

## **Rule 411A**

### **Position-Based Testing Program for MTA Service-Critical Positions or Classes**

Applicability: Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

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## **Rule 411A**

### **Position-Based Testing**

#### **Article I: Civil Service Commission Policy Related to Position-Based Testing**

Applicability: Article I, Rule 411A shall apply to examinations designated to this Position-Based Testing Program, and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.1 Purpose**

**411A.1.1** The Civil Service Commission recognizes the importance of reducing the time it takes to make permanent civil service appointments and reducing reliance on provisional and other forms of temporary hiring. Therefore, this Position-Based Testing Program is being established with the goal of adopting eligible lists resulting from merit-based examination processes within sixty (60) days from the posting of the examination announcement.

**411A.1.2** It is the policy of the Civil Service Commission that examination processes in the City and County of San Francisco under this Position-Based Testing Program are conducted in an efficient and fair manner to ensure that the best-qualified individuals are selected to perform service for the City.

##### **Sec. 411A.2 Merit Based Examinations**

**411A.2.1** It is the policy of the Civil Service Commission of the City and County of San Francisco that all persons shall have equal opportunity in employment as expressed in Rule 403 Equal Employment Opportunity.

**411A.2.2** All applicants for positions in the classified service shall submit to verifiable competitive examinations based on merit and fitness as shown by appropriate tests. Job-related criteria shall be utilized in all phases of the examination and employee selection process without regard to race, sex, sexual orientation, gender identity, political affiliation, age, religion, creed, national origin, disability, ancestry, marital status, parental status, domestic partner status, color, ethnicity, medical condition (cancer-related), Acquired Immune Deficiency Syndrome (AIDS), HIV, and AIDS-related conditions, other non-merit factors or any other category provided by ordinance.

**411A.2.3** All forms of cheating, improper aid or hindrance are prohibited.

**Sec. 411A.3 Diversity of Workforce**

- 411A.3.1** Subject to existing law, it is the policy of the Civil Service Commission to achieve a workforce that is fully reflective of the diversity of the City and County of San Francisco.
- 411A.3.2** When there is underrepresentation of an ethnic or gender group for a specific class or occupational category, the Director of Transportation may take appropriate legal actions to correct or mitigate the underrepresentation.
- 411A.3.3** The Civil Service Commission endorses and supports the broadening of the Rules governing the certification of eligibles from civil service eligible lists and considers this broadening as an increase in opportunities for appointing officers to select employees who are best suited to perform the duties of specific positions and to provide greater opportunities to maximize diversity of the work force.

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### Article II: Examination Provisions

Applicability: Article II, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in MTA Service-Critical positions or classes.

#### **Sec. 411A.4 Application of Position-Based Testing**

The term “Position-Based Testing” as used in this Rule shall apply to any examination for a classification that has been designated by the Human Resources Director to be included in the Position-Based Testing Program under Civil Service Rule 111A. Inclusion of classes in the Program may be based on: the number of positions in the subject class, functions of position(s), hiring needs of departments, and other relevant criteria as may be determined by the Human Resources Director.

#### **Sec. 411A.5 Reporting Requirement**

The Director of Transportation shall provide semi-annual reports to the Civil Service Commission on any examinations administered under this Position-Based Testing Program. The Civil Service Commission shall consider whether to require such reports from the MTA to be consistent with the Department of Human Resources’ reporting requirement under Civil Service Rule 111A and will determine the frequency of such reports by Commission action. The frequency of such reports will be noted on the Annual Calendar of Required Reports.

These reports shall include, but not be limited to the following information for each examination: the applicable certification rule and duration of the eligible list; the number of applicants, and how many were deemed qualified under the terms of the examination announcement; the number of candidates who participated in the examination, and how many were placed on the eligible list; and the number and types of protests submitted to the Director of Transportation, and their disposition (i.e., the response of, or any action taken by the Director of Transportation in response; and whether they were appealed to the Civil Service Commission). The Director of Transportation shall also include in its reports a list of the known Service-Critical positions or classifications for which the MTA intends to administer a Position-Based Test under this Civil Service Rule 411A.

#### **Sec. 411A.6 Civil Service Commission Rules for Position-Based Testing**

**411A.6.1** All examination provisions for Position-Based Testing are specified in Rule 411A. Provisions specified in Civil Service Commission Rule 405.12.1, 405.12.4 and 405.20 do not apply to the Position-Based Testing Program. Examination provisions specified in Civil Service Commission Rules 410, 411 Articles I and II, 412 Articles I – IV, and 413 Article III, do not apply to the Position-Based Testing Program.

**Sec. 411A.6 Civil Service Commission Rules for Position-Based Testing (cont.)**

**411A.6.2** Pursuant to its Charter authority, the Civil Service Commission may independently inquire into the operation of the Position-Based Testing Program to determine compliance to its Rules, regulations, policies, and procedures and respond to Inspection Service requests.

**Sec.411A.7 Responsibilities of the Director of Transportation**

**411A.7.1** The Director of Transportation shall adhere to the procedures, requirements and standards established by the Human Resources Director for the Position-Based Testing Program under Rule 111A to implement this Rule 411A, and the policies of the Civil Service Commission concerning this Position-Based Testing Program, and to improve the City's ability to make prompt hires of best-qualified applicants. Nothing in this Rule is intended to extend to the Human Resources Director or the Director of Transportation the authority to change Civil Service Commission policy or to cause or permit the Human Resources Director or the Director of Transportation to take any action not in compliance with the law.

**411A.7.2** The Director of Transportation shall administer and rule on all matters concerning this Position-Based Testing Program. The decision of the Director of Transportation related to Position-Based Testing Program matters under this Rule is final, unless this Rule expressly provides for appeal to the Civil Service Commission.

**411A.7.3** The Executive Officer of the Civil Service Commission may initiate audits or investigations of the MTA's administration or implementation of this Position-Based Testing Program for compliance with Civil Service Commission policies and Rules; or for compliance with Department of Human Resources' policies, procedures and standards for Position-Based Testing.

**411A.7.4** Additionally, the Department of Human Resources shall conduct periodic independent reviews of the MTA's administration and implementation of this Position-Based Testing Program during the first three years following the adoption of this Civil Service Rule 411A on April 21, 2014 to ensure compliance with the Department of Human Resources' policies, procedures and standards for Position-Based Testing. The Department of Human Resources shall report any deficiencies to the Executive Officer of the Civil Service Commission to ensure that they are appropriately addressed. At the conclusion of the three-year period, the Department of Human Resources shall report to the Civil Service Commission on its findings regarding the operation of the MTA's Position-Based Testing Program under this Rule 411A.

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#### **Article III: Examination Announcements**

Applicability: Article III, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.8 Examination Announcements**

**411A.8.1** The examination announcement shall be the official notice of an examination and shall provide the qualifications, dates and other particulars regarding the selection procedure. Applicants must be guided solely by the terms of the examination announcement.

**411A.8.2** Municipal Transportation Agency examination announcements shall be officially posted at the Department of Human Resources and the Municipal Transportation Agency.

##### **Sec. 411A.9 Reissuing of Examination Announcements**

The Director of Transportation may reissue an examination announcement to extend the application-filing period or in response to an appeal. When reissued for these reasons, an examination announcement is not open to an appeal.

##### **Sec. 411A.10 Correction of Examination Announcements**

Examination announcements may be corrected by the Director of Transportation with respect to clerical errors, misprints and incorrect wording by posting notice of such corrections. Additional time shall not be allowed for appeal of the substantive provisions contained in the original examination announcement.

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#### **Article IV: Examination Applicants and Applications**

**Applicability:** Article IV, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.11 Definition of Applicant**

An applicant is a person who has filed an application for examination within the time limits and under the conditions specified on the examination announcement.

##### **Sec. 411A.12 Qualifications of Applicants**

**411A.12.1** Every applicant for an examination must possess and maintain the qualifications required by law and by the examination announcement.

**411A.12.2** City and County employees in Service-Critical classes at the Municipal Transportation Agency shall receive credit only for the duties of the class to which appointed or assigned unless sufficient and credible documentation is provided to verify performance of other duties. Employees in Service-Critical classes at the Municipal Transportation Agency may receive credit for duties not usually performed by incumbents in a Service-Critical class if their employee file contains contemporaneous documentation that the duties were assigned and performed. Credit for duties in Service-Critical classes at the Municipal Transportation Agency not usually performed by incumbents in a Service-Critical class based on non-contemporaneous documentation shall require the Certification of the Municipal Transportation Agency Deputy Director, Labor Relations and Human Resources, and the approval of the Director of Transportation.

##### **Sec. 411A.13 False Statements by Applicants**

Relevant false statements, whether intentional or unintentional, made or permitted by any applicant on the application or in any phase of the examination or hiring process shall be good cause for the exclusion of such person from any examination, or the removal of the applicant's name from the eligible list, and may be good cause for removal or discharge from the City and County service.

##### **Sec.411A.14 Promotive Applicants**

Applicants for promotive-only or combined promotive and entrance examinations shall meet the requirements of the examination announcement under which they apply. If otherwise qualified, City employees with six (6) consecutive months (1040 hours) of verifiable experience in any job classification in any appointment type qualify as promotive applicants.



**Sec. 411A.15 Veterans Preference in Examinations**

**411A.15.1** The Director of Transportation shall adhere to the procedures for veterans preference in examinations established by the Human Resources Director in accordance with applicable law and Civil Service Commission Rules.

**411A.15.2** Any individual applicant for entrance employment with the City and County of San Francisco wishing to receive veterans preference credit as provided in Civil Service Commission Rules must notify the Department of Human Resources of his/her veteran status at the time he/she submits the initial job application or as specified on the examination announcement.

**Sec. 411A.16 Change of Address**

The Municipal Transportation Agency must be notified in writing (including e-mail) by the applicant of any change of address, e-mail address or telephone number. Notice of change to the Post Office and/or an employee's current department only, does not meet the notification requirement.

**Sec. 411A.17 Custody of Examination Applications**

Examination applications and supporting documents become the property of the Municipal Transportation Agency when received. Return of such documents shall require the approval of the Director of Transportation.

**Sec. 411A.18 Confidentiality of Applicant Information**

Applicant information, including names of applicants on eligible lists shall not be made public, unless required by law.

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#### **Article V: Examinations**

**Applicability:** Article V, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.19 Adequacy of Examinations**

The Director of Transportation shall approve the adequacy of the examination to rate the capacity of the applicants to perform the job. Examinations may include, but are not limited to one or more testing devices such as written examinations, oral interviews, performance exercises, assessment centers, successful completion of requirements imposed by other authorities for the award of certification, licensure, academic recognition (e.g. degree, course completion), placement on a roster as provided in Sec. 411A.28, or any other devices or methods to determine merit and fitness for tested positions.

##### **Sec. 411A.20 Examination Rating Panels**

The Director of Transportation shall make every reasonable effort to ensure diversity of the qualified raters.

##### **Sec. 411A.21 Establishing Cutoff Scores and Number of Eligibles**

The Director of Transportation shall establish a cutoff or passing score and shall determine the number of persons who shall constitute the eligible list.

##### **Sec. 411A.22 Cheating in Examinations Prohibited**

**411A.22.1** Any action that constitutes cheating, improper aid, hindrance, fraud, or collusion in any part of the examination process is prohibited. The following are some specific actions that are expressly prohibited: relevant false statements by applicants on the application or during the selection process; the use or attempted use of materials not authorized by the scheduling notice to candidates to report for the examination; defeating, deceiving or obstructing any person in respect to his or her right of examination; falsely marking, grading, estimating, or reporting upon the examination or proper standing of any person examined hereunder, or aid in so doing; making any false representations concerning the examination or the person examined; or furnishing to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person of being appointed, employed or promoted.

**Sec. 411A.22 Cheating in Examinations Prohibited (cont.)**

**411A.22.2** Any person cheating, attempting to cheat, or assisting in cheating or hindering other persons in any phase of the examination process shall be prosecuted to the full extent of the Charter and other laws. Actions to be taken include elimination from the examination process, dismissal and ineligibility for future employment and such other appropriate action as may be recommended by the Director of Transportation.

**Sec. 411A.23 Review of Ratings by Examination Participants**

**411A.23.1** Examination participants shall have a minimum period of five (5) working days to review their own examination ratings to confirm the accuracy of the calculation of their scores and/or rankings. The identity of the examiner giving any mark or grade shall not be disclosed.

**411A.23.2** The Director of Transportation shall establish the procedures for Review of Ratings.

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#### **Article VI: Administration of Eligible Lists**

**Applicability:** Article VI, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.24 Eligible Lists for Certification Purposes Only**

**411A.24.1** The names of examination participants passing all phases of an examination described by the terms and conditions of the examination announcement shall be placed on an eligible list. Eligible information, including names on eligible list shall not be made public unless required by law; however, any eligible list shall be made available for public inspection upon request once the eligible list is exhausted or expired and referrals resolved.

**411A.24.2** The Director of Transportation shall establish the duration of an eligible list and/or durations of eligibility of individuals on the eligible list. Eligibles will be notified of the duration of the eligible list and/or durations of eligibility of individuals.

##### **Sec. 411A.25 Posting of Tentative Eligible List Examination Score Report**

**411A.25.1** At the beginning of the inspection period the Tentative Eligible List Score Report shall be posted and made available for public inspection.

**411A.25.2** Changes in an eligible list because of clerical or computational errors shall not change the date of adoption of the eligible list.

**411A.25.3** The Director of Transportation may adopt an eligible list pending the resolution of any appeal. Eligibles reachable within the applicable certification rule may be referred to departments (certified) for potential hire. Resolutions of appeals shall not affect earlier hires from the eligible list.

##### **Sec. 411A.26 Maintenance of Eligibility**

Eligibles who fail to possess or maintain the qualifications required by law and/or by the terms of the examination announcement under which they participated shall forfeit their eligibility. The Director of Transportation is authorized to remove eligibles from an eligible list who have failed to maintain qualifications and/or may restore eligibles to an eligible list based on qualifications or to comply with Civil Service Commission Rules, policy and/or action.

##### **Sec. 411A.27 Management of Eligible Lists**

**411A.27.1** The Director of Transportation shall have the right to correct errors on an eligible list or amend an eligible list as a result of the outcome of an appeal or if required by Civil Service Commission Rules or other legal requirements. Corrections and/or amendments of the eligible list shall not affect earlier hires from the eligible list.

**Sec. 411A.27 Management of Eligible Lists (cont.)**

- 411A.27.2** The Director of Transportation may extend the duration of an eligible list or eligibility periods for individuals on the eligible list based on the needs of the Municipal Transportation Agency or merit factors. Any extension of the eligible list or eligibility period shall occur prior to the expiration date with the exception of correcting errors. During the first three years following the adoption of this Civil Service Rule 411A on April 21, 2014, the maximum duration of the eligible list shall not exceed twenty-four (24) months. At the conclusion of the three-year period, the Civil Service Commission shall consider whether to increase the allowable maximum duration of the eligible list to forty-eight months, consistent with the provisions of Civil Service Rule 111A. Affected eligibles will be notified of the extension of the eligible list or eligibility period.
- 411A.27.3** The Director of Transportation may authorize the merging of eligible lists in the same Service-Critical class or different Service-Critical classes. Affected eligibles will be notified of the merging of eligible lists.
- 411A.27.4** The Director of Transportation may cancel an eligible list, or make optional the use of an eligible list based on the needs of the Municipal Transportation Agency or merit factors such as inability of eligibles to meet job specific qualifications or requirements. Affected eligibles will be notified of the cancellation of eligible lists.
- 411A.27.5** The Director of Transportation may approve the use of an eligible list established under this Rule 411A Position-Based Testing Program for permanent civil service appointments to other positions in the same or similar classes in the MTA or other City departments.
- 411A.27.6** The Human Resources Director may approve the use of an eligible list established pursuant the Position-Based Testing Program under Rule 111A for permanent civil service appointments to MTA Service-Critical positions or classes.
- 411A.27.7** In the event of a declaration of emergency by the Mayor of San Francisco and with the approval of the Civil Service Commission, active eligible lists during a declared emergency may be extended for up to an additional year beyond the timeframes set forth in these rules.

**Sec. 411A.28 Rosters of Eligibles Established by Other Authorities**

- 411A.28.1** By mutual agreement with the affected employee organization, appropriate rosters of eligibles established by other recognized authorities, such as the State of California, may be utilized to fill Service-Critical positions, or as the basis for establishing eligible lists for Service-Critical classifications.
- 411A.28.2** The Director of Transportation shall determine the criteria and standards for approving the use of rosters established by other authorities. In assessing appropriateness, the Director of Transportation shall ensure that placement on a roster does not require membership in an organization.
- 411A.28.3** The use of such rosters shall be specified on the examination announcement and shall not be subject to appeal to the Civil Service Commission.

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#### **Article VII: Certification of Eligibles**

Applicability: Article VII, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.29 Certification**

**411A.29.1** The Municipal Transportation Agency shall certify to the appointing officer the names of eligibles that are reachable within the applicable certification rule. Except for circumstances beyond the control of the Municipal Transportation Agency, the initial notice of certification to eligibles shall be issued within fifteen (15) business days from the date of adoption of an eligible list.

**411A.29.2** If all eligibles at a score waive appointment or fail to respond within specified time limits, the appointing officer may request supplementary certification(s) from the next highest score(s).

##### **Sec. 411A.30 Certification of Eligibles – Minimum Allowable Certification Rule**

**411A.30.1** The minimum (i.e., most restrictive) certification rule shall be the Rule of Three Scores.

**411A.30.2** The most restrictive formula for application of the Rule of Three Scores shall be:

- 1) When there is one (1) approved personnel requisition on file for a class, the Municipal Transportation Agency shall certify to the appointing officer the number of scores equal to the number of the certification rule. For example, three (3) scores will be certified for a position with a certification Rule of Three Scores.
- 2) When there are two (2) or more approved personnel requisitions on file for the same class, the number of scores certified shall be equal to the number of positions to be filled plus the number of scores in the certification rule minus one. For example, if twelve (12) requisitions are to be filled under a Rule of Three Scores, the number of scores certified is  $12 + 3 - 1 = 14$ .

##### **Sec. 411A.31 Establishment of the Certification Rule for Position-Based Testing**

**411A.31.1** The Director of Transportation and/or representative is authorized to discuss and pursue agreement with employee organizations as to the certification rule applicable to an eligible list resulting from an examination in the Position-Based Testing Program, provided however, that the minimum rule cannot be fewer than the Rule of Three Scores. Nothing in this Section is intended to change the scope of bargaining specified by Charter or applicable law.

**Sec. 411A.31 Establishment of the Certification Rule for Position-Based Testing (cont.)**

**411A.31.2** Unless agreed between the employee organization representing the class and the Director of Transportation, the Rule of Three Scores shall be used exclusively, except as set forth in Rule 413, Article III.

**411A.31.3** The Certification Rule shall be specified as a term of the examination announcement. Appeals of the Certification Rule shall not be permitted.

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#### Article VIII: Appeals of Examination Processes

Applicability: Article VIII, Rule 411A shall apply to examinations designated to this Position-Based Testing Program and shall apply to employees in all MTA Service-Critical positions or classes.

##### **Sec. 411A.32 Substance of Appeals**

**411A.32.1** An action by the Municipal Transportation Agency under Rule 411A may be appealed by a party alleging injury by that action as provided in this Article VIII. For each appeal the appellant must state the specific grounds upon which the appeal is based, cite the specific Civil Service Commission Rule or Municipal Transportation Agency Policy that the appellant contends was violated by the action which is the subject of the appeal, provide facts including available documents to support the appeal, and demonstrate a rational relationship between the alleged injury suffered by the appellant as a result of the action being appealed and the alleged violation of Rule or Policy. Failure to meet all of the above requirements to support the appeal may be sufficient grounds for denial of the appeal by the Civil Service Commission.

**411A.32.2** An appeal that objects to ratings or rankings based solely on the candidate's belief that he or she is entitled to a higher or passing score shall not be considered. Neither the Director of Transportation nor the Civil Service Commission shall substitute his, her or its judgment for the judgment of qualified raters.

##### **Sec. 411A.33 Timeliness of Appeals**

Protests and appeals that are not submitted within the prescribed time limits shall not be considered.

##### **Sec. 411A.34 Continuance of Examinations with Appeals Pending**

The Director of Transportation may proceed with any and all phases of the Position-Based Testing process pending an appeal.

##### **Sec. 411A.35 Authority to Rule on Appeals**

###### **411A.35.1 Civil Service Commission**

Appeals to the Civil Service Commission may occur at three (3) points in the examination process: (1) after the examination announcement has been issued, (2) after the examination has been administered and prior to the posting of the Tentative Eligible List Score Report and (3) after the merging of eligible lists in different classes.

Appeals of the examination announcement may be based only on challenges to the position description and/or the minimum qualifications. Appeals after the examination



**Sec. 411A.35 Authority to Rule on Appeals (cont.)****411A.35.1 Civil Service Commission (cont.)**

administration may be based only on claims of inconsistency in examination administration, bias of raters and/or failure of raters to apply uniform standards. Appeals of merging of eligible lists in different classes may be based only on claims of substantial differences in the knowledge, skills and abilities required to perform the essential functions of the positions. Decisions of the Civil Service Commission on these examination matters will be final.

**411A.35.2 Director of Transportation**

All other appeals may be made to the Director of Transportation whose decision will be final.

**Sec. 411A.36 Appeals to the Civil Service Commission****411A.36.1 Appeals of the Examination Announcement**

- 1) The standard of review for appeals under this Section shall be abuse of discretion in establishing the position description, the minimum qualifications and/or the certification rule when the certification rule was not reached by mutual agreement with the employee organization representing the tested class. In determining abuse of discretion, the Civil Service Commission must find that the Director of Transportation made decisions beyond his/her authority or had no rational basis for his/her decision.
- 2) Appeals under this Section must be submitted directly to the Executive Officer of the Civil Service Commission and must be received in the Civil Service Commission office by close of business on the fifth (5th) business day after the examination announcement issuance date.
- 3) Appeals must be in writing and shall include a statement of the specific component(s) or item(s) of the examination announcement being contested and specific reason(s) why adoption of the cited portions of the examination announcement constitutes abuse of discretion by the Director of Transportation. To the extent possible, all supporting documentation must be submitted with the written appeal.
- 4) Upon receipt of an appeal, the Executive Officer of the Civil Service Commission shall immediately forward a copy of the appeal to the Municipal Transportation Agency. The Executive Officer of the Civil Service Commission shall place the appeal, if timely and appealable under this Article VIII, on the Civil Service Commission agenda for the next Regular Commission Meeting consistent with the Brown Act, Sunshine Ordinance and other applicable law. The Executive Officer of the Civil Service Commission in consultation with the President may calendar the appeal at a Special Meeting prior to the Regular Meeting of the Civil Service Commission. The appellant and other parties shall be notified of the particulars of the hearing in accordance with the procedures established by the Executive Officer of the Civil Service Commission.

**Sec. 411A.36 Appeals to the Civil Service Commission (cont.)****411A.36.1 Appeals of the Examination Announcement (cont.)**

- 5) The Director of Transportation or representative may take actions to resolve the appeal with the appellant before the scheduled Commission hearing date and forward to the Executive Officer of the Civil Service Commission the documented resolution prior to the scheduled Commission hearing date. The Executive Officer of the Civil Service Commission shall report the resolution to the Civil Service Commission at the scheduled hearing.
- 6) The Civil Service Commission shall consider an unresolved appeal on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Municipal Transportation Agency. The Civil Service Commission shall rule on the appeal at the hearing. The Commission's action on the appeal shall be final and no reconsideration requests shall be allowed.

**411A.36.2 Appeals of Inconsistency of Examination Administration, Bias of Raters and/or Failure of Raters to Apply Uniform Standards**

- 1) Appeals shall be based solely on claims that the inconsistency in examination administration, bias of the raters and/or failure of the raters to apply uniform standards compromised either the validity or the reliability of the examination. Appeals shall include a statement of the specific facts that demonstrate that the validity or reliability of the examination was compromised, and cite the specific Civil Service Commission Rule or Municipal Transportation Agency Policy that was violated. For the purposes of appeals under this Section, validity is generally defined as the establishment of the relationship between a test device or other selection procedure and performance on the job; and reliability is generally defined as the consistency of measurement of the test device or selection procedure.
- 2) Appeals must be in writing and must be submitted directly to the Executive Officer of the Civil Service Commission. The appeal must be received in the Civil Service Commission office by close of business on the fifth (5th) business day from the postmarked date (or e-mail date) of the written notice of examination results.
- 3) Upon receipt of an appeal, the Executive Officer of the Civil Service Commission shall immediately forward a copy of the appeal to the Municipal Transportation Agency. The Executive Officer of the Civil Service Commission shall place the appeal, if timely and appealable under this Article VIII, on the Civil Service Commission agenda for the next Regular Commission Meeting consistent with the Brown Act, Sunshine Ordinance and other applicable law. The Executive Officer of the Civil Service Commission in consultation with the President may calendar the appeal at a Special Meeting prior to the Regular Meeting of the Civil Service Commission. The appellant and other parties shall be notified in accordance with the procedures established by the Executive Officer of the Civil Service Commission.

**411A.36.2 Appeals of Inconsistency of Examination Administration, Bias of Raters and/or Failure of Raters to Apply Uniform Standards (cont.)**

4) The Director of Transportation or representative may take actions to resolve the appeal with the appellant before the scheduled Commission hearing date and forward to the Executive Officer of the Civil Service Commission the documented resolution prior to the scheduled Commission hearing date. The Executive Officer of the Civil Service Commission shall report the resolution to the Civil Service Commission at the scheduled hearing.

5) The Civil Service Commission shall consider an unresolved appeal on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and Municipal Transportation Agency. The Civil Service Commission shall rule on the appeal at the hearing. The Commission's action on the appeal shall be final and no reconsideration requests shall be allowed. In order to prevail on an appeal under this Section, the appellant must establish by a preponderance of the evidence, i.e. more likely than not, that the Rule or Policy at issue was violated and that the violation caused a compromise of the validity or reliability of the examination. The Commission's action on the appeal shall be final and no reconsideration requests shall be allowed.

**411A.36.3 Appeals of Merging of Eligible Lists of Different Classes**

1) The standard of review for appeals under this Section shall be abuse of discretion in merging eligible lists of different classes. Appeals shall include a statement of the specific facts that demonstrate that the merging of eligible lists in different classes is not supported by job analyses that demonstrate that the same or similar knowledge, skills and abilities are required to perform the essential functions of the positions.

2) Appeals must be in writing and must be submitted directly to the Executive Officer of the Civil Service Commission. The appeal must be received in the Civil Service Commission office by close of business on the fifth (5th) business day from the postmarked date (or e-mail date) of the written notice of the merging of eligible lists.

3) Upon receipt of an appeal, the Executive Officer of the Civil Service Commission shall immediately forward a copy of the appeal to the Municipal Transportation Agency. The Executive Officer of the Civil Service Commission shall place the appeal, if timely and appropriate, on the Civil Service Commission agenda for the next Regular Commission Meeting consistent with the Brown Act, Sunshine Ordinance and other applicable law. The Executive Officer of the Civil Service Commission in consultation with the President may calendar the appeal at a Special Meeting prior to the Regular Meeting of the Civil Service Commission. The appellant and other parties shall be notified in accordance with the procedures established by the Executive Officer of the Civil Service Commission.

**411A.36.3 Appeals of Merging of Eligible Lists of Different Classes (cont.)**

4) The Director of Transportation or representative may take actions to resolve the appeal with the appellant before the scheduled Commission hearing date and forward to the Executive Officer of the Civil Service Commission the documented resolution prior to the scheduled Commission hearing date. The Executive Officer of the Civil Service Commission shall report the resolution to the Civil Service Commission at the scheduled hearing.

5) The Civil Service Commission shall consider an unresolved appeal on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Municipal Transportation Agency. The Civil Service Commission shall rule on the appeal at the hearing. The Commission's action on the appeal shall be final and no reconsideration requests shall be allowed.

**Sec. 411A.37 Appeals to the Director of Transportation****411A.37.1 Protests at the Examination Site**

1) An examination participant may protest the assignment of a rater to his/her board or panel based on a claim of the rater's inability to rate the examination participant competently or without bias. The protest of the rater must be made to the designated representative of the Director of Transportation present at the examination prior to participation in this phase of the examination. If no protest is made, then no appeal of the assignment of the rater will be permitted.

2) An examination participant may submit a protest of a problem occurring at an examination site, such as, but not limited to equipment malfunction or disturbance of the examination process, that interfered with the examination participant's performance in the examination. Such protest must be made to the designated representative of the Director of Transportation present at the examination site immediately upon encountering or experiencing the problem and before leaving the examination site. If no protest is submitted, then the Director of Transportation may refuse an appeal of a problem occurring at the examination site.

3) The decision or action in response to a protest at the examination site may be appealed to the Director of Transportation. The appeal must be submitted in writing and must be received at the Municipal Transportation Agency not later than the fifth (5th) business day after the candidate's examination date.

**411A.37.2 Appeal of Accuracy of the Calculation of Examination Scores and/or Ranking**

An appeal of the accuracy of the calculation of examination scores and/or rank must be submitted directly to the Director of Transportation or representative within the period designated for review of ratings (see Section 411A.23). The decision of the Director of Transportation related to calculation of examination scores and rank is final.

**411A.37.3 Appeals of Other Examination Matters**

An appeal of any other examination matter must be made in writing and received by the Director of Transportation not later than the fifth (5th) business day after the occurrence or notice of the issue of appeal. The decision of the Director of Transportation on all these matters is final.