

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

1.0 POLICY

The object of this Policy is to assure Driver fitness for duty and to protect taxicab Drivers, passengers and the public from risks posed by the use of prohibited drugs and abuse of alcohol. California Government Code section 53075.5 requires drug and alcohol testing for Taxi Drivers, therefore all applicants and Driver permit holders (new and renewal) must comply with controlled substance and alcohol testing certification program requirements and comply with regulations specified in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR).

Effective immediately, any Taxi Driver who operates a commercial motor vehicle for hire as defined under the San Francisco Transportation Code will be tested for the presence of prohibited drugs by a Third Party Administrator. It is our Policy (a) to take appropriate action to assure that commercial Taxi Drivers are not impaired in their ability to perform in a safe, productive, and healthy manner; (b) to foster and maintain a drug and alcohol free environment; (c) to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (d) to encourage commercial Taxi Drivers to voluntarily seek professional assistance whenever personal problems, including alcohol or drug use, may adversely affect their ability to perform.

1.1 The Third Party Administrator will be responsible to the SFMTA for the following:

- A. Training to the Taxi Companies.
- B. Designation of collection sites.
- C. Ensuring that urine and breath collectors are certified has the necessary equipment and follow procedures in accordance with DOT Regulations.
- D. Supplying services for forensic urine testing from a Department of Health and Human Services- (DHHS-) certified laboratory.
- E. Supplying Medical Review Officer services.
- F. Submitting pricing to the SFMTA for services needed to comply with the testing program.
- G. Reporting to the SFMTA on all procedures related to drug and alcohol testing.

1.2 The Third Party Administrator will be responsible to and work with the Taxi Companies for the following:

- A. Training and education.
- B. Assistance in accomplishing post-Accident and reasonable suspicion testing protocols.
- C. Assisting in referral Taxi Drivers to a Substance Abuse Professional for violations of the drug and alcohol testing Policy.
- D. Conducting return-to-duty and follow-up testing.

- E. Ensuring that Taxi Companies are adhering to the SAP recommendations for Drivers with drug and alcohol testing violations.
- F. Maintaining records as required by DOT Regulations.

1.3 This Policy includes:

- A. **Detection, Deterrence and Enforcement** -- All Taxi Drivers will be subject to permit renewal, reasonable suspicion, post-accident, return-to-duty and follow-up drug and alcohol testing. Applicants for Taxi Driver permits will not receive a permit unless they pass a drug test.
- B. **Treatment and Opportunities for Rehabilitation** -- Alcohol and drug abuse are recognized as diseases that can be treated. The SFMTA supports a voluntary rehabilitation approach and encourages Taxi Companies to provide Drivers with confidential, professional assistance through a Substance Abuse Professional. The SFMTA also encourages Drivers to seek such assistance prior to testing positive for drugs or alcohol.

2.0 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).

California Government Code section 53075.5 requires drug and Alcohol testing for Taxi Drivers; therefore, all applicants (new and renewal) who will operate taxicabs, must comply with controlled substance and alcohol testing certification program requirements and comply with applicable regulations in Part 40 and Part 382 of Title 49 of the Code of Federal Regulations (CFR).

These regulations also prevent performance of Driver functions when there is a positive test result or other prohibited conduct. Part 40 sets standards for the collection and testing of urine and breath specimens. This Policy incorporates these federal requirements for Drivers as well as other provisions as noted. Participation in the testing program is a requirement of each Taxi Driver and therefore is a condition of the Driver permit.

3.0 APPLICABILITY

This Policy applies to all Taxi Drivers regulated by the SFMTA. This Policy will be applied in an unbiased and impartial manner.

4.0 OPPORTUNITIES FOR REHABILITATION

This Policy includes two types of rehabilitation programs: voluntary rehabilitation and rehabilitation after a positive test result, if supplied by the Taxi Company and/or Taxi Driver.

- 4.1 **Rehabilitation After a Positive Alcohol or Drug Test.** When a Taxi Driver tests positive for drugs or over 0.02 for alcohol, he or she must be referred to a Substance

Abuse Professional (SAP). If a Driver is allowed to return to duty, 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 duty 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.

- 4.2 **Cost of Rehabilitation.** Taxi Companies will be required to offer rehabilitation services but can require Drivers to pay for the services or obtain such services through the Driver's health insurance.

5.0 PROHIBITED SUBSTANCES

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

- 5.1 **Prohibited Drugs.** This Policy specifically prohibits the use of the following illegal, prohibited substances and requires testing for their presence under certain circumstances: marijuana, amphetamines, methylenedioxymetamphetamine (MDMA), methylenedioxyamphetamine (MDA), opiates, phencyclidine (PCP), and cocaine. 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 such that Alcohol is present in the body while Performing Safety-Sensitive Functions as a Taxi Driver, are 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 0.02 or greater.
- B. No Taxi Driver shall use alcohol while on duty or while driving.
- C. No Taxi Company supervisor or manager who has actual knowledge that any Driver Performing Safety-Sensitive Functions has an alcohol level of .04 or greater, is using Prohibited Substances while Performing Safety-Sensitive Functions, has tested positive for a Prohibited Substance, has used alcohol within four hours of 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. No Driver shall use alcohol during the hours that they are immediately available to be called for duty.
- F. 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 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. No Taxi Driver shall perform their functions unless he or she is referred for evaluation and testing after testing positive or Refusing to Submit to Testing and is approved and authorized to return to duty by a SAP.
- B. No Driver who has a 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. (Each Taxi Company will determine if any disciplinary action will be taken up to and including termination.)
- 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.
- D. A Taxi Driver who has a confirmed alcohol concentration of greater than 0.02 and less than .04 will be removed 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.

6.3 Refusal to Submit. A Taxi Driver, who Refuses to Submit to 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 test (except a permit issuance or permit renewal) within a reasonable amount of time for drug testing (as directed by the Taxi Company) and within two hours for Alcohol testing after notification that he or she has been selected for a test.
- 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 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 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 that 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 (**see Testing Procedures**). 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 a Driver 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, 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 (Taxi Companies or Drivers will be responsible for costs)
- D. Optional follow-up (Taxi Companies or 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 or Taxi Company, 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 or Taxi Company 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, the Taxi Company, 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.

7.2 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 supervisor or 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 supervisor will order the Driver to submit to drug testing.

In any reasonable suspicion circumstance, the Third Party Administrator 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 TPA 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 the taxi fare to transport the Driver, if any

7.2.4 Post-Accident Testing.

- A. **Testing Requirement.** Post-accident testing for Prohibited Substances shall be required of each surviving Driver (i) who was Performing Safety-Sensitive Functions if there was a fatality; or (ii) who receives a citation under state or local law for a moving traffic violation arising from the Accident (see Table below).
- 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 0.02 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. The Driver also must have successfully completed the SAP recommendations and sign a return-to-work agreement, if required by the SAP or the Taxi Company. 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 0.02 or greater will be considered a positive Alcohol test and in violation of this Policy. Any Driver who has (a) a positive drug test, either as confirmed by the MRO or (b) a confirmed alcohol test will be removed from his or her Safety-Sensitive Function, referred for evaluation by a SAP, informed of educational and rehabilitation programs available, and be subject to revocation of his or

her taxi permit, and subject to disciplinary action up to and including termination, as set forth in the policy of the Taxi Company for whom the Driver works.

- 8.2 Compliance with Testing Requirements.** Any Driver who Refuses to Submit to testing, shall be removed from duty immediately and be subject to the same consequences as a positive test result.
- 8.3 Taxi Company Policies.** Taxi Companies shall adopt written statements detailing each Company's policy regarding the consequences of positive drug and Alcohol test results. The Company is not required to maintain the Driver on its roster following a positive test. If a Company does maintain the Driver on its roster following a positive test result, then it shall implement a program whereby the Driver is subjected to unannounced follow-up drug and/or Alcohol tests for up to 60 months after returning to work as determined by the SAP, with a minimum of six tests during the first 12 months.
- 8.4 Reinstatement.** A Driver may have his or her A-card reinstated, after the SAP has determined that the Driver has successfully complied with the prescribed education and treatment.
- 8.5 Penalties Against Taxi Companies.** Penalties for Taxi Companies allowing Taxi Drivers who test negative to continue to drive a taxi or for the failure of a Taxi Company to provide an approved drug and alcohol test program include fines up to \$10,000 for the first offense (if a substantial safety violation that could reasonably lead to or has resulted in serious personal injury or death); fines up to \$25,000 for the second offense within a 12-month period; and up to a maximum of \$50,000 for a third and subsequent offense within a subsequent 12-month period, which may include suspension and/or revocation of the "Color Scheme Permit."

9.0 SUBSTANCE ABUSE PROFESSIONAL (SAP)

Any Driver who tests positive for the presence Of Prohibited Drugs or Alcohol above the minimum thresholds set forth in 49 CFR Part 40 will be evaluated by an SAP. A SAP is 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.

Taxi companies shall be responsible for ensuring that a Driver is evaluated by a Substance Abuse Professional. The SAP will evaluate each Driver to determine what assistance, if any, the Driver needs in resolving problems associated with prohibited substance abuse or misuse. If a Driver is allowed to return to duty, he or she must properly follow the rehabilitation program prescribed by the SAP.

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.

10.0 RETURN-TO-WORK CONDITIONS

Drivers may not return to work unless they have obtained a release-to-work statement from an approved SAP and have tested negative for drugs and/or alcohol. Such Drivers must agree to unannounced frequent follow-up testing paid for by the Driver as a condition of any return- to-work agreement.

Following the Driver's satisfactory completion of the SAP recommendation and a negative return-to-duty test, the SAP will provide the Taxi Company and the TPA with a written statement of completion, along with a continuing care plan that will include a follow-up testing schedule. Taxi companies will be responsible for ensuring completion of the recommended number of follow-up tests.

11.0 TRAINING AND EDUCATION

All Taxi Drivers shall receive educational materials provided by their Companies that explain the requirements of SFMTA's 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 supervisors and managers 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.

12.0 RECORDS; CONFIDENTIALITY

12.1 Access to Records. Information regarding a Driver's test results 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 Drivers. 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. 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 Taxi Company determination that the Driver engaged in conduct prohibited under this Policy.
- D. To a subsequent Taxi Company who seeks to hire the Driver upon receipt of a written request from a Driver.

12.2 Records Maintained. The Third Party Administrator and Taxi Company must maintain records of its substance abuse program in a secure location with controlled access. The Driver's drug testing records will not be made a part of the Driver's personnel file. Records shall be maintained as follows: (a) results of negative 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 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, the Driver, or 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.

12.3 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.

13.0 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
- 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 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.

14.0 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

15.0 REVISIONS TO THE POLICY AND PROGRAM

This Policy and program is subject to revision.

16.0 DEFINITIONS

16.1 Accident. An occurrence involving a taxicab operating on a public road in which:

- A. The accident involves the loss of human life; or
- B. The accident involves the Driver receiving a citation within eight hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii. One or more motor vehicles incurring Disabling Damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

16.2 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.

16.3 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.)

16.4 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.

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

16.6 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.

16.7 Disabling Damage. Damage which 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.

16.8 DOT. The United States Department of Transportation.

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

16.10 DOT Regulations. Alcohol and Controlled Substances Testing Regulations published by the Secretary of Transportation in 49 CFR Part 382.

16.11 Invalid Drug Test. The result of a drug test of 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.

16.12 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.

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

16.14 Performing (a Safety-Sensitive Function). A Covered Employee 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.

16.15 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.

16.16 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.

16.17 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 or shipper plant, terminal, 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 taxicab at any time;
- C. All time spent at the driving controls of a taxicab in operation;
- D. All time, other than driving time, in or upon any taxicab;
- 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.

16.18 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, BATs, laboratories, TPAs, MROs, and SAPs.

16.19 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.

16.20 Substance Abuse Professional (SAP). A person who evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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

16.22 Taxi Company. A color scheme permit holder as defined in Transportation Code Article 1100.

16.23 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.

16.24 Third Party Administrator (TPA). A contractor hired by the SFMTA to administer all aspects of the Taxi Driver drug and alcohol testing program.

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