicators of probable drug use and another hour on the physical, behavioral, speech and performance indicators of probable alcohol misuse. The Taxi Companies shall be responsible for the cost of such training.

11.0 RECORDS; CONFIDENTIALITY

11.1 Access to Records. Information regarding a Driver's test results will be released, as necessary, to the Taxi Company, but will only be released to a third party upon the specific written consent of the Driver, except that such information must be released to a federal, state or local agency with regulatory authority over the SFMTA, the Taxi Company, or the Taxi Driver. Other exceptions to the confidentiality of the testing results are as follows:

- A. Release to the collection facility, testing laboratory, MRO, SAP, or designee.
- B. Release pursuant to a lawful court order or other law requiring disclosure.
- C. Release to a decision maker in connection with a Taxi Company or SFMTA disciplinary action, grievance, arbitration or other legal proceeding initiated by or on behalf of the individual and arising from a certified positive drug or Alcohol test or from the SFMTA's determination that the Driver engaged in conduct prohibited under this Policy.

- D. Release to a subsequent Taxi Company who seeks to hire the Driver upon receipt of a written request from a Driver.

11.2 Records Maintained. The Third Party Administrator and Taxi Company must maintain records relating to Prohibited Drug and Alcohol testing under this Policy in a secure location with controlled access. Taxi Companies may not make a Driver's drug and Alcohol testing records part of the Driver's personnel file.

The SFMTA shall maintain records as follows: (a) results of negative Prohibited Drug tests and Alcohol tests less than .02 -- one year; (b) records of collection and training -- two years; (c) records of verified positive drug test results and Alcohol tests .02 or greater, documentation of refusals, calibration documentation, referrals to the SAP and evaluations, reports to the SFMTA -- five years; and the records shall include the following information;

- A. The functions performed by the Driver who failed the drug test;
- B. The Prohibited Drugs that were used by Drivers who failed the drug test;
- C. The disposition of Drivers who failed the drug test (e.g., termination, leave without pay);
- D. The age of each Driver who failed the test.

The laboratory maintains all records relating to urine specimen analysis in confidence for at least two years. The laboratory may not disclose such records to anyone other than the SFMTA, the Taxi Company or the Driver, and the decision maker in a lawsuit, grievance or other proceeding initiated by the employee and arising from a verified positive drug or Alcohol test result.

11.3 Retention of Records of Questions or Complaints. The Third Party Administrator will retain records of questions or complaints related to the drug and alcohol testing process.

12.0 COMPLIANCE WITH BACKGROUND CHECK REQUIREMENTS

All applicants for Driver Permits are required to sign a written consent to allow SFMTA to obtain the following information regarding the applicant's drug and alcohol testing history for the previous two years:

- Alcohol tests with a result of .04 or higher;
- Verified positive drug tests;

- Refusals to Submit for testing, including verified Adulterations and Substitutions
- Other violations of drug and alcohol testing regulations; and
- Documentation of the applicant's successful completion of return-to-duty requirements and follow-up tests.

Information will be obtained from all companies (including Service Agents) for whom the applicant worked as a Taxi Driver or other driver subject to DOT testing for a period of two years prior to the date of the application. Such companies will be asked to include any Alcohol and Prohibited Drug test information obtained from previous employers or jurisdictions. For example, if a previous taxi company has information from other taxi companies or Service Agents (within the two-year period), that company is obligated to provide that information to SFMTA.

Additionally, the applicant must disclose if he or she has, within the prior two years, ever failed a pre-employment drug or alcohol test that resulted in the applicant not getting hired.

13.0 SYSTEM CONTACT

Any questions regarding this Policy or any other aspect of the Taxi Driver Drug and Alcohol Testing Program should be directed to the office of the following SFMTA representative:

Name: Peter N. Kashtanoff
Address: One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103-5417
email: peter.kashtanoff@sfmta.com
Telephone: (415) 581-5134

EXHIBIT B



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, *Mayor*

Cheryl Brinkman, *Chairman*

Malcolm Heinicke, *Vice-Chairman*

Gwyneth Borden, *Director*

Lee Hsu, *Director*

Joél Ramos, *Director*

Cristina Rubke, *Director*

Art Torres, *Director*

Edward D. Reiskin, *Director of Transportation*

July 27, 2017

Commissioner Liane Randolph
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Timothy Sullivan, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: California Vehicle Code Section 21702

Dear Commissioner Randolph and Mr. Sullivan:

I write to you to express serious concern regarding the public safety of citizens of and visitors to the County and City of San Francisco. My concern arises from numerous reports, in both local and national news articles, detailing how many Transportation Network Companies (TNCs) drivers routinely exceed the maximum amount of drive time permitted under California Vehicle Code section 21702.

California Vehicle Code section 21702(a) provides that:

No person shall drive upon any highway any vehicle designed or used for transporting persons for compensation for more than 10 consecutive hours nor for more than 10 hours spread over a total of 15 consecutive hours. Thereafter, such person shall not drive any such vehicle until eight consecutive hours have elapsed.

Regardless of aggregate driving time, no driver shall drive for more than 10 hours in any 24-hour period unless eight consecutive hours off duty have elapsed.

Drowsy drivers are involved in one-fifth of U.S. fatal accidents according to AAA Automobile Club. The risk of a serious collision increases every hour that a TNC driver continues to operate beyond these legal guidelines. People who sleep only four to five hours per night have the same risk of becoming involved a serious accident as those who drive while intoxicated.

In an interview with the San Francisco Chronicle, TNC driver Brittney Barber detailed her work day:

Getting ready for work means assembling several casseroles for her extended family —

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1 South Van Ness Avenue 7th Floor, San Francisco, CA 94103

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husband, son, nephew and mother-in-law — packing an overnight bag, and loading up her gray Honda Fit for the 3½-hour drive from her home in Clovis (Fresno County) to San Francisco.

After that 190-mile commute, it's time to get to work — driving. Barber, 35, drives for Lyft and Uber. She comes to the City most weeks to put in three or four long days behind the wheel, spending nights at a friend's house in Half Moon Bay. Working 12 to 16 hours a day, she can pull in up to \$1,700 after Lyft and Uber take their cuts, but before deducting for gas and other expenses... She's among hundreds of Uber and Lyft drivers from the far corners of California who log ultra-long commutes to San Francisco. (San Francisco Chronicle Article, Carolyn Said, *Driving Long Distances Just To Drive Some More*, 2/19/2017)

Ms. Barber's drive time begins when she leaves her residence in Clovis and drives 3½- hours to San Francisco to work an additional 12 to 16 hours as a TNC driver. Her drive time is far in excess of the cap of 10 hours in a 24-hour period without an 8-hour break required by Vehicle Code section 21702(a).

“When you sleep two days in the car, you are not fresh, you are not relaxed,” said Tony, 60, who commutes from Modesto to work two, three or four days in a row for Uber, and gets his “rest” in his car. “It makes us more tired, so we can't use our time to do a good job.” (San Francisco Chronicle Article, Carolyn Said, “Driving long distances just to drive some more”, 2/19/2017)

Every Monday morning Mr. German Tugas leaves at 4 am, drives 90 miles to San Francisco, picks up passengers until he earns \$300.00 or gets too tired to keep going. Then, he and a half-dozen other Uber drivers gather in the Marina Safeway parking lot to sleep in their car before another long day of driving. “With Uber, people make their own decision about when, where and how long to drive,” the company said in an e-mailed statement. “We're focused on making sure that driving with Uber is a rewarding experience, however you choose to work.” (Bloomberg Businessweek article, Eric Newcome and Olivia Zaleski, “When Their Shifts End, Uber Drivers Set Up Camp in Parking Lots Across the U.S.,” 1/23/2017)

San Francisco adopted Vision Zero as a City policy in 2014, committing the City to eliminate all traffic deaths by 2024. Our philosophy and approach is simple: no loss of life on our streets is acceptable. One core Vision Zero principle is that traffic deaths are preventable.

In response to this mandate, I am contacting you to request that the Commission ensures enforcement of Vehicle Code section 21702 as it applies to TNC drivers and let us know how the Commission intends to do so. While we understand that the Commission has not considered or issued any rulemaking regarding this statute as part of its on-going rulemaking proceedings, it is the SFMTA's position that this state law applies to TNC drivers. As a result, our view is that the Commission should immediately adopt additional rules and regulations to address the serious and egregious conduct by some TNC drivers as documented by these news reports. Action by the Commission to ensure compliance with Section 21702 will immediately improve public safety on all California streets.

Further, the long-distance commutes to San Francisco by TNC drivers resulting from the incentives that TNC companies employ to encourage these drivers to drive these long distances and work even

longer hours make it highly likely that these companies are complicit in the routine violation of state law. *See, "How Uber Uses Psychological Tricks to Push Its Drivers' Buttons"* New York Times, April 2, 2017. This article documents how Uber employs behavioral science techniques to manipulate its drivers into working longer hours. For instance, the article states that "(e)mploying hundreds of social scientists and data scientists, Uber has experimented with video game techniques, graphics and noncash rewards of little value that can prod drivers into working longer and harder — and sometimes at hours and locations that are less lucrative for them." (*New York Times, April 2, 2017*)

The SFMTA is very concerned about TNC drivers having insufficient sleep and becoming drowsy behind the wheel while working. It is our understanding that Uber does not have any break requirements for its drivers, and the company's app simply reminds drivers to take required breaks. We understand that Lyft's app requires that drivers take a six-hour break after 14 hours. But because many drivers use both apps to solicit customers, TNC drivers can easily work 24 or 48 hours straight by switching between these two apps without ever taking a break.

The San Francisco Chronicle's review of the business registration certificates recorded with the City's Treasurer/Tax Collector's Office, which includes a TNC driver's business address, shows that more than 1,960 TNC drivers list a business address (which is often their home address) outside the Bay Area. This reflects 9.4 percent of the total 20,000 TNC drivers who have obtained such a certificate. These include TNC drivers from Sacramento County, almost two hours away, as well as drivers from as far south as San Diego and as far north as Redding. (San Francisco Chronicle Article, Carolyn Said, "Driving long distances just to drive some more", 2/19/2017.)

But because many TNC drivers — possibly as many as 20,000 — do not pay an annual business license fee to the City, the actual number of TNC drivers on City streets is likely significantly higher than 20,000.

No data has been provided by either Uber or Lyft to the City regarding how many drowsy TNC drivers have been involved in automobile collisions even though technology to track a driver's total driving time is available. Given the lack of this information, we urge the Commission to take appropriate steps to ensure immediate compliance with state law.

I thank you in advance for your consideration. If you could provide me any information regarding how the Commission intends to address this serious public safety issue, I would appreciate it.

Sincerely,



Edward D. Reiskin
Director of Transportation

cc: Nick Zanjani, Director
Consumer Protection and Enforcement Division
California Public Utilities Commission