

## 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 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 – 19<sup>th</sup> 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 – 22<sup>nd</sup> 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](mailto: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](http://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 new rules that will:

- require FHV bases to submit trip records to the TLC,
- prohibit dispatching a vehicle affiliated with a base belonging to a different Workers' Compensation fund, i.e. a Livery Fund member base dispatching to a vehicle affiliated with Black Car Fund member 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 in accordance with the rules of the Fund,
- 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,
- establish a violation for failing to comply with certain portions of the new rule, and
- make a dispatching base liable for dispatching an uninspected vehicle or a vehicle without the proper identifications.

### **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 with the affiliated base's knowledge. In addition, the industry practice has been to dispatch only vehicles of the same vehicle class; e.g. a Livery base would not dispatch a Black Car.

Recently, bases that dispatch using only smartphone applications began dispatching vehicles affiliated with other bases without their knowledge with great frequency, including bases of other classes. These new practices have given rise to problems not addressed in the TLC's rules:

- First, the current rules 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, the current rules do not specify with what information the customer must be provided.
- Third, cross-class dispatches undermine important regulatory class distinctions.

To assess the extent of these problems and find solutions, TLC met or spoke with FHV 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. At a public hearing held on October 16, 2014, the TLC heard testimony from a cross-section of the entire industry. Representatives from all sectors of the for-hire transportation industry, including drivers who spoke for and against the rules, testified at the hearing. This proposed rule incorporates information collected and knowledge gathered from these meetings, field tests, written comments received on the proposed rules, and testimony received at the public hearing.

## **Identifying Drivers**

There are currently over 70,000 licensed FHV drivers and 50,000 licensed for-hire vehicles compared to just over 50,000 licensed Yellow Taxi drivers, 13,698 Yellow Taxis, and 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 that are automatically captured and transmitted to the TLC, no such mechanism exists for this larger section of the for-hire transportation industry. Without a record of every trip, TLC does not have a way to fairly enforce its rules against drivers across service types, which leaves a wide accountability gap between drivers of Yellow Taxis and drivers of FHV. Additionally, without obtaining trip records, TLC does not know the number of trips the FHV industry is dispatching as a whole. With trip records, TLC will have more accountability of FHV vehicles and drivers, to better ensure that people who want rides can get them safely and reliably.

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 that are automatically captured and transmitted to the TLC, which include the driver license number associated with each trip. For FHV, 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, as is currently the case, 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. For example, 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. Trip records are also useful to enable passengers to locate lost property, to assist with investigations into possible criminal activity, and to ensure all FHV's and FHV drivers have a valid TLC license.

Receiving uniform trip records in regularly scheduled intervals will also enable the TLC to better develop informed policies governing FHV service. The information in the trip records will allow TLC to understand where trips occur and where demand for trips arises. Amongst the many policy objectives that will be aided by collecting trip records, understanding trip demand will enable TLC to identify areas where there are shortages of for-hire service, evaluate the spread of accessible vehicles and their pick up patterns, and determine how many for-hire vehicles are actually active, as opposed to just licensed by the TLC. Additionally, understanding trip volumes in different parts of the City will enable TLC to assist other agencies, such as the Department of Transportation, in developing comprehensive transportation policy.

To address enforcement and policy concerns, the proposed rule in essence automates existing requirements by requiring all FHV bases to submit to the TLC at regular intervals information about every trip that they are currently required to maintain pursuant to chapter §59B-19 of the TLC Rules. TLC takes its fiduciary responsibility seriously as the guardian of all the data it collects. TLC will maintain these records, and disclose these records pursuant to the Freedom of Information Law, in the same careful and considered manner it currently maintains and discloses the numerous other types of sensitive records it currently collects.

### **Cross-Class Dispatching**

The recent proliferation of cross-class dispatching has brought to light several problems inherent in the practice which are addressed by the proposed rule that prohibits cross-class vehicle dispatch. Principally, cross-class dispatching erodes the distinction between Livery service and Black Car service. Livery bases, historically, have served their local communities, while Black Car bases have provided contract services with a higher class of vehicle throughout New York City. While these distinctions may have blurred over time, the core principles behind the services continue to serve their respective passengers and communities. The Administrative Code and TLC Rules have consistently reflected the importance of this division, placing differing requirements on the bases, vehicles, and services provided by the Black Car industry and the Livery industry.

Livery service, above all else, provides passengers with a binding fare quote for all trips. So important is this provision of Livery service that the City Council amended the New York City Administrative Code to require all Livery vehicles to display a Passengers' Bill of Rights, which must include a statement that the passenger has the right to pay a pre-approved fare quoted by the dispatcher. However, a cross-class dispatched Black Car will not display this Passengers' Bill of Rights, even though the passenger has requested Livery service, contravening the very intent of the Administrative Code. Additionally, Passengers getting into cross-class dispatched Livery vehicles will, likewise, be presented with a Passengers' Bill of Rights stating they are entitled to a binding fare quote, when in fact they are not because Black Car Bases are not required to provide price certainty. As such, cross-class dispatching allows a Black Car base to

shirk the duty of fare certainty that has historically attached to service provided by a Livery vehicle.

Beyond the binding fare quote required by TLC Rules, the New York City Administrative Code clearly and repeatedly delineates between the two classifications of services. To reflect the fact that Livery bases serve their surrounding communities, the Administrative Code sets extensive requirements for bases that can dispatch Livery vehicles, and Black Car bases do not meet these requirements. For example, the Administrative Code requires bases that dispatch Livery vehicles to maintain off-street parking and affiliate a minimum number of vehicles. These requirements were meant to ensure that a Livery base serving a community had enough vehicles to provide the needed service and enough parking available for these vehicles as not to encumber the community's ability to find street parking of its own. Black Car bases do not meet these requirements and allowing them to dispatch Livery vehicles subverts the intent of the Administrative Code.

The Administrative Code and TLC Rules also solidify another important contrast between the two classes that reflects often times stark differences between the types of passenger they serve. Section 19-502(u) of the Administrative Code requires that a Black Car Base's business be 90% non cash thereby reserving the cash market, which has also traditionally been the community market, to the Livery base. In conformity with the Administrative Code, Section 59B-03(c) also requires at least 90% of a Black Car Base's business be on a payment basis other than direct cash payment by the customer.

In addition, cross-class dispatching may also put FHV drivers in danger of losing Workers' Compensation coverage, which is determined by the dispatching base type; i.e. if a trip is dispatched by a Livery base, regardless of the type of base the vehicle is affiliated with, the Livery Workers' Compensation Fund (the "Livery Fund") rules govern the coverage. As such, if a Livery base dispatched a vehicle affiliated with a Black Car base, the Black Car Fund will not cover the driver. Similarly, a Livery driver dispatched by a Black Car Fund member base would not be covered by the Livery Fund. The proposed rules eliminate cross-class dispatching, which will align TLC Rules with the intent of the Administrative Code and protect the important distinctions between Black Car and Livery services.

### **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 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.

§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 York 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 York 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 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 dispatching Base) in all communications with the customer and any materials or receipts provided to the customer, 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 York 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. Subdivision (a) of Section 59B-26 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.

Section 6. Subdivision (b) of Section 59B-28 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) *Proper Vehicle Identification Required.* A Base Owner must not dispatch a Vehicle unless the Vehicle complies with the following requirements:

Section 7. The introductory paragraph of Section 59B-29 of Title 35 of the Rules of the City of New York is amended to read as follows:

#### **§59B-29 Vehicles – Markings & Advertising**

A Base Owner must not dispatch a Vehicle [from its Base] unless the Vehicle complies with the following requirements.

Section 8. Separability. If any clause, sentence, paragraph, section or part of this rule shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this rule that was adjudged to be invalid.

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, 10<sup>th</sup> 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