

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 (“TLC”, “the Commission”) is proposing rules that would make the Flex Fare Pilot Program permanent, offering yellow taxicab passengers the same price certainty as For-Hire Vehicle (“FHV”) passengers.

When and where is the Hearing? TLC will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 am on May 8, 2024. The public hearing will be held online using Zoom. There will be no in person public hearing. The public hearing will be livestreamed on TLC’s website at www.nyc.gov/tlc. To participate in the public hearing, please e-mail the TLC at tlcrules@tlc.nyc.gov or call TLC at 212-676-1135 by 5:00pm on May 7, 2024. After you have signed up to speak, TLC will provide you with a Zoom URL to enter in on your computer or dial-in via phone number if you prefer to call in.

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

- **Website.** You can submit comments to the Taxi and Limousine Commission through the NYC rules website at www.nyc.gov/nycrules.
- **Email.** You can email comments to tlcrules@tlc.nyc.gov.
- **Mail.** You can mail comments to the Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver Street – 22nd Floor, New York, NY 10004.
- **Fax.** You can fax comments to the TLC at 212-676-1102.
- **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 speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by May 8, 2024.

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. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by May 1, 2024. This location has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio only access.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at www.nyc.gov/nycrules. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a

summary of oral comments concerning the proposed rule 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 Sections 19-503 of the New York City Administrative Code authorize the Commission to make this proposed rule.

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? TLC 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 of the City Charter.

Statement of Basis and Purpose

The purpose of this rule change is to make the Flex Fare Pilot permanent, allowing yellow and green taxi customers the same option of up-front pricing as For-Hire Vehicle (FHV) customers. The rules also update Chapter 78 relating to the payment of Taxicab and Street-Hail Livery Improvement Funds to correspond to the parallel provisions of Chapter 66.

Background

In New York City, certified taximeters calculate the cost of all yellow taxi and Street-Hail Livery ("SHL") trips. These taximeters are programmed with TLC-mandated rates, displaying the running total of all passenger fares based on the elapsed time and the distance of trips. The operation of a taximeter means passengers do not know their total fare until the end of the trip. However, FHVs offer guaranteed up-front fares to passengers prior to booking a trip. This level of price certainty is attractive to passengers and allows them to comparison shop, a competitive advantage not currently available yellow taxis.

Flex Fare

Through its observation of New York City's for-hire industry and the medallion fare structure in other jurisdictions, TLC recognizes that passengers appreciate upfront pricing. The ability to offer up-front, pricing to customers is a key factor in the growth of the app-based FHV sector in New York City and around the world.

To allow yellow taxi and SHL passengers the same price certainty as users of app-based FHV services, TLC launched the Flex Fare Pilot Program on March 29, 2018. Under the Flex Fare Pilot Program, participating TLC-licensed E-Hail app companies were permitted to offer fares to taxicab and SHL passengers other than those calculated by the taximeter ("Flex Fare"). The aim of the Pilot was to allow licensed E-Hail companies greater flexibility with regard to their fare structure and pricing models, without the constraints of the taximeter, on the condition that passengers were provided with a binding, up-front fare quote, and that drivers would not be required to accept e-hail or Flex Fare trips.

Although currently, Curb and Arro are the only E-Hail providers offering e-hail service in taxicabs and SHLs on a large scale, the ability to offer upfront pricing for trips has contributed to the growth in the number of E-Hail trips in the taxicab sector and allowed the taxi industry to broaden its services. Having the option to offer Flex Fare trips gives drivers the opportunity to earn additional income from passengers who prefer to rely on apps rather than street hails, a growing sector of the for-hire transportation market.

TLC issued an initial Pilot evaluation report in June of 2019, which found that over 99% of trips conducted under the Flex Fare Pilot up to that point were part of the MTA’s Access-A-Ride (AAR) program.¹ While the ability to conduct AAR trips is a significant benefit of Flex Fare—for both taxi drivers and passengers—the limited use of the Pilot for non-AAR purposes restricted TLC’s ability to evaluate the overall impact of the Pilot at that time. As such, in its initial evaluation report TLC recommended, among other things, continuing the Pilot and monitoring its effects. With the onset of the COVID-19 pandemic in early 2020 and its drastic impact on the industry, TLC determined to allow the Pilot to continue beyond its initial two-year scope, waiting until the taxi industry was in more stable condition and ample post-COVID data could be analyzed before determining next steps.

In September 2023, TLC issued the Flex Fare Pilot Final Evaluation, which found that, since its inception, the Flex Fare Pilot has evolved in several ways:

- While Access-A-Ride trips made up over 99% of trips conducted as part of the Pilot during the previous evaluation, **Access-A-Ride trips now constitute just over 50% of Flex Fare trips**, showing the growth of standard E-Hail trips and making analysis of Flex Fare trips undertaken by members of the general public more feasible.
- Since the start of the Pilot, **11,760 taxis** and **3,086 SHLs** have provided Flex Fare trips, showing the widespread use of this type of E-Hail service within the taxicab industry.²
- Since the initial Pilot evaluation in June 2019, **over 6,000,000 Flex Fare trips** have taken place. This level of popularity, as well as the importance of this type of trip for Access-A-Ride users, underscores the value of this service for both drivers and passengers.
- When comparing driver revenue per mile for Flex Fare and metered trips, Flex Fare trips are generally equivalently priced when compared to metered trips, and do not have a negative impact on driver income. In fact, E-Hail trips, including Flex Fare trips, typically are much longer than street hail trips, thus allowing the driver the potential to earn more with Flex Fare trips should they choose this option.
- Because of the impact of COVID on the taxi industry—taxi trips are still at roughly 50% of their pre-pandemic levels—**the additional trips provided through the Flex Fare program are more important to the taxi industry now than ever before.**

Driver Income

¹ See “[Flex Fare Pilot Report June 2019](#)”, pg. 2.

² At the time of the Pilot’s launch in March 2018, there were about 12,000 taxis and 3,700 SHLs in operation.

Flex Fare trips have been widely adopted in both the taxi and SHL sectors, with the number of drivers choosing to conduct Flex Fare trips over time steadily growing³. As part of its evaluation for its September 2023 report, TLC examined the effects of Flex Fare on driver income. To do this, TLC analyzed the fare data it collects from both metered and Flex Fare trips. Due to variations in average trip distance—the average E-Hail trip is much longer than the average street hail trip—and the different driver payment methods, per-mile driver revenue was used to compare driver income for metered and Flex Fare trips in the September 2023 report.⁴ The report found that when looking at the average take-home income per mile for metered and Flex Fare taxi trips, while driver revenue is similar, the average Flex Fare trip was more profitable for taxi drivers than the average street-hailed trip per mile (paying out \$4.44 per mile versus \$4.28 per mile for metered trips). Higher per-mile revenue coupled with longer average trip distances represents significant earning potential for drivers conducting E-Hail trips with up-front fares.

For SHL trips, while the average price per mile was similar for both types of trips, driver revenue per mile for Flex Fare trips was \$0.47 lower than for metered trips. However, the average E-Hail trip is typically much longer than street hails trips, thus, the Flex Fare option still offers SHL drivers additional earning potential should drivers choose to accept those trips. The potential for additional income is especially true in areas where street hails are less prevalent and where Flex Fare trips can help avoid deadheading. This pattern was noticeable for SHL trips, where the proportion of Flex Fare trips among all trips is larger, since SHLs were more likely to conduct trips in areas in upper Manhattan and the outer boroughs where street hails are less frequent.

While Flex Fare trip numbers remain small as a proportion of all taxi trips, the additional income earning opportunities for drivers and the flexibility it affords to passengers has positively affected the for-hire landscape in New York City. Therefore, TLC proposes to promulgate rules to make the Flex Fare Pilot Program permanent and allow E-Hail App Providers to offer Flex Fare trips. TLC will continue to monitor Flex Fare trips, including the impact of flexible up-front pricing on industry dynamics such as driver income and passenger service and ensuring driver earnings to the drivers and TLC will make appropriate rule changes when necessary.

TLC’s authority for these rules is found in section 2303 of the New York City Charter and section 19-503 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Section 1. The definition of “E-Hail” set forth in section 51-03 of Title 35 of the Rules of the City of New York is amended, and the following new definitions are added, in alphabetical order, to read as follows:

³ See [“Flex Fare Pilot Report September 2023”](#)

⁴ See [“Flex Fare Pilot Report September 2023”](#)

E-Hail is a Hail requested through an E-Hail Application, which can either be a metered fare trip or a Flex Fare trip.

Flex Fare Trip is an E-Hail requested through a TLC-licensed E-Hail application for yellow taxicabs and Street Hail Liveries with an upfront, non-metered, binding fare in dollars and cents, inclusive of all taxes, fees, and any price multiplier, for the specific trip requested, prior to dispatching the trip.

Flex Fare Rate Schedule is a rate schedule subject to approval by the Chair, outlining the manner in way the E-Hail App will calculate fares, including the rate of fare it will use, any variable or surge pricing policies, the breakdown of surcharges (no-show fees, cancelation fees, MTA Tax, Taxicab/SHL Improvement, etc.) and any other fees charged to the passengers.

Section 2. Subdivision (i) of section 58-26 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (i) *E-Payments.*
 - (1) The payment for the fare for any trip paid for using an E-Payment must not exceed Commission-approved rates, plus an optional tip.
 - (2) The fare must be calculated as required by these rules and the Taximeter must be used for all trips, including trips paid for by E-Payment, unless it is a Flex Fare trip. Any fare paid for by E-Payment must be calculated by the Taximeter and not by any other method, unless it is a Flex Fare trip.

Section 3. Subdivision (b) of section 78-15 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) *Fares.* An E-Hail Application and an E-Hail Application Provider must NOT charge any Passenger a fare for a trip that exceeds the fare as calculated by the Taximeter, permitted in §58-26 and §82-26 of these Rules, unless it is a Flex Fare Trip. The E-Hail Application and the E-Hail Application Provider may however charge additional fees to a Passenger above the fare for the trip in accordance with subdivision (c) below so long as such fees are clearly delineated and not called a fare or tip or gratuity.

- (1) *Flex Fare Rate Schedule.* An E-Hail App Provider that offers Flex Fare Trips must submit a Flex Fare Rate Schedule, to be approved by the Commission, outlining the manner in which the E-Hail App will calculate fares, including the rate of fare it will use, all applicable taxes, fees and surcharges, and any other fees (such as cancellation fee) charged to the passengers. The E-Hail App

Provider must comply with the Notice of Fee requirements in accordance with subdivision (c) of this section.

- (i) An E-Hail App Provider’s Flex Fare Rate Schedule must assess all applicable taxes, fees, and surcharges that may be required by these Rules.
- (ii) An E-Hail App Provider’s Flex Fare Rate Schedule must not charge more for a wheelchair accessible Flex Fare request than for a non-wheelchair accessible Flex Fare request.
- (iii) An E-Hail App Provider must remit to each Medallion Owner (or Owner’s Agent) all MTA Taxes assessed for trips performed in their respective Taxicabs/SHLs.
- (iv) An E-Hail App Provider must provide a means to allow passengers to tip Drivers through the E-Hail App offering Flex Fare trips. An E-Hail App Provider must remit to the Driver the entirety of anything designated as a tip or gratuity collected by the E-Hail App Provider from a customer on behalf of the Driver.

(2) All rate schedules and any subsequent modifications thereto shall be approved by the Chair prior to such modifications taking effect.

§78-15(b)	Penalty: \$1000 fine	Appearance NOT REQUIRED
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Section 4. Paragraph (3) of subdivision (a) of section 78-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (3) The E-Hail Application may only disclose to a Driver a potential Passenger’s pickup location, drop-off location, and fare estimate, or binding upfront fare quote if it is a Flex Fare Trip, except that a Passenger’s trip identification number or E-Hail Application user name may be transmitted to the Driver after the Driver has accepted the Passenger’s E-Hail request.

Section 5. Subdivision (a) of section 78-21 of Title 35 of the Rules of the City of New York is amended by adding a new paragraph (6), to read as follows:

- (6) The E-Hail Application must require the customer to affirmatively acknowledge and accept that the customer is being charged a non-metered fare when accepting a Flex Fare Trip.

Section 6. The opening paragraph of paragraph (3) of subdivision (b) of section 78-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

(3) The E-Hail Application must receive the fare and Trip Data automatically from the Technology System or Taximeter, unless it is a Flex Fare Trip, and must not permit a Driver or any other person to enter any fare information manually. The E-Hail Application also must provide the Technology System Provider with the following:

Section 7. Paragraph (2) of subdivision (d) of section 78-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

(2) E-Payment

- (i) Receive from the E-Hail Application Provider or Accessible Taxi Dispatcher access to itemized fare data including time-and-distance fare, tolls, surcharges, extras, and taxes from the Technology System and Taximeter, in real time, when the trip has been completed and the Driver has disengaged the Taximeter, or access to itemized fare data for Flex Fare Trips;
- (ii) Provide to the E-Hail Application Provider or Accessible Taxi Dispatcher a confirmation that electronic credit card payment for the total fare amount has been successfully processed; and
- (iii) Provide relevant payment information to the E-Hail Application Provider or Accessible Taxi Dispatcher to the extent necessary to display the total charges, including E-Hail service fee and tip (if applicable) on the receipt and collect and transmit Trip Data.

Section 8. Paragraph (3) of subdivision (e) of section 78-21 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (3) The E-Hail Application and its third party designee, if any, must be capable of automatically collecting and transmitting to the Technology System the Trip Data required below for all trips using E-Payment, except for Flex Fare Trips.

Section 9. Subdivision (a) of section 78-22 of Title 35 of the Rules of the City of New York is amended, and a new subdivision (b) is added, to read as follows:

- (a) [*Street Hail Livery Improvement Fund*] Taxicab Improvement Fund
 - (1) A Technology System Provider and/or E-Hail Application Provider must pay [the Street Hail Livery] the collected Taxicab Improvement Surcharge remitted by the Taxicab Driver [for each Hail Trip to the Street Hail Livery] Taxicab Improvement Fund within 60 days of the end of the payment period. For example, the Taxicab Improvement Surcharge due for the month of July must be remitted to the TLC in its entirety by October 1st.

- (2) The Technology System Provider and/or E-Hail Application provider must pay the [Street Hail Livery] Taxicab Improvement Surcharge to the [Street Hail Livery] Taxicab Improvement Surcharge Fund to the Taxicab Improvement Fund at the time and in the manner required by the Commission.
- (3) If a Technology System Provider and/or E-Hail Application Provider does not pay the [Street Hail Livery] Taxicab Improvement Surcharge to the [Street Hail Livery] Taxicab Improvement Fund at the time required, non-payment [may] will be grounds for suspension of the Technology System Provider License or E-Hail Application Provider License, and/or denial of any renewal application or of any application for another TLC-issued license, as well as monetary penalties.

§78-22(a)	Penalty: \$1000	Appearance REQUIRED
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(b) Street Hail Livery Improvement Fund

- (1) A Technology System Provider and/or E-Hail Application Provider must pay the collected Street Hail Livery Improvement Surcharge remitted by the Street Hail Livery Driver to the Street Hail Livery Improvement Fund within 60 days of the end of the payment period. For example, the Street Hail Livery Improvement Surcharge due for the month of July must be remitted to the TLC in its entirety by October 1st.
- (2) The Technology System Provider and/or E-Hail Application provider must pay the Street Hail Livery Improvement Surcharge to the Street Hail Livery Improvement Fund at the time and in the manner required by the Commission.
- (3) If a Technology System Provider and/or E-Hail Application Provider does not pay the Street Hail Livery Improvement Surcharge to the Street Hail Livery Improvement Fund at the time required, non-payment may be grounds for suspension of the Technology System Provider License or E-Hail Application Provider License, and/or denial of any renewal application or of any application for another TLC-issued license, as well as monetary penalties.

§78-22(b)	Penalty: \$1000	Appearance REQUIRED
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Section 10. Subdivision (b) of section 80-16 of Title 35 of the Rules of the City of New York is amended to read as follows:

(b) *Requests to Change Destination.* Passengers may ask the Driver to change their destination or end their ride during their trip. Drivers must comply with these requests unless it is impossible or unsafe. For Hail trips the Passenger will pay the amount shown on the Taximeter or information monitor when the trip ends. For a Pre-Arranged Trip in a Street Hail Livery, or a trip in a For-Hire Vehicle, or a Pre-Arranged Trip in a Taxi or Street Hail Livery using Flex Fare price, a request to change or terminate the trip can result in a different fare or, for a trip which terminates early, the complete fare quoted.

Section 11. Paragraph (1) of subdivision (a) of section 80-17 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (1) A Driver of a Taxicab or Street Hail Livery must not charge or attempt to charge a fare above the Commission-approved rates, including Commission-approved Flex Fare Rate Schedule. This includes a fare in a Street Hail Livery for a Hail Trip or a fare for any trip initiated or accepted through an E-Hail Application, including a Flex Fare Trip.

Section 12. Paragraphs (2), (3) and (4) of subdivision (j) of section 80-17 of Title 35 of the Rules of the City of New York are amended to read as follows:

- (2) The payment must not exceed Commission-approved rates, including Commission-approved Flex Fare Rate Schedules, plus any optional tip.
- (3) The fare must be calculated as required by these rules and the Taximeter must be used for all trips, including trips paid for by E-Payment, unless it is a Flex Fare Trip. Any fare paid for by E-Payment must be calculated by the Taximeter and not by any other method, unless it is a Flex Fare Trip.
- (4) The itemized fare amount charged to the Passenger must be automatically transmitted to the E-Hail Application from the Technology System, or the Taximeter, unless it is a Flex Fare trip, and relevant payment data necessary to obtain a complete trip record must be transmitted from the E-Hail Application to the Technology System. Manual input of the fare by the Driver or any other person into the E-Hail Application is not permitted.

Section 13. Paragraph (4) of subdivision (a) of section 80-20 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (4) *Ask Destination in Advance.* A Driver must not attempt to learn the destination of a Passenger before the Passenger is seated in the Taxicab or, for a Hail Trip started in the Hail Zone, in the Street Hail Livery, except for Flex Fare Trips. Attempting to learn the destination in advance is a violation of this paragraph, regardless if the Driver ultimately agrees to transport the Passenger.
 - (i) Asking [a] for a Passenger's destination in advance shall not be a violation of this paragraph if the Driver is returning to his or her

home or garage and has followed the procedures provided in 80-19(a)(5) or 80-19(b)(6).

Section 14. Subdivision (a) of section 80-25 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (a) A Driver is required to log in and operate the Technology System for each trip in a Taxicab or Street Hail Livery, including those Taxicab or Street Hail Livery trips that begin with the use of an E-Hail Application but otherwise excluding Street Hail Livery trips that are Pre-Arranged Trips, except for Flex Fare Trips.

Section 15. Subdivision (i) of section 82-26 of Title 35 of the Rules of the City of New York is amended to read as follows:

(i) *E-Payments.*

- (1) The payment for the fare for any trip paid for using an E-Payment must not exceed Commission-approved rates.
- (2) The fare must be calculated as required by these rules and the Taximeter must be used for all trips not dispatched through a Base, including trips paid for by E-Payment, unless it is a Flex Fare Trip. Any fare paid for by E-Payment must be calculated by the Taximeter and not by any other method, unless it is a Flex Fare Trip.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Rules Relating to Flex Fare Program

REFERENCE NUMBER: 2023 RG 102

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
Senior Counsel

Date: December 7, 2023

**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: Rules Relating to Flex Fare Program

REFERENCE NUMBER: 2023 RG 102

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 a cure period would defeat the purpose of the rule.

/s/ Grace M. Francese
Mayor's Office of Operations

December 11, 2023
Date