



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 17-81-A

September 8, 2017

Investigation of the Department of Public Utilities, on its own motion, instituting a rulemaking pursuant to Chapter 187 of the Acts of 2016; G.L. c. 25, § 23(a); G.L. c. 30A, § 2; G.L. c. 159A½; and 220 CMR 2.00, establishing requirements for transportation network companies and the provision of transportation network services, and suitability requirements for transportation network drivers.

ORDER ADOPTING FINAL REGULATIONS

Table of Contents

I.	INTRODUCTION AND PROCEDURAL HISTORY	1
II.	ADOPTION OF FINAL TNC REGULATIONS.....	5
A.	Introduction	5
B.	Transportation Network Company Permit Process.....	7
1.	Introduction	7
2.	Ensuring Rider Safety Comments	8
3.	Ensuring Rider Safety Analysis and Findings.....	8
4.	Ensuring Driver Compliance with Hours of Service, Insurance, and Non-Discrimination Requirements Comments	9
5.	Ensuring Driver Compliance with Hours of Service, Insurance, and Non-Discrimination Requirements Analysis and Findings.....	9
6.	Commercial Toll Rates Comments	10
7.	Commercial Toll Rates Analysis and Findings	11
8.	Maintenance of Driver Roster Comments	12
9.	Maintenance of Driver Roster Analysis and Findings.....	12
10.	Capping Vehicles Comments	13
11.	Capping Vehicles Analysis and Findings	13
C.	Transportation Network Driver Certificate	14
1.	Driver Training Comments	14
2.	Driver Training Analysis and Findings.....	15
3.	License Plate Number Comments	16
4.	License Plate Number Analysis and Findings.....	16
5.	Display of Driver Certificate Comments.....	17
6.	Display of Driver Certificate Analysis and Findings	17
D.	Transportation Network Driver Background Check	18
1.	Procedural Background Check Process.....	18
2.	Substantive Background Check Process	30
E.	Hours of Service	56
1.	Comments	56
2.	Analysis and Findings	57
F.	Transportation Network Vehicle Requirements	58
1.	Removable Decal and Trade Dress Comments	58
2.	Removable Decal and Trade Dress Analysis and Findings.....	59
3.	Massachusetts License Plate Requirement for Vehicles Comments.....	60
4.	Massachusetts License Plate Requirement for Vehicles Analysis and Findings	60
G.	Data Protection.....	61

- 1. Comments61
- 2. Analysis and Findings63
- H. Record Retention and Reporting64
 - 1. Record Retention and Reporting Comments.....64
 - 2. Record Retention and Reporting Analysis and Findings68
 - 3. Reporting of Ride Data Comments.....74
 - 4. Reporting of Ride Data Analysis and Findings75
- I. Inspection and Audit77
 - 1. Comments77
 - 2. Analysis and Findings78
- J. Enforcement78
 - 1. TNC Fine Comments78
 - 2. TNC Fine Analysis and Findings.....79
 - 3. Enforcement Considerations Comments.....80
 - 4. Enforcement Considerations Analysis and Findings80
- K. Transportation Network Driver Appeals Process.....81
 - 1. Comments81
 - 2. Analysis and Findings82
- L. Small Businesses84
 - 1. Comments84
 - 2. Analysis and Findings85
- III. RELEVANT ACTIONS AND NEXT STEPS85
- IV. ORDER.....86

I. INTRODUCTION AND PROCEDURAL HISTORY

A transportation network company (“TNC”) is an entity that provides pre-arranged transportation services through connecting passengers and drivers via a digital network. Final Transportation Network Companies Regulation (“Final TNC Regulation”) 220 CMR 274.02. Originating in California, TNCs began operations in Massachusetts around 2011. As of 2015, TNCs reportedly accounted for approximately 28 million pre-arranged rides (“Rides”)¹ in the state. By 2016, TNCs were reportedly providing over 2.5 million Rides per month throughout Massachusetts. Currently, the following entities operate as TNCs within the Commonwealth: (1) Embarque Boston, Inc.; (2) Fasten, Inc.; (3) House Car Partners, LLC d/b/a Housecar; (4) Lyft, Inc. (“Lyft”); (5) Zemcar; (6) Rasier, LLC (“Rasier”) also known as Uber; (7) Safeher Inc. d/b/a SAFR; (8) Tickengo, Inc. d/b/a Wingz; and (9) Wuleeb, Inc. (“Wuleeb”).² Approximately 107,000 transportation network

¹ Pre-arranged Ride or Ride means “a period of time that begins when a Transportation Network Driver accepts a ride through a Digital Network and the Transportation Network Driver commences his or her route to pick up a Transportation Network Rider, continues while the Transportation Network Driver transports the Transportation Network Rider, and ends when the Transportation Network Rider safely departs from the Transportation Network Vehicle or when a Transportation Network Rider cancels the Ride.” Final TNC Regulation 220 CMR 274.02.

² As further discussed below, these entities operate as TNCs through Memoranda of Understanding with the Department of Public Utilities, which establish interim public safety procedures to cover the gap between the enactment of Chapter 187 of the Acts of 2016 and the promulgation of Final TNC Regulations 220 CMR 274.00. See St. 2016, c. 187, § 15.

drivers (“Drivers”)³ are authorized to provide transportation network services (“Services”)⁴ on behalf of these entities in Massachusetts.

On August 5, 2016, Governor Charles D. Baker signed into law Chapter 187 of the Acts of 2016, An Act Regulating Transportation Network Companies (“Act”). Section 4 of the Act amends the General Laws of Massachusetts by establishing G.L. c. 159A½: Transportation Network Companies.⁵ St. 2016, c. 187, § 4. The Act also created a division within the Department of Public Utilities (“Department”) to oversee TNCs. St. 2016, c. 187, §§ 2, 4; G.L. c. 25, § 23(a); G.L. c. 159A½, § 2(a). The Department designated that division as the Transportation Network Company Division (“Division”).⁶ Transportation Network Companies Rulemaking, D.P.U. 17-81, at 1 (Mar. 24, 2017). “The

³ Transportation Network Driver or Driver “means an individual certified by a TNC to provide Transportation Network Services, or an individual applying to a TNC to provide Transportation Network Services.” Final TNC Regulation 220 CMR 274.02.

⁴ Transportation Network Services or Services means “means the offer and provision of Pre-arranged Rides for compensation or on a promotional basis to Riders or prospective Riders through a Digital Network, covering the period beginning when a Driver is logged onto a Digital Network and is available to receive a Pre-arranged Ride or while in the course of providing a Pre-arranged Ride and ending when the Ride is completed.” Final TNC Regulation 220 CMR 274.02.

⁵ Where appropriate, the Order references G.L. c. 159A½ as the “Statute.”

⁶ While the Act serves to establish the enabling powers of the Division and gives broad authority to the Division and the Division Director to carry out the mandates of the Act and the oversight of the TNC industry as a whole, the Division operates under “the general supervision and control of the [C]ommission,” which heads the Department. G.L. c. 25, § 23(a). Accordingly, the Department hereby promulgates these regulations, in satisfaction of the Act and encompassed in the Department’s overall authority as part of Title 220 of the Code of Massachusetts Regulations.

division [has] jurisdiction over transportation network companies to ensure the safety and convenience of the public” and to ensure that the provision of Services in the Commonwealth is “consistent with the public interest,” and the Division shall issue rules and orders to implement, administer, and enforce its oversight responsibilities. G.L. c. 25, § 23(a); G.L. c. 159A½, §§ 2(a), 3(c), 11.

The Act requires the Department to promulgate final regulations to implement the Statute not later than November 3, 2017.⁷ St. 2016, c. 187, § 15. In addition, the Act permits TNCs and Drivers to continue to operate in the Commonwealth during the Department’s promulgation of regulations. St. 2016, c. 187, § 13. To further the Act’s goals of protecting public safety and supporting innovation, and until the promulgation of final regulations is complete, the Department and the various previously mentioned entities entered into Memoranda of Understanding to establish interim public safety procedures regarding Driver motor vehicle and insurance carrier requirements, and, most notably, Driver background check requirements and suitability criteria.⁸ As a result, from January 6, 2017, to September 8, 2017, the Division performed over 120,000 background checks and

⁷ While the Act was signed into law on August 5, 2016, it did not take effect until 90 days later. Article 48 of the Amendments to the Massachusetts Constitution, The Referendum, I (“No law passed by the general court shall take effect earlier than ninety days after it has become a law”).

⁸ All such agreements with the Department are available on the Division’s website: <http://www.mass.gov/eea/grants-and-tech-assistance/guidance-technical-assistance/agencies-and-divisions/dpu/dpu-divisions/transportation-network-company-division/memoranda-of-understanding.html>

determined that over 107,000 Drivers (approximately 90%) were suitable for a background check clearance certificate (“Clearance Certificate”).⁹

To initiate the process of implementing final regulations, on March 24, 2017, the Department issued Proposed Transportation Network Companies Regulations, designated as 220 CMR 274.00 (“Proposed TNC Regulations”). D.P.U. 17-81. Pursuant to the requirements of G.L. c. 30, § 2 and 220 CMR 2.05(1), the Department published notice of the Proposed TNC Regulations in the Massachusetts Register on April 7, 2017, and on April 13, 2017, in The Boston Globe and The Boston Herald. The Department sought written comments on the Proposed TNC Regulations via an initial comment submission deadline of May 9, 2017, and a reply comment submission deadline of June 6, 2017.¹⁰ The Department held a public hearing on May 23, 2017.¹¹

In this Order, the Department reviews the comments received in response to the solicitation for such in this docket (D.P.U. 17-81), and provides its analysis of those comments and the rationale for adopting Final TNC Regulations, designated as

⁹ Background Check Clearance Certificate or Clearance Certificate is verification by the Division to a TNC and a Driver that a Driver completed the two-part background check (by a TNC and the Division) and is suitable to provide Services. Final TNC Regulation 220 CMR 274.02.

¹⁰ The Department does not consider nor analyze comments received after the close of the public comment period.

¹¹ In this Order, the Department cites to the transcript of the public hearing as “Tr. at ___”.

220 CMR 274.00, promulgated as a result of this Order.¹² Accompanying this Order are the following Attachments: (a) Attachment 1 – Final TNC Regulations; (b) Attachment 2 – a redline version of the Final TNC Regulations compared to the Proposed TNC Regulations; and (c) Attachment 3 – a listing of all commenters.¹³ By this Order, and pursuant to G.L. c. 25, § 23(a); G.L. c. 30A, § 2; G.L. c. 159A½; and 220 CMR 2.00, the Department hereby promulgates these Final TNC Regulations, which will become effective on September 22, 2017, with publication in the Massachusetts Register. St. 2016, c. 187, § 15.

II. ADOPTION OF FINAL TNC REGULATIONS

A. Introduction

In furtherance of the Act's directives, the Department finds that this Order and the adoption of Final TNC Regulations are in the public interest and are necessary for the public

¹² All publically available documents pertaining to this proceeding are posted on the Department's website: <http://web1.env.state.ma.us/DPU/FileRoom>. Click on "Dockets/Filings," select "Dockets by Number," and enter "17-81."

¹³ In total, the Department received over 370 comments, including written comments and those made orally at the public hearing (some commenters submitted multiple comments). Of those 370 comments, approximately 297 individuals argue that some aspect of the Proposed TNC Regulations is too stringent or restrictive. By contrast, approximately 10 individuals comment in favor of the Proposed TNC Regulations or in favor of more strict regulation for the TNC industry. The majority of individual commenters (approximately 205) were Drivers, but were disqualified under the interim background check process established in the Memoranda of Understanding. Some 75 commenters registered concerns with aspects of the disqualification of Drivers under the interim background check process and the Proposed TNC Regulations. While the overall number of comments received makes it impractical for the Department to address each commenter individually in this Order, the Department has reviewed and considered all comments and cites to those comments herein where appropriate.

safety and convenience. To implement, administer, and enforce the provisions of the Act, the Department promulgates these Final TNC Regulations. Below, in Sections II.B. through II.L., the Department discusses the following: (a) requirements of a transportation network company permit (“Permit”);¹⁴ (b) requirements of a transportation network driver certificate (“Driver Certificate”);¹⁵ (c) requirements of a Clearance Certificate; (d) maximum daily hours that a Driver may provide Services; (e) requirements for a transportation network vehicle (“Vehicle”);¹⁶ protections for the personal information of a transportation network rider (“Rider”) and Driver;¹⁷ (f) TNC recordkeeping and reporting; (g) inspection and audit procedures; (h) penalty structure for a TNC violation of rules or regulations; (i) Driver appeals; and (j) accommodation of small TNCs. Accordingly, the Department reviews and discusses how the public comments, the Division’s experience in conducting Driver

¹⁴ Transportation Network Company Permit or Permit is documentation issued by the Division that qualifies an entity as a TNC. Final TNC Regulation 220 CMR 274.02.

¹⁵ Transportation Network Driver Certificate or Driver Certificate is authorization issued by a TNC allowing a Driver to provide Services on its behalf. G.L. c. 159A½, § 1. For discussion on the difference between a Driver Certificate and a Clearance Certificate, see Section II.D.1.1., infra.

¹⁶ Transportation Network Vehicle or Vehicle is a motor vehicle used by a Driver to provide Services. Final TNC Regulation 220 CMR 274.02.

¹⁷ Transportation Network Rider or Rider is a passenger in a Pre-arranged Ride provided by a Driver, “provided that the passenger personally arranged the ride or the arrangement was made on the rider’s behalf.” Final TNC Regulation 220 CMR 274.02.

background checks, and the Department's analysis of relevant legal authority support the promulgation of the Final TNC Regulations.

B. Transportation Network Company Permit Process

1. Introduction

The Department received several comments regarding the process of applying for and renewing a Permit in order to operate as a TNC within the Commonwealth, as provided for in Proposed TNC Regulation 220 CMR 274.03. G.L. c. 159A½, § 3(b) (“A transportation network company shall apply for a permit to be issued and annually renewed by the division.”). Pursuant to G.L. c. 159A½, §§ 3(c)(i) through 3(c)(x), and Proposed TNC Regulation 220 CMR 274.03, a TNC must have several oversight processes in place as prerequisites to obtaining a Permit. In their comments, Lyft and Rasier urge the Department to modify the proposed Permit process regarding the obligations that TNCs ensure that Drivers comply with requirements of safe transportation, hours of service, insurance, non-discrimination, payment of commercial tolls, and maintenance of monthly Driver rosters (Lyft Comments at 3-4; Rasier Comments at 12-13; Rasier Reply Comments at 2-3).¹⁸ In addition, the Boston Taxi Owners Association (“BTOA”) urges the Department to reduce and cap the number of Vehicles that operate within the City of Boston (BTOA Comments at 2). Safe, Fair, and Insured Rides (“SAFIR”) comments generally that the framework of

¹⁸ Rasier's May 9, 2017 motion to file extended comments is allowed.

Proposed TNC Regulation 220 CMR 274.03 is consistent with the Act (SAFIR Reply Comments at 2).

Based on the comments received, and for reasons delineated below, the Department finds that it is appropriate to revise the proposed Permit process. As a result, the Department's revisions consolidate the Permit process by modifying and eliminating some of the proposed requirements that are in addition to those set forth in the Statute. Final TNC Regulation 220 CMR 274.03. Below, the Department addresses the comments and the analysis for revisions.

2. Ensuring Rider Safety Comments

Rasier argues that Proposed TNC Regulation 220 CMR 274.03(2)(b) is overly broad in that it requires a TNC to have an oversight process in place to ensure the safe pickup, transfer, and delivery of all Riders (Rasier Comments at 12). Rasier argues that this requirement does not appear in Statute, and that it is duplicative of other Rider safety-related objectives that appear elsewhere in the Proposed TNC Regulations (Rasier Comments at 12). Thus, Rasier argues that the Division should strike Proposed TNC Regulation 220 CMR 274.03(2)(b) (Rasier Comments at 12).

3. Ensuring Rider Safety Analysis and Findings

With respect to ensuring Rider safety, the Department agrees with Rasier's comments that this requirement is satisfied, holistically, throughout the Final TNC Regulations: through the Division's scrutiny of a TNC's business operations, strict Driver Certificate and Clearance Certificate requirements, and hours of service restrictions. Accordingly, the

Department finds that the inclusion of such similar provisions here is redundant and unnecessary. Therefore, the Department strikes Proposed TNC Regulation 220 CMR 274.03(2)(b).

4. Ensuring Driver Compliance with Hours of Service, Insurance, and Non-Discrimination Requirements Comments

Rasier states that it cannot comply with Proposed TNC Regulations 220 CMR 274.03(2)(c) and (2)(f), which require a TNC to “ensure” Driver compliance with hours of service limitations, insurance carrier notice requirements, and non-discrimination laws (Rasier Comments at 12). Rasier’s central argument to support its inability to comply is that Drivers are independent contractors, not employees of Rasier, and, consequently, Rasier has no mechanism to ensure that Drivers undertake specific actions (Rasier Comments at 12).¹⁹ Instead, Rasier suggests that the Final TNC Regulations state that a TNC “promote,” rather than “ensure,” Driver compliance with those requirements (Rasier Comments at 12).

5. Ensuring Driver Compliance with Hours of Service, Insurance, and Non-Discrimination Requirements Analysis and Findings

Given the Statute’s repeated use of the word “ensure” to describe a TNC’s responsibility in the oversight process, the Division cannot adopt Rasier’s suggested substitution of the word “promote.” G.L. c. 159A½, §§ 3(c)(i) (“ensure . . . transportation network driver . . . otherwise complies with all laws, rules and regulations”), (ii) (“ensure

¹⁹ Rasier states it can “leverage its technology” to educate Drivers about drowsy driving (Rasier Comments at 11).

each driver . . . successfully completed a background check”), (v) (“ensure tolls incurred . . . are paid at the commercial rate”), and (x) (“ensure . . . drivers with vehicles registered outside of the commonwealth meet the requirements of [G.L. c. 159A½]”). In terms of Proposed TNC Regulations 220 CMR 274.03(2)(c) and (2)(f), the Statute expressly states that a TNC shall have an “oversight process in place to ensure” that Drivers possess adequate insurance coverage under G.L. c. 175, § 228, and comply with other Vehicle requirements, e.g., G.L. c. 90, § 7A.²⁰ G.L. c. 159A½, § 3(c)(i). Likewise, the Statute requires a TNC to “ensure” the accommodation of Riders with special needs. G.L. c. 159A½, § 3(c)(vi). The proposed regulation simply reflects the plain language of the Statute. As to hours of service, the Department discusses this requirement in Section II.E., infra. Accordingly, the Department rejects Rasier’s recommendation to substitute “promote” for “ensure.”²¹

6. Commercial Toll Rates Comments

Lyft and Rasier argue that the Massachusetts Department of Transportation (“MassDOT”) is the appropriate entity to enforce the requirement of Proposed TNC Regulation 220 CMR 274.03(2)(k), that Drivers incur tolls at a commercial rate (Lyft Comments at 3-4; Rasier Reply Comments at 3). In addition, Rasier recommends that

²⁰ In addition, the Statute prohibits a TNC from issuing a Driver Certificate to a Driver that it knows or has reason to know is non-compliant with G.L. c. 175, § 228 insurance requirements or has not provided notice to her or his automobile insurance policy holder that a vehicle is used to provide Services. G.L. c. 159A½, §§ 4(b)(iii)-(iv).

²¹ Because of the Department’s findings, the Department need not address whether a Driver is, or is not, an employee of a particular TNC.

the Department clarify that TNCs pay tolls, not Drivers, and that Drivers incur the commercial rate when engaged in a Pre-arranged Ride only (Rasier Comments at 13; Rasier Reply Comments at 3). Similarly, Lyft urges the Department to strike Proposed TNC Regulation 220 CMR 274.03(2)(k); if not, Lyft asserts that the Department should clarify that Drivers incur tolls at a commercial rate only when a Driver accepts a Ride, not simply when a Driver logs onto a TNC's digital network ("Digital Network")²² (Lyft Comments at 3-4).

7. Commercial Toll Rates Analysis and Findings

In light of the Division's limited involvement between MassDOT and a TNC with respect to the interchange of Ride data, and MassDOT's responsibility to ensure that tolls are paid at the commercial rate (see G.L. c. 159A½, §§ 2(j), 2(k)), the Department finds that it is appropriate to strike Proposed TNC Regulation 220 CMR 274.03(2)(k). TNCs are hereby on notice, however, that non-compliance with G.L. c. 159A½, § 3(c)(v) shall be a factor in determining the amount of a monetary penalty levied by the Division upon a TNC in any enforcement action. G.L. c. 159A½, § 6(a); Final TNC Regulation 220 CMR 274.14(3).²³

²² A Digital Network is "any online-enabled application, software, website or system offered or utilized by a Transportation Network Company that enables Pre-arranged Rides with Transportation Network Drivers." Final TNC Regulation 220 CMR 274.02

²³ The Department also clarifies, with this change, that a Ride is "accepted" when a Driver commences his or her route to pick up a Rider. Final TNC Regulation 220 CMR 274.02 (definition of "Ride").

8. Maintenance of Driver Roster Comments

Rasier contends that the Department should remove the language “which shall be updated monthly” from Proposed TNC Regulation 220 CMR 274.03(2)(m), which requires that a TNC maintain a Driver roster and update it monthly (Rasier Comments at 13). Rasier argues that the Statute does not provide for this requirement and that it is unnecessary in light of its real-time Driver roster functionality (Rasier Comments at 13).

9. Maintenance of Driver Roster Analysis and Findings

Requests for Driver roster information likely will arise from time-sensitive investigations by law enforcement or requests by the Division for background check verification. See G.L. c. 159A½, § 3(c)(vii). In this respect, a real-time roster is particularly important to protection of public safety.²⁴ Therefore, the Department revises the Final TNC Regulations to require that a TNC maintain a real-time roster of Drivers. Final TNC Regulations 220 CMR 274.03(2)(k). Also important to the protection of public safety, however, is a Driver roster like the monthly Diver roster that is provided for in Proposed TNC Regulation 220 CMR 274.03(2)(k), since, given the fluid nature of the TNC business, an instant snap-shot of a Driver roster may well become stale in instances where a roster is important for compliance-related issues. But, in light of the newly adopted requirement of a real-time Driver roster, the Department finds that it is appropriate to extend

²⁴ In order to ensure that requesting entities timely receive information, a TNC shall maintain a locally-based agent of service on file with the Division.
Final TNC Regulation 220 CMR 274.18.

the period of time regarding the Driver roster pursuant to Proposed TNC Regulation 220 CMR 274.03(2)(k). Therefore, the Department revises this section of the Final TNC Regulations to provide that, starting January 1, 2018, each TNC shall maintain Driver roster for each calendar year, for a period of three years from the date that the roster is generated. Final TNC Regulation 220 CMR 274.11(3)(b).

10. Capping Vehicles Comments

BTOA argues that the Division should reduce and cap the number Vehicles that operate in the City of Boston and throughout the Commonwealth (BTOA Comments at 2). BTOA contends that the Vehicles significantly increase traffic congestion (BTOA Comments at 2). In addition, BTOA contends that cities and towns need to understand the environmental impacts of TNC-related services before the Division permits more Vehicles to operate (BTOA Comments at 2).

11. Capping Vehicles Analysis and Findings

The Department agrees that traffic congestion and environmental impacts of TNC-related services are important considerations in the oversight of the TNC industry. Hence, the Department directs TNCs to share certain information with the Division so that state and regional traffic planning entities may better assess the impacts of TNCs on the Commonwealth's transportation landscape. Section II.H.4., infra. In addition, the Statute permits municipalities to "regulate traffic flow and traffic patterns to ensure public safety and convenience" in relation to Vehicles engaged in the provision of Services. G.L. c. 159A^{1/2}, § 10. The Act also provides that municipalities shall receive expenditures "to address the

impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services” St. 2016, c. 187, § 8(c)(i). Moreover, the Act establishes a Ride-For-Hire Task Force to examine “the environmental impacts that the provision of transportation network services may have”²⁵ St. 2016, c. 187, § 7(vii). Accordingly, the Department finds that these rules and regulations appropriately address issues of traffic congestion and environmental impact, and that a cap on Vehicles is not necessary at this time.

C. Transportation Network Driver Certificate

1. Driver Training Comments

The National Safety Council (“NSC”) comments that Drivers should receive training in a defensive and distracted driving program as a prerequisite to obtaining a Driver Certificate from a TNC under Proposed TNC Regulation 220 CMR 274.05(2) (NSC Comments at 1). NSC argues that such training will reduce the number of Driver-related motor vehicle infractions (NSC Comments at 2). In response, Wuleeb argues that such a requirement is excessively burdensome for a TNC and that now is not the time for its adoption (Wuleeb Reply Comments at 4).

²⁵ On June 30, 2017, the Ride-For-Hire Task Force submitted an interim report to the Legislature on its progress, stating that it would provide a full report to the Legislature by the end of the year. Ride-For-Hire Task Force, Interim Report, available at <https://malegislature.gov/Reports>

2. Driver Training Analysis and Findings

The Department agrees with Wuleeb that mandated Driver certification in defensive and distracted driving training as a Driver Certificate prerequisite is not appropriate at this time. In certain situations where an individual's poor driving record triggers a mandatory driver education program, the Massachusetts Registry of Motor Vehicles ("RMV") designates the NSC as the appropriate entity for the administration of the program.²⁶ G.L. c. 175, § 113B. While the Department supports driving proficiency for Drivers, the Department finds that suitability scheme set forth in Final TNC Regulation 220 CMR 274.21 (Suitability Standard)²⁷ already considers driving history via the categories of Licensed Driver, License Suspension, and Multiple Traffic Violations. In addition, the Division considers overall Driver history in determining whether a discretionary determination of unsuitability is appropriate. Suitability Standard (Discretionary). In light of these safety precautions, the Department declines, at this time, to mandate that TNCs require Drivers to participate in a mandatory defensive and distracted driving training program as a prerequisite for a Driver Certificate.

²⁶ Massachusetts RMV Required Classes or Programs:
<https://www.massrmv.com/SuspensionsandHearings/ReinstatingYourLicense/RequiredClassesorPrograms.aspx>

²⁷ Hereinafter, the Department refers to the suitability scheme set forth in Final TNC Regulation 220 CMR 274.21 (Suitability Standard) as the "Suitability Standard." As discussed in this Order, the Suitability Standard differs in several respects from Proposed TNC Regulation 220 CMR 274.19: Disqualifying Conditions. Section II.D.2., infra.

3. License Plate Number Comments

Lyft and Rasier state that the contents of a Driver Certificate should refer to a Vehicle license plate number, not its registration number (Lyft Comments at 4; Rasier Comments at 18). Lyft states that the term “Registration Number” is ambiguous and that a Vehicle’s license plate is the easiest way that a Rider can identify a Driver’s Vehicle (Lyft Comments at 4-5).

4. License Plate Number Analysis and Findings

The Department agrees that a license plate number, rather than a registration number, is appropriate for a Driver Certificate. Pursuant to G.L. c. 159A½, § 4(a), a “driver certificate shall . . . include the name, picture of the driver and the license plate number of the vehicle in use” (emphasis added). Therefore, a Driver Certificate shall include the license plate number, not the registration number, of the Vehicle in use at the time that the Driver is providing Services.²⁸ Final TNC Regulation 220 CMR 274.05(3)(c). In addition, the Department amends Final TNC Regulation 220 CMR 274.11(3)(a)1 to reflect this modification.

²⁸ Consistent with the Department’s analysis in Section II.D.1.1., *infra*, a Driver Certificate also shall include a statement that the Driver has successfully completed the two-part background check. Final TNC Regulation 220 CMR 274.05(3)(d). Likewise, a Driver Certificate shall contain a statement or recognizable logo by which to identify the issuing TNC. Final TNC Regulation 220 CMR 274.05(3)(e).

5. Display of Driver Certificate Comments

Lyft and Rasier urge the Department to amend Proposed TNC Regulation 220 CMR 274.05(4) to reflect that a Driver need not physically post his or her Driver Certificate inside the Vehicle during the provision of Services (Lyft Comments at 5; Rasier Comments at 18). They argue that the Department should permit electronic display of a Driver Certificate within their Digital Networks instead (Lyft Comments at 5; Rasier Comments at 18). Electronic display, Lyft reasons, is more secure than a posted, printed Driver Certificate that may be lost, manipulated, or shared with a non-Driver (Lyft Comments at 5). Accordingly, Lyft argues that the requirement of posting a Driver Certificate inside of a Vehicle is unnecessary and duplicative of a more secure system already in place (Lyft Comments at 5).

6. Display of Driver Certificate Analysis and Findings

The Department disagrees with Lyft and Rasier that a Driver need not physically post his or her Driver Certificate inside the Vehicle, as the Statute's language "should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Welch v. Sudbury Youth Soccer Association, Inc., 453 Mass. 352, 354-355 (2009), quoting Sullivan v. Town of Brookline, 435 Mass. 353, 360 (2001). The plain language of the Statute requires that a Driver physically post his or her Driver Certificate inside of a Vehicle so that it is visible to a Rider. G.L. c. 159A½, § 4(a) (a Driver "shall post a certificate for each transportation network company that has certified the driver in a location in the vehicle that is visible to the rider while transportation

network services are being provided”) (emphasis added). Correspondingly, based on the Statute’s plain language, the Department agrees with Lyft that a Driver Certificate should be available for electronic display to a Rider within a TNC’s Digital Network. G.L. c. 159A½, § 2(i) (a TNC “shall provide a driver’s name, picture and the license plate number of the vehicle in use to a rider on any digital network used to facilitate a ride.”).

The Department disagrees, however, that the physical posting of a Driver Certificate inside of a Vehicle is unnecessary or duplicative of electronic display within a TNC’s Digital Network. To the contrary, the Department finds that, together, the requirements of G.L. c. 159A½, §§ 2(i) and 4(a) provide further verification to a Rider that he or she has entered the correct Vehicle through matching the Driver Certificate that appears within the Digital Network to the Driver Certificate that appears inside of the Vehicle. Accordingly, in light of the Statute’s plain language and the Department’s findings, the Department holds that: (1) a Driver shall post his or her Driver Certificate inside of the Vehicle so that it is visible to the Rider during the provision of Services; and (2) a TNC shall ensure that a Driver Certificate is easily available to a Rider within a TNC’s Digital Network during the provision of Services. Final TNC Regulation 220 CMR 274.05(4).

D. Transportation Network Driver Background Check

1. Procedural Background Check Process

a. Frequency of TNC Background Checks Comments

Rasier recommends that the Department replace the language of “once every six months” as provided for in Proposed TNC Regulation 220 CMR 274.06(2)(b) with the

language of “[n]ot less than 2 times per year” as provided for in G.L. c. 159A½, § 4(d) (Rasier Comments at 8). Rasier argues that there are no significant policy reasons that favor the proposed requirement and that frequent background checks are of limited practical utility given that criminal cases proceed slowly (Rasier Comments at 8). In addition, Rasier asserts that TNCs benefit from discretion in determining when to conduct background checks, which it contends the proposed requirement does not allow (Rasier Comments at 8).

Wuleeb argues that TNCs should conduct a background check once yearly or once every two years (Wuleeb Comments at 6). Wuleeb contends that there is no reason for what it asserts to be a “multi-element, administratively burdensome, national search to be re-performed by the TNC on such a frequent basis” (Wuleeb Comments at 6). Based on the background check’s purpose, Wuleeb contends that it is very unlikely that a second nationwide background check within a year will produce new Driver information not already known from the first nationwide background check (Wuleeb Comments at 6).

b. Frequency of TNC Background Checks Analysis and Findings

The Department disagrees with Rasier and Wuleeb. First, the Statute mandates that a TNC shall conduct a background check at least twice per year, thereby rendering Wuleeb’s arguments inconsistent with the Statute. G.L. c. 159A½, § 4(d). Second, the Department finds Rasier’s arguments unpersuasive. There is no support for the pace of criminal cases necessitating a change in Proposed TNC Regulation 220 CMR 274.06(2)(b). Nor does Rasier explain how its exercise of discretion is preferable to the six-month requirement contained therein. Regardless, the Department finds that “once every six months” is

consistent with the Statute and furthers the legislative intent of protecting public safety. Such a reporting provision safeguards against a TNC performing two background checks in a year, but within short intervals that are likely to result in the same feedback and frustrate the intent of the Act. Moreover, nothing in the Act prohibits a TNC from conducting background checks on a more frequent basis than as directed by the Act or by the Department's regulations. As such, the Department declines to modify Proposed TNC Regulation 220 CMR 274.06(2)(b) based on the comments received from Rasier and Wuleeb.

c. Third-Party Background Checks Comments

Rasier and Wuleeb contend that the Department should revise Proposed TNC Regulation 220 CMR 274.06(2)(a) to clarify that a third party may conduct a background check on behalf of a TNC (Rasier Comments at 7; Wuleeb Reply Comments at 2). Rasier states that it currently contracts with the third-party background check-provider Checkr, Inc., which is accredited by the National Association of Professional Background Screeners (Rasier Comments at 7).²⁹

d. Third-Party Background Checks Analysis and Findings

The Department is cognizant that TNCs frequently contract with third parties to perform essential functions of their business operations. Third-party contracting is an

²⁹ Founded in 2003, the National Association of Professional Background Screeners is a non-profit trade association that represents the interest of companies offering employment and tenant background screening services.
<https://www.napbs.com/about-us/about-napbs/>

accepted business practice and its use by TNCs is consistent with a general approach of deferring to the reasonable business judgment of regulated companies. See Attorney General v. Department of Public Utilities, 390 Mass. 208, 229 (1983). Accordingly, the Department agrees with Rasier and Wuleeb, and holds that a TNC may contract with a third party for business purposes to satisfy the requirements of G.L. c. 159A½ and Final TNC Regulations 220 CMR 274.00. Final TNC Regulation 220 CMR 274.17.

Nevertheless, a TNC shall not avoid compliance with G.L. c. 159A½ or Final TNC Regulation 220 CMR 274.00 merely because it has outsourced a business function. Thus, the Department directs the Division to construe a record kept or function performed by a TNC's third-party contractor or agent as if kept or performed by the TNC itself. Final TNC Regulation 220 CMR 274.17. Moreover, a TNC shall hold a third-party contractor to the same standards as required of it pursuant to G.L. c. 159A½ and Final TNC Regulations 220 CMR 274.00. If a TNC's third-party contractor or agent violates any statute, rule, regulation, or Order of the Department or Division, the TNC shall be held as if it violated said statute, rule, regulation, or Order. Final TNC Regulation 220 CMR 274.17.

e. Nationwide TNC Background Checks Comments

Rasier comments that it cannot comply with Proposed TNC Regulation 220 CMR 274.06(2)(a)1 because a “multi-state/multi-jurisdictional motor vehicle records locator or other similar commercial database with vehicle validation” does not exist

(Rasier Comments at 7-8).³⁰ Rasier states that its current practice is “to obtain a driving history research report from the Driver’s state of licensure through its third-party background check provider” (Rasier Comments at 8). Rasier recommends amending the Proposed TNC Regulation to refer instead to a “driving history research report” (Rasier Comments at 8).

f. Nationwide TNC Background Checks Analysis and Findings

Based on a consideration of Rasier’s comments, the Department agrees to simplify the language to require that a TNC conduct a multi-state database search of a Driver’s criminal history and of a Driver’s motor vehicle driving history. Final TNC Regulations 220 CMR 274.06(2)(a)1, (2)(a)2. In addition, the Department hereby clarifies that the TNC background check is a nationwide background check for the purposes of the Final TNC Regulations.³¹ Thus, the Department finds that Rasier’s stated, current practice of obtaining an individual’s driving history only from that individual’s current state of licensure will not comply with Final TNC Regulation 220 CMR 274.06(2)(a). Other TNC operators, such as Wuleeb, acknowledge that the “purpose of a national check is to identify whether the driver has significant problems in another state before moving to the

³⁰ The Proposed TNC Regulations require use of a multi-state/multi-jurisdictional records locator for both criminal records (220 CMR 274.06(2)(a)1) and for motor vehicle records (220 CMR 274.06(2)(a)3). The Division treats Rasier’s comments as applying to both requirements.

³¹ In contrast, the Division’s statewide background check is based, in large part, on information gathered from Massachusetts databases. G.L. c. 159A½, §§ 4(b)(viii), 4(c)(ii). See also St. 2016, c. 187, § 14 (Department and RMV to examine the feasibility of “conducting statewide criminal offender record information checks for each operator of a ride for hire vehicle”) (emphasis added).

Commonwealth to be a TNC driver” (Wuleeb Comments at 6). Accordingly, the Department holds that a TNC shall submit to the Division, as part of its Permit application or application renewal, proof of compliance with the nationwide background check requirements, and the Department incorporates this requirement into Final TNC Regulation 220 CMR 274.03(1)(c)4.

g. Submission of Identifying Information to the Division Comments

Lyft and Rasier recommend that the Department reduce the content of Driver roster information that a TNC provides to the Division for purposes of the Division’s background check pursuant to Proposed TNC Regulation 220 CMR 274.06(1)(c) (Lyft Comments at 5-6; Rasier Comments at 9).³² The commenters argue that a Driver’s middle name, former name, current address, and place of birth are not necessary to identify him or her in light of providing the Driver’s first and last name, date of birth, license number, and partial social security number (Lyft Comments at 5-6; Rasier Comments at 9). Rasier states that it is burdensome for a TNC to provide this information (Rasier Comments at 9). Lyft and Wuleeb suggest that the Department require a TNC to provide such information only “if known” to the TNC (Lyft Comments at 5-6; Wuleeb Reply Comments at 2).

³² Teamsters Local 25 (“Teamsters”) argues that Driver roster information should be a public record and that its exemption is a disservice to Drivers, consumers, and the spirit of recently passed public records access legislation (Tr. at 18-19). The Teamsters’ argument, however, is inconsistent with the express provisions of the Statute. G.L. c. 159A½, § 8(e) (such information “shall not be considered a public record”). Accordingly, the Department does not make any findings relative to this assertion.

h. Submission of Identifying Information to the Division Analysis and Findings

In general, the Department agrees with the commenters that TNCs need only provide the information “if known.” Therefore, if such information is known, a TNC shall submit to the Division a Driver’s middle name, former name, current address, and place of birth for purposes of the Division’s background check. As such, the Department amends the reporting obligations to reflect this distinction. Final TNC Regulation 220 CMR 274.06(1)(c). TNCs are hereby on notice, however, that should such information become necessary for the Division to conduct a background check and it is not provided, the Division shall not issue a Clearance Certificate and a TNC shall not issue a Driver Certificate until the Division receives the necessary information to conduct its background check and renders a suitability determination.

i. Fingerprint-Based Background Check Comments

The Department received comments in support of and against the Division conducting fingerprint-based background checks for Driver suitability determinations (see, e.g., Ariana Zagarella Comments at 1; BTOA Comments at 1, Tr. at 92, 93, 138-140; Jen Sales Comments at 1; Rasier Reply Comments at 1). The Boston Police Department (“BPD”) asserts that a fingerprint-based background check is the “gold standard” for conducting a background check, as it provides for a thorough interstate and federal database query of an individual’s criminal offender record history (Tr. at 13, 15). In addition, BPD states that New York City requires fingerprinting for Drivers and that several major United States cities conduct fingerprint-based background checks for taxi drivers (Tr. at 14-15).

BTOA members also support the use of fingerprint-based background checks and argue that the same regulations should apply across the ride-for-hire industry (taxi drivers operating in the City of Boston are currently subject to fingerprinting) (BTOA Comments at 1, Tr. at 92-93, 138-140). Lastly, the New England Livery Association joined in support of requiring fingerprint-based background checks for all Drivers (Tr. at 106).

In response, Rasier argues that the Department should not include a requirement of fingerprint-based background checks for Drivers (Rasier Reply Comments at 1). Rasier contends, without explanation, that fingerprinting is unnecessary and discriminates against minorities (Rasier Reply Comments at 1-2). No other TNC commented on the fingerprinting requirement issue.

j. Fingerprint-Based Background Checks Analysis and Findings

Regardless of the arguments for and against fingerprint-based background checks, the Department need not reach their merits, as the Department and the Division are without the authority necessary to promulgate such background check requirements. Pursuant to Public Law 92-544, a state or federal statute must authorize the use of fingerprint-based background checks for federal and national database queries of criminal offender history information and that statute must be approved by the Director of the Federal Bureau of Investigation.³³ 28 CFR 0.85(j), 20.33, 50.12. The Act provides no such statutory

³³ See, e.g., Department of Criminal Justice Information Services Policies and Procedures for Civil Fingerprinting for Municipal Licensing Applicants: <http://www.mass.gov/eopss/agencies/dcjis/dcjis-fingerprinting-policy.html>

authorization for the Department or Division, nor is the Department or the Division aware of any Massachusetts statute that does. Instead, the Act authorizes the Division to receive “all available criminal offender record information” (“CORI”) from the Massachusetts Department of Criminal Justice Information Services (“DCJIS.” St. 2016, c. 187, § 1; Cf. G.L. c. 6, § 172B½ (“Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check”). Therefore, the Department is incapable of promulgating fingerprint-based background-check regulations in this rulemaking, and declines to engage in a debate on the merits of any such proposal within the context of this proceeding.

k. Issuance of Background Check Clearance Certificates Comments

Lyft and Wuleeb argue that the Division should conduct Driver background checks pursuant to Proposed TNC Regulation 220 CMR 274.06(1)(d) on a per-Driver basis (not on its current per-Driver application basis)³⁴ so that a Clearance Certificate is interchangeable among any TNC for a 60-day period (Lyft Comments at 6-7; Wuleeb Reply Comments at 2). Lyft (with Wuleeb joining in support) argues that the Division’s current practice of a per-Driver application basis is inefficient, needlessly delays Drivers’ access to multiple TNC

³⁴ A Driver does not apply or submit an application to the Division. Rather, a Driver applies or submits an application to a TNC, which then submits Driver roster information to the Division for purposes of a background check. G.L. c. 159A½, § 4(c)(ii); Final TNC Regulation 220 CMR 274.02 (definition of “Driver”). For ease of reference, the Department refers to the Driver roster information that a TNC submits as a Driver application.

platforms, and results in inconsistent suitability determinations by the Division (Lyft Comments at 7; Wuleeb Reply Comments at 2).

Rasier, however, disagrees with the arguments made by Lyft and Wuleeb (Rasier Reply Comments at 2). Rasier contends that, together, G.L. c. 159A½, §§ 4(c) and 3(d) contemplate that the Division and each TNC conduct a separate background check for each individual who applies to a TNC to provide Services (Rasier Reply Comments at 2-3). This practice, Rasier argues, guards against a Driver's forum shopping, *i.e.*, "an individual [] seeking to contract with another TNC due to deactivation from the previous TNC" (Rasier Reply Comments at 3).

In addition, Rasier argues that the Division should allow a TNC to issue a Driver Certificate before the Division conducts a background check and issues a Clearance Certificate (Rasier Comments at 8-9). Rasier contends that G.L. c. 159A½, § 1 defines a Clearance Certificate to issue after the Division background check, not after the TNC background check (Rasier Comments at 8-9). Rasier concludes that, together, G.L. c. 159A½, §§ 1 and 4(b) authorize TNCs to issue Driver Certificates after completion of their background check only, not after the Division's background check (Rasier Comments at 9). This, according to Rasier, comports with its current process of issuing Driver Certificates (Rasier Comments at 9).

1. Issuance of Background Check Clearance Certificates Analysis and Findings

First, the Department finds that the conducting of background checks on a per-Driver application basis is consistent with the Statute. G.L. c. 159A½, § 4(c) ("Prior to providing

transportation network services, a driver applicant shall be subject to a 2-part background check process to determine if the driver applicant is suitable”) (emphasis added). In addition, the Department finds that conducting background checks on a per-Driver application basis supports a measure of competitive fairness in that one TNC will not bear the cost of a background check that benefits all TNCs, but with no costs accrued by other TNCs. Further, the Department agrees with Rasier’s assertion that requiring a TNC and the Division to conduct separate background checks for each individual application guards against Driver forum shopping. Moreover, a Driver’s suitability may change during the period in which separate TNCs submit that Driver’s roster information to the Division. Finally, given that, as of the date of this Order, there is no backlog in applications at the Division, and that the Division is largely processing applications within 24-48 hours, the Department rejects Lyft’s argument that the proposed background check process will create needless delays. Thus, based on the plain language of the Statute and the Department’s findings, the Department holds that the two-part background check shall be performed per each Driver application, not per each Driver.³⁵ Final TNC Regulations 220 CMR 274.06(1)(a), 1(d).

Second, the Department rejects Rasier’s contention that a TNC may issue a Driver Certificate before the Division issues a Clearance Certificate. The Statute is clear that

³⁵ For separate, distinct reasons, the Department holds that Driver appeals shall be considered on an individual Driver basis, not an individual Driver application basis. Section II.K.2., infra.

the Division issues a Clearance Certificate first, and that a TNC issues a Driver Certificate second:

A person shall not provide transportation network services in the commonwealth without a valid background check clearance certificate and a transportation network driver certificate A transportation network company shall not issue a transportation network driver certificate to a driver applicant unless the transportation network company has verified that the driver has received a background check clearance certificate from the division

G.L. c. 159A½, § 4(a) (emphasis added). Thus, a Driver Certificate is the final authorization necessary for a Driver to provide Services, which shall not be issued until after the Division issues a Clearance Certificate. G.L. c. 159A½, §§ 1, 4(a). This, too, comports with the statutory obligations of a TNC to issue a Driver Certificate only after a Driver meets the minimum statutory requirements and “other requirements as the division may establish” G.L. c. 159A½, § 4(b). Therefore, Rasier’s current practice of issuing a Driver Certificate before the Division issues a Clearance Certificate to the Driver is inconsistent with the Statute.

Moreover, the Department finds that issuance of a Driver Certificate after the Division’s issuance of a Clearance Certificate is consistent with the public interest and supports the protection of the public safety. A Driver Certificate that is available to Riders both through a TNC’s Digital Network and through posting inside of a Vehicle serves to assure Riders that the Division approved the Driver. Section II.C.6., supra. Therefore, in light of the Statute’s plain language and the Department’s findings, the Department holds that a TNC shall issue a Driver Certificate only after verification that a Driver has received a Clearance Certificate from the Division. Final TNC Regulation 220 CMR 274.05(2)(b).

2. Substantive Background Check Process

a. Statutory Authority Comments

Many commenters argue that the Statute sets a limit on the scope of Driver suitability criteria and, consequently, contend that the Department is without authority to promulgate regulations that include a look-back period beyond the seven years provided for in Statute, include non-conviction dispositions, or include offenses not expressly articulated in Statute (see, e.g., Christian Buscemi Comments at 1-4; Larry Croce Comments at 1; Rasier Comments at 2-5). Thus, according to several commenters, the Statute mandates that the categories of Felony Robbery and of Sex, Abuse, and Exploitation Offenses be limited to a seven-year look-back period, not the indefinite look-back period provided for in Proposed TNC Regulation 220 CMR 274.19 (see, e.g., American Civil Liberties Union of Massachusetts (“ACLU”) Comments at 1). Similarly, commenters assert that G.L. c. 159A½, § 4(b)(vii)(1) defines “sex offense” as a crime under G.L. c. 127, § 133E, not a crime pursuant to G.L. c. 6, § 178C as provided for Proposed TNC Regulation 220 CMR 274.19 (see, e.g., GBLS Comments at 8-9).

In addition, many commenters argue that, because G.L. c. 159A½, § 4(b) references the word “conviction,” the Department cannot (and should not) promulgate a suitability standard that includes a continuance without a finding (“CWOFF”)³⁶ as a trigger for a

³⁶ A CWOFF is a criminal disposition in which the defendant admits to sufficient facts for a finding of guilt, but the judge accepts the defendant’s request that a finding of guilt not enter and instead continues the case without a finding of guilt until a specific date to be thereupon dismissed pending compliance with court orders. G.L. c. 278, § 18.

disqualifying condition (see, e.g., GBLS Comments at 5-6; NAACP-Boston Branch Comments at 1; Rasier Comments at 4-5).³⁷ In contrast, some commenters argue that the Department should maintain strict standards for Driver suitability criteria with respect to CWOFS (see, e.g., Norma Floyd Comments at 1). Additionally, in light of the arguments made against the inclusion of CWOFS, BPD contends that the “[Department] should not lower the standards but should in fact make more stringent standards” (Tr. at 14). Likewise, the RMV states that the “question of assessing operator fitness or safe driving should in no way be limited by excluding certain motor vehicle violations that terminate in a CWOFS disposition” (RMV Comments at 4). Relatedly, the Massachusetts Executive Office of Public Safety and Security (“EOPSS”) submitted comments and data summaries illustrating the use of CWOFS throughout the district and Boston municipal court departments (EOPSS Comments at 1-7).

b. Statutory Authority Analysis and Findings

i. Minimum Standards

The Department finds that the Statute intends to set out the minimal standards and regulatory guidelines by which the Division must implement its oversight of TNCs, and that

“[T]he judge will [] make findings as to whether the plea or admission is knowing and voluntary, and whether there is an adequate factual basis for the charge.”
Mass. R. Crim. P. 12(c)(5).

³⁷ The Department also recognizes the many individual commenters who argue against the inclusion of CWOFS in Proposed TNC Regulation 220 CMR 274.19 (see, e.g., Anne Auerbach Comments at 1; Barry Martin Comments at 1-2; Craig Korowski Comments at 9-12; Donald Latham Comments at 1-2; Milton Neto Comments at 1).

those standards and guidelines are not to serve as a regulatory ceiling. Where the language of a statute is plain and unambiguous, its ordinary meaning is applied. See Commonwealth v. Brown, 431 Mass. 772, 775-776 (2000) (“‘for life or for any term of not less than twenty years,’ indicates that offenders under the statute must be sentenced . . . a minimum term of twenty years and a maximum term of life,” not “for life, or for any term of years, provided however, that in no event shall the maximum term imposed be less than twenty years”) (emphasis added). Here, the operative portion of the Statute contains significant modifying language supporting a minimal standards construction: “At a minimum, and subject to other requirements as the division may establish by regulation” G.L. c. 159A½, § 4(b) (emphasis added).

Only after those qualifiers does the Statute establish details for Driver requirements: (a) a Driver must be “at least 21 years of age”; (b) have a validly registered and inspected Vehicle; (c) provide notice to the insurer of his or her Vehicle; (d) be determined suitable; (e) not appear on the National Sex Offender Registry (“NSOR”); (f) not have a conviction in the last seven years for certain enumerated offenses; and (g) not have more than four traffic violations or any one major traffic violation within the last three years.³⁸ G.L. c. 159A½, §§ 4(b)(i)-(vii). The Statute plainly authorizes the Department to

³⁸ Even with the level of detail that the Legislature provides, the Department must fill in the gaps, as the Statute does not define “felony robbery,” “felony fraud,” or “suitable.” G.L. c. 159A½, §§ 4(b)(v), 4(b)(vii)(4)-(5). Where there is such a statutory gap, the agency charged with the administration of the statute is to spell out the details of the legislative policy. United States v. Mead Corporation, 533 U.S. 218, 227 (2001), citing Chevron U.S.A., Inc. v. Natural Resources Defense

set forth “such other requirements” it deems appropriate in promulgating regulations and identifies specific regulatory details consistent with the setting of minimum standards. See Mad Maxine's Watersports, Inc. v. Harbormaster of Provincetown, 67 Mass. App. Ct. 804, 809 (2006) (“The plain terms of [G.L. c. 90B] § 9A codify quotidian regulatory details consonant with the setting of minimum standards for personal watercraft use and operation, e.g., the minimum distance to be maintained as a buffer between the watercraft and a swimmer or other vessel, hours of approved use, a minimum age of sixteen years for an operator, and a requirement of wearing approved flotation devices. Given this micro level of detail in [G.L. c. 90B] § 9A, the plain language of the statute supports the minimal standards construction”) (emphasis added).

Therefore, the Department construes the Statute to establish minimum requirements, rather than exact regulatory standards or ceilings. Accordingly, the Department rejects the position that it cannot promulgate a suitability standard with a look-back period beyond seven years that considers a criminal disposition other than a conviction, or that includes offenses not expressly referenced in Statute.

ii. Continuance Without a Finding

Following a review of the record and an analysis of the Statute, the Department holds that G.L. c. 159A½, § 4 requires that the Division consider non-conviction dispositions, such

Council, Inc., 467 U.S. 837, 843-844 (1984); Town of Middleborough v. Housing Appeals Committee., 449 Mass. 514, 523 (2007), citing Zoning Board of Appeals of Wellesley v. Housing Appeals Committee, 385 Mass. 651, 654 (1982).

as CWOFS, in determining Driver suitability. First, for purposes of the two-part background check under G.L. c. 159A½, § 4, the Statute’s plain language requires the Division to obtain from DCJIS “all available” CORI as defined in G.L. c. 6, § 167, which includes “non-convictions.” G.L. c. 6, § 172(a)(33); G.L. c. 159A½, § 4(c)(ii). Based upon that information, the Division determines whether a Driver “committed an offense” that would render him or her unsuitable, not whether he or she was “convicted” of such an offense. G.L. c. 159A½, § 3(d). See also G.L. c. 159A½, § 4(e). Thus, the Statute’s language belies the assertion that the Driver suitability review is limited to convictions only.

One of the minimum Driver requirements, as stated above, is that a Driver does not have a “conviction” for certain offenses within the past seven years. G.L. c. 159A½, § 4(b)(vii). Other, separate requirements are that Drivers successfully complete the two-part background check and are “suitable to provide transportation network services.” G.L. c. 159A½, § 1 (definition of “Clearance Certificate”). The Legislature granted the Department access to all available CORI for the purposes of “ensur[ing] the safety . . . of the public” in overseeing TNCs. G.L. c. 6, § 172(a)(33); G.L. c. 159A½, § 2(a). In connection with this purpose and in giving effect to all of the words of the Statute, the Department resolves that convictions as well as offenses committed, *i.e.*, non-convictions, such as CWOFS, are to inform the determination of Driver suitability.³⁹

³⁹ General Laws c. 159A½ does not define the term “conviction.” With the Department’s findings that CWOFS are considered in determining Driver suitability, the Department need not reach the issue of whether the term “conviction,” as used in the Statute, includes or excludes CWOFS. Compare Tirado v. Board of Appeal on

Second, several of the Statute's express and implied requirements obligate the Division to consider non-conviction dispositions in determining Driver suitability. For example, G.L. c. 159A½, § 4(b)(vii)(2) includes language prohibiting Drivers from providing Services who were "assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court" within the last seven years. Such court-ordered assignments are frequently forms of non-conviction dispositions for offenses under G.L. c. 90, § 24.⁴⁰ In addition, pursuant to G.L. c. 159A½, § 4(b)(vi), no Driver may appear on NSOR. Significantly, NSOR's federal enabling statute requires registration for convictions, which include CWOFF-like dispositions.⁴¹ Thus, the prohibition contained in

Motor Vehicle Liability Policies and Bonds, 472 Mass. 333, 340 (2015) (conviction includes CWOFFs for commercial driver license requirements); contrast Souza v. Registrar of Motor Vehicles, 462 Mass. 227, 231 (2012) (where definition of "convicted" makes no mention of, among other things, assignment to alcohol or controlled substance education, treatment or rehabilitation program, an offense that resulted in a CWOFF will not be read into the definition).

⁴⁰ See Commonwealth v. Bowden, 447 Mass. 593, 594 (2006) (statute providing enhanced penalties for subsequent operating under the influence offenses satisfied by evidence that defendant was "previously convicted or assigned to an alcohol . . . education, treatment, or rehabilitation program by a court"); Scheffler v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 84 Mass. App. Ct. 904, 905 (2013) ("A plain reading of G.L. c. 90, § 24, demonstrates that a guilty conviction is not the only outcome that is labeled a 'like offense'; rather, the statute contains a variety of dispositions, including a continuance without a finding.").

⁴¹ The Sex Offender Registration and Notification Act ("SORNA"), which was enacted on July 27, 2006 (see Pub. L. No. 109-248, 120 Stat. 590), established the NSOR, which receives sex offender information from all 50 states, the District of Columbia, U.S. territories, and certain Indian tribes. 42 U.S.C. § 16935a(6). Under SORNA, a "conviction" depends on the disposition's substantive effect, rather than "nominal changes or terminological variations," so an offender "is 'convicted' for SORNA

G.L. c. 159A½, § 4(b)(vi) implicitly considers non-conviction dispositions for certain sex offenses. Further, under G.L. c. 159A½, § 4(b)(viii), a Driver shall not, within the preceding three-year period, have a “major traffic violation” pursuant to the Massachusetts Division of Insurance, e.g., 211 CMR 134.00 Appendix A: Traffic Law Violations. All major traffic violations are criminal in nature. Consequently, in the Division’s experience, a major traffic violation may sometimes appear as a CWOFF on a Driver’s CORI, but may not appear on his or her RMV driving record.⁴² By ignoring that CWOFF and issuing a

purposes if the sex offender remains subject to penal consequences based on the conviction, however it may be styled.” The National Guidelines for Sex Offender Registration and Notification, 73 Fed.Reg. 38030, at 38050 (emphasis added). A defendant is thus “convicted” for purposes of SORNA if he pled nolo contendere to a sex offense, regardless of whether the adjudication of guilt is withheld due to successful completion of probation. United States v. Bridges, 741 F.3d 464, 469 (4th Cir. 2014). Cf. Tirado, 472 Mass. at 338 (2015) (“An admission to sufficient facts is very much like an Alford plea or a plea of nolo contendere, in that the defendant does not explicitly admit guilt We do not think the issue of admission or adjudication of the guilt of a defendant is dispositive of the question whether a determination has been made that a person has violated or failed to comply with the law. Such an argument acknowledges only the form of the end result of the practice without regard for its operation and purpose.”).

⁴² Law enforcement initially reports a criminal motor vehicle citation to a clerk-magistrate (where it may enter into the individual’s CORI) and the clerk-magistrate subsequently notifies the RMV of the disposition (where it may enter into the individual’s driving record). See G.L. c. 90, § 27; G.L. c. 90C, § 2 (b). Due to lags in administrative reporting between courts and the RMV, the Division may receive a Driver’s CORI that contains a CWOFF for a major traffic violation and the same Driver’s RMV record, which does not contain an entry for that major traffic violation. See, e.g., National Highway Traffic Safety Administration, Massachusetts Traffic Records Assessment Report, at 54-55 (Mar. 16-20, 2009), available at <http://www.mass.gov/eopss/docs/programs/ghsb/reports/122209-traffic-rec-assess-rpt-09.doc>; and Cambridge Systematics, Inc., Massachusetts Statewide e-Citation and Traffic Records System Business Plan, at 1-2 (Sept. 30, 2009), available at

Clearance Certificate based on the RMV driving record (with the omitted entry), the Division would frustrate the intent of the Statute by allowing a Driver to provide Services despite having had major traffic violation in the last three years.⁴³ Thus, with respect to G.L. c. 159A½, § 4(b)(viii), the Department finds that the Statute implicitly requires the Division to consider a CWOFF in determining Driver suitability.

Finally, and independent of the previous holding, the Department holds that, based on the widespread use of CWOFFs throughout the district and Boston municipal court departments, the Division's inclusion of CWOFFs in determining Driver suitability is appropriate in discharging its statutory responsibility of regulating the provision of Services in furtherance of public safety. See, e.g., G.L. c. 6, § 172(a)(33); G.L. c. 159A½, § 2(a). According to a report authored by the Council of State Governments Justice Center ("CSG Justice Center"), data from 2014 demonstrates that CWOFFs were a means to resolve criminal matters nearly as often as convictions, and that CWOFFs were imposed in not only minor offenses, but also in serious felonies (EOPSS Comments at 2-7).⁴⁴ Indeed, in 2014,

<http://www.mass.gov/eopss/docs/programs/ghsb/reports/012910-ecitation-business-plan-final.pdf>.

⁴³ Due to the higher burden of proof for a CWOFF (admission to sufficient facts to warrant a finding of guilt) than a motor vehicle responsible finding (preponderance of evidence), a Driver is not prejudiced by the Division's reliance on a criminal disposition in lieu of a responsible finding. Mass. R. Crim. P. 12 (a)(2); Trial Court Rule VII, Uniform Rules on Civil Motor Vehicle Infractions Rule (b)(2).

⁴⁴ CSG Justice Center, Massachusetts Criminal Justice Review, Working Group Meeting 2, at 40-41 (Apr. 12, 2016), available at

throughout the district and Boston municipal court departments, there were reportedly 35,684 convictions and 31,855 CWOFS: CWOFS were imposed in 1,324 violent felonies, 3,991 felony property offenses, and 916 felony drug crimes (EOPSS Comments at 2, 5).⁴⁵ Given the prevalent use of CWOFS to dispose of serious offenses, as demonstrated by these numbers, the Department finds that the Division's responsibility to ensure the public's safety during the millions of monthly Rides throughout the Commonwealth compels rejecting the arguments to exclude, for suitability determination purposes, nearly one-half of the criminal admissions made in the district and Boston municipal court departments.⁴⁶ Accordingly, the Department finds that it is appropriate to consider CWOFS in determining Driver suitability.

Notwithstanding this conclusion, the Department is sympathetic to the issues raised by several commenters regarding the variety of reasons for which a CWOFS may be imposed (see, e.g., Boston City Councilor Andrea J. Campbell Comments at 2; Johanna

<http://www.uumassaction.org/uuma/wp-content/uploads/2015/01/CSG-Interim-Report-Working-Group-Meeting-2-1.pdf>.

⁴⁵ CSG Justice Center, Massachusetts Criminal Justice Review, Working Group Meeting 2, at 40-41 (Apr. 12, 2016), available at <http://www.uumassaction.org/uuma/wp-content/uploads/2015/01/CSG-Interim-Report-Working-Group-Meeting-2-1.pdf>.

⁴⁶ In addition, the Department disagrees that the consideration of CWOFS is akin to treating them as convictions (see, e.g., GBLS Comments at 6; Lyft Comments at 10; Massachusetts Immigrant & Refugee Advocacy Coalition ("MIRA") Comments at 1; NAACP-Boston Branch Comments at 1; Rasier Comments at 4-5). For purposes of determining suitability, a CWOFS is no more like a conviction than any other disqualifying condition, such as too many traffic violations, a license suspension, or an active arrest warrant, though they all have the same effect on Driver suitability.

Griffiths Comments, Tr. at 163-165; Lyft Comments at 10; MIRA Comments at 1; Rasier Comments at 4-5). As a result, and in light of the Statute's minimum guidelines, the Department directs the Division to qualify the consideration of CWOFS for suitability purposes. Thus, the Division shall construe a CWOFS as a mandatory disqualifying condition if entered within the last seven years and as a presumptive disqualifying condition if entered after the last seven years.⁴⁷ Suitability Standard (preamble).

c. Specific Disqualifying Conditions Comments

i. Look-Back Periods

Several commenters contend that the Department should reduce the look-back periods for various categories of Proposed TNC Regulation 220 CMR 274.19. The commenters argue that the Department should eliminate, or reduce, the indefinite look-back period as it pertains to the categories of: (a) Felony Robbery; (b) Multiple Driving Offenses; (c) Sex, Abuse, and Exploitation Offenses; and (d) Violent Crimes (see, e.g., ACLU Comments at 1-2; Beverly Steed Comments at 1; Craig Nelson Comments at 2; David Sullivan Comments at 1; Families for Justice as Healing ("FJH") Comments at 1; GBLS Comments at 7-10; Harvie Campbell Comments at 1-2; Lyft Comments at 11; Michael Benn Comments at 2). In addition, some commenters argue that the Department should reduce the seven-year look-back period as it pertains to the categories of: (a) Felony Convictions; (b) Suspension of Driver's License; and (c) Violent Crimes 2, including

⁴⁷ For the distinction between mandatory and presumptive disqualifying conditions, see Section II.K.2., infra, and Final TNC Regulation 220 CMR 274.15(1).

offenses of assault and battery, assault, and threats to commit a crime (see, e.g., GBLs Comments at 8-9; Rasier Comments at 3, 6-7).⁴⁸ Finally, the RMV states that “[d]ue to the seriousness of [a habitual traffic offender] designation, the [RMV] does not believe that any operator suspended as [a habitual traffic offender] is suitable to transport passengers for hire without at least four years of clean driving following [a habitual traffic offender designation]”⁴⁹ (RMV Comments at 3-4).

ii. Scope of Disqualifying Categories

Several commenters argue that various categories of Proposed TNC Regulation 220 CMR 274.19 are overly broad and should be narrowed in scope. For example, the ACLU argues that the category of Sex Offender Registration should not apply to Level 1 sex offenders (who might not be disqualified by the NSOR category), nor should the category of Open/Unresolved Warrants render a Driver unsuitable where the underlying offense would not result in an unsuitability determination (ACLU Comments at 1-2). Likewise, some commenters argue that an open criminal case should not prohibit a Driver from providing Services (see, e.g., FJH Comments at 1; Gisell Suazo Comments at 1-2;

⁴⁸ The RMV contends that immediate medical threat suspensions should be subject to a three-year look-back period or an individualized suitability determination (RMV Comments at 2).

⁴⁹ A habitual traffic offender suspension “is triggered by accumulating a total of three major moving violations or any combination of 12 major or minor violations within a five year period.” Massachusetts RMV, Accumulation of Offenses Suspensions: <http://www.massrmv.com/SuspensionsandHearings/CitationsSurcharges/AccumulationofOffensesSuspensions.aspx>; see also, G.L. c. 90, § 22F.

Hailey Alm Comments at 1; Jason Daily Comments at 1; Polly Attwood Comments at 1). In addition, GBLS argues that the category of Felony Fraud is overly broad and captures “low level” offenses, such as larceny over \$250 (GBLS Comments at 8).

Other commenters argue that the Department should narrow the criteria of the Suspension of Driver’s License category by excluding: (a) instances of a license suspension for obtaining a license by fraudulent means; (b) license suspension for failure to make a timely payment; (c) suspensions for an immediate medical threat; and (d) license suspension for excessive traffic law violations and subsequent failure to take a driver retraining course (see, e.g., Denise Lawrie Comments, Tr. at 33-34; Gideon Clemedore Comments at 1; Holly Montero Comments at 1-2; Iman Abdullah Comments at 2; Oswaldo Alzate Comments at 1-2; Rasier Comments at 6-7; Teresa Balas Comments at 1). Lastly, some commenters argue that where multiple traffic law violations arise out of the same incident, the Division should construe them as one violation, not multiple violations (see, e.g., Kassaye Mario Comments, Tr. at 126-129; Tilak Raj Comments, Tr. at 35-37).

iii. Provision of Disqualifying Conditions

The Department also received comments that various categories and offenses of Proposed TNC Regulation 220 CMR 274.19 should be removed altogether as suitability criteria. For example, several commenters argue that the Department should eliminate the categories of Licensed Driver and Suspension of Driver’s License in favor of requirements that a Driver be at least 21 years of age and possess a valid driver’s license (see, e.g., ACLU Comments at 1; FJH Comments at 1; Rasier Comments at 5-6). In contrast, the

RMV maintains “that regardless of the event (major or minor traffic violation) or the number of license suspensions (single or multiple), the behavior demonstrates an inability to safely operate a motor vehicle and to abide by the traffic laws,” and, thus, it supports the seven-year look-back period for license suspensions related to driving (RMV Comments at 1-2).

In addition, the ACLU encourages the Department to strike the category of Felony Convictions and GBLS argues that the Department should strike the offenses of prostitution and of indecent exposure (ACLU Comments at 2; GBLS Comments at 8). Lastly, based on concerns that Drivers may illegally operate like taxis by soliciting street hails (see, e.g., BPD Comments, Tr. at 16-17; BTOA Comments at 2), BPD recommends that the Department include a disqualifying provision that serves to bar any Driver caught street hailing from providing Services for a period of two years (Tr. at 16-17).

d. Specific Disqualifying Conditions Analysis and Findings

i. Adopted Modifications

In light of the comments received, the Department modifies Proposed TNC Regulation 220 CMR 274.19 in several respects. First, the Department modifies the category of Suspension of Driver’s License by reducing the look-back period to five-years and narrowing the criteria. Suitability Standard (License Suspension). In this regard, the Department agrees that, due to the various ways in which a license may be suspended that are unrelated to safe operation of a motor vehicle, it is appropriate to narrow the category. See Kenney, Faris, and Keane, Administrative Law and Practice, 12 Mass. Prac. Series § 21:50;

Rasier Comments at 6-7. In narrowing the category, the Department finds that a license suspension: (a) bears directly upon a Driver's ability to operate a motor vehicle safely (see RMV Comments at 1-2); and (b) is more serious than the proscription of G.L. c. 159A $\frac{1}{2}$, § 4(b)(viii) for excessive traffic violations, which contains a three-year look-back period.⁵⁰ Accordingly, the Department rejects the arguments that the Suspension of Driver's License category should be reduced further to a three-year look-back period or shorter (see ACLU Comments at 1; Rasier Comments at 6-7), and that the Division completely disregard whether a Driver's license was suspended at all (see, e.g., FJH Comments at 1).

The Department also finds that several other areas of Proposed TNC Regulation 220 CMR 274.19 are appropriate for modification. In agreeing with the RMV that the designation as a habitual traffic offender merits a look-back period beyond seven years (RMV Comments at 2-3), the Department extends the look-back period to ten years. Suitability Standard (Habitual Traffic Offender). In addition, the Department narrows the grounds that constitute criteria of the Multiple Driving Offenses category, from all offenses under G.L. c. 90, § 24(2)(a), to specifically enumerated offenses. Suitability Standard (Multiple Driving Offenses). Moreover, the Department finds that its treatment of CWOFs after seven years (see preamble to the Suitability Standard), alleviates several other concerns

⁵⁰ Based on the RMV's comments, the Department finds that junior operator-specific violations shall apply generally to the category of License Suspension and that the Division shall calculate the date of the look-back period for a traffic law violation from the disposition of the violation (RMV Comments at 4). Suitability Standard (preamble; License Suspension).

with respect to the Multiple Driving Offenses category (see, e.g., David Faustrum Comments, Tr. at 57-59; Paul Ford Comments, Tr. at 84-86).

In addition, the Department agrees with GBLS that prostitution offenses may inadvertently encompass instances where individuals are victims of sex trafficking (GBLS Comments at 8). Therefore, the Department removes this offense from Proposed TNC Regulation 220 CMR 274.19. Likewise, the Department is persuaded by GBLS's comments regarding indecent exposure offenses (GBLS Comments at 8), but disagrees that the offense should be removed entirely from consideration; therefore, the Department shall retain a seven-year look-back period for that offense. Suitability Standard (Violent Crimes & Abuse-Related Offenses).

Finally, due to the Department's public safety responsibilities and the Division's experience in conducting background checks, the Department finds that, in relation to other similar prohibitive offenses, it is appropriate to include the following additional offenses within the seven-year look-back period: (a) felony breaking and entering/burglary (G.L. c. 266, §§ 15-18); (b) larceny from a person (G.L. c. 266, § 25); (c) identity fraud (G.L. c. 266, § 37); and (d) witness intimidation (G.L. c. 268, § 13B). Suitability Standard (Violent Crimes & Abuse Related Offenses).

ii. Rejected Modifications

Overall, the Department agrees with commenters who argue that the Division should maintain strict Driver suitability criteria (see, e.g., BPD Comments, Tr. at 14; Jen Sales Comments at 1; SAFIR Reply Comments at 1-2). Accordingly, the Department finds that an

indefinite look-back period is appropriate in determining Driver suitability, as it is in other public safety-oriented driver licensing contexts. G.L. c. 90, § 8A (no school bus operator certificate shall issue to a sex offender or an individual convicted of possession with intent to distribute a controlled substance); G.L. c. 90F, §§ 9(B), (D) (no person shall hold a commercial driver's license if convicted of two or more offenses for operating under the influence or leaving the scene of an accident, or convicted of use of a motor vehicle in the commission of a felony, or refusing to submit to a chemical breath test two or more times). Likewise, the Department disagrees that a Level 1 sex offender may operate as a Driver (see ACLU Comments at 2) and, instead, agrees with commenters who assert that a sex offender should not be permitted to do so (see, e.g., State Senator Michael Rodrigues Comments at 1; City of Everett Mayor Carlo DeMaria, Jr., ("Mayor DeMaria") Comments at 2). See also G.L. c. 90, § 8A ("no [school bus operator] license shall be issued to a person who is a sex offender"). In sum, the Department finds that the remaining offenses and conditions within the indefinite look-back period are serious and significantly concern the Division's responsibility to ensure the safe transport of the Commonwealth's residents availing themselves of Services by TNCs. Therefore, the Department declines to modify any other categories that are subject to an indefinite look-back period.

In addition, the Department declines to narrow or remove the categories of Felony Convictions, Open/Unresolved Cases, Open/Unresolved Warrants, or Sex Offender Registration. The Department finds that Driver suitability determinations based on felony convictions are appropriate for public safety purposes. See, e.g., BPD Rule 403,

§ 2.II.a.iii.13 (prohibiting felony convictions within last five years for taxi operators). In light of the Division's statewide public safety responsibility and the proximity of Drivers and Riders, the Department declines to reduce the look-back periods for offenses within the seven-years categories.

Further, the Department finds that disqualification pursuant to the Open/Unresolved Cases category is appropriate in light of G.L. c. 159A½, § 4(e) (suspending or revoking Driver Certificate for arrest for a crime or motor vehicle citation for a disqualifying condition). Likewise, the Department declines to narrow the category of Open/Unresolved Warrants to include only warrants that may result in a negative determination of suitability. Where an individual has an active arrest warrant, law enforcement may arrest that person immediately. If police attempt to execute an arrest warrant for a person that is a Driver, a Rider's safety and convenience may be jeopardized in a number of ways. The Department finds that such a scenario compels maintaining the disqualification for any active arrest warrant, regardless of the underlying offense.

Regarding the criteria of the Suspension of Driver's License category, the Department declines to eliminate the following license suspensions: (a) license suspension for obtaining a fraudulent license; (b) license suspension for immediate medical threat; and (c) license suspension related to excessive surchargeable events.⁵¹ Fraudulently obtaining a license bears

⁵¹ The Department hereby clarifies that a license suspension for failure to make a timely payment is not construed as a license suspension related to the operation of a motor vehicle for purposes of the Suitability Standard.

directly upon an individual's ability to comply with the most basic of motor vehicle laws. In addition, while the Department sympathizes with an individual whose license was suspended due to a medical threat, the Department's regulations must put the safety of the Rider first. Therefore, the Department finds that a license suspension for an immediate medical threat is appropriate within this category. Lastly, the Department disagrees that a license suspension for surchargeable events is merely a suspension for failure to attend a driver retraining course (see, e.g., Holly Montero Comments at 1-2). Rather, the Department finds that it represents a determination by the RMV that, due to excessive moving violations and/or surchargeable events, it is appropriate to suspend an operator's license.⁵² See Commonwealth v. Crosscup, 369 Mass. 228, 231 n.2 (1975) ("The notice of intention to suspend conveys notice of imminent registry action").

The Department also rejects arguments that an individual's years of driving experience (see Licensed Driver category of the Suitability Standard) should not bear upon his or her suitability to provide Services (see, e.g., Rasier Comments at 5-6). To the contrary, the Department finds that age is a proxy for driving experience and, as such, correlates with safe driving.⁵³ Further, the Department rejects the argument that multiple traffic law violations

⁵² See Massachusetts RMV, Accumulation of Offenses Suspensions: <http://www.massrmv.com/SuspensionsandHearings/CitationsSurcharges/AccumulationofOffensesSuspensions.aspx>.

⁵³ See Brian C. Tefft, AAA Foundation for Traffic Safety, "Motor Vehicle Crashes, Injuries, and Deaths in Relation to Driver Age" at 2 (2012), available at <https://www.aaafoundation.org/sites/default/files/OlderDriverRisk%20FINAL.pdf> and <https://www.aaafoundation.org/sites/default/files/Motor%20Vehicle%20Crashes%20F>

arising out of a single incident or citation should qualify as a single traffic violation (see, e.g., Kassaye Mario Comments, Tr. at 126-129; Tilak Raj Comments, Tr. at 35-37). General Laws c. 159A½, § 4(b)(viii) prohibits “more than [four] traffic violations or any major traffic violation,” not more than four traffic incidents or any one major traffic incident. We presume the Legislature chose its words carefully in making this distinction. Breslin v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 70 Mass. App. Ct. 131, 134 (2007). See G.L. c. 90C, § 1 (defining “[a]utomobile law violation” as “any violation of any statute, ordinance, by-law or regulation relating to the operation or control of motor vehicles” and a “[c]itation” as the record of “an occurrence involving all automobile law violations by the person cited.”). Finally, the Department declines to adopt BPD’s recommendation to bar a Driver from providing Services for a period of two years should a Driver accept a street hail, as G.L. c. 159A½, § 7(c) already provides for a penalty mechanism in this instance and the Division may suspend or revoke a Clearance Certificate for a Driver’s violation of a rule or regulation. G.L. c. 159A½, §§ 2(l)-(m); Suitability Standard (Discretionary).

e. Discretionary Determination Comments

Lyft and Rasier submitted comments regarding the Division’s discretionary authority to deny a Clearance Certificate to a Driver pursuant to Proposed TNC Regulation

[act%20Sheet.pdf](#); Insurance Institute for Highway Safety, Highway Loss Data Institute, Fatality Facts, Teenagers (2015), available at <http://www.iihs.org/iihs/topics/t/teenagers/fatalityfacts/teenagers>.

220 CMR 274.06(3)(b)2. Lyft states that it “has serious due process concerns about the [Division] disqualifying drivers who pass the Division Background Check, but are deemed to nonetheless have acted or are likely to act in an unsafe manner” (Lyft Comments at 8). Lyft argues that a Driver should be afforded a hearing prior to a discretionary determination of unsuitability (Lyft Comments at 8). In addition, both Lyft and Rasier argue that Proposed TNC Regulation 220 CMR 274.06(3)(b)2 is overly broad and subjective in its inclusion of the language “likely to act” and recommend that the Department remove that language from the Final TNC Regulations (Lyft Comments at 8; Rasier Comments at 9-10). In contrast, with respect to “the [Division’s] discretionary use of denials,” BPD comments that “the safety of the riders should be paramount” and “when in doubt, [the Division] should err on that side of caution and disqualify” (Tr. at 14). SAFIR also generally supports Proposed TNC Regulation 220 CMR 274.06(3)(b)2 (SAFIR Reply Comments at 2).

f. Discretionary Determination Analysis and Findings

The Department finds that a discretionary determination of suitability comports with the requirements of due process and is appropriate in light of the impossible task of specifying every instance in which a Driver’s provision of Services would be inconsistent with the public interest or the protection of public safety. First, discretionary determinations of suitability are not “subjective.” See Chief of Police of the City of Worcester v. Holden, 470 Mass. 845, 854-856 (2015) (suitability determination based on specific and reliable information not a generalized or subjective determination). Second, the Statute requires the Division to take immediate action with respect to a Driver who is unsuitable.

G.L. c. 159A½, § 2(m) (“division shall immediately revoke or suspend the background check clearance certificate”) (emphasis added). Moreover, given the volume of applications and the Division’s immediate responsibility to the public interest and the protection of public safety, see G.L. c. 159A½, §§ 2(a) and 3(c), the Department finds that determinations of suitability do not necessitate a hearing prior to determination. See, generally, Mackey v. Montrym, 433 U.S. 1, 17-18 (1979) (prehearing suspension of license for breathalyzer refusal does not violate due process). In addition, the Department codifies the Division’s current practice of construing a discretionary determination of unsuitability as a presumptive disqualification with an attendant presumed appeal hearing at which a Driver may present evidence on his or her behalf. Final TNC Regulations 220 CMR 274.15(1)-(2).

“Frequently, administrative agencies are charged, implicitly or explicitly, with the task of crafting regulations that are more detailed than statutes and tailored to more situations than the legislation specifies.” Goldberg v. Board of Health of Granby, 444 Mass. 627, 633 (2005). Thus, the Department agrees to remove the language of “likely to act” and language referencing a false statement in an application to provide transportation services from Proposed TNC Regulation 220 CMR 274.06(3)(b)(2); in its place, however, the Department inserts language providing that a Driver’s provision of Services shall be consistent with the public interest. Suitability Standard (Discretionary). This modification is a reflection of the fact that it is impossible to specify every instance in which a Driver’s provision of Services might otherwise be inconsistent with the public interest and the protection of public safety (such as the making of false statements in order to provide transportation services), despite

the absence of a specific disqualifying condition.⁵⁴ Accordingly, the Department finds that this revision is reasonable and accords with the Division's responsibility to regulate the provision of Services consistent the public interest and the protection of public safety.⁵⁵

G.L. c. 159A½, §§ 2(a), 3(b). Moreover, the Division's use of discretionary determinations of unsuitability is limited. In conducting over 120,000 individual background checks since

⁵⁴ For example, the Division is responsible to take action against a Driver that violates a rule or law related to the provision of Services, which the Suitability Standard may not encompass as a specific condition. G.L. c. 159A½, § 2(l) ("A transportation network company shall notify the division upon receipt of information that a driver utilizing its network has violated a law or rule or regulation related to the provision of transportation network services or that the driver is not suitable to provide transportation network services.") (emphasis added); G.L. c. 159A½, § 2(m) (if "the division is notified by a transportation network company, law enforcement or government entity that a driver is unsuitable and the division verifies the unsuitability, the division shall immediately revoke or suspend the background check clearance certificate").

⁵⁵ In this respect, the Department observes that driver licensing schemes routinely allow for discretionary determinations outside of rigid criteria. G.L. c. 90, § 8A (school bus operator applicant shall not be issued license unless "registrar . . . satisfied that he is of good moral character"); BPD Rule 403, § 2.III(c) ("All [hackney] license applicants must be suitable individuals in addition to meeting [other] requirements"); Brookline Taxicab Regulations Rule VII.B.2 ("All applicants shall have . . . a satisfactory driving and criminal record as determined by the Hackney Officers"). Moreover, the Department is mindful of the unusual situations that have compelled the Department's Transportation Oversight Division to exercise discretionary authority to deny transportation certificates. See Appeal of Filipp Banar, D.P.U. 09-TD-1 (2010) (school bus driver certificate denied where applicant received one year of pretrial probation with the condition of having no unsupervised contact with children under the age of 16); In re McPartland, D.T.E. 02-TD-1 (2003) (school bus driver certificate denied where evidence applicant forged signature and terminated from various employments for drug and alcohol use).

January 6, 2017, less than 0.005 percent of the Division's negative determinations of suitability decisions were for discretionary reasons.

g. CORI Reform Comments

Many commenters assert that the Department's suitability criteria for Driver background checks contravenes CORI reform (Chapter 256 of the Acts of 2010) (see, e.g., Associated Industries of Massachusetts Comments at 1; TechNet, Neighbor to Neighbor, and the National Association for the Advancement of Colored People ("NAACP")-Berkshire County Branch Comments at 1-2).⁵⁶ Generally, commenters arguing this position state that CORI reform, including "ban the box" legislation,⁵⁷ sought to help individuals with criminal records overcome the collateral consequences of a criminal record by facilitating employment opportunities (see, e.g., State Representatives Joan Meschino and James Cantwell Comments at 1; Boston City Councilor Andrea J. Campbell Comments at 2). Many commenters contend that Proposed TNC Regulation 220 CMR 274.19 disregards this CORI reform objective by its inclusion of: (a) CWOFS; (b) mandatory disqualifying criteria; and (c) an indefinite look-back period (see, e.g., Cambridge Chamber of Commerce

⁵⁶ The Department treats the comments as applying to Proposed TNC Regulation 220 CMR 274.19.

⁵⁷ "Ban the box" limits criminal record questions on job applications. Massachusetts Court System, Massachusetts Laws by Popular Name: <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/popname/#B>; Massachusetts Commission Against Discrimination, Employment Discrimination on the Basis of Criminal Record: <http://www.mass.gov/mcad/resources/employers-businesses/emp-fact-sheet-discrim-criminal-record-gen.html>

Comments at 1; GBLS Comments at 1-10; Rasier Comments at 2-3).⁵⁸ Inclusion of such criteria, commenters assert, disproportionately affects communities of color and members of the foreign-born population, and that it stunts innovation, economic growth, and transportation options (see, e.g., ACLU Comments at 1-2; Lawyers Committee for Civil Rights and Economic Justice Comments, Tr. at 87-89; MIRA Comments at 1-2; NAACP-Boston Branch Comments at 1-2).

While various commenters argue for a variety of adjustments to the regulations, their thrust is that the Department should eliminate or significantly reduce the consideration of CWOFs, use of mandatory disqualifying criteria, and application of an indefinite look-back period. Several commenters also argue that the Department should require the Division to make an individualized assessment for each Driver prior to any negative determination of suitability (see, e.g., GBLS Comments at 4-5; Lawyers Committee for Civil Rights and Economic Justice Comments, Tr. at 88-89).⁵⁹

⁵⁸ The Department recognizes the many individual commenters who argue that the suitability criteria of Proposed TNC Regulation 220 CMR 274.19 is otherwise over-inclusive and does not support individuals with criminal records (see, e.g. Cindy Dill Comments at 1; Melvin Jimenez Comments at 1; Reverend Annie Milliken Comments at 1).

⁵⁹ In light of the Statute's establishment of minimum requirements, as discussed at Section II.D.2.b.i., supra, the Department declines to adopt the commenters' proposal requiring the Division to undertake a hearing with an individualized assessment for each Driver. Rather, the Department addresses these comments in Section II.K., infra, along with the nature of mandatory and presumptive disqualifying conditions.

h. CORI Reform Analysis and Findings

The Department disagrees that Proposed TNC Regulation 220 CMR 274.19 contravenes CORI reform. As an initial matter, the Division provides regulatory oversight of TNCs and Drivers and does not function as an employer with associated CORI access. In addition, Drivers do not apply to the Division, nor does the Division require a Driver to disclose information about his or her criminal history prior to a suitability determination. See G.L. c. 151B, § 4(9½) (prohibiting an employer, unless exempted, “to request on its initial written application form criminal offender record information”).⁶⁰ See also, Bynes v. School Committee of Boston, 411 Mass. 264, 269 (1991) (request by public school to Criminal History Systems Board for bus driver’s CORI did not violate G.L. c. 151B, § 4(9) where statute “only affects an employer’s ability to request certain criminal record information from employees and potential employees”). For these reasons, the Department disagrees that Proposed TNC Regulation 220 CMR 274.19 violates G.L. c. 151B, § 4(9½) (“ban the box”).

In addition, the Department finds that the Statute provides for the inclusion of CWOFs and use of mandatory disqualifying criteria as part of its minimum and implicit Driver requirements. See Section II.D.2.b.i., supra. Moreover, as previously stated, application of an indefinite look-back period and mandatory disqualifications are found in similar driver

⁶⁰ General Laws c. 151B, § 4(9½) creates an exemption for employers where state or federal law or regulation impose a mandatory or presumptive disqualification for one or more types of criminal convictions.

licensing contexts. G.L. c. 90, § 8A; G.L. c. 90F, §§ 9(B), (D); Luk v. Commonwealth, 421 Mass. 415, 423 (1995) (“Mandatory license suspension is but one of several provisions of the motor vehicle laws aimed at preserving public safety.”). Further, as part of its 2010 CORI reform, the Legislature authorized greater access for certain CORI-receiving entities in recognition that those entities possess unique public safety concerns when considering the qualifications of applicants. See St. 2010, c. 256, § 21; McDonough, Administrative Law & Practice, 39 Mass. Prac. Series § 17:32.⁶¹ Finally, given that approximately eight entities of various sizes and business models currently operate as TNCs in Massachusetts with more than 107,000 Drivers since background checks began on January 6, 2017, the Department rejects the argument that Proposed TNC Regulation 220 CMR 274.19 stunts innovation, economic growth, and transportation options. Accordingly, in light of the Department’s analysis above and the Division’s position as a regulator tasked with ensuring public safety with respect to millions of Rides per month throughout the Commonwealth, the Department rejects the arguments that the Driver suitability criteria contravenes CORI reform.

⁶¹ Neither the Department nor the Division is a criminal justice agency or a statutorily authorized entity to receive sealed record information. G.L. c. 276, §§ 100A-100C. The ability of Driver to seal his or her criminal record as provided for under CORI reform remains unchanged by the Department’s regulations. The records sealing statute applies to criminal records on file with the Office of the Commissioner of Probation and with respective courts, clerks, and probation officers. G.L. c. 276, § 100A. See Commonwealth v. Boe, 456 Mass. 337, 340 n.5 (2010) (“defendant’s criminal offender record information, maintained by the [Criminal History Systems Board], is accessible to a wider number of individuals, agencies, and institutions than a defendant’s sealed record on file with the commissioner. Compare G.L. c. 6, §§ 172-172I, with G.L. c. 276, §§ 100A-100C.”).

E. Hours of Service

1. Comments

Wuleeb and Rasier argue that the hours of service restrictions contained in Proposed TNC Regulation 220 CMR 274.07 are excessive and, if not struck entirely, should be curtailed (Rasier Comments at 10-12; Wuleeb Comments at 8; Wuleeb Reply Comments at 2-3). Wuleeb argues that this regulation would require it to increase its data storage capacity, increase staffing to manage application and field components, and increase legal counsel and regulatory staff (Wuleeb Comments at 8). Rasier argues that the hours of service requirements are inconsistent with legislative intent, overly burdensome, and unworkable (Rasier Comments at 10). Rasier further asserts that the proposed hours cap could limit Driver flexibility and encourage a “shift mentality” among Drivers, inadvertently discouraging Drivers from taking advantage of breaks that otherwise would be available (Rasier Reply Comments at 2). Rasier offers that its “Community Guidelines” and technology are sufficient to address issues of fatigued driving and over exhaustion (Rasier Comments at 10-11; Rasier Reply Comments at 2).

If the Department does not remove the hours of service provisions in their entirety, Rasier and Wuleeb propose that the Department retain only a version of the twelve-hour limitation contained in Proposed TNC Regulation 220 CMR 274.07(1) (Rasier Comments at 11; Wuleeb Reply Comments at 2-3). Wuleeb further states that this more limited restriction should apply to Drivers offering or providing Services “for a single TNC,” so as to reduce the burden on small TNCs of tracking Drivers’ total hours (Wuleeb Reply

Comments at 3). Accordingly, Rasier and Wuleeb recommend that Proposed TNC Regulations 220 CMR 274.07 be amended to eliminate: (1) the requirement that a Driver log out for at least eight hours after 16 hours logged onto the Digital Network; and (2) the requirement that limits a Driver to providing 70 hours of Service within a seven-day period (Rasier Comments at 10-11; Wuleeb Reply Comments at 2-3). SAFIR comments in support of the hours of service restrictions, stating that the standards as proposed reasonably address fatigued driving concerns and are in accordance with industry standards (SAFIR Reply Comments at 2).

2. Analysis and Findings

While the Department appreciates Rasier's self-imposed commitment to limiting fatigued driving and use of its technology to promote safety, the Department is required to promulgate regulations across all TNCs. As such, the Department declines to eliminate the hours of service provision in its entirety. But, the Department does find that Wuleeb's comments regarding the impact of Proposed TNC Regulations 220 CMR 274.07(3) and (4) on small business are persuasive. Likewise, Rasier's argument that the twelve-hour rule contained in Proposed TNC Regulation 220 CMR 274.07(1) encompasses the objectives of the requirements contained in Proposed TNC Regulations 220 CMR 274.07(3) and (4) is also persuasive.

In addition, the Department finds that the proposal to retain Proposed TNC Regulation 220 CMR 274.07(1), while eliminating Proposed TNC Regulations 220 CMR 274.07(3) and (4), is consistent with other jurisdictions that limit Drivers' hours of service. See Nev.

Rev. St. § 75-327(1) (“No person shall be a participating driver for a period of more than twelve hours during each twenty-four-hour period.”); Va.Code § 46.2-812 (“No person shall drive any motor vehicle on the highways of the Commonwealth for more than thirteen hours in any period of twenty-four hours”). Accordingly, the Department eliminates Proposed TNC Regulations 220 CMR 274.07(3) and (4). Final TNC Regulation 220 CMR 274.07. Further, the Department finds that in order to ensure compliance with these requirements, a TNC shall create a written enforcement policy and file it with the Division. Final TNC Regulation 220 CMR 274.07(4).

F. Transportation Network Vehicle Requirements

1. Removable Decal and Trade Dress Comments

Rasier contends that the Department should revise Proposed TNC Regulations 220 CMR 274.08(2) and 274.14(1), which, together, impose a \$500 penalty on a TNC for a Driver’s failure to return his or her removable decal or trade dress to the TNC (Rasier Comments at 16). Rasier’s current practice is to make its Vehicle trade dress and decals available to its Drivers through printing it at home, having it mailed to his or her address, or picking it up at a local office (Rasier Comments at 16). Further, Rasier argues that its relationship with a Driver is too limited after the Driver is “deactivated” to ensure that he or she returns the trade dress or decal (Rasier Comments at 16). Accordingly, Rasier recommends that the Department strike the requirement of Proposed TNC Regulation 220 CMR 274.08(2) that a Driver return his or her removable decal or trade dress to the

TNC upon cessation of Services, or in the alternative strike the \$500 penalty in Proposed TNC Regulation 220 CMR 274.14(1) (Rasier Comments at 16-17).

2. Removable Decal and Trade Dress Analysis and Findings

The Department finds that it appropriate to revise Proposed TNC Regulations 220 CMR 274.08(2) and 274.14(1). Specifically, the Department removes the associated penalty structure of Proposed TNC Regulation 220 CMR 274.14(1), as it is duplicative of G.L. c. 159A½, § 7(a). But, given Rasier’s comments that its Drivers may print their decals or trade dress at home (Rasier Comments at 16), the Department is skeptical that Rasier’s current decals and trade dress will in all cases comply with Final TNC Regulation 220 CMR 274.08(1) (“The removable decal or trade dress must be reflective, illuminative, or otherwise visible at night or in low-light environments.”).

Important policy goals are furthered by Final TNC Regulation 220 CMR 274.08(1) and the requirement of G.L. c. 159A½, § 2(b) that a Driver affix the removable decal or trade dress to the front and back panels of the Vehicle. The trade dress or decal serves as added means of Vehicle identity verification to Riders. Accord Section II.C.6., supra. It also provides notice to law enforcement and others on the road that a particular motor vehicle is engaged in the provision of Services and, therefore, may be prone to different motor vehicle movements. See, e.g., 740 CMR 23.02 (“Vehicle Permit shall mean any decal or other identification device affixed to a commercial Vehicle for purposes of identifying the Vehicle, as authorized by the [Massachusetts Port] Authority, to operate at Logan Airport as a Commercial Ground Transportation Service Vehicle”). Accordingly, to ensure compliance

with the aforementioned policy goals, the Department requires that a TNC submit its proposed removable decal or trade dress to the Division as part its Permit application and application renewal. Final TNC Regulation 220 CMR 274.03(1)(c)2.

3. Massachusetts License Plate Requirement for Vehicles Comments

BTOA urges the Department to establish regulations that prohibit Vehicles with out-of-state license plates from engaging in the provision of Services in Massachusetts (BTOA Comments at 2). In addition, BTOA argues that it is unfair that taxis in the City of Boston are subject to different obligations than TNCs, such as insurance and registration requirements (BTOA Comments at 2; see also Joanne Callahan Comments at 1; Orville Moiten Comments at 1). BTOA further contends that this dichotomy is fundamentally unfair and that Vehicles with out-of-state license plates should not compete with taxis in the City of Boston (BTOA Comments at 2).

4. Massachusetts License Plate Requirement for Vehicles Analysis and Findings

The Department rejects BTOA's arguments and declines to establish requirements that prohibit Vehicles with out-of-state license plates from engaging in the provision of Services in the Commonwealth, including the City of Boston. The Statute clearly provides that Vehicles with out-of-state license plates may do so. G.L. c. 159A½, § 4(b)(ii) (a Driver may provide Services with "a vehicle that has been registered in another state, [if] the vehicle complies with the inspection requirement of the state where the vehicle is registered.>"). Further, municipalities, including the City of Boston, are statutorily authorized to establish taxi regulations. G.L. c. 40, § 22. Moreover, the current regulatory treatment of taxis and

TNCs in Massachusetts has been upheld. Boston Taxi Owners Association, Inc. v. Baker, Docket No. 16-1192 (D. Mass., Jan. 24, 2017).

G. Data Protection

1. Comments

The Department received several comments from Rasier and Wuleeb on the data protection requirements contained in Proposed TNC Regulations 220 CMR 274.03(2)(e), 274.10, and 274.12(5) and (6) (Rasier Comments at 13-15; Wuleeb Comments at 9-12). Their overall contention is that these requirements conflict with existing data protection requirements under G.L. c. 93H and 201 CMR 17.00 in various aspects and, as such, will cause confusion and difficulty in compliance (Rasier Comments at 13-15; Wuleeb Comments at 9-12). The commenters suggest removing these requirements and, if not, tailoring them so that only requirements in addition to G.L. c. 93H and 201 CMR 17.00 are enumerated in the Final TNC Regulations (Rasier Comments at 15; Wuleeb Comments at 9; Wuleeb Reply Comments at 3).

In particular, their comments focus on: (1) report of a data breach; (2) the definition of “personal information”; (3) the requirement of express consent; and (4) security procedures. First, Wuleeb states that Proposed TNC Regulation 220 CMR 274.12(6) creates compliance difficulties because it requires a TNC to report a breach of G.L. c. 93H or 201 CMR 17.00 within 30 days, but that G.L. c. 93H, § 3 requires such breach to be reported “as soon as practicable and without unreasonable delay” (Wuleeb Comments at 11). Second, with respect to Proposed TNC Regulation 220 CMR 274.10(3), Rasier argues that,

without a definition of “personal information,” there is confusion with compliance and, depending on the definition’s scope, hindrance of basic TNC business functions (Rasier Comments at 14). Wuleeb’s comments reflect its understanding that Proposed TNC Regulation 220 CMR 274.10(3) contains an implied definition of “personal information,” but that the definition nonetheless creates ambiguous compliance burdens by separating an alternative class of protected information from 201 CMR 17.02 (Wuleeb Comments at 10).

Third, the commenters argue that a reasonable definition of “prior express consent” is necessary; otherwise, their basic business functions will needlessly be burdened by uncertainty as to whether a TNC must obtain express consent for every data sharing instance, such as contracts with third parties or obligations to law enforcement (Rasier Comments at 14; Wuleeb Comments at 10-11). Rasier also argues that the “prior express consent” requirement is inconsistent with the Statute’s legislative intent (Rasier Comments at 13-14). Fourth, and finally, Wuleeb contends that the Proposed TNC Regulation 220 CMR 274.10(4) requirement for a TNC to maintain a policy of access to personal information only for legitimate business purposes displaces a similar, but different requirement of 201 CMR 17.04 for a TNC to maintain a written information security policy (Wuleeb Comments at 10-11). Maintaining two distinct security policies for government oversight, Wuleeb argues, will burden business operations by creating duplicative and ambiguous compliance obligations (Wuleeb Comments at 11).

2. Analysis and Findings

The Department appreciates the comments from Rasier and Wuleeb and largely agrees that the proposed requirements are duplicative of existing data protection requirements pursuant to G.L. c. 93H and 201 CMR 17.00. Therefore, the Department makes several changes pertaining to reports of data breaches and related notification requirements. First, the Department deletes the reporting requirements in Proposed TNC Regulations 220 CMR 274.12(5) and (6), and, in their place, inserts Final TNC Regulation 220 CMR 274.12(5). This modification aligns with G.L. c. 93H, § 3. Similarly, the Department revises the notification period from 30 days to “as soon as practicable and without unreasonable delay.” Final TNC Regulation 220 CMR 274.12(5). The Department also makes clear that a TNC may delay disclosure for law enforcement purposes. Final TNC Regulation 220 CMR 274.12(5). For further clarity, the Department adopts a definition of “breach of security” derived from G.L. c. 93H, § 1(a). Final TNC Regulation 220 CMR 274.12(5). This definition is broad enough to ensure that a TNC notify the Division of a breach of security or unauthorized disclosure of personal information not only under the Final TNC Regulations, but also under G.L. c. 93H and 201 CMR 17.00.

Second, the Department clarifies the definition of “personal information.” Final TNC Regulation 220 CMR 274.10(1). The Department finds that this revised definition of “personal information” ensures consistency with existing data protection requirements under G.L. c. 93H and 201 CMR 17.00, while also incorporating a TNC-specific focus and providing clarity to TNCs. Third, the Department revises the “express consent” requirement

by replacing it with “notice” and “consent” requirements for a TNC’s authorized use of Driver and Rider personal information.⁶² Final TNC Regulation 220 CMR 274.10(2). The Department finds that the revised language provides TNCs with a measure of flexibility for appropriate notice to, and consent from, Drivers and Riders. Lastly, the Department revises Proposed TNC Regulation 220 CMR 274.10(4) to reflect that a TNC must comply with data security requirements pursuant to 201 CMR 17.04 and file a copy of its attendant written information security policy with the Division during its Permit application and application renewal. Final TNC Regulation 220 CMR 274.10(3).

H. Record Retention and Reporting

1. Record Retention and Reporting Comments

a. Introduction

The Department received comments from Rasier and Wuleeb regarding record retention and reporting requirements contained in Proposed TNC Regulations 220 CMR 274.11(1) and (3)(c), and 274.12(3) through 274.12(6) (Rasier Comments at 13, 15, 18; Wuleeb Comments at 5-6, 8-9; Wuleeb Reply Comments at 3, 4).⁶³ Regarding

⁶² The Department rejects Rasier’s contention that promulgation of an express consent requirement regarding a TNC’s use of personal information is inconsistent with legislative intent. See G.L. c. 159A½, § 3(c) (the Division shall not grant a Permit unless consistent with the public interest).

⁶³ While Wuleeb’s comments also pertain to Proposed TNC Regulation 220 CMR 274.12(5) (see Wuleeb Comments at 5), the Department amended that proposed requirement in a manner responsive to Wuleeb’s comments. Final TNC Regulation 220 CMR 274.12(6). See Section II.G.2., infra. Therefore, the Department does not address those comments here.

record retention, Rasier comments on the general manner of retention and the particular maintenance of records pertaining to accessibility (Rasier Comments at 13). Regarding record reporting, Rasier and Wuleeb comment on the requirements that a TNC report complaints and violations to the Division immediately (Rasier Comments at 15, 18; Wuleeb Comments at 5, 8; Wuleeb Reply Comments at 3). Fundamentally, the commenters seek objective criteria for these record retention and reporting requirements (Rasier Comments at 13, 15; Wuleeb Comments at 2, 5, 9).

b. Retention of Records in Accordance with Generally Accepted Accounting Principles

Rasier comments that many TNC records are not financial in nature and therefore are not of the type associated with generally accepted accounting principles (“GAAP”) (Rasier Comments at 18).⁶⁴ Therefore, Rasier recommends that the Department amend Proposed TNC Regulation 220 CMR 274.11(1) to reflect that a TNC shall maintain records in accordance with GAAP, “if applicable” (Rasier Comments at 18).

⁶⁴ The Securities and Exchange Commission (“SEC”) has authority to prescribe the methods for the preparation of accounts and the form and content of financial statements filed under the Securities Act of 1933 and the Securities Exchange Act of 1934. 15 USC § 77s(a); 15 USC § 78m(b)(1). In meeting this statutory responsibility, the SEC relies on, and oversees, the Financial Accounting Standards Board (“FASB”) in setting the necessary accounting standards. See Robert K. Herdman, “Testimony Concerning the Roles of the SEC and the FASB in Establishing GAAP,” U.S. Securities and Exchange Commission (Aug. 22, 2017), available at <http://www.sec.gov/news/testimony/051402tsrkh.htm>. The FASB’s standards are designated as the primary level of GAAP, which is the framework for accounting and financial reporting. GAAP set forth accounting measurement and disclosure principles used in the preparation of financial statements, with the intent of providing useful information to investors and other users of financial reports.

c. Retention of Records Pertaining to Accessibility

Rasier expresses concern with the requirement of Proposed TNC Regulation 220 CMR 274.11(3)(c) that a TNC maintain records pertaining to accessibility of Rides for individuals with special needs or disabilities (Rasier Comments at 13). Rasier acknowledges that the proposed requirement is consistent with G.L. c. 159A½, § 8(a), but states that without defining records “pertaining to accessibility of Rides,” a TNC must make subjective determinations as to who has a special need or is disabled, decisions that Rasier argues will seriously impact Rider privacy (Rasier Comments at 13). Specifically, Rasier requests that the language be revised in a manner similar to Proposed TNC Regulation 220 CMR 274.11(3)(a), which enumerates particular categories of Ride data a TNC shall report to the Division (Rasier Comments at 13). In addition, Rasier recommends that the Division require a TNC to retain records for the completion of Rides by wheelchair-accessible Vehicles only (Rasier Comments at 13).

d. Reporting Complaints

Rasier states that Proposed TNC Regulation 220 CMR 274.12(3) should be amended to clarify that a TNC must report a numerical accounting of the number of complaints a TNC receives pursuant to G.L. c. 159A½, § 8(b), not the specifics of each complaint (Rasier Comments at 18). In addition, Wuleeb recommends that the Department define “complaint” for purposes of Proposed TNC Regulation 220 CMR 274.12(6), and argues that a complaint should not include a price dispute or ordinary customer service inquiries; instead, a complaint should express a clear dissatisfaction with a TNC service or response

(Wuleeb Comments at 9). Wuleeb also states that such complaints should be reported semi-annually or annually during a Permit renewal process (Wuleeb Comments at 8-9).

e. Reporting Driver Violations

Rasier and Wuleeb argue that the requirement of Proposed TNC Regulation 220 CMR 274.12(4), that a TNC immediately report to the Division a Driver violation of G.L. c. 159A½ or Final TNC Regulations 220 CMR 274.00, is unreasonably broad and extremely burdensome (Rasier Comments at 15; Wuleeb Comments at 5; Wuleeb Reply Comments at 3). Specifically, Rasier argues that the requirement would be burdensome where a TNC may have thousands of Drivers at any given time and an extremely high volume of Ride data (Rasier Comments at 15). In addition, the commenters state that this reporting requirement is practically unworkable because it requires a TNC to make a subjective credibility determination as to whether a Driver violated a rule or regulation (Rasier Comments at 15; Wuleeb Comments at 2, 5). Wuleeb contends that Proposed TNC Regulation 220 CMR 274.12(4) raises due process concerns and exposes TNCs to needless litigation risk because of the potential for reporting unverified, inaccurate information (Wuleeb Comments at 5). As a solution, the commenters request that the Department remove Proposed TNC Regulation 220 CMR 274.12(4) or specify that a TNC should confirm or substantiate a violation before reporting it to the Division (Rasier Comments at 15; Wuleeb Reply Comments at 3). In particular, Wuleeb argues that a TNC should only report violations that a TNC has reviewed, substantiated, and accepted as true (Wuleeb Comments at 5).

2. Record Retention and Reporting Analysis and Findings

a. Introduction

Overall, the Department agrees with Rasier and Wuleeb that the Final TNC Regulations should reflect, to the extent possible, objective-based criteria for record retention and reporting. In addition, because the Final TNC Regulations commence the Commonwealth's regulation of TNCs and, in many respects, are a first in the nation, the Department anticipates the need to adjust retention and reporting requirements in order to determine whether a TNC's rendering of Services is consistent with the public interest. See, e.g., G.L. c. 159A½, §§ 2(g), (4)(f), 3(c)(i)-(x), 8(a). In this respect, the Department finds that the Statute vests the Division with discretion to prescribe the manner, content, and form of record retention and reporting. After consideration of the comments and analysis of the Statute, the Department finds that it is appropriate to issue guidelines, as opposed to regulations, for several aspects of record retention and reporting requirements, where doing so is not in conflict with the Statute's plain language.

b. Applicability of Generally Accepted Accounting Principles

The Department agrees with Rasier that many of the reports a TNC will submit to the Division are not in the nature of financial statements and that the underlying data is not financial in nature. Therefore, the Department removes from Proposed TNC Regulations 220 CMR 274.11(1) the requirement for maintaining records in accordance with GAAP. Consistent with the Department's finding below, the Division may issue guidelines setting forth standards for recording data that TNCs report.

c. Record Retention

i. Guidelines

The Statute expressly vests the Division with authority to prescribe record retention requirements and to do so through Division-issued guidelines. First, G.L. c. 159A½, § 8(a) provides that the Division shall require a TNC to maintain records "in addition" and "including, but not limited to" incidents, accessibility, and pricing. Consequently, the Department concludes that the Division may require a TNC to retain records beyond those provided for in Statute. Second, the Statute recognizes that record retention requirements may be issued through guidelines as opposed to regulations, for the Statute's general retention provision does not prescribe regulations for retention of records for incidents, accessibility, or pricing; rather, it provides that the Division "shall issue guidelines on the content and maintenance of incident reports." G.L. c. 159A½, § 8(a). Otherwise, the Statute is explicit where it mandates record retention requirements to be promulgated in regulation. See, e.g., G.L. c. 159A½, § 3(c)(vii) (TNC shall "maintain and update, pursuant to regulations

promulgated by the division, a roster”) (emphasis added). Accordingly, the Department finds that the Statute provides express authority to issue guidelines for record retention.

ii. Accessibility, Incidents, and Complaints

As to records pertaining to accessibility, the Department rejects Rasier’s suggestion that retention of such records be limited to “the completion of Pre-arranged rides by wheelchair accessible vehicles” (Rasier Comments at 13). First, limiting record retention to the completion of Rides omits instances in which a Ride is requested, but not completed. Without such information, there can be no determination of the extent that a TNC and its Drivers “accommodate” these Riders. See G.L. c. 159A½, §§ 2(g), 3(c)(vi). Second, the Statute is more expansive than applying only to wheelchair-accessible Vehicles. It requires a TNC to “accommodate riders with special needs, including riders requiring wheelchair accessible vehicles . . . and service animals,” as well as “individuals with visual impairments and individuals who use mobility devices, including but not limited to wheelchairs, crutches, canes, walkers, and scooters.” G.L. c. 159A½, § 3(c)(vi), (c)(ix).

While the Department declines to limit the record retention requirement as requested, the Department agrees with Rasier that retention of records pertaining to accessibility will benefit from objectively identifiable criteria, similar to Proposed TNC Regulation 220 CMR 274.11(3)(a). The Department finds that objective criteria provide a measure of consistency across the TNC industry and ensure that the Division receives the records necessary to determine whether a TNC’s rendering of Services is consistent with the public interest. See, generally, G.L. c. 159A½, §§ 2(g), (4)(f), 3(c)(i)-(x), 8(a). For substantially

similar reasons (although not raised in comments), the Department finds that the retention of incident and complaint information likewise will benefit from the establishment of objective criteria for the specific information subject to the requirement.⁶⁵ Therefore, based on the findings reached above, the Department amends Proposed TNC Regulation 220 CMR 274.11(3) to reflect the minimum recordkeeping requirements established by the Statute pertaining to accessibility, incidents, and complaints. Final TNC Regulations 220 CMR 274.11(3)(c), (3)(d). In addition, the Division shall issue guidelines identifying the type, manner, and form of records a TNC shall maintain.

d. Reporting

i. Guidelines

The Department finds that the Statute implicitly grants the Division the authority to issue guidelines for record reporting, where not otherwise inconsistent with the Statute and necessary for the Division's oversight responsibilities. See Goldberg v. Board of Health of Granby, 444 Mass. 627, 633 (2005). Although the Act establishes several categories of records that TNCs must report to the Division,⁶⁶ it also vests the Division with authority to require a TNC to report additional records where necessary and relevant to the Division's

⁶⁵ As stated previously, the Department has determined that it is appropriate to do so via Division-issued guidelines rather than amending the Proposed TNC Regulations to include additional recordkeeping requirements.

⁶⁶ See G.L. c. 25, § 23(b) (intrastate operating revenue); G.L. c. 159A½, §§ 2(l) (Driver violation of rule or law), 4(e) (Driver arrest or citation), 8(b) (Driver and Rider complaints); and St. 2016, c. 187, § 8(b) (Ride data).

oversight responsibilities. G.L. c. 159A½, § 8(a) (Upon reasonable request, a TNC or Permit applicant “shall furnish all information and documents related to the condition, management and operation of the company” to the Division). Moreover, the Statute vests the Division with broad authority in determining the appropriate procedure to fulfill its oversight responsibilities. G.L. c. 159A½, § 11 (“division shall promulgate regulations necessary for [] implementation, administration and enforcement”). Accordingly, as with retention of records, the Department finds that the Statute vests the Division with authority to prescribe guidelines, where appropriate, for reporting requirements.

ii. Complaints

As to the reporting of Driver and Rider complaints required by G.L. c. 159A½, § 8(b), the Department agrees with Rasier that a monthly detailed numerical accounting of the number of complaints is consistent with the provisions of the Statute.⁶⁷ There is no mandate for specific information regarding each complaint to be included in the monthly accounting, although minimum details such as the name of the Driver involved and the time and place are subject to record retention requirements under Final TNC Regulation 220 CMR 274.11(3). In addition, the Department finds that limiting the reporting of complaints to the method by which the complaint is registered is not in the public interest. Therefore, the Department holds that a TNC shall report to the Division all complaints,

⁶⁷ General Laws c. 159A½, § 8(b) requires a TNC to report complaints on a monthly basis. Therefore, the Department rejects Wuleeb’s recommendation for TNCs’ reporting of complaints on a semi-annual or annual basis.

including those received via the hotline number pursuant to G.L. c. 159A½, § 3(c)(viii) and those received by other means, e.g., through a TNC's Digital Network, webpage, or email server. Final TNC Regulation 220 CMR 274.12(3). The Division shall issue guidelines relative to the content, manner, and form in which a TNC is to report this information.

iii. Violations

In the context of regulating the reporting of alleged violations of G.L. c. 159A½ or Final TNC Regulation 220 CMR 274.00, the Division is largely bound by the plain language of the Statute. General Laws c. 159A½, § 2(l) provides that a TNC “shall notify the division upon receipt of information that a driver utilizing its network has violated a law or rule or regulation related to the provision of transportation network services or that the driver is not suitable to provide transportation network services” (emphasis added). The Department cannot simply delete this express requirement nor can it issue regulations significantly narrowing the Statute's plain language. Therefore, the Department rejects the suggestions of Rasier and Wuleeb to remove or limit Proposed TNC Regulation 220 CMR 274.12(4) to the reporting of those violations that a TNC investigates and confirms as true (Rasier Comments at 15; Wuleeb Comments at 5-6). In addition, the Department rejects the argument that merely providing notice of alleged or potential violations, at the time of reporting, violates due process or is unduly subjective (Rasier Comments at 15; Wuleeb Comments at 5; Wuleeb Reply Comments at 3).⁶⁸ This provision is analogous to the

⁶⁸ If a reported violation leads to a suspension or revocation a Driver will have the right to appeal that decision to the Division, and any Driver aggrieved by a final order or

reporting of complaints (discussed above) where there is no judgment of veracity inherent in the act of reporting that a complaint was registered.⁶⁹ The Division shall issue guidelines relative to the content, manner, and form in which a TNC reports this information.

3. Reporting of Ride Data Comments

Several commenters urge the Department to require TNCs to provide the Division with more Ride data and for the Division to make that information more readily available to transportation planning entities in order that they may assess the impact of TNCs on the larger transportation landscape (BTOA Comments at 2; Metropolitan Area Planning Council (“MAPC”) Comments at 1; Transportation for Massachusetts (“T4MA”) Comments at 1). The commenters argue that TNC-related services have significant regional impacts on traffic congestion, traffic safety, and vehicle emission standards (BTOA Comments at 2; MAPC Comments at 2-3; T4MA Comments at 1).⁷⁰ In order for state and regional transportation

decision of the Division will have a right of appeal to Superior Court, thereby satisfying due process. Final TNC Regulation 220 CMR 274.15(6). See General Chemical Corporation v. Department of Environmental Quality Engineering, 19 Mass. App. Ct. 287, 293 (1985) (adjudicatory proceeding pursuant to G.L. c. 30A satisfies due process requirements).

⁶⁹ Contrast this with the reporting requirement of G.L. c. 159A½, § 4(e), which requires a TNC to report a Driver’s arrest for a crime or citation for a driving infraction upon “verifying” the information and for which the TNC shall “immediately” suspend the Driver Certificate. No such immediate consequence stems from a TNC’s reporting of Driver violation information to the Division.

⁷⁰ For example, the MAPC provides statistics for New York City, which indicate a decline in public transportation ridership and an increase in TNC-related travel (MAPC Comments at 2).

planning entities to plan, invest in, and operate the Commonwealth's overall transportation system, MAPC and T4MA argues that it is essential that TNCs disclose, not merely retain, the information provided for in Proposed TNC Regulation 220 CMR 274.11(3)(a) (MAPC Comments at 2-3; T4MA Comments at 1).^{71,72} To prevent disclosure of competitively sensitive and private information, they recommend that TNCs aggregate and anonymize the data (MAPC Comments at 2; T4MA Comments at 1).

In response, Wuleeb argues that the propositions advanced by MAPC and T4MA are excessively burdensome and would involve the disclosure of competitively sensitive information (Wuleeb Reply Comments at 4). Instead, Wuleeb states that any such determination should be left to the Legislature (Wuleeb Reply Comments at 4). Wuleeb recommends that the Department "should work on making sure that recordkeeping and reporting obligations are limited as much as possible" (Wuleeb Reply Comments at 4).

4. Reporting of Ride Data Analysis and Findings

The Department finds that disclosure of limited, aggregated, and anonymized Ride data balances the commenters' positions and is in accordance with the Department's

⁷¹ Proposed TNC Regulation 220 CMR 274.11(3)(a) requires a TNC to maintain, for a period of not less than three years, the following data for each Pre-arranged Ride: (1) Driver's Vehicle registration number; (2) Identity of Driver; (3) Identity of Rider; (4) Date and time of Ride; (5) City or Town where Ride originated; (6) Destination address; (7) Date and time of drop-off; and (9) Method of payment.

⁷² Specifically, MAPC seeks the following information for each Ride: (a) address, date, and time of pick-up; (b) address, date and time of drop-off; (c) trip route and length (miles and minutes); (d) Vehicle trip speeds; (e) Vehicle dwell times; and (f) number, date, and time of accidents and traffic violations (MAPC Comments at 2-3).

responsibility to ensure the interest and convenience of the public in the regulation of TNCs and of Services in the Commonwealth. G.L. c. 159A½, §§ 2(a), 3(c). See Zachs v. Department of Public Utilities, 406 Mass. 217, 223-224 (1989) (“[S]ince the mission of the [Department] is to regulate in the public interest, this is the overriding meaning of the term ‘public convenience and necessity.’”). Of importance to the public interest is the overall impact of TNC-related services on the Commonwealth’s transportation landscape. See, e.g., Newton v. Department of Public Utilities, 339 Mass. 535, 546-547 (1959) (standard of public convenience required Department to consider impact of proposed discontinued rail service on overall Massachusetts rail system). Indeed, the Act contemplates as much through its creation of a Transportation Infrastructure Enhancement Trust Fund, which provides funding for cities and towns to “address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services” St. 2016, c. 187, § 8(c)(i).⁷³

While cognizant of Wuleeb’s concerns, a TNC already must retain much of the information sought by T4MA and MAPC, and, thus, the argument that such reporting will be “excessively” burdensome is not persuasive. Final TNC Regulation 220 CMR 274.11(3)(a). In addition, the Department finds that aggregating and anonymizing the data safeguards

⁷³ A municipality that receives such disbursement must file a report with the Division that details projects for which the disbursement is or will be applied; the Division will post those reports on its website. St. 2016, c. 187, § 8(d).

against disclosure of competitively sensitive information is persuasive. Nevertheless, in balancing concerns for overly burdensome reporting, the Department is not persuaded that the public interest and convenience require, at this time, disclosure of all information sought by T4MA and MAPC, such as specific pick-up and drop-off locations, Vehicle trip speeds and dwell times, and certain accident information. Accordingly, the Department holds that a TNC shall report to the Division, for the previous calendar year, the following information for each Pre-arranged Ride: (a) city, town, or zip code of pick-up; (b) city, town, or zip code of drop-off; (c) aggregated and anonymized trip route and length (miles and minutes); and (d) location of accidents. Final TNC Regulation 220 CMR 274.12(2)(a).

I. Inspection and Audit

1. Comments

The Department received limited comment on inspection and audit requirements under Proposed TNC Regulation 220 CMR 274.13. Lyft urges the Department to revise Proposed TNC Regulation 220 CMR 274.13(1) to limit the number of records that the Division may inspect to “up to 25 driver records” per quarter (Lyft Comments at 8-9). Lyft reasons that the Department’s proposed quarterly audits for TNC background checks, in addition to the Department’s proposed inspection of any and all records relating to a complaint or incident (see Proposed TNC Regulations 220 CMR 274.13(2)-(3)) provides sufficient oversight (Lyft Comments at 8-9). Lyft also urges the Department to revise Proposed TNC Regulation 220 CMR 274.13(4) by increasing the amount of time that a TNC may respond to a Division request for records, from ten calendar days to ten business days from the date of the

Division's request (Lyft Comments at 9). Lyft asserts that it would require at least ten business days "in order to ensure full compliance" with the proposed requirement (Lyft Comments at 9). Wuleeb also supports Lyft's proposals (Wuleeb Reply Comments at 3).

2. Analysis and Findings

The Department finds that Lyft's suggestion to change the response time for information requests from ten calendar days to ten business days is reasonable and, therefore, the Department incorporates the revision into Final TNC Regulation 220 CMR 274.13(4). The Department, however, declines to adopt Lyft's proposal to limit the number and type of records that the Division may inspect. The Statute specifies, in part, that each TNC "shall furnish all information and documentation related to the condition, management and operation of the company upon the division's request" G.L. c. 159A½, § 8(a) (emphasis added). In addition, given that the Division's oversight responsibilities are broad (see, e.g., G.L. c. 159A½, §§ 2(a), 2(g), (4)(f), 3(c)(i)-(x), 8(a)), the Department finds that it is unreasonable for the Division to determine, through regulation, the number of records that may be necessary to conduct an inspection and/or audit. Therefore, the Department declines to limit the number of records that the Division may request.

J. Enforcement

1. TNC Fine Comments

Wuleeb and Rasier express concern with the penalty requirement contained in Proposed TNC Regulation 220 CMR 274.14(1), which provides for a \$500 fine on each TNC if a Driver provides Services without his or her trade dress or decal affixed to the Vehicle

(Rasier Comments at 17-18; Wuleeb Comments at 6-7; Wuleeb Reply Comments at 4).⁷⁴

Wuleeb argues that this fine has a disparate impact on smaller TNCs that cannot afford to incur numerous \$500 fines (Wuleeb Comments at 7). Wuleeb also argues that it is unfair to fine a TNC that was not the cause of the violation (Wuleeb Comments at 7). Similarly, Rasier argues that the fine is unreasonably high and disproportionate to the violation (Rasier Comments at 17). Rasier suggests that a \$50 fine is more appropriate (Rasier Comments at 18). In addition, Rasier argues that Drivers are independent contractors and, without further explanation, contends that practical and legal considerations limit its ability to comply with Proposed TNC Regulation 220 CMR 274.14(1) (Rasier Comments at 17).

2. TNC Fine Analysis and Findings

The Department disagrees with Rasier and Wuleeb and declines to make the amendments that they propose. The Department, however, acknowledges that Proposed TNC Regulation 220 CMR 274.14(1) will benefit from further clarity. When a Driver does not comply with the Vehicle decal or trade dress requirements, “every transportation network company that allows the driver to provide transportation network services shall be subject to a fine of \$500.” G.L. c. 159A½, § 7(a) (emphasis added). The Department construes this provision to mean that although a TNC may be “subject” to the fine, the Division does not immediately impose the fine. Rather, the Department interprets the Statute to require the

⁷⁴ Rasier’s comments also pertain to the requirement that Proposed TNC Regulation 220 CMR 274.14(1) subject a TNC to a \$500 penalty should a Driver fail to return the TNC decal or trade dress within 14 days (Rasier Comments at 17-18). The Department has already addressed this issue. See Section II.F.2., supra.

Division to impose a burden on each TNC to demonstrate that the Driver did not provide Services for that TNC at the time of violation. In addition, given the Statute's plain language, the Department rejects Rasier's recommendation to change the fine amount from \$500 to \$50. Accordingly, the Department revises the requirement to clarify that the Division shall issue a \$500 fine to each relevant TNC for a Driver violation of G.L. c. 159A½, § 7(a) and that a TNC shall have 30 business days to rebut the presumption that the Driver provided Services for that TNC at the time of violation.

Final TNC Regulation 220 CMR 274.14(1).

3. Enforcement Considerations Comments

Lyft and Wuleeb argue that the Department should revise Proposed TNC Regulation 220 CMR 274.14 so that the same factors apply when determining whether to suspend or revoke a TNC Permit, as would apply in determining whether to issue a monetary penalty to a TNC (Lyft Comments at 9-10; Wuleeb Reply Comments at 3). Lyft's concern is that, otherwise, the Division's only recourse in the event of a minor TNC violation is to suspend or revoke its Permit, which may be an excessive punishment depending on the violation (Lyft Comments at 9). Additionally, the Massachusetts Port Authority ("Massport") seeks clarification that TNCs are subject to its regulations when a TNC is operating within its jurisdiction (Massport Comments at 1).

4. Enforcement Considerations Analysis and Findings

The Department agrees with Lyft and revises Proposed TNC Regulation 220 CMR 274.14(3) to reflect that the same factors apply across Division enforcement

actions. Final TNC Regulations 220 CMR 274.14(3). In addition, the Department construes Massport's comments as pertaining to TNC compliance with the Commonwealth's overall regulatory framework. See, e.g., G.L. c. 159A½, § 6(a) (Division shall consider the degree of a TNC's non-compliance with payment of tolls at a commercial rate). Thus, in determining an enforcement action, the Department finds that it is appropriate for the Division to consider a TNC's compliance with rules and regulations of Massport, RMV, the Massachusetts Division of Insurance, and other agencies and departments. Final TNC Regulations 220 CMR 274.14(3)(d).

K. Transportation Network Driver Appeals Process

1. Comments

The Department received several comments regarding the appeals process for Drivers (see, e.g., State Representatives Joan Meschino and James Cantwell Comments at 1; T4MA Comments at 2). These commenters generally support a robust appeals process that allows individuals to present evidence of mitigating factors in order to establish suitability. Relatedly, GBLS argues for the Division to make individualized assessments of each Driver who seeks a Clearance Certificate (GBLS Comments at 4-5).⁷⁵ For individual assessments, GBLS recommends that the Division consider the following factors: (1) age of the offense; (2) nature and seriousness of the offense; (3) age of person at time of offense and completion of sentence; (4) rehabilitation efforts; (5) nature of the position sought; and (6) work in the

⁷⁵ As explained in Section II.D.2.g., n.59, supra, the Department discusses recommendations for individual assessments here.

same type of job without incident after the offense (GBLS Comments at 4-5). Similarly, Mayor DeMaria suggests that, in reviewing Driver suitability involving minor non-violent offenses, the Division should consider: (1) nature and gravity of the offense; (2) amount of time passed since the offense; and (3) nature of the position sought (Mayor DeMaria Comments at 2). Lastly, GBLS comments that the Final TNC Regulations should state that a Driver denied a Clearance Certificate may dispute the accuracy of his or her background check report (GBLS Comments at 10).

2. Analysis and Findings

Based on a consideration of the comments received, the Division's experience in conducting background checks, and administrative factors, the Department revises and clarifies the Division's appeal process for Drivers. Final TNC Regulations 220 CMR 274.15. An appeal must be submitted to the Division within 30 business days of the Clearance Certificate denial. Final TNC Regulation 220 CMR 274.15(5). Appeals shall be considered on an individual basis, not on a per-application basis.⁷⁶ Final TNC Regulation 220 CMR 274.15(1). In addition, the Department codifies the Division's practice that records from government agencies or departments constitute prima facie evidence of the information contained therein. Final TNC Regulation 220 CMR 274.15(3). Further, once the Division determines that a Driver is not suitable to provide Services, the Division shall

⁷⁶ The purpose of this requirement is to protect against frivolous appeals and Driver forum shopping. For example, an individual denied a Clearance Certificate for TNC-A, who fails to submit a timely appeal, cannot apply to TNC-B merely to toll the 30-business day appeal period.

deny a subsequent Driver application unless the subsequent application is in response to: (a) a vacated adjudicatory determination; (b) a disposition for an open criminal or civil matter that does not result in a disqualifying condition under the Suitability Standard; (c) insufficient driver license history; (d) expiration of a disqualifying condition under the Suitability Standard; or (e) a disqualifying condition under the Memoranda of Understanding that is no longer a disqualifying condition under the Suitability Standard (see Section II.D.2.d.i., supra). Such an approach balances the needs of the applications with the Division's mission to protect public safety in accordance with the Act and in a manner consistent with the considerations given by other jurisdictions on this issue. Accord Attorney General of Oregon, Advisory Opinion, OP-2000-1 at *1-10 (Jul. 11, 2000).

All negative determinations of suitability shall carry a right to appeal.

Final TNC Regulation 220 CMR 274.15(1). Whether a hearing accompanies the appeal depends on whether a negative determination of suitability arises from a mandatory disqualifying condition or from a presumptive disqualifying condition. For the former, the Division may provide for a hearing to determine if the appeal raises a genuine issue of material fact, such as whether the records that the Division received are accurate.

Final TNC Regulation 220 CMR 274.15(1). See Pepin v. Division of Fisheries and Wildlife, 467 Mass. 210, 226-228 (2014) (administrative summary judgment procedure appropriate where the papers and pleadings show conclusively that a hearing could not affect the decision). Otherwise, the Division shall consider the appeal on the papers and pleadings. See Puerto Rico Aqueduct and Sewer Authority v. United States Environmental Protection

Agency, 35 F.3d 600, 605-606 (1st Cir. 1994) (“To force an agency fully to adjudicate a dispute that is patently frivolous, or that can be resolved in only one way, or that can have no bearing on the disposition of the case, would be mindless, and would suffocate the root purpose for making available a summary procedure.”). For an appeal from a presumptive disqualifying condition, a hearing shall be presumed to accompany the appeal, during which a Driver may present evidence on his or her behalf. Final TNC Regulation 220 CMR 274.15(1).

In consideration of comments by GBLS and Mayor DeMaria, at an appeal hearing, the Division shall consider: (1) relevance of the record to the position sought; (2) the nature of the work to be performed; (3) time since the disposition; (4) age of the candidate at the time of the offense; (5) seriousness and circumstances of the offense; (6) the number of offenses; (7) whether the Driver has pending charges; (8) any relevant evidence of rehabilitation or lack thereof; and (9) any other relevant information, including information submitted by the Driver or by the Division. Final TNC Regulation 220 CMR 274.15(2).

L. Small Businesses

1. Comments

The majority of Wuleeb’s comments pertain to the anticipated impact of the Final TNC Regulations on “small TNCs,” which it characterizes as TNCs with annual gross revenue of less than \$500,000 and fewer than 300 Drivers (Wuleeb Comments at 12).

Overall, Wuleeb argues that Proposed TNC Regulations 220 CMR 274.00 would be unduly burdensome on small TNCs because they lack the administrative staff and resources

necessary for compliance (Wuleeb Comments at 4). Specifically, Wuleeb argues that Proposed TNC Regulations 220 CMR 274.07 (hours of service), 274.11 (record maintenance and retention), 274.12 (reporting requirements), and 274.14 (enforcement) are particularly burdensome (Wuleeb Comments at 6-9). Accordingly, Wuleeb argues that the Department should create alternative Permit requirements with reduced regulatory compliance for small TNCs (Wuleeb Comments at 12-13).

2. Analysis and Findings

The Department declines, at this time, to create a subset of regulations for “small TNCs.” First, several of Wuleeb’s concerns have been addressed in a manner responsive to its comments. Sections II.H.2. and II.J.2., supra. Second, the Department does not find that the Final TNC Regulations are overly burdensome. Finally, Wuleeb does not explain which requirements should apply to a small TNC. The Department, though, will remain committed to advancing economic growth, competition, and innovation within the Commonwealth. Accordingly, the Department directs the Division to continue to work with Wuleeb, and all TNCs, through the implementation, administration, and enforcement of the Final TNC Regulations.

III. RELEVANT ACTIONS AND NEXT STEPS

As noted above, the Department hereby promulgates the accompanying Final TNC Regulations and the Division will issue guidelines for record retention and reporting requirements. The Department and the Division, as appropriate, will issue subsequent

orders, rules, and guidelines to continue the implementation, administration, and enforcement of the General Laws c. 159A½.

IV. ORDER

Accordingly, after notice and opportunity for comment, public hearing, and due consideration, it is

ORDERED: That adoption of the regulations entitled “Transportation Network Companies,” attached hereto and designated as 220 CMR 274.00, is necessary for the administration, implementation, and enforcement of General Laws c. 159A½, and it is

FURTHER ORDERED: That the regulations entitled “Transportation Network Companies,” attached hereto and designated as 220 CMR 274.00, are hereby ADOPTED.

By Order of the Department,

/s/
Angela M. O’Connor, Chairman

/s/
Robert E. Hayden, Commissioner

/s/
Cecile M. Fraser, Commissioner

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 274.00: TRANSPORTATION NETWORK COMPANIES

Section

274.01: Purpose and Scope

274.02: Definitions

274.03: Transportation Network Company Permit Process

274.04: Transportation Network Driver Requirements

274.05: Transportation Network Driver Certificate

274.06: Transportation Network Driver Background Check

274.07: Hours of Service

274.08: Transportation Network Vehicle Requirements

274.09: Insurance

274.10: Data Protection

274.11: Record Maintenance and Retention

274.12: Reporting Requirements

274.13: Inspection and Audit

274.14: Enforcement

274.15: Appeals

274.16: Notice

274.17: Third Party Contractors

274.18: Agent of Service

274.19: Waiver

274.20: Severability

274.21: Suitability Standard

274.01: Purpose and Scope

(1) Purpose. In furtherance of the public interest, safety, and convenience, 220 CMR 274.00 establishes rules and regulations governing the oversight of Transportation Network Companies, provision of Transportation Network Services within the Commonwealth, and suitability requirements of Transportation Network Drivers.

(2) Scope. 220 CMR 274.00 applies to every Transportation Network Company, Transportation Network Driver, and Transportation Network Vehicle within the Commonwealth.

274.02: Definitions

For the purposes of 220 CMR 274.00, the terms set forth shall be defined as follows, unless context requires otherwise.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Background Check Clearance Certificate or Clearance Certificate means verification issued by the Transportation Network Company Division to a Transportation Network Driver and Transportation Network Company, electronically or otherwise, that a Transportation Network Driver successfully completed the two-part background check pursuant to 220 CMR 274.06 and is suitable to provide Transportation Network Services.

Cruising means the driving of a Transportation Network Vehicle on the streets, alleys or public places of motorized travel in search of or soliciting hails from a person in the street, alleys or public places of motorized travel.

Department means the Department of Public Utilities.

Digital Network means any online-enabled application, software, website or system offered or utilized by a Transportation Network Company that enables Pre-arranged Rides with Transportation Network Drivers.

Division means the Transportation Network Company Division established by the Department to implement, administer and enforce M.G.L. c. 159A½.

Pre-arranged Ride or Ride means a period of time that begins when a Transportation Network Driver accepts a ride through a Digital Network and the Transportation Network Driver commences his or her route to pick up a Transportation Network Rider, continues while the Transportation Network Driver transports the Transportation Network Rider, and ends when the Transportation Network Rider safely departs from the Transportation Network Vehicle or when a Transportation Network Rider cancels the Ride.

Transportation Network Company or TNC means a corporation, partnership, sole proprietorship or other entity that uses a Digital Network to connect Transportation Network Riders to Transportation Network Drivers to pre-arrange and provide transportation.

Transportation Network Company Permit or Permit means a document issued, electronically or otherwise, by the Division authorizing a TNC to provide Transportation Network Services in the Commonwealth.

Transportation Network Driver or Driver means an individual certified by a TNC to provide Transportation Network Services, or an individual applying to a TNC to provide Transportation Network Services.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Transportation Network Driver Certificate or Driver Certificate means the certification to become a Driver and the authorization to provide Transportation Network Services issued, electronically or otherwise, by a TNC to a Driver.

Transportation Network Rider or Rider means a passenger in a Pre-arranged Ride provided by a Driver, provided that the passenger personally arranged the Ride or the arrangement was made on the passenger's behalf.

Transportation Network Services or Services means the offer and provision of Pre-arranged Rides for compensation or on a promotional basis to Riders or prospective Riders through a Digital Network, covering the period beginning when a Driver is logged onto a Digital Network and is available to receive a Pre-arranged Ride or while in the course of providing a Pre-arranged Ride and ending when the Ride is completed.

Transportation Network Vehicle or Vehicle means a vehicle that is used by a Driver to provide Services.

274.03: Transportation Network Company Permit Process

- (1) TNC Permit General Requirements.
 - (a) A TNC shall maintain a valid Permit in order to provide Services within the Commonwealth.
 - (b) A TNC shall, in a manner that the Division prescribes, apply to the Division for a Permit and apply annually to renew its Permit. The Division shall not grant or renew a Permit unless it is consistent with the public interest for the TNC to render Services within the Commonwealth.
 - (c) To obtain a Permit, a TNC shall submit the following to the Division:
 1. Written verification of an established oversight process pursuant to 220 CMR 274.03(2);
 2. The proposed removable decal or trade dress that the TNC will issue to its Drivers pursuant to 220 CMR 274.08(1);
 3. The proposed document or means by which the TNC will use to obtain a Driver's consent for a background check pursuant to 220 CMR 274.06(1)(b);

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

4. Documentation of the multi-state criminal and motor vehicle driving history database search by which the TNC shall conduct a nationwide background check pursuant to 220 CMR 274.06(2)(a);
 5. Proof of adequate insurance as certified by the Massachusetts Division of Insurance in accordance with M.G.L. c. 159A½ and M.G.L. c. 175, § 228;
 6. The proposed Driver Certificate that the TNC shall issue to its Drivers and make available within its Digital Network; and
 7. A Permit fee as determined by the Secretary of Administration and Finance pursuant to M.G.L. c. 159A½, § 3(e).
- (d) The Division may request additional information from a TNC to determine whether to issue or renew a Permit.
- (2) TNC Oversight Process. Consistent with the public interest of the Commonwealth, a TNC shall have an oversight process in place to:
- (a) Conduct Driver background checks in accordance with 220 CMR 274.06;
 - (b) Ensure that Drivers comply with 220 CMR 274.07 and 220 CMR 274.09;
 - (c) Maintain a 24 hour toll-free customer service hotline, online webpage, email system, and functionality within its Digital Network to respond to questions and complaints;
 - (d) Ensure the security, protection and privacy of Driver and Rider personal information in accordance with M.G.L. c. 93H, 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents of the Commonwealth* and 220 CMR 274.10;
 - (e) Ensure that the TNC and its Drivers do not discriminate against Riders or potential Riders with special needs, disabilities or visual impairments, which shall include but not be limited to ensuring that there are no additional charges or increased fares and that wheelchairs and service animals are accommodated;
 - (f) Comply with the insurance requirements of M.G.L. c. 175, § 228 and 220 CMR 274.09;
 - (g) Ensure that its Drivers' Vehicle(s) are in compliance with M.G.L. c. 90, § 7A;
 - (h) Ensure that its Digital Network displays a clear and conspicuous total cost and price structure of each Ride before the Ride commences;
 - (i) Prohibit the use of excessive minimum or base rates;
 - (j) Ensure that Drivers maintain a valid Driver Certificate; and
 - (k) Maintain a real-time roster of Drivers who provide Services.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

274.04: Transportation Network Driver Requirements

- (1) To provide Services, a Driver must:
 - (a) Have a valid Clearance Certificate;
 - (b) Have a valid Driver Certificate;
 - (c) Have access to a Vehicle registered in the Commonwealth and inspected pursuant to M.G.L. c. 90, § 7A, or access to a Vehicle registered in another state that complies with the inspection requirements of that state; and
 - (d) Comply with Registry of Motor Vehicles rules and regulations promulgated pursuant to M.G.L. c. 90, § 7A.

- (2) A Driver shall provide Rides only through a Digital Network and shall not otherwise solicit, accept, arrange or provide Services through street hails, Cruising or street solicitations.

274.05: Transportation Network Driver Certificate

- (1) A Driver shall not provide Services without a valid Driver Certificate.

- (2) A TNC shall not issue a Driver Certificate to a Driver unless the TNC verifies that the Driver has:
 - (a) A valid TNC background check pursuant 220 CMR 274.06(2);
 - (b) A valid Clearance Certificate pursuant to 220 CMR 274.06(3)(c);
 - (c) Adequate automobile insurance pursuant M.G.L. c. 175, § 228; and
 - (d) Complied with the Vehicle requirements set forth in 220 CMR 274.08.

- (3) A Driver Certificate shall include:
 - (a) Driver's legal name;
 - (b) Up-to-date facial image of the Driver;
 - (c) License plate number of the Vehicle in use;
 - (d) A statement that the Driver has successfully completed the two-part background check required by 220 CMR 274.06; and
 - (e) A statement or recognizable logo to identify which TNC issued the Driver Certificate.

- (4) A Driver Certificate shall be readily available to a Rider within a TNC's Digital Network at all times during the provision of Services. A Driver shall post his or her Driver Certificate, issued by the TNC for which the Driver is providing Services, inside the Vehicle so that it is clearly visible to the Rider while Services are provided.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

274.06: Transportation Network Driver Background Check

(1) Driver Background Check Process.

(a) To provide Services, each Driver must successfully complete a two-part background check in accordance with 220 CMR 274.21. First, a TNC shall complete a background check pursuant to 220 CMR 274.06(2) and second, the Division shall complete a background check pursuant to 220 CMR 274.06(3).

(b) Prior to the Division's background check, a TNC shall obtain a Driver's consent, consistent with 803 CMR 2.00: *Criminal Offender Record Information (CORI)*, for the Division to conduct a background check.

(c) After obtaining consent to conduct a Driver background check, a TNC shall submit its Driver roster to the Division, which shall include the following Driver information:

1. Legal first name;
2. Legal middle name (if known);
3. Legal last name;
4. Former name(s) (if known);
5. Current address (if known);
6. Place of birth (city and state) (if known);
7. Driver's license number;
8. Driver's license state;
9. Date of birth;
10. Last six digits of social security number;
11. Electronic mail address; and
12. A Driver's consent, consistent with 803 CMR 2.00: *Criminal Offender Record Information (CORI)*, to conduct a background check.

(d) If the two-part background check does not reveal a condition provided for pursuant to 220 CMR 274.21, the Division shall issue a Clearance Certificate to the Driver and to each relevant TNC.

(2) TNC Background Check.

(a) A TNC shall conduct a nationwide background check for each Driver, which shall, at a minimum, include a review of the following:

1. Multi-state criminal history database;
2. Multi-state motor vehicle driving history database; and
3. U.S. Department of Justice National Sex Offender Public website.

(b) A TNC shall conduct the nationwide background check for each Driver not less than once every six months.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (c) In addition to the requirements of 220 CMR 274.06(2), nothing shall prohibit a TNC from maintaining internal Driver suitability requirements.
 - (d) If a TNC learns of and verifies a Driver's arrest for a crime or a citation for a driving infraction that would disqualify a Driver pursuant to 220 CMR 274.21 from providing Services, the TNC shall immediately suspend or revoke the Driver Certificate and notify both the Driver and the Division immediately.
 - (e) Upon the suspension or revocation of a Driver Certificate or Clearance Certificate in accordance with 220 CMR 274.06(2)(d) or (3)(d), a TNC shall promptly bar access to its Digital Network by the individual whose name appears on the suspended or revoked Driver Certificate or Clearance Certificate.
- (3) Division Background Check.
- (a) The Division shall conduct a Driver background check based on information that the Division receives from the Department of Criminal Justice Information Services, Sex Offender Registry Board, Warrant Management System, Registry of Motor Vehicles, and other reliable sources. The Division shall determine whether the background check reveals any condition pursuant to 220 CMR 274.21.
 - (b) If a Driver has a disqualifying condition pursuant to 220 CMR 274.21, the Division shall issue a negative determination of suitability to the Driver and relevant TNC(s) stating the reasons therefor.
 - (c) The Division shall issue a Clearance Certificate to a Driver that has not been disqualified pursuant to 220 CMR 274.06(2) or (3).
 - (d) If the Division learns of and verifies a Driver's arrest for a crime or a Driver's citation for a driving infraction that would render the Driver unsuitable to provide Services pursuant to 220 CMR 274.21, the Division shall immediately suspend or revoke the Driver's Clearance Certificate and notify the relevant TNC(s). After having been so notified, the TNC shall immediately suspend or revoke the Driver Certificate until the Division determines otherwise.
 - (e) The Division shall conduct the background check pursuant to 220 CMR 274.06(3) not less than once annually.

274.07: Hours of Service

- (1) A Driver shall not offer or provide Services for more than 12 consecutive hours in a 24-hour period.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

(2) A TNC shall adopt a policy to ensure that, after 12 hours of providing Services in a 24-hour period, the Driver shall log out of the Digital Network for not less than eight consecutive hours. For purposes of this provision, the Division does not presume that a Driver logs onto a Digital Network if the login period does not exceed five minutes.

(3) A TNC shall bar access to its Digital Network for a period of not less than 24 consecutive hours to any Driver who violates any requirement set forth in 220 CMR 274.07.

(4) A TNC shall create a written enforcement policy to comply with 220 CMR 274.07 and shall file its enforcement policy, and subsequent changes or updates to its enforcement policy, with the Division during a TNC's Permit application and application for renewal.

274.08: Transportation Network Vehicle Requirements

(1) A TNC shall issue a Division-approved removable decal or trade dress to a Driver before the Driver provides Services. The Driver shall apply the removable decal or trade dress to the front and back panels of the Vehicle at all times while the Vehicle is used to provide Services. The removable decal or trade dress must be reflective, illuminative or otherwise visible at night or in low-light environments.

(2) A Driver who ceases to be authorized to provide Services for any reason shall return the decal or trade dress to the respective TNC within 14 business days.

(3) Every Vehicle shall receive an annual inspection pursuant to M.G.L. c. 90, § 7A. Vehicles registered in another state shall comply with the inspection requirements of that state.

(4) Every Vehicle shall comply with the insurance requirements set forth in M.G.L. c. 175, § 228.

274.09: Insurance

(1) A TNC shall provide the Division with proof of adequate insurance, as certified by the Division of Insurance and in accordance with M.G.L. c. 159A½ and M.G.L. c. 175, § 228, prior to receiving a Permit from the Division.

(2) Upon receipt of a Permit, and before a Driver can provide Services, a TNC shall clearly and conspicuously provide a Driver with the following disclosures:

(a) A statement that the Driver's own automobile insurance policy might not provide coverage during the provision of Services;

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (b) A statement of the automobile insurance coverage that the TNC provides, including the types of coverage and the limits for each coverage, in each circumstance:
1. A Driver logged onto the Digital Network and available to receive transportation requests, but not engaged in a Pre-arranged Ride;
 2. A Driver engaged in a Pre-arranged Ride; and
 3. A Driver not logged onto the Digital Network nor engaged in a Pre-arranged Ride.

(3) Within seven business days of receiving a Driver Certificate, a Driver shall disclose to the automobile insurance carrier, whose coverage applies to the Vehicle(s) used by the Driver to provide Services, that the Vehicle is used to provide Services.

274.10: Data Protection

(1) A TNC shall protect from unauthorized disclosure all personal information of a Rider or Driver in the TNC's possession, including but not limited to a Rider or Driver's first name and last name, or first initial and last name, in combination with any one or more of the following data elements that relate to such individual; provided, however, that personal information shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public:

- (a) Social security number;
- (b) Driver's license number or state-issued identification card number;
- (c) Financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to the individual's financial account;
- (d) Personal cellular or home phone number;
- (e) Home address;
- (f) Electronic mail address; or
- (g) Global Positioning System (GPS) coordinates of a Pre-arranged Ride and for any time thereafter.

(2) A TNC shall notify a Rider or Driver of its use of personal information. Notification shall be unambiguous and may be through a TNC's Digital Network or website. After notification, a TNC shall obtain the consent of a Rider or Driver prior to its use of personal information. Notification and consent may be obtained by a Rider's or Driver's accepting a TNC's terms of service within its Digital Network or another means of acceptance by a Rider or Driver of the proposed use of his or her personal information.

(3) A TNC shall maintain a data security policy, in accordance with 201 CMR 17.00: *Standards for the Protection of Personal Information of Residents*

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

of the Commonwealth, that protects Rider and Driver personal information, which the TNC shall file with the Division in its Permit application and renewal application.

274.11: Record Maintenance and Retention

- (1) A TNC shall maintain true and correct records. A TNC, or third party on behalf of a TNC, may maintain records in electronic format, provided that copies can be reproduced in their original format.
- (2) A TNC shall maintain the following records, at a minimum, during a Driver's period of providing Service and for one year thereafter:
 - (a) A Driver's application submitted to the TNC; and
 - (b) The disclosures provided to the Driver within the TNC's terms of service, including the Driver's acknowledgement of said terms.
- (3) A TNC shall maintain the following records, at a minimum, for a period of not less than three years:
 - (a) The following data for each Pre-arranged Ride:
 1. Driver's Vehicle license plate number;
 2. Identity of Driver;
 3. Identity of Rider;
 4. Date and time of Ride;
 5. Origination address;
 6. Destination address;
 7. Date, time, and location of drop-off; and
 8. Method of payment;
 - (b) A roster of Drivers for each calendar year, which shall be maintained from three years from the date that the roster is generated;
 - (c) Records pertaining to the price of Rides; and
 - (d) Records pertaining to accessibility of Riders with special needs, disabilities, and visual impairments.
- (4) A TNC shall maintain the following records, at minimum, for a period of not less than seven years:
 - (a) Any suspension or revocation of a Driver Certificate, or any disciplinary actions taken against a Driver, and the reason(s) therefore;
 - (b) Incidents reported, from any source, to a TNC relative to a Driver or Rider, and any actions that the TNC has taken, if any, to resolve said incidents; and
 - (c) Results of each Driver background check pursuant to 220 CMR 274.06(2).

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

(5) The Division may issue orders, rules and guidelines relative to the content, form and information that a TNC shall retain and maintain.

274.12: Reporting Requirements

(1) The Division shall issue orders, guidelines and forms relative to the content of information that a TNC shall report to the Division.

(2) Annually, a TNC shall report to the Division the following:

(a) By February 1st of each calendar year, a TNC shall submit a report for the number of Rides from the previous calendar year, including:

1. City or town where each Ride originated;
2. City or town where each Ride ended;
3. Aggregated and anonymized trip route and length (miles and minutes); and
4. Location of Vehicle accidents;

(b) By March 31st of each calendar year, a TNC shall report its intrastate operating revenues for the previous calendar year. If a TNC fails to report its intrastate operating revenues to the Division by March 31st of any calendar year, the Division may estimate a TNC's intrastate operating revenues. A TNC's intrastate operating revenue shall include but not be limited to any Rider picked up at the following:

1. Airport;
2. Train station;
3. Bus terminal; or
4. Any other kind of port.

(3) A TNC shall report monthly to the Division a detailed accounting of all Driver and Rider complaints, received through any means, and the actions that the TNC has taken, if any, to resolve said complaints.

(4) A TNC shall report the following to the Division immediately:

- (a) A Driver suspension pursuant to M.G.L. c. 159A½, § 4(e); and
- (b) Receipt of a Driver violation of any aspect of M.G.L. c. 159A½ or 220 CMR 274.00.

(5) In the event of a breach of security or unauthorized disclosure involving a Driver or Rider's personal information, as defined in 220 CMR 274.10(1), a TNC shall notify the Division as soon as practicable and without unreasonable delay, and notify the Division upon compliance with M.G.L. c. 93H, § 3. A breach of security shall be the unauthorized acquisition or unauthorized use of unencrypted data or encrypted electronic data and the confidential process or key that is capable of compromising the security, confidentiality or integrity of personal information,

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

maintained by a TNC, or on the TNC's behalf, that creates a substantial risk of identity theft or fraud. A good faith but unauthorized acquisition of personal information by or on behalf of a TNC, or employee or agent thereof, for the lawful purposes of such TNC, is not a breach of security unless the personal information is used in an unauthorized manner or subject to further unauthorized disclosure. A breach shall not include the authorized use of personal information for which the TNC obtained consent under 220 CMR 274.10(2). A TNC may delay disclosure as necessary pursuant to M.G.L. c. 93H, § 4.

274.13: Inspection and Audit

- (1) For purposes of verifying a TNC's compliance with the requirements of M.G.L. c. 159A½ and 220 CMR 274.00, the Division may inspect a sample of records that the TNC maintains. If, after this initial review, the Division has reasonable basis to conclude that the TNC is not in compliance with M.G.L. c. 159A½ or 220 CMR 274.00, the Division may, upon reasonable notice, conduct a supplemental audit of records that it deems necessary and reasonable.
- (2) In response to a complaint or incident, the Division may inspect any of the TNC's records related to the complaint or incident at issue.
- (3) The Division shall quarterly audit records relating to 220 CMR 274.06(2).
- (4) Within ten business days of receiving a request from the Division pursuant to 220 CMR 274.13, the TNC shall transmit requested records to the Division via a secure delivery method, which may include use of encryption security.
- (5) If a Division audit is conducted by an agreed upon third party, the cost of the audit shall be borne and paid by the TNC that is under audit.

274.14: Enforcement

- (1) If a Driver is cited for a violation for 220 CMR 274.08(1), each TNC for which the Driver provides Services shall be subject to a \$500 monetary penalty by the Division. Each TNC subject to the fine shall have 30 business days to rebut the presumption that the Driver provided Services at the time of violation.
- (2) If a TNC is found in violation of M.G.L. c. 159A½ or 220 CMR 274.00, the Division shall take appropriate enforcement action that it deems necessary, including but not limited to:
 - (a) Refrain from issuing Clearance Certificates;
 - (b) Suspend, revoke, or deny a Permit; and
 - (c) Issue monetary penalties.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (3) In determining the enforcement action, the Division shall consider, without limitation:
- (a) The size of the TNC based on the TNC's intrastate operating revenues for the previous calendar year pursuant to 220 CMR 274.12(3)(b);
 - (b) The gravity of violation, which shall include but not be limited to the degree of the TNC's compliance with payment of tolls at the commercial rate pursuant to M.G.L. c. 159A½, § 3(c)(v);
 - (c) The degree to which the TNC exercised good faith in attempting to achieve compliance or to remedy non-compliance;
 - (d) Degree of compliance with existing state and local rules and regulations; and
 - (e) Any previous violations by the TNC cited by the Division.

274.15: Appeals

- (1) A Driver aggrieved by a negative determination of suitability shall have a right of appeal to the Division. Appeals shall be considered on an individual basis, not a per-application basis. Appeals of mandatory disqualifications shall be limited to determining whether a genuine issue of material fact exists on the records received by the Division. Appeals of presumptive disqualifications, including discretionary disqualifications, shall be presumed to entitle the Driver to an appeal hearing at which the Driver may submit evidence on his or her behalf.
- (2) At a Driver appeal hearing, the Division shall consider the following factors in determining whether a Driver has met his or her burden of rebutting the presumption of unsuitability:
- (a) Relevance of the record to the position sought;
 - (b) Nature of the work to be performed;
 - (c) Time since the disposition;
 - (d) Age of the candidate at the time of the offense;
 - (e) Seriousness and circumstances of the offense;
 - (f) Number of offenses;
 - (g) Pending charges;
 - (h) Evidence of rehabilitation or lack thereof; and
 - (i) Any other relevant information.
- (3) Records from government entities shall constitute *prima facie* evidence of the facts contained therein.
- (4) The Division shall first provide a TNC notice and an opportunity for hearing before exercising enforcement action pursuant to 220 CMR 274.14(2). A TNC may appeal any enforcement action taken after a Division hearing to the Department.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

(5) Appeals shall be filed within 30 business days from the date of the receipt of the decision for which the party is aggrieved. The appeal shall specifically set forth the grounds upon which the appellant claims to be aggrieved by the decision.

(6) A Driver or TNC aggrieved by a final order or decision issued after exhaustion of all administrative appeals may appeal for judicial review in the Superior Court within 30 business days after receipt of such order or decision. Any proceedings in the Superior Court shall, insofar as applicable, be governed by M.G.L. c. 30A, § 14, and may be instituted in the Superior Court for the county:

- (a) Where the parties or any one of the parties reside or have their principal place of business within the Commonwealth;
- (b) Where the Division has its principal place of business; or
- (c) Suffolk.

(7) An appeal by an aggrieved party of a final order or decision shall, unless otherwise ordered by the Division, Department, or a court of competent jurisdiction, not operate as a stay of the decision.

274.16: Notice

Any notice sent to the physical or electronic mail address that the Division has on file for a party shall constitute *prima facie* evidence that the party received the notice.

274.17: Third-Party Contractors

A TNC may contract with a third party to comply with M.G.L. c. 159A½ and 220 CMR 274.00. A record kept or function performed by a TNC's third-party contractor or agent shall be construed as if kept or performed by the TNC itself. A TNC shall hold a third-party contractor and agent to the same standards as required of a TNC pursuant to M.G.L. c. 159A½ or 220 CMR 274.00. If a TNC's third-party contractor or agent violates any statute, rule, regulation, or order of the Division, the TNC shall be held as if it violated said statute, rule, regulation, or Division order.

274.18: Agent of Service

A TNC shall maintain a locally-based agent of service with regular hours of business during weekdays. A TNC shall provide the Division with the identity and contact information of the agent as part of its Permit application and application for renewal. A TNC shall immediately update the Division with any change of its agent or agent contact information.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

274.19: Waiver

On its own motion, or for good cause shown, and not contrary to statute, the Division may waive any provision of 220 CMR 274.00.

274.20: Severability

The provisions of 220 CMR 274.00 shall be deemed severable if any particular provision(s) is (are) rendered invalid by judicial determination or by statutory amendment.

274.21: Suitability Standard

All categories are construed as within time frames (look-back periods) during which a Driver shall not have a particular condition, offense, or violation. All conditions, offenses, and violations are construed to include Massachusetts law or like/similar law(s) of another state, the United States, a military, territorial or Native American tribal authority, or any other jurisdiction. All criminal disqualifying conditions, offenses, and violations include the crimes of attempt, accessory, conspiracy, and solicitation.

All look-back periods for criminal conditions, offenses, and violations commence upon the date of disposition; provided, however, that if disposition results in incarceration in any institution, the look-back period shall commence upon release from incarceration. All look-back periods for motor vehicle conditions, offenses, and violations commence upon the date of finding of the condition, offense, or violation; provided, however, that if the violation resulted in a license suspension, the look-back period shall commence upon the termination of the suspension.

A conviction is a mandatory disqualification for all look-back periods. A continuance without a finding is a mandatory disqualification if within seven years and a presumptive disqualification if after seven years. All conditions within the present look-back period and the three-year look-back period are mandatory disqualifying conditions, offenses, and violations. A discretionary disqualification is a presumptive disqualification.

PRESENT

Age Requirements

- (a) Must be at least 21 years of age;
- (b) If under 23 years of age, must have held a valid United States driver's license for not less than three years; and
- (c) If 23 years of age or older, must have held a valid United States driver's license for not less than one year

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Open/Unresolved Criminal Proceeding(s)

Any outstanding or unresolved criminal proceeding, the disposition for which would result in a negative determination of suitability, including but not limited to cases of active probation.

Open/Unresolved Motor Vehicle Violation(s)

Any outstanding or unresolved driving infraction that would result in a negative determination of suitability.

Open/Unresolved Criminal Warrant(s)

Any outstanding or unresolved warrant for arrest.

Sex Offender Registration

Required to register as a sex offender in any jurisdiction.

THREE (3) YEARS

Multiple Traffic Violations

- (a) More than four traffic violations, as defined by 211 CMR 134.00 Appendix A: *Traffic Law Violations*, and M.G.L. c. 159A½, § 7; or
- (b) Any one major traffic violation pursuant to 211 CMR 134.00 Appendix A: *Traffic Law Violations*.

FIVE (5) YEARS

License Suspension

Any suspension of driver's license for reasons related to the operation of a motor vehicle, including:

- (a) license suspension three (3) or five (5) surchargeable incidents as defined by 211 CMR 134.00 Appendix A: *Traffic Law Violations* and subsequent failure to take the related driver retraining course within the prescribed amount of time;
- (b) license suspension for seven (7) surchargeable incidents as defined by 211 CMR 134.00 Appendix A: *Traffic Law Violations*;
- (c) refusal to take a chemical breath test;
- (d) immediate threat;
- (e) complaint fraud; or
- (f) racing.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

SEVEN (7) YEARS

Felony Conviction

A conviction for an offense with an available maximum penalty of more than two and one half years' imprisonment.

Felony Fraud

Including but not limited to:

- M.G.L. c. 90, § 24B (counterfeiting motor vehicle documents)
- M.G.L. c. 266, § 30 (larceny – over \$250 only)
- M.G.L. c. 266, § 30B (unlawful possession of theft detection shielding device or deactivator)
- M.G.L. c. 266, § 30C (use of counterfeit receipt with intent to defraud)
- M.G.L. c. 266, § 30D (organized retail crime)
- M.G.L. c. 266, § 31 (obtaining signature by false pretenses)
- M.G.L. c. 266, § 32 (fraudulent conversion of property by captain of vessel)
- M.G.L. c. 266, § 33 (larceny by false pretenses relating to contracts, banking transactions or credit)
- M.G.L. c. 266, § 35A (false material statements in connection with mortgage lending)
- M.G.L. c. 266, § 37 (uttering fraudulent checks)
- M.G.L. c. 266, § 37C (fraudulent use of credit cards – felony form only)
- M.G.L. c. 266, § 39 (destruction or concealment of will)
- M.G.L. c. 266, § 40 (common and notorious thief)
- M.G.L. c. 266, § 50 (fraud or embezzlement by state treasury employee)
- M.G.L. c. 266, § 51 (fraud or embezzlement by city, town or county employee)
- M.G.L. c. 266, § 52 (fraud or embezzlement by bank officer or employee)
- M.G.L. c. 266, § 53A (misconduct by bank officer or employee)
- M.G.L. c. 266, § 55 (embezzlement by liquidating agent or receiver)
- M.G.L. c. 266, § 56 (embezzlement by broker or agent)
- M.G.L. c. 266, § 57 (embezzlement by fiduciary)
- M.G.L. c. 266, § 60A (buying or selling stolen trade secrets)
- M.G.L. c. 266, § 66 (fraudulent issue of stock)
- M.G.L. c. 266, § 67 (false entry in corporate books)
- M.G.L. c. 266, § 67A (false statement in procurement)
- M.G.L. c. 266, § 67B (presentation of false claims)
- M.G.L. c. 266, § 67C (false entry in records relating to capital construction projects)
- M.G.L. c. 266, § 73 (obtaining goods under false pretenses)
- M.G.L. c. 266, § 74 (fraudulent use of corporate credit)
- M.G.L. c. 266, § 75 (obtaining property by trick – over \$250 only)
- M.G.L. c. 266, § 76 (gross fraud or cheat at common law)
- M.G.L. c. 266, § 110 (false invoice of cargo)
- M.G.L. c. 266, § 111 (false affidavit or protest)
- M.G.L. c. 266, § 111A (insurance fraud)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

M.G.L. c. 266, § 111B (motor vehicle insurance fraud)
 M.G.L. c. 266, § 111C (fraudulently obtaining benefits under insurance contract)
 M.G.L. c. 267, § 1 (false or forged records)
 M.G.L. c. 267, § 2 (forged tickets)
 M.G.L. c. 267, § 3 (forged seal of land court)
 M.G.L. c. 267, § 4 (forged railroad company stamp)
 M.G.L. c. 267, § 5 (uttering false record)
 M.G.L. c. 267, § 6 (uttering forged ticket)
 M.G.L. c. 267, § 8 (forged bank bill or note)
 M.G.L. c. 267, § 7 (forged bill of credit issued by treasurer)
 M.G.L. c. 267, § 9 (possession of ten or more counterfeit notes)
 M.G.L. c. 267, § 10 (uttering counterfeit note)
 M.G.L. c. 267, § 11 (common utterer)
 M.G.L. c. 267, § 12 (possession of counterfeit notes)
 M.G.L. c. 267, § 13 (possession of tools for counterfeiting)
 M.G.L. c. 267, § 17 (possession of ten or more counterfeit coins)
 M.G.L. c. 267, § 18 (possession of fewer than ten counterfeit coins)
 M.G.L. c. 267, § 19 (common utterer of counterfeit coins)
 M.G.L. c. 267, § 20 (tools for making counterfeit coin)
 M.G.L. c. 267, § 27 (possession of worthless bank notes)
 M.G.L. c. 267, § 28 (uttering worthless bank notes)
 M.G.L. c. 268, § 1 (perjury)
 M.G.L. c. 268, § 2 (subordination of perjury)
 M.G.L. c. 268, § 3 (attempt to procure perjury)
 M.G.L. c. 268, § 6 (false report before state departments)
 M.G.L. c. 268, § 13 (corrupting masters, auditors, jurors, arbitrators)
 M.G.L. c. 268, § 13B (willfully misleading to obstruct a criminal investigation)
 M.G.L. c. 268, § 13E (tampering with record document for use in judicial proceeding)
 M.G.L. c. 268, § 36 (compounding or concealing a felony)
 M.G.L. c. 268, § 39 (perjury related to motor vehicle theft)

Motor Vehicle Offenses

Any offense under M.G.L. c. 90, § 24
 M.G.L. c. 90B, § 8 (operating under the influence watercraft)
 M.G.L. c. 90F, § 11 (operating a commercial vehicle under the influence)

Violent Crimes & Abuse-Related Offenses

A “violent crime” pursuant to M.G.L. c. 127, § 133E or M.G.L. c. 140, § 121
 M.G.L. c. 209A (abuse prevention or restraining order)
 M.G.L. c. 258E (harassment protection order)
 M.G.L. c. 265, § 13A (assault or assault and battery)
 M.G.L. c. 266, § 16 (breaking and entering nighttime – felony)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

M.G.L. c. 266, § 17 (entering without breaking – felony)
M.G.L. c. 266, § 18 (breaking and entering daytime – felony)
M.G.L. c. 266, § 25 (larceny from a person)
M.G.L. c. 266, § 37 (identity fraud)
M.G.L. c. 268, § 13B (witness intimidation)
M.G.L. c. 272, § 53 (indecent exposure and annoying or accosting another person)
M.G.L. c. 275, § 2 (threats)
A crime involving the illegal use or possession of weapons

TEN (10) YEARS

Habitual Traffic Offender

Habitual traffic offender license suspension, by an adjudicatory body or motor vehicle licensing authority.

INDEFINITE

Felony Robbery

M.G.L. c. 265, § 17 (armed robbery)
M.G.L. c. 265, § 18 (assault to rob)
M.G.L. c. 265, § 19 (unarmed robbery)
M.G.L. c. 265, § 21 (stealing by confining or putting in fear)
M.G.L. c. 265, § 21A (carjacking)
M.G.L. c. 266, § 14 (armed burglary)

Multiple Driving Offenses

Two or more of the following offenses, in any combination:

- (a) Any form of operating under the influence;
- (b) Any leaving the scene of personal injury;
- (c) Any leaving the scene of property damage;
- (d) Any negligent operation; or
- (e) Any reckless operation.

Serious Bodily Injury Offenses

Any offense involving the serious bodily injury or death of another person, including but not limited to:

M.G.L. c. 90B, §8A (operating under the influence causing serious bodily injury – watercraft)
M.G.L. c. 90B, §8B (operating under the influence causing death – watercraft)
M.G.L. c. 90 § 24(2)(a½)(2) (leaving the scene of an accident causing death)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

M.G.L. c. 90, § 24G (motor vehicle homicide)
M.G.L. c. 90, § 24L (operating under the influence causing serious bodily injury – motor vehicle)
M.G.L. c. 265, § 13½ (operating under the influence causing manslaughter)

Sexual Conduct & Abuse-Related Offenses

Any “sex offense” as defined by M.G.L. c. 6, § 178C and M.G.L. c. 127, § 133E, including but not limited to:

M.G.L. c. 265, § 13B (indecent assault and battery on a child under 14)
M.G.L. c. 265, § 13B½ (aggravated indecent assault and battery on a child under 14)
M.G.L. c. 265, § 13B¾ (indecent assault and battery on a child under 14 by a previously similarly convicted offenders, adjudicated delinquent, or youthful offender)
M.G.L. c. 265, § 13F (indecent assault and battery on a mentally retarded person)
M.G.L. c. 265, § 13H (indecent assault and battery on a person age 14 or over)
M.G.L. c. 265, § 13L (child endangerment)
M.G.L. c. 265, § 22 (rape)
M.G.L. c. 265, § 22A (rape of a child with force)
M.G.L. c. 265, § 22B (aggravated rape of a child under 16 with force)
M.G.L. c. 265, § 22C (rape of a child with force by similarly previously convicted offenders, delinquency adjudications, or youthful offenders)
M.G.L. c. 265, § 23 (rape and abuse of a child)
M.G.L. c. 265, § 23A (aggravated rape and abuse of a child)
M.G.L. c. 265, § 23B (rape and abuse of a child by similarly previously convicted offenders, delinquency adjudications, or youthful offenders)
M.G.L. c. 265, § 24 (assault with intent to commit rape)
M.G.L. c. 265, § 24B (assault of a child with intent to commit rape)
M.G.L. c. 265, § 26 (kidnapping of a child)
M.G.L. c. 265, § 43 (stalking)
M.G.L. c. 265, § 43A (criminal harassment)
M.G.L. c. 272, § 2 (enticing away a person for prostitution or sexual intercourse)
M.G.L. c. 272, § 3 (drugging persons for sexual intercourse)
M.G.L. c. 272, § 4A (inducing a minor into prostitution)
M.G.L. c. 272, § 4B (living off or sharing earnings of a minor prostitute)
M.G.L. c. 272, § 6 (owner of place inducing or suffering person to resort in such place for sexual intercourse)
M.G.L. c. 272, § 7 (support from, or sharing, earnings of prostitute)
M.G.L. c. 272, § 8 (soliciting prostitute)
M.G.L. c. 272, § 12 (procuring person to practice, or enter a place for, prostitution; employment office procuring person)
M.G.L. c. 272, § 13 (detaining, or drugging to detain, person in place for prostitution)
M.G.L. c. 272, § 16 (open and gross lewdness and lascivious behavior)
M.G.L. c. 272, § 17 (incestuous marriage or intercourse)
M.G.L. c. 272, § 28 (disseminating to a minor matter harmful to a minor)
M.G.L. c. 272, § 29A (exposing or exhibiting a child in a state of nudity)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

M.G.L. c. 272, § 29B (dissemination of visual material of a child in a state of nudity or sexual conduct)

M.G.L. c. 272, § 35A (unnatural and lascivious acts with a child under 16 under)

M.G.L. c. 272, § 39 (aggravated rape)

M.G.L. c. 272, § 105 (upskirting)

Violent Crime II

A “violent crime” pursuant to M.G.L. c. 127, § 133E or M.G.L. c. 140, § 121 that is punishable by ten years or more in state prison.

DISCRETIONARY

A presumptive negative suitability determination may issue if reliable information demonstrates that a Driver acted in a manner that resulted in jeopardy to the health, safety, or welfare of any person, or that a Driver’s provision of Services is not consistent with the public interest.

REGULATORY AUTHORITY:

M.G.L. c. 6, § 172(a)(33); c. 25, § 23(a); c. 159A½.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 274.00: TRANSPORTATION NETWORK COMPANIES

Section

274.01: Purpose and Scope

274.02: Definitions

274.03: Transportation Network Company Permit Process

274.04: Transportation Network Driver Requirements

274.05: Transportation Network Driver Certificate

274.06: Transportation Network Driver Background Check

274.07: Hours of Service

274.08: ~~Motor~~Transportation Network Vehicle Requirements

274.09: Insurance

274.10: Data Protection

274.11: Record Maintenance and Retention

274.12: Reporting Requirements

274.13: Inspection and Audit

274.14: Enforcement

274.15: Appeals

274.16: Notice

274.17: Third Party Contractors

274.18: Agent of Service

274.19: Waiver

~~274.17:274.20:~~ Severability

274.21: Suitability Standard

~~274.18:274.01:~~ Waiver

~~274.19: Disqualifying Conditions~~

274.01: Purpose and Scope

(1) ~~Purpose.~~ Purpose. In furtherance of the public interest, safety, and convenience, 220 CMR 274.00 establishes rules and regulations governing the oversight of Transportation Network Companies ~~and the,~~ provision of Transportation Network Services within the Commonwealth, and suitability requirements of Transportation Network Drivers.

(2) Scope. 220 CMR 274.00 applies to every Transportation Network Company, Transportation Network Driver, and Transportation Network Vehicle within the Commonwealth.

274.02: Definitions

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

For the purposes of 220 CMR 274.00, the terms set forth ~~in 220 CMR 274.02~~ shall be defined as follows, unless ~~the context of 220 CMR 274.00~~ requires otherwise ~~requires.~~

Background Check Clearance Certificate or Clearance Certificate means verification issued by the Transportation Network Company Division to a Transportation Network Driver and Transportation Network Company, electronically or otherwise, that a Transportation Network Driver successfully completed the two-part background check pursuant to 220 CMR 274.06 and is suitable to provide Transportation Network Services.

~~Background Information means~~

- ~~(a) — Criminal Offender Record Information (CORI);~~
- ~~(b) — Warrant Management System information (WMS);~~
- ~~(c) — Sex Offender Registry Information (SORI); and~~
- ~~(d) — Registry of Motor Vehicles (RMV) driving record information.~~

Cruising means the driving of a Transportation Network Vehicle on the streets, alleys or public places of motorized travel in search of or soliciting hails from a person in the street, alleys or public places of motorized travel.

Department means the Department of Public Utilities.

Digital Network means any online-enabled application, software, website or system offered or utilized by a Transportation Network Company that enables Pre-arranged Rides with Transportation Network Drivers.

Division means the Transportation Network Company Division established by the Department to implement, administer, and enforce M.G.L. c. ~~25, § 23(a) and~~ ~~e.~~ 159A½.

Pre-arranged Ride or Ride means a period of time that begins when a Transportation Network Driver accepts a ride through a Digital Network and the Transportation Network Driver commences his or her route to pick up a Transportation Network Rider, continues while the Transportation Network Driver transports the Transportation Network Rider, and ends when the Transportation Network Rider safely departs from the Transportation Network Vehicle ~~or when a Transportation Network Rider cancels the Ride.~~

Transportation Network Company or TNC means a corporation, partnership, sole proprietorship or other entity that uses a Digital Network to connect Transportation

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Network Riders to Transportation Network Drivers to pre-arrange and provide transportation.

Transportation Network Company Permit or Permit means a document issued, electronically or otherwise, by the Division ~~to a TNC~~ authorizing ~~the~~ TNC to provide Transportation Network Services in the Commonwealth.

Transportation Network Driver or Driver means ~~a driver~~ an individual certified by a TNC to provide Transportation Network Services, or ~~a driver~~ an individual applying to a TNC to provide Transportation Network Services.

Transportation Network Driver Certificate or Driver Certificate means the certification to become a Driver and the authorization to provide Transportation Network Services issued, electronically or otherwise, by a TNC to a Driver.

Transportation Network Rider or Rider means a passenger in a Pre-arranged Ride provided by a Driver, provided that the passenger personally arranged the ~~ride~~ Ride or ~~an~~ the arrangement was made on the passenger's behalf.

Transportation Network Services or Services means the offer and provision of Pre-arranged Rides for compensation or on a promotional basis to Riders or prospective Riders through a Digital Network, covering the period beginning when a Driver is logged onto a Digital Network and is available to receive a Pre-arranged Ride or while in the course of providing a Pre-arranged Ride and ending when the Ride is completed.

Transportation Network Vehicle or Vehicle means a vehicle that is used by a Driver to provide Services.

274.03: Transportation Network Company Permit Process

(1) TNC Permit General Requirements.

(a) A TNC shall maintain a valid Permit in order to provide Services within the Commonwealth.

(b) A TNC shall, in a manner that the Division prescribes, apply to the Division for a Permit and apply annually to ~~the Division to~~ renew its Permit. The Division shall not grant or renew a Permit unless ~~the Division determines that~~ it is consistent with the public interest for the TNC to render Services within the Commonwealth.

(c) To obtain a Permit, a TNC shall submit the following ~~information to~~ the Division:

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

1. ~~Verification~~Written verification of an established oversight process pursuant to 220 CMR 274.03(2);
 2. The proposed removable decal or trade dress ~~that the TNC~~ will issue to its Drivers; pursuant to 220 CMR 274.08(1);
 3. ~~The proposed document or means by which the TNC will use to obtain a Driver's consent for a~~ Background Information~~background~~ check pursuant to 220 CMR 274.06(1)(b);
 - 3.4. ~~Documentation of the multi-state criminal and motor vehicle driving history database search by which the TNC shall conduct a nationwide background check pursuant to 220 CMR 274.06(2)(a);~~
 - 4.5. ~~Proof of adequate insurance as certified by the Massachusetts Division of Insurance in accordance with M.G.L. c. 159A½ and M.G.L. c. 175, § 228, § 175.;~~
 6. ~~The proposed Driver Certificate that the TNC shall issue to its Drivers and make available within its Digital Network; and~~
 7. ~~A Permit fee as determined by the Secretary of Administration and Finance pursuant to M.G.L. c. 159A½, § 3(e).~~
- (d) The Division may request additional information from a TNC to determine whether to ~~grant~~issue or renew a Permit.
- (2) TNC Oversight Process. Consistent with the public interest of the Commonwealth, a TNC shall have an oversight process in place to:
- (a) Conduct Driver background checks in accordance with 220 CMR 274.06;
 - ~~(b)~~ ~~Ensure the safe pickup, transfer, and delivery of all Riders;~~
 - ~~(e)~~(b) ~~Ensure that its~~ Drivers comply with 220 CMR 274.07 and 220 CMR 274.09;
 - ~~(d)~~(c) Maintain a 24 hour toll-free customer service hotline, online webpage, email system, and functionality within its Digital Network to respond to questions and complaints;
 - ~~(e)~~(d) Ensure the security, protection, and privacy of Driver and Rider personal ~~or private~~ information in accordance with M.G.L. c. 93H, 201 CMR 17.00:— Standards for the Protection of Personal Information of Residents of the Commonwealth; and 220 CMR 274.10;
 - ~~(f)~~(e) Ensure that the TNC and its Drivers do not discriminate against Riders or potential Riders with special needs ~~or~~, disabilities or visual impairments, which shall include but not be limited to ensuring that there are no additional charges or increased fares and that wheelchairs and service animals are accommodated;
 - ~~(g)~~(f) Comply with the insurance requirements of M.G.L. c. 175, § 228 and 220 CMR 274.09;

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- ~~(h)~~(g) Ensure that its Drivers' Vehicle(s) are in compliance with M.G.L. c. 90, § 7A;
- ~~(i)~~(h) Ensure that ~~their~~its Digital Network displays a clear and conspicuous total cost and price structure of each Ride before the Ride commences;
- ~~(j)~~(i) Prohibit the use of excessive minimum or base rates;
- ~~(k)~~ — Ensure that ~~its Drivers pay tolls at the commercial rate while providing Services;~~
- ~~(l)~~(j) ~~Ensure that its~~ Drivers maintain a valid Driver Certificate; and
- ~~(m)~~(k) Maintain a real-time roster of Drivers who provide Services, ~~which shall be updated monthly.~~

274.04: Transportation Network Driver Requirements

- (1) To provide Services, a Driver must:
 - ~~(a)~~ — ~~Be at least 21 years of age;~~
 - ~~(b)~~(a) Have a valid Clearance Certificate;
 - ~~(c)~~(b) Have a valid Driver Certificate;
 - ~~(d)~~(c) Have access to a Vehicle registered in the Commonwealth and inspected pursuant to M.G.L. c. 90, § 7A, or access to a Vehicle registered in another state that complies with the inspection requirements of that state; and
 - ~~(e)~~(d) Comply with RMV Registry of Motor Vehicles rules and regulations promulgated pursuant to M.G.L. c. 90, § 7A.
- (2) A Driver shall ~~only~~ provide Rides only through a Digital Network and shall not otherwise solicit, accept, arrange or provide Services through street hails, ~~erusing~~Cruising or street solicitations.

274.05: Transportation Network Driver Certificate

- (1) A Driver shall not provide Services ~~unless the Driver has been issued~~without a valid Driver Certificate.
- (2) A TNC shall not issue a Driver Certificate to a Driver unless the TNC verifies that the Driver has:
 - (a) A valid TNC background check pursuant 220 CMR 274.06(2);
 - (b) A valid Clearance Certificate pursuant to 220 CMR 274.06(3)(c);
 - (c) Adequate automobile insurance pursuant M.G.L. c. 175, § 228; and
 - (d) Complied with the ~~motor vehicle~~Vehicle requirements set forth in 220 CMR 274.08.
- (3) ~~The~~A Driver Certificate shall include:
 - (a) Driver's ~~Legal Name~~legal name;
 - (b) Up-to-date facial image of the Driver; ~~and~~

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (c) ~~Registration~~License plate number of the Vehicle in use-;
 - (d) A statement that the Driver has successfully completed the two-part background check required by 220 CMR 274.06; and
 - (e) A statement or recognizable logo to identify which TNC issued the Driver Certificate.
- (4) A Driver Certificate shall be readily available to a Rider within a TNC's Digital Network at all times during the provision of Services. A Driver shall post ~~their~~his or her Driver Certificate, issued by the TNC for which the Driver is providing Services ~~at the time of a Pre-arranged Ride, in, inside~~ the Vehicle so that it is clearly visible to the Rider while Services are provided.

274.06: Transportation Network Driver Background Check

- (1) Driver Background Check Process.
- (a) To provide Services, each Driver must successfully complete a two-part background check ~~and not be otherwise deemed unsuitable. The first in accordance with 220 CMR 274.21. First, a TNC shall complete a~~ background check ~~shall be completed by a TNC~~ pursuant to 220 CMR 274.06(2) and ~~the second, the Division shall complete a~~ background check ~~shall be completed by the Division~~ pursuant to 220 CMR 274.06(3).
 - (b) Prior to the ~~Division~~Division's background check, a TNC shall obtain a Driver's consent, consistent with 803 CMR 2.00:— Criminal Offender Record Information (CORI), for the Division to conduct a background check ~~of the Background Information of a Driver.~~
 - (c) After obtaining ~~a Driver's~~ consent ~~for to~~ conduct a Driver background check ~~of their Background Information~~, a TNC shall submit its Driver roster to the Division, which shall include the following Driver information ~~to the Division~~:
 1. Legal ~~First Name~~first name;
 2. Legal ~~Middle Name~~middle name (if known);
 3. Legal ~~Last Name~~last name;
 4. Former ~~Name~~name(s) (if known);
 5. Current ~~Address~~address (if known);
 6. Place of ~~Birth~~ (City~~birth (city and State~~state) (if known);
 7. Driver's license number;
 - 7-8. Driver's License Numberlicense state;
 8. ~~Driver's License State~~;
 9. Date of ~~Birth~~birth;
 10. Last ~~Six Digits~~six digits of ~~Social Security Numbers~~social security number;

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

11. Electronic ~~Mail-Address~~mail address; and

12. A Driver's consent, consistent with 803 CMR 2.00:— *Criminal Offender Record Information (CORI)*, to conduct a background check.

(d) If the two-part background check does not reveal a condition provided for pursuant to 220 CMR 274.19 ~~and a Driver is not otherwise deemed unsuitable to provide Services~~21, the Division shall issue a Clearance Certificate to the Driver and to each relevant TNC(s).

(2) TNC Background Check.

(a) ~~A A TNC shall conduct a~~ nationwide background check for each Driver, which shall be conducted by, at a TNC and minimum, include a review of the following:

1. ~~A multi-Multi-state/multi-jurisdictional criminal records locator or other similar commercial nationwide history database with identity validation;~~

2. Multi-state motor vehicle driving history database; and

~~2.3. U.S. Department of Justice National Sex Offender Public website; and.~~

3. ~~A multi-state/multi-jurisdictional motor vehicle records locator or other similar commercial nationwide database with vehicle validation.~~

(b) A TNC shall conduct the nationwide background check for each Driver not less than once every six months.

(c) In addition to the requirements of 220 CMR 274.06(2), nothing shall prohibit a TNC from maintaining internal Driver suitability requirements.

~~(e)(d)~~ If a TNC learns of and verifies a Driver's arrest for a crime or a citation for a driving infraction that would disqualify a Driver pursuant to 220 CMR 274.1921 from providing Services ~~or render a Driver unsuitable pursuant the TNC's internal suitability requirements,~~ the TNC shall immediately suspend or ~~terminate the Driver's access to its Digital Network~~revoke the Driver Certificate and ~~immediately~~ notify both the Driver and the Division immediately.

~~(d) In addition to the requirements enumerated in 220 CMR 274.06(2), nothing shall prohibit a TNC from maintaining internal Driver background check and suitability requirements.~~

(e) Upon the suspension or revocation of a Driver Certificate or Clearance Certificate in accordance with 220 CMR 274.06(2)(d) or (3)(d), a TNC shall promptly bar access to its Digital Network by the individual whose name appears on the suspended or revoked Driver Certificate or Clearance Certificate.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

(3) Division Background Check.

~~(a) A statewide~~ The Division shall conduct a Driver background check ~~shall be conducted by based on information that the Division and shall include a review of receives from the Background~~ Department of Criminal Justice Information of a Driver to Services, Sex Offender Registry Board, Warrant Management System, Registry of Motor Vehicles, and other reliable sources. The Division shall determine whether the ~~Driver has background check reveals~~ any condition ~~provided for pursuant to 220 CMR 274.21.~~

~~(a)(b) If a Driver has a disqualifying condition pursuant to 220 CMR 274.19- If 21, the Driver has any such condition, the~~ Division ~~will~~ shall issue a negative determination of suitability to the Driver and relevant TNC(s). stating the reasons therefor.

~~(b) The Division may also issue a negative determination of suitability if the statewide background check or any other reliable information demonstrates that a Driver:~~

~~1. Made an intentional or knowingly false statement on an application to provide transportation services; or~~

~~2. Acted or is likely to act in a manner that has or may result in jeopardy to the health, safety, or welfare of any person.~~

(c) The Division shall issue a Clearance Certificate to a Driver that has not been disqualified pursuant to 220 CMR 274.06(2) or (3).

(d) If the Division learns of and verifies a Driver's arrest for a crime or a Driver's citation for a driving infraction that would render the Driver unsuitable to provide Services pursuant to 220 CMR 274.06(3), ~~21~~, the Division shall immediately suspend or revoke the Driver's Clearance Certificate and notify the relevant TNC(s). ~~If~~ After having been so notified, the TNC(s) shall immediately suspend or revoke the ~~Driver's access to its Digital Network~~ Driver Certificate until the Division determines otherwise.

(e) The Division shall conduct the background check pursuant to 220 CMR 274.06(3) not less than once annually.

274.07: Hours of Service

~~(1) A Driver shall not offer or provide Services for more than 12 consecutive hours.~~

~~(2) If a Driver is logged in to a Digital Network, the Driver will be presumed to be offering or providing Services.~~

~~(3)~~ (1) a 24-hour period.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

~~(4)(2)~~ A TNC shall adopt a policy ~~designed~~ to ensure that, after ~~16 cumulative~~ 12 hours ~~logged into the Digital Network of providing Services~~ in a ~~calendar day~~ 24-hour period, the Driver shall log out of the Digital Network for not less than eight consecutive hours. For purposes of this provision, the Division does not presume that a Driver will not be presumed to have logged into the logs onto a Digital Network if the login period does not exceed five minutes. ~~The TNC shall enforce this policy through appropriate monitoring of available data and administration of disciplinary actions.~~

~~(3)~~ A TNC shall ~~adopt a policy designed~~ bar access to ensure that ~~no its Digital Network for a period of not less than 24 consecutive hours to any Driver is logged in to the Digital Network for more than 70 hours in a consecutive seven day period.~~ The who violates any requirement set forth in 220 CMR 274.07.

~~(5)(4)~~ A TNC shall ~~enforce this policy through appropriate monitoring of available data~~ create a written enforcement policy to comply with 220 CMR 274.07 and administration of disciplinary actions. ~~The TNC shall file the its enforcement policy, and any subsequent changes or updates to its enforcement policy, with the Division during a TNC's Permit application and application for renewal.~~

~~(6)~~ Any Driver found by a TNC to have violated any requirement set forth in 220 CMR 274.07 shall be disconnected from the TNC's Digital Network for a period of not less than 24 consecutive hours.

274.08: Motor-Transportation Network Vehicle Requirements

(1) A TNC shall issue a Division-approved removable decal or ~~a~~ trade dress to a Driver before the Driver provides Services. The Driver shall apply the removable decal or trade dress to the front and back panels of the Vehicle at all times while the Vehicle is used to provide Services. The removable decal or trade dress must be reflective, ~~illuminated,~~ illuminative or otherwise visible at night or in low-light environments.

(2) A Driver who ceases to be ~~certified~~ authorized to provide Services for any reason shall return the decal or trade dress to the respective TNC within 14 ~~days, in a manner prescribed by the TNC~~ business days.

(3) Every Vehicle shall receive an annual inspection pursuant to M.G.L. c. 90, § 7A ~~or.~~ Vehicles registered in another state ~~that complies~~ shall comply with the inspection requirements of that state.

(4) Every Vehicle shall comply with the insurance requirements set forth in M.G.L. c. 175, § 228.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

274.09: Insurance

~~(1)~~ Proof A TNC shall provide the Division with proof of adequate insurance, as certified by the ~~Massachusetts~~ Division of Insurance, and in accordance with M.G.L. c. 159A½ and M.G.L. c. 175, § 228, ~~§ 175, shall be required~~ prior to a TNC receiving a Permit from the ~~Department~~ Division.

~~(1)(2)~~ Upon receipt of a Permit, and before a Driver can provide Services, a TNC shall clearly and conspicuously provide a Driver with the following disclosures:

(a) A statement that the Driver's own automobile insurance policy might not provide coverage while during the ~~Driver provides provision of~~ Services.;

(b) A statement of the automobile insurance coverage that the TNC provides, including the types of coverage and the limits for each coverage, in each circumstance:

1. A Driver logged onto the Digital Network and available to receive transportation requests, but not engaged in a Pre-arranged Ride;
2. A Driver engaged in a Pre-arranged Ride; and
3. A Driver not logged onto the Digital Network nor engaged in a Pre-arranged Ride.

~~(2)(3)~~ Within seven business days of receiving a Driver Certificate, a Driver shall disclose to the automobile insurance carrier, whose coverage applies to the Vehicle(s) used by the Driver to provide Services, that the Vehicle is used to provide Services.

274.10: Data Protection

(1) A TNC shall protect from unauthorized disclosure ~~any and all personal or private information of a~~ Rider or Driver ~~information or data in its~~ the TNC's possession, including but not limited to a Rider or Driver's first name and last name, or first initial and last name, in combination with any one or more of the following data elements that relate to such individual; provided, however, that personal information shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public:

~~(a)~~ Name;

~~(b)~~ (a) Phone Social security number;

~~(b)~~ Address Driver's license number or state-issued identification card number;

~~(c)~~ Financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to the individual's financial account;

~~(d)~~ Personal cellular or home phone number;

~~(e)~~ (e) Home address;

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- ~~(d)~~(f) Electronic mail address; or
- ~~(e)~~ Form and method of payment; and
- ~~(f)~~(g) Global Positioning System (GPS) coordinates of a Pre-arranged Ride and for any time thereafter.

~~(2)~~ A TNC shall ~~comply~~notify a Rider or Driver of its use of personal information. Notification shall be unambiguous and may be through a TNC's Digital Network or website. After notification, a TNC shall obtain the consent of a Rider or Driver prior to its use of personal information. Notification and consent may be obtained by a Rider's or Driver's accepting a TNC's terms of service within its Digital Network or another means of acceptance by a Rider or Driver of the proposed use of his or her personal information.

~~(2)~~(3) A TNC shall maintain a data security policy, in accordance with the requirements of ~~M.G.L. c. 93H and~~ 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth, that protects Rider and Driver personal information, which the TNC shall file with the Division in its Permit application and renewal application.

~~(3)~~ A TNC shall not provide personal or private information of a Rider or Driver to a third party without prior express consent of the Rider or Driver.

~~(4)~~ A TNC shall maintain a policy that prohibits its employees and Drivers from accessing Rider or Driver personal or private information or data except for a legitimate, necessary business purpose.

274.11: Record Maintenance and Retention

(1) A TNC shall maintain true and correct records. ~~A TNC shall maintain such records in accordance with generally accepted accounting principles (GAAP), unless otherwise agreed to by the Division.~~ A TNC, or third-party on behalf of a TNC, may maintain records in electronic format, provided that copies can be reproduced in their original format.

(2) ~~The~~ A TNC shall maintain the following records ~~shall~~, at a minimum, ~~be maintained~~ during a Driver's period of serviceproviding Service and for one year thereafter:

- (a) A Driver's application submitted to the TNC; and
- (b) The disclosures provided to the Driver within the ~~Driver's~~TNC's terms of service, including the Driver's acknowledgement of said terms.

(3) ~~The~~ A TNC shall maintain the following records ~~shall be maintained~~, at a minimum, for a period of not less than three years:

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (a) The following data for each Pre-arranged Ride:
1. Driver's Vehicle ~~registration~~license plate number;
 2. Identity of Driver;
 3. Identity of Rider;
 4. Date and time of Ride;
 - ~~5. City or Town where Ride originated;~~
 5. Origination address;
 6. Destination address;
 7. Date, time, and timelocation of drop-off; and
 8. Method of payment;
- (b) ~~An up-to-date A~~ roster of Drivers ~~authorized to provide Services for each calendar year~~, which shall ~~include but not be limited to Driver information enumerated in 220 CMR 274.06(1)(e);~~be maintained from three years from the date that the roster is generated;
- (c) Records pertaining to the price of Rides; and
- ~~(e) Records pertaining to accessibility of Rides, including but not limited to:~~
- ~~1. Each Rider accommodated pursuant to 220 CMR 274.03(2)(f);~~
 - ~~2. A Driver's refusal to transport a Rider or potential Rider after the Driver and Rider or potential Rider were matched; and~~
- (d) ~~The monthly average price of Rides that accommodate individuals~~Riders with special needs~~or, disabilities, and visual impairments.~~
- ~~1. Records pertaining to the price and base rate of Pre-arranged Rides.~~
- (4) ~~The~~A TNC shall maintain the following records ~~shall be maintained, at minimum,~~ for a period of not less than seven years:
- (a) Any suspension or revocation of a Driver Certificate, or any disciplinary actions taken against a Driver, and the reason(s) therefore;
- ~~(b) Incidents and complaints reported, from any source, to a TNC relative to a Driver or Rider, including but not limited to:~~
- ~~1. Specific nature of and any actions that the incident or complaint;~~
 - ~~2. Date and time;~~
 - ~~3. Trip origin, route, and drop-off location;~~
 - ~~4. Name of Driver;~~
 - ~~5. Name of Rider; and~~
- ~~(e)(b) Actions TNC has taken and resolution, if any, to resolve said incidents; and~~
- ~~(d)(c) Results of each Driver background check pursuant to 220 CMR 274.06(2).~~

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

(5) The Division may issue orders, rules and guidelines relative to the content, form and information that a TNC shall retain and maintain.

274.12: Reporting Requirements

(1) Pursuant to St. 2016, c. 187, § 8(b), by The Division shall issue orders, guidelines and forms relative to the content of information that a TNC shall report to the Division.

(2) Annually, a TNC shall report to the Division the following:

(a) By February 1st of each calendar year, a TNC shall submit to the Division a report for the number of Rides from the previous calendar year. The report shall include a clear and concise statement of the specific city, including:

1. City or town where each Ride originated;
2. Pursuant to M.G.L. c. 25, § 23(b), by City or town where each Ride ended;
3. Aggregated and anonymized trip route and length (miles and minutes); and
4. Location of Vehicle accidents;

(b) By March 31st of each calendar year, a TNC shall report to the Division its intrastate operating revenues for the previous calendar year. If a TNC fails to report its intrastate operating revenues to the Division by March 31st of any calendar year, the Division may estimate a TNC's intrastate operating revenues. A TNC's intrastate operating revenue shall include but not be limited to any Rider picked up at an airport, train the following:

1. Airport;
2. Train station, bus;
3. Bus terminal; or any
- 2.4. Any other kind of port. If a TNC fails to report its intrastate operating revenues to the Division by March 31st of each calendar year, the Division may estimate a TNC's intrastate operating revenues.

(3) A TNC shall provide report monthly to the Division a detailed monthly accounting of all Driver and Rider complaints, received through any means, and the actions that the TNC has taken, if any, to resolve said complaints.

(4) A TNC shall report the following to the Division immediately:

(b)(a) A Driver suspension pursuant to M.G.L. c. 159A½, § 3(e)(viii)- § 4(e); and

(e)(b) A TNC shall immediately notify the Division upon receipt Receipt of information that a Driver utilizing its Digital Network violated violation of any aspect of M.G.L. c. 159A½ or 220 CMR 274.00.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

~~(2) A TNC shall immediately provide the Division with any incidents or complaints related to a violation of M.G.L. c. 93H, 201 CMR 17.00, or 220 CMR 274.10 by the TNC, its employee(s), or a third party on behalf of a TNC. The information the TNC provides the Division shall include, but not be limited to:~~

- ~~(a) Specific nature of incident or complaint;~~
- ~~(b) Date and time of incident or complaint;~~
- ~~(c) Name of employee(s) or third party vendor(s) directly involved;~~
- ~~(d) Name of Driver(s) and Rider(s); and~~
- ~~(e) Actions taken and resolution.~~

~~(3) Within 30 days of a violation of either M.G.L. c. 93H or 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth, a TNC shall verify with the Division that it has fulfilled the appropriate notification requirements pursuant to M.G.L. c. 93H, § 3.~~

(5) In the event of a breach of security or unauthorized disclosure involving a Driver or Rider's personal information, as defined in 220 CMR 274.10(1), a TNC shall notify the Division as soon as practicable and without unreasonable delay, and notify the Division upon compliance with M.G.L. c. 93H, § 3. A breach of security shall be the unauthorized acquisition or unauthorized use of unencrypted data or encrypted electronic data and the confidential process or key that is capable of compromising the security, confidentiality or integrity of personal information, maintained by a TNC, or on the TNC's behalf, that creates a substantial risk of identity theft or fraud. A good faith but unauthorized acquisition of personal information by or on behalf of a TNC, or employee or agent thereof, for the lawful purposes of such TNC, is not a breach of security unless the personal information is used in an unauthorized manner or subject to further unauthorized disclosure. A breach shall not include the authorized use of personal information for which the TNC obtained consent under 220 CMR 274.10(2). A TNC may delay disclosure as necessary pursuant to M.G.L. c. 93H, § 4.

274.13: Inspection and Audit

(1) For ~~the purpose~~purposes of verifying ~~that a TNC is in~~TNC's compliance with the requirements of M.G.L. c. 159A $\frac{1}{2}$ and 220 CMR 274.00, the Division may inspect a sample of records that the TNC ~~is required to maintain~~maintains. If, after this initial review, the Division has reasonable basis to conclude that the TNC is not in compliance with M.G.L. c. 159A $\frac{1}{2}$ or 220 CMR 274.00, the Division may, upon reasonable notice, conduct a supplemental audit of records that it deems necessary and reasonable.

(2) In response to a complaint or incident, the Division may inspect any ~~and all~~ of the TNC's records related to the complaint or incident at issue.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (3) The Division shall quarterly audit records relating to 220 CMR 274.06(2) ~~and Driver certification by a TNC.~~
- (4) Within ten business days of receiving a request from the Division pursuant to 220 CMR 274.13, the TNC shall transmit requested records to the Division via a secure delivery method, which may include use of encryption security.
- (5) If a Division audit is conducted by an agreed upon third ~~party~~, the ~~expenses~~cost of the ~~examination~~audit shall be borne and paid by the TNC that is under ~~examination.~~ audit.

274.14: Enforcement

- (1) If a Driver is cited for a violation for 220 CMR 274.08(1) ~~or (2), the Division shall impose a \$500 fine on~~, each ~~respective~~ TNC for which the Driver provides Services ~~shall be subject to a \$500 monetary penalty by the Division. Each TNC subject to the fine shall have 30 business days to rebut the presumption that the Driver provided Services at the time of violation.~~
- (2) If a TNC is found in violation of M.G.L. c. 159A½ or 220 CMR 274.00, the Division shall take appropriate enforcement action that it deems necessary, including but not limited to:
- (a) ~~Abstaining~~Refrain from issuing Clearance Certificates;
 - (b) ~~Suspending, revoking~~Suspend, revoke, or ~~denying renewal of~~deny a Permit; and
 - (c) ~~Issuing~~Issue monetary penalties.
- (3) In determining the ~~amount of any monetary penalty~~enforcement action, the Division shall consider, without limitation:
- (a) The size of the TNC based on the TNC's intrastate operating revenues for the previous calendar year, ~~which shall include but not be limited to a Rider picked up at an airport, train station, bus terminal, or any kind of port; pursuant to 220 CMR 274.12(3)(b);~~
 - (b) The gravity of violation, which shall include but not be limited to the degree of the TNC's compliance with payment of tolls at the commercial rate pursuant to ~~220 CMR 274.03(2)(k);~~ M.G.L. c. 159A½, § 3(c)(v);
 - (c) The degree to which the TNC exercised good faith in attempting to achieve compliance or to remedy non-compliance; ~~and~~
 - (d) Degree of compliance with existing state and local rules and regulations; and
 - (~~d~~)(e) Any previous violations by the TNC cited by the Division.

274.15: Appeals

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

~~(1) If the Division suspends or revokes a Driver's Clearance Certificate pursuant to 220 CMR 274.06(3), said Driver shall have a right of appeal to the Division. A Driver aggrieved by a final order or decision of the Division shall have a right of appeal to Superior Court.~~

~~(1) Prior to taking any enforcement action pursuant to 220 CMR 274.14(2), the~~A Driver aggrieved by a negative determination of suitability shall have a right of appeal to the Division. Appeals shall be considered on an individual basis, not a per-application basis. Appeals of mandatory disqualifications shall be limited to determining whether a genuine issue of material fact exists on the records received by the Division. Appeals of presumptive disqualifications, including discretionary disqualifications, shall be presumed to entitle the Driver to an appeal hearing at which the Driver may submit evidence on his or her behalf.

~~(2) At a Driver appeal hearing, the Division shall consider the following factors in determining whether a Driver has met his or her burden of rebutting the presumption of unsuitability:~~

- ~~(a) Relevance of the record to the position sought;~~
- ~~(b) Nature of the work to be performed;~~
- ~~(c) Time since the disposition;~~
- ~~(d) Age of the candidate at the time of the offense;~~
- ~~(e) Seriousness and circumstances of the offense;~~
- ~~(f) Number of offenses;~~
- ~~(g) Pending charges;~~
- ~~(h) Evidence of rehabilitation or lack thereof; and~~
- ~~(i) Any other relevant information.~~

~~(3) Records from government entities shall constitute prima facie evidence of the facts contained therein.~~

~~(2)(4) The~~ Division shall first provide a TNC notice and an opportunity for hearing before exercising enforcement action pursuant to 220 CMR 274.14(2). A TNC ~~aggrieved by a final order or decision of the~~may appeal any enforcement action taken after a Division shall have a right of appeal to the Commission of hearing to the Department.

~~(3)(5) Any claim of appeal, to the Division or the Commission of the Department, shall be submitted~~Appeals shall be filed within 30 business days from the date of the receipt of the decision for which the party is aggrieved ~~and in a manner the Division prescribes. The claim of.~~ The appeal shall specifically set forth the grounds upon which the appellant claims to be aggrieved by the decision.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

~~(4) The burden of proof shall be on the appellant to demonstrate that a decision should be modified or vacated.~~

~~(5)~~(6) A Driver or TNC aggrieved by a final order or decision issued after exhaustion of all administrative appeals may appeal for judicial review in the Superior Court within 30 business days after receipt of such order or decision. Any proceedings in the Superior Court shall, insofar as applicable, be governed by M.G.L. c. 30A, § 14, and may be instituted in the Superior Court for the county:

- (a) Where the parties or any one of the parties reside or have their principal place of business within the Commonwealth;
- (b) Where the Division has its principal place of business; or
- (c) Suffolk.

~~(6)~~(7) An appeal by an aggrieved party of a final order or decision shall, unless otherwise ordered by the Division, ~~Commission of the~~ Department, or a Court of competent jurisdiction, not operate as a stay of the decision.

274.16: Notice

Any notice sent to the physical or electronic mail address that the Division has on file for a party shall constitute *prima facie* evidence that the party received the notice.

274.17: Third-Party Contractors

A TNC may contract with a third party to comply with M.G.L. c. 159A½ and 220 CMR 274.00. A record kept or function performed by a TNC's third-party contractor or agent shall be construed as if kept or performed by the TNC itself. A TNC shall hold a third-party contractor and agent to the same standards as required of a TNC pursuant to M.G.L. c. 159A½ or 220 CMR 274.00. If a TNC's third-party contractor or agent violates any statute, rule, regulation, or order of the Division, the TNC shall be held as if it violated said statute, rule, regulation, or Division order.

274.18: Agent of Service

A TNC shall maintain a locally-based agent of service with regular hours of business during weekdays. A TNC shall provide the Division with the identity and contact information of the agent as part of its Permit application and application for renewal. A TNC shall immediately update the Division with any change of its agent or agent contact information.

~~274.17:–274.19: Waiver~~

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

On its own motion, or for good cause shown, and not contrary to statute, the ~~Department~~Division may waive any provision of 220 CMR 274.00.

~~274.18:–274.20: Severability~~

The provisions of 220 CMR 274.00 shall be deemed severable if any particular provision(s) is (are) rendered invalid by judicial determination or by statutory amendment.

~~274.19:–Disqualifying Conditions~~

~~274.21: Suitability Standard~~

All ~~of the offenses included in 220 CMR 274.19~~categories are ~~to be~~ construed as ~~including all~~within time frames (look-back periods) during which a Driver shall not have a particular condition, offense, or violation. All conditions, offenses, and violations ~~of are~~ construed to include Massachusetts law or like/similar ~~violation(s) of the~~ law(s) of another state, the United States, a military, territorial or Native American tribal authority, or any other jurisdiction. All criminal disqualifying conditions, offenses, and violations include the crimes of attempt, accessory, conspiracy, and solicitation.

All look-back periods for criminal conditions, offenses, and violations commence upon the date of disposition; provided, however, that if disposition results in incarceration in any institution, the look-back period shall commence upon release from incarceration. All look-back periods for motor vehicle conditions, offenses, and violations commence upon the date of finding of the condition, offense, or violation; provided, however, that if the violation resulted in a license suspension, the look-back period shall commence upon the termination of the suspension.

A conviction is a mandatory disqualification for all look-back periods. A continuance without a finding is a mandatory disqualification if within seven years and a presumptive disqualification if after seven years. All conditions within the present look-back period and the three-year look-back period are mandatory disqualifying conditions, offenses, and violations. A discretionary disqualification is a presumptive disqualification.

~~DISQUALIFYING CONDITIONS
PRESENT~~

~~Present Look Back Period~~Age Requirements

~~Licensed Driver~~

- (a) Must be at least 21 years of age;
- ~~(a)~~(b) If under 23 years of age, must have ~~not~~ held a valid United States driver's license for not less than three ~~years~~; ~~or~~and
- ~~(b)~~(c) If 23 years of age or older, must have ~~not~~ held a valid United States driver's

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

license for not less than one- year .	
Open/Unresolved Cases	
Definition	Any outstanding or unresolved criminal proceedings, the disposition for which would result in a negative determination of suitability.
Open/Unresolved Warrants	
Definition	Any outstanding or unresolved warrant for arrest.
Open/Unresolved Driving Infractions	
Definition	Any outstanding or unresolved driving infraction(s) that would result in a negative determination of suitability.
Lifetime Look Back Period	
Felony Robbery	
Definition	M.G.L. c. 265, § 17 (armed robbery).
	M.G.L. c. 265, § 18 (assault to rob).
	M.G.L. c. 265, § 19 (unarmed robbery).
	M.G.L. c. 265, § 21 (stealing by confining or putting in fear).
	M.G.L. c. 265, § 21A (carjacking).
	M.G.L. c. 266, § 14 (armed burglary).
	Or attempt, solicitation, or conspiracy to commit these offenses, or being an accessory thereto.
Disposition	Conviction or continuation without a finding (CWOFF)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Violent Crimes-Open/Unresolved Criminal Proceeding(s)	
Definition	Any “violent crime,” as defined in M.G.L. c. 140, § 121, that is punishable by ten years or more in state prison (including attempt, solicitation, conspiracy, or accessory thereto).
Disposition	Conviction or CWOE
Sex, Abuse, and Exploitation Offenses	
Definition	Any “sex offense,” as defined in M.G.L. c. 6, § 178C (including attempt, solicitation, conspiracy, or accessory thereto).
	M.G.L. c. 265, § 13L (child endangerment).
	M.G.L. c. 265, § 43 (stalking).
	M.G.L. c. 265, § 43A (criminal harassment).
	M.G.L. c. 272, § 6 (owner of place inducing or suffering person to resort in such place for sexual intercourse).
	M.G.L. c. 272, § 7 (support from, or sharing, earnings of prostitute).
	M.G.L. c. 272, § 8 (soliciting for prostitute).
	M.G.L. c. 272, § 12 (procuring person to practice, or enter a place for, prostitution; employment office procuring person).
	M.G.L. c. 272, § 13 (detaining, or drugging to detain, person in place for prostitution).
	M.G.L. c. 272, § 16 (open and gross lewdness and lascivious behavior).
	M.G.L. c. 272, § 53 (indecent exposure).
	M.G.L. c. 272, § 53 (accosting or annoying another person).
	M.G.L. c. 272, § 53A (engaging in sexual conduct for a fee).
	M.G.L. c. 272, § 105 (upskirting).
Disposition	Conviction or CWOE
Sex Offender Registration	
Definition	Required to register as sex offender.
Serious Bodily Injury Driving Offenses	
Definition	M.G.L. c. 90, § 24(2)(a ½)(2) (leaving the scene of an accident causing death).

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

	M.G.L. c. 90, § 24G (operating under the influence (OUI) motor vehicle homicide).
	M.G.L. c. 90, § 24L (OUI causing serious bodily injury).
	M.G.L. c. 265, § 13½ (OUI manslaughter).
Disposition	Conviction or CWOE
Multiple Driving Offenses	
Two or more convictions or CWOEs for any OUI, any leaving the scene of personal injury or property damage, any offense under M.G.L. c. 90, § 24(2)(a), or any combination thereof.	
<u>Any outstanding or unresolved criminal proceeding, the disposition for which would result in a negative determination of suitability, including but not limited to cases of active probation.</u>	
Disposition	Conviction or CWOE
Seven Year Look Back Period	
Violent Crimes 2	
Any "violent crime," as defined M.G.L. c. 140, § 121;	
Any assault;	
Any assault and battery;	
Any threat to commit a crime;	
Any violation of a M.G.L. c. 209A order; or	
Any crime involving the illegal use or possession of weapons.	
<u>Open/Unresolved Motor Vehicle Violation(s)</u>	
<u>Any outstanding or unresolved driving infraction that would result in a negative determination of suitability.</u>	
Disposition	Conviction or CWOE
Felony Convictions	
Definition	Any offense with an available maximum penalty of more than two and one-half years' imprisonment.
Disposition	Conviction

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Felony Fraud/Unresolved Criminal Warrant(s)

~~Any outstanding or unresolved warrant for arrest. M.G.L. c. 266, §§ 30 (larceny—over \$250 only); 30B (unlawful possession of theft detection shielding device or deactivator); 30C (use of counterfeit receipt with intent to defraud); 30D (organized retail crime); 31 (obtaining signature by false pretenses); 32 (fraudulent conversion of property by captain of vessel); 33 (larceny by false pretenses relating to contracts, banking transactions or credit); 35A (false material statements in connection with mortgage lending); 37 (uttering fraudulent checks); 37C (fraudulent use of credit cards—felony form only); 39 (destruction or concealment of will); 40 (common and notorious thief); 50 (fraud or embezzlement by state treasury employee); 51 (fraud or embezzlement by city, town or county employee); 52 (fraud or embezzlement by bank officer or employee); 53A (misconduct by bank officer or employee); 55 (embezzlement by liquidating agent or receiver); 56 (embezzlement by broker or agent); 57 (embezzlement by fiduciary); 60A (buying or selling stolen trade secrets); 66 (fraudulent issue of stock); 67 (false entry in corporate books); 67A (false statement in procurement); 67B (presentation of false claims); 67C (false entry in records relating to capital construction projects); 73 (obtaining goods under false pretenses); 74 (fraudulent use of corporate credit); 75 (obtaining property by trick—over \$250 only); 76 (gross fraud or cheat at common law); 110 (false invoice of cargo); 111 (false affidavit or protest); and 111A, 111B, 111C (insurance fraud).~~

Sex Offender Registration

~~M.G.L. c. 268, §§ 1 (perjury); 2 (subornation of perjury); 3 (attempt to procure perjury); 6 (report before state departments); 13 (corrupting masters, auditors, jurors, arbitrators); 13B (willfully misleading to obstruct a criminal investigation); 13E (tampering with record document for use in judicial proceeding); 36 (compounding or concealing a felony); and 39 (perjury related to motor vehicle theft).~~
Required to register as a sex offender in any jurisdiction.

THREE (3) YEARS

Multiple Traffic Violations/Disposition

Operating Under the Influence (OUI)

- (a) More than four traffic violations, as defined by 211 CMR 134.00 Appendix A: *Traffic Law Violations*, and M.G.L. c. 159A½, § 7; or
- (b) Any one major traffic violation pursuant to 211 CMR 134.00 Appendix A: *Traffic Law Violations*.

FIVE (5) YEARS

Definition

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

License Suspension

Any suspension of driver's license for reasons related to the operation of a motor vehicle, including:

- (a) license suspension three (3) or five (5) surchargeable incidents as defined by 211 CMR 134.00 Appendix A: *Traffic Law Violations* and subsequent failure to take the related driver retraining course within the prescribed amount of time;
- (b) license suspension for seven (7) surchargeable incidents as defined by 211 CMR 134.00 Appendix A: *Traffic Law Violations*;
- (c) refusal to take a chemical breath test;
- (d) immediate threat;
- (e) complaint fraud; or
- (f) racing.

SEVEN (7) YEARS

Felony Conviction ~~or CWOE~~

Reckless Operation of Motor Vehicle

A conviction for an offense with an available maximum penalty of more than two and one half years' imprisonment.

Definition

Felony Fraud

Including but not limited to:

M.G.L. c. ~~Disposition~~90, § 24B (counterfeiting motor vehicle documents)

Habitual Traffic OffenderM.G.L. c. 266, § 30 (larceny – over \$250 only)

M.G.L. c. 90, § 24 (habitual traffic offender)-M.G.L. c. 266, § 30B (unlawful possession of theft detection shielding device or deactivator)

Suspension of Driver's LicenseM.G.L. c. 266, § 30C (use of counterfeit receipt with intent to defraud)

DefinitionM.G.L. c. 266, § 30D (organized retail crime)

Three Year Look Back PeriodM.G.L. c. 266, § 31 (obtaining signature by false pretenses)

M.G.L. c. 266, § 32 (fraudulent conversion of property by captain of vessel)**Multiple Traffic**

Violations

More than four violations, in any combination, of the Traffic Laws and At Fault Accidents (pursuant to 211 CMR 134.00: *Safe Driver Insurance Plan*), and M.G.L. c. 159A½, § 7; or

Any one Major Traffic Violation (pursuant to 211 CMR 134.00)-M.G.L. c. 266, § 33 (larceny by false pretenses relating to contracts, banking transactions or credit)

M.G.L. c. 266, § 35A (false material statements in connection with mortgage lending)

M.G.L. c. 266, § 37 (uttering fraudulent checks)

M.G.L. c. 266, § 37C (fraudulent use of credit cards – felony form only)

M.G.L. c. 266, § 39 (destruction or concealment of will)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

M.G.L. c. 266, § 40 (common and notorious thief)
M.G.L. c. 266, § 50 (fraud or embezzlement by state treasury employee)
M.G.L. c. 266, § 51 (fraud or embezzlement by city, town or county employee)
M.G.L. c. 266, § 52 (fraud or embezzlement by bank officer or employee)
M.G.L. c. 266, § 53A (misconduct by bank officer or employee)
M.G.L. c. 266, § 55 (embezzlement by liquidating agent or receiver)
M.G.L. c. 266, § 56 (embezzlement by broker or agent)
M.G.L. c. 266, § 57 (embezzlement by fiduciary)
M.G.L. c. 266, § 60A (buying or selling stolen trade secrets)
M.G.L. c. 266, § 66 (fraudulent issue of stock)
M.G.L. c. 266, § 67 (false entry in corporate books)
M.G.L. c. 266, § 67A (false statement in procurement)
M.G.L. c. 266, § 67B (presentation of false claims)
M.G.L. c. 266, § 67C (false entry in records relating to capital construction projects)
M.G.L. c. 266, § 73 (obtaining goods under false pretenses)
M.G.L. c. 266, § 74 (fraudulent use of corporate credit)
M.G.L. c. 266, § 75 (obtaining property by trick – over \$250 only)
M.G.L. c. 266, § 76 (gross fraud or cheat at common law)
M.G.L. c. 266, § 110 (false invoice of cargo)
M.G.L. c. 266, § 111 (false affidavit or protest)
M.G.L. c. 266, § 111A (insurance fraud)
M.G.L. c. 266, § 111B (motor vehicle insurance fraud)
M.G.L. c. 266, § 111C (fraudulently obtaining benefits under insurance contract)
M.G.L. c. 267, § 1 (false or forged records)
M.G.L. c. 267, § 2 (forged tickets)
M.G.L. c. 267, § 3 (forged seal of land court)
M.G.L. c. 267, § 4 (forged railroad company stamp)
M.G.L. c. 267, § 5 (uttering false record)
M.G.L. c. 267, § 6 (uttering forged ticket)
M.G.L. c. 267, § 8 (forged bank bill or note)
M.G.L. c. 267, § 7 (forged bill of credit issued by treasurer)
M.G.L. c. 267, § 9 (possession of ten or more counterfeit notes)
M.G.L. c. 267, § 10 (uttering counterfeit note)
M.G.L. c. 267, § 11 (common utterer)
M.G.L. c. 267, § 12 (possession of counterfeit notes)
M.G.L. c. 267, § 13 (possession of tools for counterfeiting)
M.G.L. c. 267, § 17 (possession of ten or more counterfeit coins)
M.G.L. c. 267, § 18 (possession of fewer than ten counterfeit coins)
M.G.L. c. 267, § 19 (common utterer of counterfeit coins)
M.G.L. c. 267, § 20 (tools for making counterfeit coin)
M.G.L. c. 267, § 27 (possession of worthless bank notes)
M.G.L. c. 267, § 28 (uttering worthless bank notes)
M.G.L. c. 268, § 1 (perjury)
M.G.L. c. 268, § 2 (subordination of perjury)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- M.G.L. c. 268, § 3 (attempt to procure perjury)
- M.G.L. c. 268, § 6 (false report before state departments)
- M.G.L. c. 268, § 13 (corrupting masters, auditors, jurors, arbitrators)
- M.G.L. c. 268, § 13B (willfully misleading to obstruct a criminal investigation)
- M.G.L. c. 268, § 13E (tampering with record document for use in judicial proceeding)
- M.G.L. c. 268, § 36 (compounding or concealing a felony)
- M.G.L. c. 268, § 39 (perjury related to motor vehicle theft)

Motor Vehicle Offenses

- Any offense under M.G.L. c. 90, § 24
- M.G.L. c. 90B, § 8 (operating under the influence watercraft)
- M.G.L. c. 90F, § 11 (operating a commercial vehicle under the influence)

Violent Crimes & Abuse-Related Offenses

- A “violent crime” pursuant to M.G.L. c. 127, § 133E or M.G.L. c. 140, § 121
- M.G.L. c. 209A (abuse prevention or restraining order)
- M.G.L. c. 258E (harassment protection order)
- M.G.L. c. 265, § 13A (assault or assault and battery)
- M.G.L. c. 266, § 16 (breaking and entering nighttime – felony)
- M.G.L. c. 266, § 17 (entering without breaking – felony)
- M.G.L. c. 266, § 18 (breaking and entering daytime – felony)
- M.G.L. c. 266, § 25 (larceny from a person)
- M.G.L. c. 266, § 37 (identity fraud)
- M.G.L. c. 268, § 13B (witness intimidation)
- M.G.L. c. 272, § 53 (indecent exposure and annoying or accosting another person)
- M.G.L. c. 275, § 2 (threats)
- A crime involving the illegal use or possession of weapons

TEN (10) YEARS

Habitual Traffic Offender

Habitual traffic offender license suspension, by an adjudicatory body or motor vehicle licensing authority.

INDEFINITE

Felony Robbery

- M.G.L. c. 265, § 17 (armed robbery)
- M.G.L. c. 265, § 18 (assault to rob)

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

M.G.L. c. 265, § 19 (unarmed robbery)

M.G.L. c. 265, § 21 (stealing by confining or putting in fear)

M.G.L. c. 265, § 21A (carjacking)

M.G.L. c. 266, § 14 (armed burglary)

Multiple Driving Offenses

Two or more of the following offenses, in any combination:

(a) Any form of operating under the influence;

(b) Any leaving the scene of personal injury;

(c) Any leaving the scene of property damage;

(d) Any negligent operation; or

(e) Any reckless operation.

Serious Bodily Injury Offenses

Any offense involving the serious bodily injury or death of another person, including but not limited to:

M.G.L. c. 90B, §8A (operating under the influence causing serious bodily injury – watercraft)

M.G.L. c. 90B, §8B (operating under the influence causing death – watercraft)

M.G.L. c. 90 § 24(2)(a½)(2) (leaving the scene of an accident causing death)

M.G.L. c. 90, § 24G (motor vehicle homicide)

M.G.L. c. 90, § 24L (operating under the influence causing serious bodily injury – motor vehicle)

M.G.L. c. 265, § 13½ (operating under the influence causing manslaughter)

Sexual Conduct & Abuse-Related Offenses

Any “sex offense” as defined by M.G.L. c. 6, § 178C and M.G.L. c. 127, § 133E, including but not limited to:

M.G.L. c. 265, § 13B (indecent assault and battery on a child under 14)

M.G.L. c. 265, § 13B½ (aggravated indecent assault and battery on a child under 14)

M.G.L. c. 265, § 13B¾ (indecent assault and battery on a child under 14 by a previously similarly convicted offenders, adjudicated delinquent, or youthful offender)

M.G.L. c. 265, § 13F (indecent assault and battery on a mentally retarded person)

M.G.L. c. 265, § 13H (indecent assault and battery on a person age 14 or over)

M.G.L. c. 265, § 13L (child endangerment)

M.G.L. c. 265, § 22 (rape)

M.G.L. c. 265, § 22A (rape of a child with force)

M.G.L. c. 265, § 22B (aggravated rape of a child under 16 with force)

M.G.L. c. 265, § 22C (rape of a child with force by similarly previously convicted offenders, delinquency adjudications, or youthful offenders)

M.G.L. c. 265, § 23 (rape and abuse of a child)

M.G.L. c. 265, § 23A (aggravated rape and abuse of a child)

M.G.L. c. 265, § 23B (rape and abuse of a child by similarly previously convicted offenders,

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

delinquency adjudications, or youthful offenders)

M.G.L. c. 265, § 24 (assault with intent to commit rape)

M.G.L. c. 265, § 24B (assault of a child with intent to commit rape)

M.G.L. c. 265, § 26 (kidnapping of a child)

M.G.L. c. 265, § 43 (stalking)

M.G.L. c. 265, § 43A (criminal harassment)

M.G.L. c. 272, § 2 (enticing away a person for prostitution or sexual intercourse)

M.G.L. c. 272, § 3 (drugging persons for sexual intercourse)

M.G.L. c. 272, § 4A (inducing a minor into prostitution)

M.G.L. c. 272, § 4B (living off or sharing earnings of a minor prostitute)

M.G.L. c. 272, § 6 (owner of place inducing or suffering person to resort in such place for sexual intercourse)

M.G.L. c. 272, § 7 (support from, or sharing, earnings of prostitute)

M.G.L. c. 272, § 8 (soliciting prostitute)

M.G.L. c. 272, § 12 (procuring person to practice, or enter a place for, prostitution; employment office procuring person)

M.G.L. c. 272, § 13 (detaining, or drugging to detain, person in place for prostitution)

M.G.L. c. 272, § 16 (open and gross lewdness and lascivious behavior)

M.G.L. c. 272, § 17 (incestuous marriage or intercourse)

M.G.L. c. 272, § 28 (disseminating to a minor matter harmful to a minor)

M.G.L. c. 272, § 29A (exposing or exhibiting a child in a state of nudity)

M.G.L. c. 272, § 29B (dissemination of visual material of a child in a state of nudity or sexual conduct)

M.G.L. c. 272, § 35A (unnatural and lascivious acts with a child under 16 under)

M.G.L. c. 272, § 39 (aggravated rape)

M.G.L. c. 272, § 105 (upskirting)

Violent Crime II

A “violent crime” pursuant to M.G.L. c. 127, § 133E or M.G.L. c. 140, § 121 that is punishable by ten years or more in state prison.

DISCRETIONARY

A presumptive negative suitability determination may issue if reliable information demonstrates that a Driver acted in a manner that resulted in jeopardy to the health, safety, or welfare of any person, or that a Driver’s provision of Services is not consistent with the public interest.

REGULATORY AUTHORITY:

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

~~220 CMR 274.00~~-M.G.L.-c.-6, § 172(a)(33); c. 25, § 23(a) and; c.-159A½.

1. Abdelghani, Beldjouhar
2. Abdullah, Iman
3. Adams, Larry
4. Aderdour, Rachid
5. Ahearn, Michael
6. Agredo, Sr., Rafael
7. Aikens, Kristina
8. Alm, Hailey
9. Alger, Charlotte
10. Alzate, Oswaldo
11. American Civil Liberties Union of
Massachusetts
12. Anderson, Emily
13. Anderson, Jorge
14. Andino, Angel
15. Araujo, Carlos
16. Aranha, Roberta
17. Associated Industries of Massachusetts
18. Atherton-Zeman, Ben
19. Attwood, Polly
20. Aubert, Ken
21. Auerbach, Anne Waller
22. Austin, Mark
23. Ayala, Pedro
24. Badgley, Jonathan
25. Balas, Teresa
26. Baptista, Melissa
27. Barbosa, Geovanni
28. Barnartt-Goldstein, Elaine
29. Beckford, Livingston
30. Beg, Qasim
31. Benjamin, Lirano
32. Benn, Mike
33. Bird, Jeremy
34. Biru, Zerejacob
35. Blencowe, Julia
36. Borelli, Brian
37. Boston Police Department
38. Boston Taxi Owners Association
39. Bourbeau, Greg
40. Bourranane, Tarik
41. Bowman Jr., John
42. Braun, Devan
43. Brea, Willy
44. Brower, Montgomery
45. Brown, Jen
46. Brown, Richard
47. Brune, Molly
48. Bundu, Masunda
49. Buscemi, Christian
50. Byakuleka, Richard
51. Caizzi, Gregory
52. Cambridge Chamber of Commerce
53. Chalhoub, Hailey
54. Callahen, Joanne
55. Campbell, Andrea J., Boston City
Councilor
56. Campbell, Harvie
57. Campbell, Omar
58. Cantwell, James, State Representative
59. Carnes, Fred
60. Carpenter, Shawn
61. Carvalho, Carlos
62. Casale, Matthew
63. Castro, Aneudy
64. Castillo, Ramon
65. Chauvet, Emanuel
66. Chukwuezi, Edmondson
67. Chiu, Wai
68. Cho, You Hyun
69. Conley, Sean
70. Conte, Anthony
71. Cooper, Jayson
72. Crichton, Kevin
73. Christopher, Glenroy
74. Clemendore, Gideon
75. Copley, David
76. Cordeiro, Marcelo

77. Croce, Larry
78. Cronin, Pat
79. Cronk, Sean
80. Cruz, Karen
81. Curran, Brian
82. Curtin, Michael
83. Daily, Jason
84. David, Nadav
85. Davoodi, Telli
86. DeCosta, Karen
87. DeMaria Jr., Carlo, City of Everett
Mayor
88. Denis, Valerie
89. Desir, Pierrot
90. DeStefano, Ashley Tarbet
91. Devine, Joe
92. Dickens, Joseph
93. Dill, Cindy
94. Dixon, Lionel
95. Dogherty, Keith
96. Donworth, Patrick
97. Doucette, Christina
98. Druss, Harold
99. Duverseau, Jean
100. Earsy, Nancy Franklin
101. Eiten, Geoffrey
102. Eiten, Hildy
103. Ellis, Dai
104. Ekstrom, Jack
105. Emmanuel, Juin David
106. Ertilien, Frankel
107. Escott, Frank
108. Evans, Kayla
109. Fajardo, Rafael
110. Families for Justice as Healing
111. Fantasia, Edward John
112. Farah, Michael
113. Fares, Edward
114. Fear, Cameron
115. Ferreira, Antonio
116. Faustrum, David
117. Fish, Lawrence
118. Fontanet, Constance
119. Fontes, Jr., Miguel
120. Ford, Paul
121. Fleming, Stephen
122. Floyd, Norma
123. Flynn, Stephen
124. Francis, Frantzy
125. Gallego, Abelardo
126. Garnett-Cook, Stacie
127. Gates, Judy
128. Geralis, Rosario
129. Gevorgyan, Gevor
130. Gibbs, Lauren
131. Gianotti, Daniel
132. Goddard, Tyrone
133. Goodhue, Temple
134. Greater Boston Legal Services
135. Griffiths, Johanna
136. Halperin, Naveh
137. Halpin, Walter
138. Hamidi, Jamshid
139. Hannd, Papha
140. Hardy, Brian
141. Harunk, Edward
142. Haughton, Gona
143. Healy, Daniel
144. Hebert, Andrew
145. Hennessey, Mike
146. Hernandez, Josue
147. Hilaire, Sophia
148. Holder, John
149. Homer, Aaron
150. Horwitz, Simca
151. Howe, Arthur
152. Hoxha, Gazmend
153. Hughes, Edward

154. Issa, Abdallah
155. Ith, Woody
156. Iyore, Idemudia Eddie
157. Jabba, Dennis
158. Jacobson, Marc
159. Jawad, Mustafa
160. Jean-Baptiste, Carmaleau
161. Jefferson, Noah
162. Jimenez, Melvin
163. Julian, Jim
164. Kabia, Victor
165. Kaizerman,
166. Kalfus, Eleni
167. Kavanagh, Kate
168. Kelley, Joseph
169. Kenney, Shawn
170. Kennedy, Arthur
171. Kennedy, Chris
172. Kenschaft, Lori
173. Kolczewski, Edward
174. Koolsbergen, Sarah
175. Korowski, Craig
176. Krupsky, Lynne
177. Lacerda, Raphael
178. Lachance, Joshua
179. Lake, Scott
180. Latham, Donald
181. Latham, Kristina
182. Lawrie, Denise
183. Lawyers Committee for Civil Rights
and Economic Justice
184. Layton, Lynne
185. Lee, Tony
186. Lewis, Newton
187. Levy, Roger
188. Lopez, Luis
189. Lowe, Matthew
190. Lowney, David
191. Lunceford, Norman
192. Lyft, Inc.
193. Madan Sr., Christopher
194. Mammen, Miranda
195. Mannion, Gareth
196. Marin, Jorge
197. Mario, Kassaye
198. Martin, Barry
199. Martenez Jr., Christian
200. Martiroso, David
201. Martyn, Lynette
202. Massachusetts Executive Office of
Public Safety and Security
203. Massachusetts Immigrant & Refugee
Advocacy Coalition
204. Massachusetts Port Authority
205. Massachusetts Registry of Motor
Vehicles
206. Massey, Eugene
207. Matson, Melanie
208. McAllister, Benjamin
209. McAllister, Felipe
210. McLaren, Hugo Alex
211. McNeil, Stephen
212. Meschino, Joan, State Representative
213. Medina, Luis
214. Meguerian, Martha
215. Mena, Ricardo
216. Metropolitan Area Planning Council
217. Metzler, Matthew
218. Meyer, Susan
219. Michaelis, Annie
220. Michaud, Charles
221. Miller, Scott
222. Milliken, Annie Gonzalez
223. Miranda, Felix
224. Miratrix, Luke
225. Mogylenets, Kostyantn
226. Mohammed, Kimakhe
227. Mohammed, Nuredin

228. Moiten, Orville
229. Montero, Holly
230. Moushigian, Vartkes
231. Mraish, Najeh
232. Musto, Jenny
233. Myers, Janelle
234. Myers, Melvin
235. Myles, Thomas
236. Neamah, Murtadha
237. National Association for the
Advancement of Colored People,
Boston Branch
238. National Safety Council
239. Nauda, Erika
240. Nelson, Craig
241. Nelson, Sally
242. Neto, Milton Mateus
243. New England Livery Association
244. Noel, Fignole
245. Nunez, Sandra
246. Obongono, Maxime
247. Ofria, Richard
248. Oliveira, Laura
249. Olivero, Miguel
250. Oglesby, Scott
251. Papadopoulos, Nikoleta
252. Paquette, Olivia
253. Patterson, Mary
254. Paulino, Rafael Garcia
255. Pena, Oscar
256. Perez, Alejandro
257. Pierce, Andrew
258. Pinson, Naomi Ruth
259. Pires, Luciano
260. Pizzo, Presley
261. Poisson, Paul
262. Pouloupoulos, Nick
263. Powell, Pamela
264. Putnins, Susan
265. Quadagno, Robert
266. Raj, Tilak
267. Rasier, LLC, also known as "Uber"
268. Randolph, Debra
269. Regis, Jean
270. Reinoso, Domingo
271. Richardson, Robert
272. Riley, M.
273. Rivera, Carlos
274. Rockwell, James
275. Rodrigues, Michael, State Senator
276. Rogina, Peter
277. Rooney, James
278. Rosa, Rafael Gonsalves
279. Rosemartin, Alyssa
280. Ryan, Daniel, State Representative
281. Safe, Fair, and Insured Rides
282. Sales, Jen
283. Sandberg, David
284. Sannuti, Arun
285. Saxe, Rebecca
286. Segal, Eric
287. Seligson, Kay
288. Schoch, Steven
289. Scott, Alan
290. Simili, Eric
291. Simone, Bob
292. Shepard, Patricia
293. Suriyamongkol, Cara
294. Smith, Lauren
295. Smith, Stephen
296. Soto, Eddy
297. Stanford, Rodney
298. Steed, Beverly
299. Sternberg, Talia
300. Suazo, Gisell
301. Sullivan, Dave
302. Sullivan, David
303. Swindell, Daniel

304. Taft-Morales, Maya
305. Tavares, Donald
306. Taylor, Samson
307. Teamsters Local 25
308. TechNet, Neighbor to Neighbor, and
the National Association for the
Advancement of Colored People,
Berkshire County Branch
309. Thompson, Mark
310. Tordella, Susan
311. Tourkistas, James
312. Tranquada, Kate
313. Transportation for Massachusetts
314. Trefethen, Ian
315. Turow, Paula
316. Vargus, Ryan
317. Verdieu, Fabrice
318. Wahl, Sarah
319. Webster, Michael
320. White, Christopher
321. Willen, Rachel
322. Williams, Dorian
323. Williams, Friday
324. Williams, Phelix
325. Williams, Vernel
326. Wilson, Patrick
327. Woodley, Paul
328. Wuleeb, Inc.
329. Wyon, Rachel
330. Yanco, Jennifer
331. Yurkofsky, Denise
332. Zagarella, Ariana
333. Zanolli, Michael
334. Zichlin, Miriam
335. Zhang, Zufu