

TAXICAB DRIVERS AND MPD ENFORCEMENT OF THE DISTRICT'S TAXICAB REGULATIONS



REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

TO

**MAYOR ADRIAN M. FENTY,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

September 8, 2009

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

The District of Columbia's Office of Police Complaints (OPC) has received dozens of complaints from District of Columbia taxicab drivers alleging that Metropolitan Police Department (MPD) officers have improperly cited them for violations of District of Columbia taxicab regulations. Some of the complaints, in addition to contesting the validity of the citations, allege that MPD officers unlawfully discriminated based on race or national origin. MPD officers are authorized to enforce the District's taxicab regulations pursuant to D.C. Official Code § 50-332, which grants MPD concurrent enforcement authority with the District of Columbia Taxicab Commission (DCTC).

The Police Complaints Board (PCB), OPC's governing body, undertook an examination of these complaints to determine whether systemic problems exist that may explain the prevalence of complaints and to explore ways to improve police officer-taxicab driver interactions. PCB discovered that while improvements in MPD officer training on proper enforcement of taxicab regulations are needed, it appears that many taxicab operators lack mastery of the rules and regulations governing them, and this contributes significantly to compliance problems and to operators' perception that they are being improperly cited for violations. PCB's investigation revealed that better pre- and post-licensing taxi operator training, clarification of rules and regulations governing taxicab drivers, and closer monitoring of citations issued both by DCTC inspectors and by MPD officers for any signs of biased enforcement would improve the caliber of the District's taxi operators and potentially reduce the incidence or perception of police misconduct stemming from MPD officer enforcement of taxi regulations. PCB further believes that greater coordination between MPD and DCTC to reduce any disparities in enforcement would be beneficial.

Accordingly, PCB, pursuant to its statutory authority to recommend to the District of Columbia Mayor, the Council of the District of Columbia, and the MPD Chief of Police, changes in District operations and management that have the potential to reduce the incidence of police misconduct, proposes: 1) an assessment of current training for taxicab drivers; 2) establishment of annual refresher training for all taxicab drivers; 3) an evaluation of taxicab-related laws, regulations, and policies to assess their accuracy and clarity; 4) comprehensive and coordinated training and guidance for DCTC inspectors and MPD officers to improve and synchronize enforcement; and 5) a review of taxicab citations issued by DCTC and MPD, perhaps through a random sampling, in an effort to spot problematic patterns and trends, including possible biased enforcement.¹

¹ PCB is making these recommendations pursuant to D.C. Official Code § 5-1104(d) (2009), which authorizes the Board to propose action to the Mayor, the Council of the District of Columbia, and MPD's Chief of Police if the measures have the potential to reduce the incidence of police misconduct. These recommendations are supported by four of the five members of PCB, Kurt Vorndran, Karl M. Fraser, Victor I. Prince, and Margaret A. Moore. The fifth member of the Board, MPD Assistant Chief Patrick A. Burke, concurs in MPD's opposition to issuance of the report, discussed more fully in the appendix. PCB is grateful for assistance in preparing this report from OPC's executive director, Philip K. Eure; Nicole Porter, Special Assistant; attorney Angela Kiper; investigator Alpha Griffin; and law clerks Florence Pettiquoi (Summer 2007) and Sara Kang (summer 2009). PCB also appreciates the cooperation of many Taxicab Commission, UDC, and MPD staff who provided information and invaluable insight.

II. PERTINENT LAW AND REGULATIONS GOVERNING DISTRICT TAXICAB DRIVERS

Lawful operation of a taxicab in the District of Columbia is governed by several provisions of the D.C. Official Code and the D.C. Municipal Regulations. The primary statutory provisions are found in Titles 47 and 50 of the D.C. Official Code. Title 50: 1) creates the DCTC, which regulates the District's taxicab industry by establishing rates, criteria for licensure, standards and rules of operation, and penalties for violation of applicable rules; and 2) establishes the Office of Taxicabs, which provides administrative support to DCTC, implements regulations promulgated by DCTC, administers licensing exams and vehicle inspections, and hires and oversees "hack inspectors," which are DCTC employees who enforce all taxicab rules and regulations.²

Noteworthy sections of D.C. Official Code Title 50 include: 50-319 (License Requirements), which provides that no person shall operate a taxicab in the District without first securing all applicable licenses; 50-314 (Insurance) and 50-315 (Sinking Fund), which together require taxicab owners to secure and maintain sufficient insurance to cover potential liability for damages resulting from taxicab operation; 50-371 (Loitering of Public Cabs), which prohibits taxis from stopping, standing, or idling (in the hope of gaining a passenger) near hotels, theaters, or public buildings except to pick up or drop off a passenger; and 50-332 (Enforcement and Issuance of Citations), which states that "The Taxicab Commission and the Metropolitan Police Department shall concurrently enforce and issue citations relating to taxicab requirements."

D.C. Official Code § 47-2829 (2009) sets forth the criteria for obtaining a taxicab license from DCTC. The requirements include completing a pre-license training course administered exclusively by the University of the District of Columbia (UDC);³ taking and passing a formal pre-license examination;⁴ and remitting applicable fees and taxes.⁵

The taxicab requirements set forth in Titles 47 and 50 of the D.C. Official Code are incorporated and clarified in Title 31 of the D.C. Municipal Regulations (Taxicabs and Public Vehicles for Hire). The regulations provide that in order lawfully to operate a taxicab, a person must first obtain from DCTC both an operator identification card, called a "face" or "face ID card" and a vehicle identification card, known as the "DCTC license."⁶ Both IDs must be displayed in the taxicab at all times while the vehicle is being operated.⁷

One of the most important requirements contained in Title 31 of the D.C. Municipal Regulations (and one which frequently is the subject of citations) is the obligation of taxicab drivers to properly maintain a daily manifest, a detailed log of each trip made during the course of a tour of duty.⁸ The regulations specify that the manifest must be prepared in ink on an approved form and

² D.C. Code §§ 50-301 through 50- 381 (2009).

³ D.C. Code § 47-2829 (e)(2)(A) (2009).

⁴ D.C. Code §§ 47-2829 (e)(2)(B) - (C) (2009).

⁵ D.C. Code §§ 47-2829 (b), (c), and (e-1) (2009).

⁶ D.C. Mun. Regs. tit. 31 § 814 (2008); *see also* D.C. Code §§ 47-2829 (d) and (e)(1) (2009).

⁷ *Id.*

⁸ D.C. Mun. Regs. tit. 31, § 823 (2008).

must contain the operator's name, ID number, taxi company, vehicle number, and license plate number.⁹ In addition, the manifest must show: 1) time and mileage from the beginning and end of the tour of duty; 2) time and mileage for each trip; 3) the time, place of origin, and destination of each trip; and 4) number of passengers and fare charged for each trip.¹⁰ Entries to the manifest must be made immediately following each trip.¹¹ Additionally, a taxi operator is required to maintain completed manifests for at least two years, may not alter a manifest, and must surrender a manifest upon the demand of DCTC or other authorized agencies, such as MPD.¹²

Other regulatory requirements that often form the basis for citations are procedures taxicab drivers must follow to indicate availability for service. For example, an operator's cruising light¹³ must be illuminated whenever he or she is available for hire during specified hours,¹⁴ and an operator may decline to provide service only after turning off the cruising light, placing an "Off Duty" or "Out of Service" sign in the windshield and after making a corresponding entry in the manifest.¹⁵ Similarly, when a taxi operator cannot accept a fare because he or she is en route to pick up a customer pursuant to a previously scheduled appointment, the operator must place an "On Call" sign in the windshield, turn off the cruising light, and make a corresponding entry in the manifest.¹⁶

Title 31 of the D.C. Municipal Regulations reiterates that taxi operators may not loiter in their vehicles around public accommodations seeking to obtain a fare¹⁷ and may enter a taxicab stand (aisle lawfully established for taxis to await customers) only when such a stand is not full.¹⁸

Regarding insurance obligations, the regulations, like the relevant statutory provisions, require taxi operators to obtain either an insurance bond, insurance policy, or sinking fund sufficient to cover potential liability and to file proof of insurance with the Taxicab Office.¹⁹ Failure to procure the required insurance is a penalty subject to a \$500 civil fine.²⁰ Regarding proof of insurance, D.C. Mun. Regs., Title 31 § 900.12 (2008) states: "Insurance cards *may be* carried in vehicles (including taxicabs) licensed under . . . D.C. Official Code §§ 47-2829 (emphasis added). Significantly, the regulations do not require taxi operators to carry a specific document, such as an insurance card, as proof that the vehicle is lawfully insured. Moreover, D.C. Official Code § 31-2413 (2009), applicable to all motor vehicle operators in the District, indicates that proof of insurance may be

⁹ D.C. Mun. Regs. tit. 31 §§ 823.1 and 823.2 (a) (2008).

¹⁰ D.C. Mun. Regs. tit. 31 §§ 823.2 (b) – (f) (2008).

¹¹ D.C. Mun. Regs. tit. 31 § 823.3 (2008).

¹² D.C. Mun. Regs. tit. 31 §§ 823.4 and 823.5 (2008).

¹³ The "cruising light" is the dome light on the hood of a taxicab.

¹⁴ D.C. Mun. Regs. tit. 31 § 605.6 (2008).

¹⁵ D.C. Mun. Regs. tit. 31 §§ 605.8, 820.3 – 820.4, and 823 (2008).

¹⁶ D.C. Mun. Regs. tit. 31 §§ 605.7, 820.1 – 820.2, and 823 (2008).

¹⁷ D.C. Mun. Regs. tit. 31 § 819.3 (2008).

¹⁸ D.C. Mun. Regs. tit. 31 § 821.2 (2008).

¹⁹ D.C. Mun. Regs. Title 31 §§ 900-900.14 (2008).

²⁰ D.C. Mun. Regs. Title 31 § 900.11 (2008).

established either with an insurance identification card or “other evidence establishing that required insurance is in effect.”

A list of penalties applicable to taxicab drivers and the attendant fines are found in chapter 8 of the taxicab regulations.²¹ MPD’s concurrent authority with DCTC hack inspectors to enforce the taxicab regulations is alluded to throughout the regulations, and chapter 6 of the regulations indicates that MPD officers and DCTC hack inspectors may initiate inspections of taxicabs “at any time a taxicab is on the public streets or public space.”²²

III. COMPLAINTS RECEIVED BY OPC

During the five-year period from FY 2005 through FY 2009, OPC received approximately 25 separate complaints against MPD officers from different taxicab drivers.²³ OPC has received a total of more than 50 complaints from taxicab drivers since the agency began accepting complaints from the public in 2001. This number does not include complaints filed by taxicab drivers directly with MPD. These complaints allege harassment by MPD officers through improper or unfair enforcement of both general traffic regulations and taxicab regulations. With respect to taxicab regulations, drivers have complained frequently about citations issued by MPD officers for violations of insurance, manifest, and driver or vehicle identification rules. The following summaries of actual complaints received are illustrative of taxicab driver complaints filed with OPC.

One complainant, a taxicab driver of Ethiopian descent, alleged that an MPD officer harassed him by issuing him frivolous tickets. According to the driver, an MPD officer ordered him to leave from a hotel “taxi stand.” The driver alleged that he asked the officer why he had to leave, and in response the officer threatened to issue tickets and arrest him. The driver left the stand, and the officer allegedly followed in his MPD cruiser. After approximately 40 minutes, the officer conducted a traffic stop and issued the driver three citations for failing to complete a manifest, failing to display his operator’s license, and failing to provide proof of insurance.

OPC’s investigation of this complaint, which was not sustained, revealed that the taxi operator may not have been fully aware of details contained in the regulations regarding when it is permissible to idle in or near a taxi stand, the criteria for a completed manifest, or specifications concerning proper display of his operator’s license. Regarding the alleged insurance violation, it appears there is confusion among MPD officers concerning what is acceptable insurance documentation. Taxi operators frequently have insurance receipts rather than insurance ID cards, which is acceptable to DCTC, and appears to meet the “other evidence [of] required insurance” criteria of D.C. Official Code § 31-2413 (2009).

In another complaint that OPC did not sustain, a taxi operator alleged that while he was driving to his residence one night, he noticed an MPD cruiser following him. The complainant was

²¹ D.C. Mun. Regs. Title 31 § 825.1 (2008).

²² D.C. Mun. Regs. Title 31 § 608.2 (2008).

²³ An additional 14 complaints were received during that same period (FY 05-FY 09) from one taxicab driver. Although some of these complaints may raise legitimate concerns involving interactions between officers and taxi operators, they have been excluded from the total in order not to skew the reported number of unique complaints.

in his taxicab and had his cruising light turned off. The complainant also had an “Out of Service” sign on his dashboard. According to the complainant, the officer approached him and asked why he had an “Out of Service” sign on his dashboard. The complainant told the officer that he was experiencing difficulty with his taxi’s air conditioning system and therefore the cab was not available for service. The officer asked the complainant for his manifest, and when the complainant showed it to him, the officer said the manifest was incomplete. The officer then asked the complainant for proof of insurance, and the complainant showed him an insurance receipt. The officer reportedly threw the insurance receipt into the taxicab driver’s face and issued five citations for failing to complete a manifest, improper use of an “Out of Service” sign, failing to use his cruising light, failing to provide proof of insurance, and failing to display his operator’s license.

OPC’s investigation of this matter revealed arguably overzealous MPD enforcement and MPD misunderstanding of what constitutes proper proof of insurance coupled with apparently inadvertent driver noncompliance with applicable regulations governing proper maintenance of a manifest and proper display of a taxi operator’s license. As in the prior case, this complaint underscores the need for taxi operators to receive clearer, more detailed instruction about applicable DCTC requirements. It also demonstrates the need for MPD officers to receive accurate training concerning acceptable proof of insurance.

A subset of the complaints, in addition to contesting particular citations, allege that MPD officers targeted the drivers for enforcement action based on race, ethnicity, or national origin. In one such complaint, a taxi operator of Ethiopian descent alleged that an MPD officer stopped and arrested him and three other operators for “failure to obey a police officer” because they were Ethiopian. Investigation of the complaint revealed that the incident was more complicated than alleged, and there was insufficient evidence from which to conclude that unlawful discrimination had occurred. Nevertheless, given the high number of District taxicab drivers who are immigrants and the potential for the perception of biased policing to undermine respect for and compliance with law enforcement, it is important for MPD officers to avoid even the appearance of bias in enforcing taxicab regulations.

Although no taxi driver allegations of biased enforcement have been sustained by OPC complaint examiners, PCB cautions against drawing definitive conclusions from this fact, as allegations of unlawful targeting by law enforcement officers are extremely difficult to prove in the absence of direct evidence of discrimination. Moreover, as PCB points out in the appendix to this report, even complaints that are not sustained often raise important issues worthy of corrective action.

Investigation of the complaints also revealed the existence of particular officers who may be engaging in overzealous enforcement. One MPD officer, for example, was the subject of 12 separate police misconduct complaints filed by taxi operators. This occurrence counsels strongly in favor of careful tracking of taxicab citations issued both by MPD officers and by DCTC hack inspectors, as these data may indicate personnel who would benefit from counseling and retraining.

IV. TRAINING AND GUIDANCE RECEIVED BY TAXICAB DRIVERS AND MPD OFFICERS

Training for Taxicab Drivers

All prospective District taxicab operators are required to take a pre-license training course at UDC.²⁴ The course consisted of at least 24 hours of instruction in 1) geography of the District; 2) DCTC rules, regulations and penalties; 3) District traffic laws and regulations; 4) public relations skills; and 5) business practices, such as how properly to complete and maintain a manifest.²⁵

The UDC course syllabus used most recently tracks the above-listed statutory requirements, and the taxicab regulations (Title 31 of the D.C. Municipal Regulations) are referenced throughout the eight-page syllabus.²⁶ It is unclear, however, to what extent details contained in the regulations are highlighted during the course.²⁷ The course instructors all have been current or former taxicab drivers whose reliance upon actual language contained in Title 31 in teaching the course may vary greatly.²⁸ To date, no MPD officers or DCTC hack inspectors have served as instructors or guest presenters during the pre-license training course, despite that there may be merit to utilizing them in this manner.²⁹ Because MPD officers and DCTC hack inspectors enforce the regulations, they may be more conversant about specific provisions of Title 31 and may be more apt to emphasize this information in training new taxicab drivers.

The only other training mentioned in the applicable regulations is a retraining course that taxicab drivers are required to take every other two-year license renewal period, or every four years.³⁰ However, the course currently is unavailable.³¹ PCB understands that the course is slated to restart in the spring of 2010.³² Nevertheless, even the temporary unavailability of the course is problematic, as there currently are no voluntary “continuing education” courses for taxicab drivers at UDC or through DCTC.³³ It should be noted, moreover, that even when the retraining course was available, license renewal was not conditioned on a taxicab driver’s demonstrated mastery of applicable rules and regulations or other retraining course content.³⁴

²⁴ D.C. Official Code § 47-2829(e)(1)(2)(A) (2009).

²⁵ *Id.*

²⁶ UDC, Taxicab Driver Pre-License Training Course, Class Syllabus.

²⁷ Interview by Nicole Porter, OPC Special Assistant, with Don Walters, Hack Inspector, Taxicab Commission (May 2, 2008).

²⁸ UDC, Office of Police Complaints Q & A.

²⁹ *Id.*

³⁰ D.C. Mun. Regs. tit. 31, § 1015.1 (2008).

³¹ *See* Final Report for the Task Force on Taxi and Limousine Industry at 56, n. 16 (Nov. 19, 2008).

³² E-mail from Leon Swain, Chairperson, Taxicab Commission, to Sara Kang, OPC Law Clerk (Jul. 20, 2009).

³³ According to DCTC, a voluntary refresher course was offered several years ago, but the course was discontinued because it covered basic topics, such as District geography, with which most drivers already were familiar. Interview by Nicole Porter, OPC Special Assistant, with Don Walters, Hack Inspector, Taxicab Commission (May 2, 2008).

³⁴ *See* D.C. Mun. Regs. tit. 31, § 1015 (2008).

District taxicab drivers are now informed of changes in applicable laws, regulations, and DCTC policy through publication of such changes on DCTC's website.³⁵ Taxicab drivers may also contact the Office of Taxicabs by phone or attend Taxicab Commission meetings.³⁶ According to the Taxicab Commission, there is no individualized outreach to taxicab drivers due to the transient nature of many drivers.³⁷ The problem is that unless taxi operators have the ability and inclination to visit DCTC's website, they may remain uninformed about important legal and policy changes because there currently is no mechanism for automatically notifying all operators individually.

Training for MPD Officers

MPD provides classroom training on taxicab regulation to new recruits, and plans are underway to extend this training to veteran officers. The recruit officer lesson plan highlights key provisions of the taxicab regulations (Title 31 of the D.C. Mun. Regs.) and was updated in May 2008 to include new rules and fines applicable to taxicab meters. Specifically, the lesson plan addresses taxicab license and operator ID requirements; proper preparation and maintenance of a manifest; rules governing passenger solicitation, loitering, and taxicab stands; insurance obligations (but not what constitutes valid proof of insurance); fare disputes; and taxicab meter requirements. Commendably, the lesson plan urges officers to be "tactful and respectful" when dealing with taxicab drivers and warns against discriminating in enforcing taxi regulations based on race or ethnicity.

Although MPD plans to offer in-service training to veteran officers about taxicab enforcement, it currently relies upon roll call training, such as that offered in June 2008 to educate officers about new taxicab meter regulations and fines,³⁸ and periodic publication of a detailed circular which lists civil infractions for moving, parking, and "hack" (taxi driver) violations. The most recent circular was issued June 6, 2007.³⁹ The circular was updated on June 23, 2008, via an MPD teletype which added new rules and fines related to the District's recent switch to use of taxicab meters.⁴⁰ Although the circular lists taxicab regulations that MPD officers are charged with enforcing and lists corresponding civil penalties for violation of the regulations, the document offers no analysis of the infractions and thus provides no guidance to officers on how properly to enforce the regulations. Another problem is that one section of the circular cites taxicab regulations that have been repealed, including some which relate to previously mandated taxicab insurance stickers which no longer are required.⁴¹ It is unclear whether the circular's continued inclusion of expired insurance sticker requirements contributes to the current misunderstanding about proper proof of insurance.

³⁵ Interview by Nicole Porter, OPC Special Assistant, with Renee Hevoir, Program Assistant, Taxicab Commission (May 2, 2008).

³⁶ *Id.*

³⁷ E-mail from Leon Swain, Chairperson, Taxicab Commission, to Sara Kang, OPC Law Clerk (Jul. 20, 2009),

³⁸ MPD issued roll call training in June 2008 specifically instructing officers on how to enforce meter regulations. *See* MPD Roll Call Training, Taxicab Meter Enforcement.

³⁹ *See* MPD Circular 07-04, Civil Infractions for Moving, Parking, and Hack Violations (effective June 6, 2007).

⁴⁰ *See* MPD Teletype #06-078-08, Taxicabs Public Vehicles for Hire—Schedule of Fines (Jun. 23, 2008).

⁴¹ *See* MPD Circular 07-04, *supra* note 38, at 27.

V. COORDINATION BETWEEN MPD AND THE COMMISSION REGARDING TAXICAB ENFORCEMENT

As indicated earlier, MPD officers and DCTC hack inspectors share authority for enforcing taxicab regulations. However there has been little coordination between MPD and DCTC on the issue of joint taxi enforcement training sessions.⁴² According to DCTC, MPD officers consult hack inspectors informally on an individual basis if they have questions about proper enforcement or need clarification about an issue. Although up to now there have been no joint training sessions for MPD officers and DCTC hack inspectors, DCTC is contemplating developing such sessions for the express purpose of ensuring that hack inspectors and MPD officers interpret and apply the rules and regulations more uniformly.⁴³

VI. POLICY IMPLICATIONS

Many of the complaints filed with OPC reveal taxi driver misunderstanding of applicable rules and regulations. For example, taxi operators seemed not to be aware that they are obligated to have and complete a manifest any time they are operating a taxi, even when they are off duty, a requirement that reportedly protects operators from misconduct complaints.⁴⁴ Other complaints filed with OPC raised concerns about improper enforcement, such as the discrepancy over what constitutes valid proof of insurance. DCTC informed OPC that insurance receipts from taxicab drivers are valid proof of insurance, as they generally contain the same information as formal insurance cards.⁴⁵ The Commission also indicated that in the past, there have been problems with taxicab operators forging insurance receipts. Still, the Commission has not taken any action to invalidate insurance receipts, so MPD officers should not issue citations to taxi drivers who produce insurance receipts unless officers have evidence of forgery.

Complaints alleging unlawful discrimination based on race, ethnicity, or national origin indicate a strong perception of bias among some taxicab drivers and warrants consideration given the high number of minorities and immigrants who serve as taxi operators in the District. According to the Taxicab Commission, the vast majority of the District's approximately 6,500 licensed taxi operators are immigrants, many of African ancestry. While racial or ethnic profiling by officers is difficult to prove in the absence of direct evidence of discrimination, tracking and review of citations issued both by MPD and DCTC hack inspectors, even a random sampling, could help allay operators' fears of discriminatory enforcement and would permit MPD and DCTC to identify and address problematic patterns and trends, whether or not related to discrimination.

⁴² Even so, there is cooperation between MPD and DCTC in other areas. For example, an MPD official has addressed taxi operators at Commission meetings regarding efforts to investigate and solve robberies of taxi operators. Similarly, DCTC has arranged for MPD officers to train hack inspectors on July 27, 2009, regarding matters related to traffic stops.

⁴³ *Id.*

⁴⁴ D.C. Mun. Regs. tit. 31, § 823.1 (2008).

⁴⁵ Interview by Nicole Porter, OPC Special Assistant, with Renee Hevoir, Program Assistant, Taxicab Commission (May 2, 2008).

VII. RECOMMENDATIONS

Based on its review of the information and materials described above, PCB makes the following recommendations:

1. **Evaluate taxicab-related rules and regulations for accuracy and clarity, and make changes where necessary.** Some of the rules and regulations applicable to taxicab drivers are vague and confusing while others provide insufficient detail. Either deficiency makes compliance difficult. Examples include provisions governing taxicab drivers' obligations with respect to completing and maintaining a manifest⁴⁶ as well as provisions governing insurance obligations that fail to specify particular documents sufficient to constitute proof of insurance. Both of the examples cited are frequent sources of contested citations. PCB therefore recommends that DCTC review for accuracy and clarity rules and regulations governing taxicab drivers, particularly those that address issues raised in this report, and make such revisions as are necessary to promote understanding and compliance. PCB further recommends that DCTC, if it has not done so already, consider making available translations of important rules and regulations in the non-English languages most commonly spoken by taxicab drivers.
2. **Assess current training for taxicab drivers and make improvements where needed.** It is evident from the facts in many of the complaints filed with OPC by taxicab drivers that more comprehensive taxi driver training is needed. To achieve this goal, PCB recommends that DCTC and UDC assess the current UDC taxicab pre-license training course and work together to incorporate relevant provisions of Title 31 of the D.C. Municipal Regulations into the course content. Efforts should also be made to include a significant number of questions from Title 31 in the UDC simulated final examination. Because MPD officers and DCTC hack inspectors enforce the taxicab regulations, they are extremely knowledgeable about particular infractions that taxicab drivers frequently commit. PCB therefore recommends that DCTC and UDC recruit interested MPD officers and DCTC hack inspectors to serve as instructors or guest presenters. Utilizing MPD officers and hack inspectors as course instructors might help operators gain a better understanding of how taxicab regulations are enforced.
3. **Establish annual refresher training for all taxicab drivers.** To ensure that taxicab drivers fully understand their responsibilities under the law and are informed of new developments, PCB also recommends that DCTC require taxicab drivers to attend annual "refresher" training that centers on Title 31 of the taxicab regulations and applicable District law. PCB further recommends that DCTC expand the "Frequently Asked Questions" page on the DCTC's website to specifically address common questions raised by taxicab drivers about taxicab enforcement and consider including translations in non-English languages, such as Spanish, Amharic and others commonly spoken by taxi drivers and District residents.
4. **Provide comprehensive training to DCTC inspectors and MPD officers on the District's taxicab laws and regulations.** Because MPD officers and DCTC hack inspectors share enforcement duties, MPD and DCTC should establish regular joint training sessions for hack inspectors and MPD officers. At these training sessions, issues and challenges

⁴⁶ D.C. Mun. Regs. tit. 31, § 823.1 (2008).

pertaining to taxicab enforcement can be reviewed and freely discussed. PCB further recommends that MPD review and update its current training materials and general orders, offer annual in-service training on taxicab enforcement to all MPD officers, and continue to provide roll-call training to inform officers of important changes in taxicab rules and regulations.

5. Review taxicab citations issued by DCTC and MPD to identify any problematic patterns or trends, including possible racial or ethnic bias.

To gain an understanding of those areas of taxicab regulation that reflect gaps in taxi driver understanding as well as possible deficiencies in enforcement, PCB recommends that both MPD and the Taxicab Commission review taxicab citations issued by their respective agencies and seek to identify any problematic patterns or trends. This review, even if performed as part of a random sampling because of the large volume of citations, would help identify any regulatory obligations that are being improperly enforced and help determine whether race, ethnicity, or nationality may have been improperly taken into account by any officers or inspectors.

To address concerns about discriminatory enforcement, MPD and DCTC, in reviewing individual citations, should note which infraction specified in D.C. Mun. Regs. tit. 31 § 825 was incurred, which officer or inspector issued the citation, and any identifying information about the taxicab driver available from the citation. Compiling a list of the aforementioned information should allow MPD and DCTC to spot outliers, *i.e.* officers or inspectors whose citation issue rates are higher than average. MPD and DCTC could coordinate to connect driver's license and vehicle ID numbers to specific individuals. To a limited but nevertheless useful extent, having names of taxicab drivers may aid in determining ethnic identity. Once names of drivers are connected to citations, it may be possible to spot patterns in citations issued by outliers. This information may help determine whether more in-depth investigation, including interviews of officers or inspectors and affected taxicab drivers is necessary. It might also prove useful to check complaints filed by taxi operators against officers and inspectors identified as outliers by the relevant data. MPD and DCTC may wish to compile simple reports showing any noteworthy results of their review and analysis.

PCB believes that the recommended review and tracking not only has the potential to address concerns about bias but would reveal which regulatory obligations taxicab drivers understand least and would highlight rules that need further clarification.

APPENDIX – PCB RESPONSE TO MPD CONCERNS

MPD has stated in a letter issued August 26, 2009, that it must oppose issuance of this report and recommendations unless PCB turns over to the police department OPC's "detailed complaints and investigations" for any cases referred to or relied upon in developing the report. According to MPD, it cannot understand or determine how adequately to respond to PCB's recommendations without full access to all of the information PCB considered in preparing its report.⁴⁷

As is its practice, PCB consulted MPD for relevant information in developing this report, and included the information provided to ensure that MPD's policies and procedures are described as accurately as possible. In addition, upon completion of a draft, PCB submitted the report to MPD for review and comments, with the understanding that, as in the past, PCB would amend the report as necessary to correct any errors or omissions. In response to PCB's request for comments on its draft report, MPD issued its letter of opposition, contending that MPD cannot respond without access to OPC's investigative materials.

OPC provides MPD with a copy of each complaint it receives and corresponding information regarding ultimate disposition but does not turn over its investigative files to MPD because OPC is an agency that is independent of the police department, expressly created by the District of Columbia Council to provide impartial review of police misconduct complaints. In establishing OPC, the Council emphasized that the agency's independence from MPD is necessary to promote public confidence in the District's police force.⁴⁸ OPC's investigative files reflect agency processes, investigative techniques, and internal deliberations, the release of which to MPD would compromise OPC's independence. Accordingly, PCB has declined to turn over OPC's investigative materials to MPD and objects to this practice as a matter of policy.

MPD's lack of access to OPC's investigative files should in no way hamper MPD's ability to understand or respond to this report and its recommendations. Indeed, MPD has been able to respond to PCB's previous 20 reports and accompanying sets of recommendations without resort to OPC's underlying investigative files, and MPD, to the benefit of greater police accountability in the District, has implemented the majority of PCB's recommendations. Contrary to MPD's suggestion, PCB has not through this report made accusations about MPD officers against which the officers or MPD must defend through re-adjudication of the underlying complaints. Rather, PCB, through careful study of complaints filed with the agency and acting in good faith, has identified and brought to MPD's attention what it believes are important issues that MPD should address. The report includes summaries of actual complaints received that illustrate areas of concern and make clear the basis for the recommendations. Having been apprised of the perceived problem, MPD has at its disposal vast amounts of relevant information that it may also explore to assess whether a response is warranted, including its police officers and the police reports they prepare, evidence they collect, records of citations they issue, and taxi operator complaints filed directly with MPD, among many other things. Moreover, MPD acknowledges understanding this report and its recommendations to some extent, as it has commendably agreed to make specific corrections to its taxi enforcement training, including clarifying for its officers that proof of insurance may be established by documents other than insurance ID cards, amending its taxi enforcement circular to

⁴⁷ See Letter from MPD Chief Cathy Lanier to Kurt Vorndran, Chairman of the Police Complaints Board, issued August 26, 2009 (on file at OPC).

⁴⁸ See D.C. Official Code §5-1101.

remove taxi regulations that have been repealed, and reviewing taxi-related departmental directives and new recruit training for possible improvement.⁴⁹

A major reason for MPD's opposition to this report is its apparent belief that since no discrimination complaints filed with PCB by taxicab drivers have been sustained, the perception by some taxi operators that MPD officers engage in biased enforcement of taxi regulations is unfounded. This view misunderstands the value of all complaints filed by members of the public, including those not sustained. There have been several instances involving non taxicab-related complaints in which PCB has been compelled to dismiss the complaints, out of fairness to the subject officers, on grounds that unclear departmental policies and directives or inadequate training (as opposed to deliberate misconduct) were the basis for officers' actions. However, such complaints often reveal systemic problems that, if brought to MPD's attention and addressed, eliminates the problem and reduces police misconduct complaints filed against officers.

A particularly relevant and recent example is seen in the complaints PCB relied upon in issuing its August 17, 2009, report and recommendations entitled "Public Drinking Arrests by MPD Officers on Residential Property." This report highlighted that people have been wrongfully arrested on private residential property in the District by MPD officers who erroneously have been taught that consuming or possessing an open container of alcohol while in a residential backyard in the District violates the District's "POCA" (public drinking) law. Although the total number of separate incidents was small, one was particularly troubling in that it involved 11 MPD officers and resulted in unlawful "POCA" arrests of 12 people who had been attending a party in a private, fenced backyard. The consolidated complaints were dismissed because OPC's investigation revealed that MPD had provided the officers with inaccurate training. The treatment of the 12 arrestees was particularly unfortunate, moreover, as they felt they were led to accept the option of a "post-and-forfeit" summary arrest procedure that left each with an arrest record for engaging in behavior that was not unlawful. Further, it is clear that even if these "residential POCA" arrests are a low priority for MPD officers, the potential for arbitrary and abusive arrests based on inaccurate or inadequate training is real and warrants correction. Likewise, we believe that there are lessons which MPD and the city can learn from patterns detected by PCB in the numerous police misconduct complaints filed by taxi operators that have been dismissed.

With regard to the issue of alleged biased enforcement of taxicab regulations, MPD may misunderstand PCB's recommendation no. 5, *i.e.*, that DCTC and MPD track and review taxicab citations issued by their respective agencies in order to identify problematic trends, including possible racial or ethnic bias. MPD asserts that the overwhelming majority of its officers do not discriminate in issuing taxicab citations because a biased policing study undertaken by MPD in 2006 found "no evidence of racial profiling in traffic stops by MPD officers."⁵⁰ The suggestion that MPD's biased policing study did not uncover evidence of racial profiling by the department's officers does not accurately reflect the study's findings. In fact, the study found five traffic sites within the District where the statistical analysis of stops suggested possible racial bias against African Americans.⁵¹ Three traffic sites within the District produced results showing possible

⁴⁹ See Letter from MPD Chief Cathy Lanier *supra* note 47 at 2.

⁵⁰ *Id* at 2.

⁵¹ See "Addressing Biased Policing in Washington, DC: Next Steps, Report and Recommendations of the Police Complaints Board," (May 17, 2007) p. 3, *available at*

ethnic bias against Latinos.⁵² Further, the study's analysis of pedestrian stops showed significant statistical evidence of bias toward African Americans in Georgetown. A site in Adams Morgan also produced statistical results showing possible bias toward African Americans and Latinos. It was only when the data from the study as a whole were collapsed and averaged that statistical results were produced that minimized the scope of the problem. Additionally, the study did not purport to measure whether profiling of African immigrants and other ethnic groups heavily represented among the District's taxi operators was occurring. Thus, like police departments almost everywhere, it is certainly possible that some MPD officers may engage in biased policing, whether intentionally or subconsciously, and given this reality, it is reasonable to assume that some District taxi drivers may have been adversely affected by such action. Even if it were true that no MPD officers discriminate in enforcing taxicab regulations, there is a strong perception by some taxi operators that this occurs. If MPD and DCTC look into the matter and determine that there is no issue, it may be possible to reduce or eliminate the perception of bias, leading to greater compliance with the regulations and a better taxicab force for the District.

PCB believes that the issues raised in this report are important and is more than willing to work with MPD and DCTC.⁵³ Specifically, OPC staff is available to meet with MPD and DCTC staff to assist in developing a tracking procedure and to share and discuss detailed information about trends and patterns in taxicab driver complaints filed with OPC, MPD, and DCTC.

http://dcpc.dc.gov/occr/frames.asp?doc=/occr/lib/occr/policy_recommendations/2007_policy_recommendation_final_5-15-07_.pdf

⁵² *Id.*

⁵³ Indeed, even though PCB member Assistant MPD Chief Patrick A. Burke adopted the position taken by MPD in opposing issuance of this report, *supra* note 1, he has agreed to work with MPD and DCTC in any way he can to address issues raised by the report.