

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Taxi and Limousine Commission is considering changing its rules. The change would amend the TLC Rules to require FHV bases to submit trip records to the TLC, prohibit dispatching another base's vehicles without an agreement between the bases, prohibit dispatching a vehicle affiliated with a different class of FHV base, and require bases to provide the customer with the name and license number of the base with which the dispatched car is affiliated.

When and where is the Hearing? The Commission will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on October 16, 2014. The hearing will be in the hearing room at 33 Beaver Street – 19th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Mail.** You can mail written comments to the Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver Street – 22nd Floor, New York, New York 10004.
- **Fax.** You can fax written comments to the Taxi and Limousine Commission, Office of Legal Affairs, at 212-676-1102.
- **Email.** You can email written comments to tlcrules@tlc.nyc.gov.
- **Website.** You can submit comments to the Taxi and Limousine Commission through the NYC rules Web site at www.nyc.gov/nycrules.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-676-1135. You can also sign up in the hearing room before the hearing begins. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by Friday, October 16, 2014.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-676-1135. You must tell us by Friday, October 10, 2014.

Can I review the comments made on the proposed rules? A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes the Commission to make this rule? Sections 1043 and 2303 of the City Charter and section 19-503 of the City Administrative Code authorize the Commission to make this proposed rule. This proposed rule was not included in the Commission's regulatory agenda for this Fiscal Year because it was not contemplated when the Commission published the agenda.

Where can I find the Commission's rules? The Commission's rules are in title 35 of the Rules of the City of New York.

What rules govern the rulemaking process? The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Rule

In response to changing industry dispatching practices resulting from the introduction of smart phones, the TLC is proposing a new rule that will:

- require FHV bases to submit trip records to the TLC,
- prohibit dispatching another base's vehicles without an agreement between the bases,
- prohibit dispatching a vehicle affiliated with a different class of FHV base,
- require Bases that are members of the Black Car fund to bill and collect the surcharge for that Fund for every trip they dispatch,
- require bases dispatching vehicles from a different base to provide the customer with the name and license number of the base with which the dispatched car is affiliated, and
- establish a violation for failing to comply with certain portions of the new rule
- make a dispatching base liable for dispatching an uninspected vehicle.

Background

Current Taxi and Limousine Commission (TLC) rules allow a For-Hire Vehicle (FHV) base (Livery, Black Car or Luxury Limousine) to dispatch a for-hire vehicle affiliated with another base when the passenger is told that this is the case at the time the passenger requests the ride. Until recently, the industry practice, though not required by current TLC rules, has been to dispatch vehicles affiliated with another base only if there is an agreement between the bases. In addition, the industry practice has been to dispatch only vehicles of the same class; e.g. a Livery base would not dispatch a Black Car.

Most new market entrants who use smart phones to dispatch vehicles have followed these industry practices. Recently, however, bases that dispatch using only smartphone applications began dispatching vehicles affiliated with other bases, including bases of other classes. This is being done without the knowledge or consent of the vehicles' affiliated bases. These new practices have given rise to problems not addressed in the TLC's rules:

- First, the current rules do not specify what information the customer must be provided and do not provide a way for the TLC to identify the driver of a dispatched vehicle, whose name and license number are needed to enforce safety and consumer protection regulations.
- Second, cross-class dispatches, and dispatches of unaffiliated vehicles from bases without an agreement with the dispatching base, put drivers at risk of losing Workers' Compensation benefits if a crash occurs during a trip.

To assess the extent of these problems and find solutions, TLC met or spoke with base owners and drivers, the Black Car Fund, the Livery Fund, the New York State Workers' Compensation Board, smartphone app companies, insurance providers, driver organizations, and passenger groups. The TLC also conducted field tests using various smartphone apps used by bases to dispatch vehicles, and spoke with drivers receiving dispatches through the apps. This proposed rule incorporates information collected and knowledge gathered from these meetings and field tests. The proposed rule also reflects TLC's safety and accountability goals, including its Vision Zero goals.

Identifying Drivers

There are currently over 65,000 licensed FHV drivers and 42,000 licensed for-hire vehicles compared to just over 50,000 licensed Yellow Taxi drivers, 13,698 Yellow Taxis, 5,496 Street Hail Liveries. While TLC can identify and hold accountable Yellow Taxis and Street Hail Liveries and their drivers through electronic trip records, no such mechanism exists for this larger section of the for-hire transportation industry. Without a record of the trip, TLC does not have a way to fairly enforce against drivers across service types, which leaves a wide accountability gap between drivers of Yellow Taxis and drivers of FHV's. Additionally, without trip records, TLC does not know the number of trips the FHV industry is dispatching as a whole.

TLC needs to be able to identify the driver in each trip of one of its licensed vehicles, particularly if a vehicle is involved in a crash or if there is a service complaint against the driver. For vehicles with required in-vehicle technology (Yellow Taxis and Street Hail Liveries), TLC identifies the driver through electronic trip records, which include the driver license number associated with each trip. For FHV's, which are currently not required to have in-vehicle technology, TLC can identify the driver by requesting dispatch records from the vehicle's affiliated base. Each FHV must affiliate with one and only one base, and all FHV bases are required to maintain a record for each trip they dispatch, which must include the driver's For-Hire license number, the date and time of the dispatch, and the passenger pick up location. If the TLC has the license plate number of a vehicle, the TLC can determine what base that vehicle is affiliated with, and contact that base for the dispatch record, which will identify the driver of that vehicle. However, if the base with which this vehicle is affiliated (the "home base") does not know about or have a record of the trip because the trip was dispatched by another base, the TLC is not able to identify the driver for that particular trip by contacting that vehicle's home base. In these cases where the TLC only has information about the vehicle's license plate, the TLC cannot identify the driver. The base that dispatched the trip, and which is currently required to keep a record of it, is unknown to both TLC and the vehicle's home base.

This lack of information poses a serious difficulty for TLC's Vision Zero goal of ensuring that its licensed drivers are the safest on the road. To achieve this goal, the agency is carrying out a wide range of initiatives, from outreach and education to incentives and enforcement. In particular, TLC is focusing on issuing summonses for speeding — the leading cause of traffic fatalities in New York City — and running red lights. To do so, TLC needs to be able to identify the driver who committed the offense. When the home base does not have the dispatch record for the trip during which the offense took place because the vehicle was dispatched without the home base's knowledge, there is no way for TLC to identify the offending driver.

Also important is protecting the rights of consumers who file complaints that a driver violated the law, such as by overcharging, driving recklessly, or failing to comply with TLC prohibitions on service refusals. Often, the passenger does not have the driver's name or license number, but does have the vehicle's license plate or the home base name/number displayed on the side of the car. If the driver cannot be identified because the vehicle was dispatched by a base other than its home base, it is difficult for TLC to issue summonses for violations of its consumer protection rules and provide passengers with the redress to which they are entitled.

To address driver accountability, the proposed rule requires all FHV bases to submit to the TLC the trip records they are currently required to maintain pursuant to §59B-19 of the TLC Rules. The current rule requires that bases maintain for each trip they dispatch a record of the date, time, and location of the passenger to be picked up, and the driver's For-Hire License number. Although bases must make these records available for inspection by the TLC, they are not currently required to submit them regularly to the TLC. By requiring bases to provide these records routinely to the TLC for all trips they dispatch, including dispatches of vehicles from other bases, the TLC will be able to identify both the driver and the dispatching base for all FHV trips.

Driver Protection and Base Liability

Cross-class dispatching and dispatching vehicles affiliated with another base create Workers' Compensation coverage problems for FHV drivers. Pursuant to State law and TLC Rules, all FHV bases must maintain New York State Workers' Compensation coverage for all of the drivers they dispatch. For Black Car bases and Luxury Limousine bases, State law dictates that these bases provide Workers' Compensation coverage through membership in the Black Car Operators' Injury Compensation Fund ("Black Car Fund") if they own less than half of the vehicles they dispatch. Livery bases must provide Workers' Compensation either through membership in the Livery Fund or by individually maintaining Workers' Compensation coverage for all drivers dispatched.

Under both funds, Workers' Compensation coverage for injuries which occur on a dispatch is determined by the dispatching base type; i.e. if a trip is dispatched by a Livery Fund member base, regardless of the type of base the vehicle is affiliated with, the Livery Fund rules govern the coverage. The State laws governing the respective Funds also place additional restrictions on Workers' Compensation coverage. New York State Executive Law §160-aaa, which governs the Livery Fund, specifically limits the drivers the Livery Fund will cover to drivers of vehicles affiliated with Livery Fund member bases. Since coverage is determined by the dispatching base type, if a Livery base dispatched a vehicle affiliated with a Black Car base, the Livery Fund would not cover the Black Car driver, as the vehicle is affiliated with a Black Car base. Similarly, the Black Car Fund would not cover the driver as the trip was not dispatched by a member Black Car base. This leaves the driver of the cross-class dispatched Black Car without Workers' Compensation insurance coverage. The New York State Workers' Compensation Board has indicated that the driver of a cross-class dispatched Livery vehicle may be without coverage as well. This is because the Black Car Fund rules do not clearly and specifically provide coverage for a Livery driver dispatched by a Black Car base. The Black Car Fund has also indicated that it would not cover a Livery driver dispatched by a Black Car base.

The proposed rule follows the New York Worker's Compensation Board's guidance and provides that a base is only permitted to dispatch vehicles affiliated with bases belonging to the same insurance fund, thereby eliminating cross-class dispatching: e.g. a base that is a member of the Black Car Fund can only dispatch another Black Car Fund member base's vehicles and a base that is a member of the Livery Fund can only dispatch another Livery Fund member base's vehicles. Eliminating cross-class dispatching will ensure that all drivers have Workers'

Compensation coverage and will clarify what specific Fund is responsible for providing that coverage.

Inter-base Agreements

In addition to the State law requirements governing the funds, the Black Car Fund and the Livery Fund each have their own rules governing what drivers and what trips the Funds will cover. The Livery Fund's rules, codified in Part 309 of Title 12 of the New York Codes, Rules and Regulations, state the Fund will only cover a driver on a trip dispatched by the base with which his or her vehicle is affiliated or, as the Livery Fund has told the TLC, if two Livery Fund member bases have an agreement covering dispatch. The Black Car Fund rules, located at http://www.newyorkblackcarfund.org/files/nybcoicf_operations_plan_amend_10.pdf, provide Workers' Compensation coverage for Black Car drivers dispatched by Black Car bases, but specify terms that must be in contracts between the bases, such as which base is required to bill and remit the surcharge on a particular trip, in order to provide coverage. So, when an FHV driver is dispatched by a base other than his or her home base, unless the bases have an agreement, the driver may be without Workers' Compensation coverage.

Therefore, the proposed rule also requires a dispatching base to have an agreement with the home base in order to dispatch its affiliated vehicles. Inter-base agreements will:

- Ensure that a Livery driver dispatched by a non-affiliated base will be covered by the Livery Fund: the Livery Fund views agreements between bases the same as other customer service contracts a base may enter into to increase dispatching volume and will thus cover trips dispatched to non-affiliated vehicles that are made under such an agreement.
- Ensure that a Black Car driver dispatched by a non-affiliated base will be covered by the Black Car Fund, as the Black Car Fund requires such agreements.
- Ensure that a base equitably pays into its Workers' Compensation fund and will protect a base's ability to know which of its vehicles are actually available.
- Address the liability a base faces in the event of a crash. Such agreements may address which party, the dispatching base or the affiliated base, bears liability in the event of a crash or liability for TLC summonses resulting from the trip, and
- Ensure that when vehicles are dispatched by a non-affiliated base it is done with the home base's knowledge and permission.

Requiring base agreements protects drivers' Workers' Compensation coverage while also retaining a driver's ability to receive dispatches from other bases. Driver choice is also protected by industry structure. Drivers may still switch base affiliations at will if they find that their affiliated bases do not provide an adequate amount of dispatches or have enough agreements with other bases to keep their drivers utilized. Drivers routinely switch base affiliations in order to seek better affiliation deals and more dispatches and nothing in this rule prevents or discourages that practice. Requiring a base agreement also does not impair passenger choice. Passengers will continue to use the bases which best meet their needs.

While many of the problems stemming from cross-class dispatching and dispatching non-affiliated vehicles without an agreement with the home base may be resolved by amending the Black Car Fund rules and Livery Fund rules, the TLC has no control over those rules or authority

to change them. Altering the State laws governing the Black Car Fund and the Livery Fund requires legislative action and the Funds themselves have the sole authority to alter their own rules. Even without the ability to alter the terms under which drivers receive Workers' Compensation coverage, the TLC has a responsibility to ensure all drivers receive coverage under the Workers' Compensation, Black Car Fund rules, and Livery Fund rules and regulations as they exist. Due to the ways in which the Funds provide coverage, TLC Rules as they exist today create a Workers' Compensation coverage gap into which a driver may unwittingly and blamelessly fall. Unless and until either Fund changes its rules, the TLC must act to ensure bases behave in a way which ensures all drivers receive Workers' Compensation for all trips.

Information Given to Passengers

Current TLC Rules require a base to notify a passenger when the base dispatches a vehicle affiliated with another base but are silent on what information must be included in this notification. The current notification excludes information a customer may need for filing consumer complaints, finding lost property, or confidently knowing that they are getting into the car they requested.

The proposed rule requires that when a base dispatches a vehicle from another base it must provide the customer with the name and TLC license number of the base with which the vehicle is affiliated. This will ensure that customers have the information they need to file consumer complaints, find lost property, and confidently enter dispatched vehicles.

These rules are authorized by Section 2303 of the Charter and Sections 19-503 of the Administrative Code of the City of New York.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Paragraph (3) of subdivision (e) of section 59A-11 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (e) *Affiliation with Licensed Base.* A For-Hire Vehicle Owner must not dispatch or permit another person to dispatch Owner's Vehicle unless:
- (1) It is affiliated with a Validly Licensed Base
 - (2) The base dispatching the Vehicle is Validly Licensed
 - (3) The Vehicle is being dispatched from its affiliated Base, unless:
 - (i) The Vehicle is an Accessible Vehicle being dispatched to transport a Person with a Disability pursuant to a contract executed under section 59B-17(c) of these Rules, or

- (ii) The dispatching Base informs the customer that the Vehicle is from another Base by providing the customer with the name and license number of both the affiliated Base and the dispatching Base (clearly identifying which Base is the affiliated Base and which Base is the dispatching Base) in all communications with the customer and any materials or receipts provided to the customer, and
 - A. the affiliated Base is a member of the same Workers' Compensation fund (that is, a Black Car Fund member or Livery Fund member) as the Base dispatching the Vehicle, and
 - B. The dispatching Base has an agreement with the affiliated Base that authorizes the dispatching Base to dispatch the affiliated Base's vehicles.

§59A-11(e)	Fine: \$400	Appearance NOT REQUIRED
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Section 2. Paragraph (3) of subdivision (b) of section 59B-12 of the Rules of the City of New is amended to read as follows:

- (3) *Bill and Collect Surcharge.* Every Black Car Base and Luxury Limousine Base member of the Black Car Fund must [add], for every trip dispatched from that Base, bill and collect the surcharge established by the Black Car Fund and required by State law in the manner prescribed by the Black Car Fund and State law. [to each invoice and billing for services and to each credit payment of services performed by a Vehicle affiliated with the Base for every trip:
 - (i) Originating from a centralized dispatch facility located within the State of New York
 - (ii) Originating from a point within the State of New York]

Section 3. Subdivision (d) of section 59B-17 of Title 35 of the Rules of the City of New is amended to read as follows:

- (d) *Must Dispatch Own Vehicles.* A Base Owner must not dispatch a Vehicle that is not affiliated with the Base Owner's Base, unless:
 - (1) The Vehicle is affiliated with another Base belonging to the same Workers' Compensation fund as the Base Owner's Base (i.e., a Black Car Fund member Base may only dispatch a Vehicle affiliated with another member of the Black Car Fund; a Livery Fund member may only dispatch a Vehicle affiliated with another member of the Livery Fund), and
 - (i) the Owner [informs] provides the customer with the name and license number of both the affiliated Base and the dispatching Base (clearly identifying which Base is the affiliated Base and which Base is the

- (ii) dispatching Base) in all communications with the customer and any materials or receipts provided to the customer, and
the Base Owner's Base has an agreement with the Base with which the Vehicle is affiliated authorizing the Base Owner's Base to dispatch affiliated Vehicles of the Base with which the Vehicle is affiliated; or
- (2) The Base is dispatching an Accessible Vehicle from a Base it has contracted with to provide accessible transportation pursuant to Section 59B-17(c) of these Rules.

§59B-17(d)	Fine: \$150	Appearance NOT REQUIRED
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Section 4. Subdivisions (a) of section 59B-19 of Title 35 of the Rules of the City of New is amended to read as follows:

- (a) *Required Information.* A Base Owner must make sure that the following records are collected and transmitted to the Commission in a format, layout, procedure, and frequency prescribed by the Commission:

- (1) With respect to all dispatched calls:
 - (i) The date, the time, and the location of the Passenger to be picked up
 - (ii) The Driver's For-Hire License number
 - (iii) The dispatched Vehicle's License number
 - (iv) The TLC License number of the For-Hire Base that dispatched the Vehicle
 - (v) The TLC License number of the For-Hire Base affiliated to the dispatched Vehicle

§59B-19(a)	Fine: \$100 if plead guilty before a hearing; \$150 if <u>found guilty following a hearing and suspension until compliance.</u>	Appearance NOT REQUIRED
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Section 5. Section 59B-26(a) of Title 35 of the Rules of the City of New York is amended to read as follows:

- (a) *Tri-Annual Inspection Required.* For-Hire Vehicles must be inspected three times a year at least once every four months and a Base must not dispatch a Vehicle that has missed an inspection until the Vehicle passes inspection.

NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of For Hire Vehicle Dispatch Rules

REFERENCE NUMBER: 2014 RG 070

RULEMAKING AGENCY: Taxi and Limousine Commission

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: September 12, 2014

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of For Hire Vehicle Dispatch Rules

REFERENCE NUMBER: TLC-71

RULEMAKING AGENCY: Taxi and Limousine Commission

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

Francisco Navarro
Mayor's Office of Operations

9/12/2014
Date