NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Promulgation

Notice is hereby given in accordance with section 1043(b) of the New York City Charter ("Charter") that the Taxi and Limousine Commission ("TLC") promulgates amendments to its minimum driver payment rules for high-volume for hire services, including increasing the minimum pay amounts to account for increased driver expenses and changing the way utilization rates are calculated and applied.

This rule is promulgated pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. This rule was published in the City Record on January 30, 2023 for public comment. On March 1, 2023 a public hearing was held by the TLC and the rule was adopted by the Commission on ____________.

Statement of Basis and Purpose

Background

In 2018 TLC drafted a driver minimum pay policy and commissioned two labor economists—Dr. James A. Parrott, Economic and Fiscal Policy Director of the Center for New York City Affairs at the New School, and Dr. Michael Reich, Professor of Economics and Chair of the Center on Wage and Employment Dynamics at the University of California, Berkeley—to study the economics of the city's for-hire vehicle (FHV) industry, including driver income and earnings, and evaluate the agency's proposed policy. Focusing on the largest FHV companies, now categorized as high-volume for-hire services (HVFHS or HV),[1] the resulting report issued in July of 2018[2] found that:

- FHV driver median earnings declined by almost $3.00 per hour from $25.78 in September of 2016 to $22.90 in October of 2017;[3]
- 85% of drivers were earning less than the equivalent of the $15.00 minimum wage;[4]
- 80% of drivers acquired their vehicle to enter the industry, taking on significant personal expense and risk;[5] and
- 40% of drivers had incomes so low they qualified for Medicaid, 16% had no health insurance, and 18% qualified for federal SNAP benefits.[6]

[1] A high-volume for-hire service is a base that dispatches 10,000 or more trips per day. HVFHSs are licensed as such by TLC. In 2018, Uber, Lyft, Gett/Juno, and Via dispatched more than 10,000 trips per day and were thus included in the analysis of driver pay in 2018. This category now includes only Uber and Lyft.
[2] James A. Parrott and Michael Reich, "An Earnings Standard for New York City's App-based Drivers: Economic Analysis and Policy Assessment" (June 2018), *available at* http://www.centernyc.org/an-earnings-standard. The authors published revised estimates in January 2019, *available at* http://www.centernyc.org/the-new-york-city-app-based-driver-pay-standard-revised.
[3] Parrott and Reich (2018) p. 24.
[4] Id. p. 4.
[5] Id. p. 5
[6] Id. p. 5.

The report also found that TLC's proposed driver pay policy, discussed further below, would increase average gross driver pay by 14%, ensure that drivers are able to cover all vehicle and related expenses, and correct some inefficiencies and inequities in the industry.[7]

In response to the report and the economic conditions faced by drivers, in August of 2018 the City Council adopted, and Mayor Bill de Blasio signed into law, Local Law 150 of 2018, which required that TLC "establish a method for determining the minimum payment that must be made to a for-hire vehicle driver for a trip dispatched by a high-volume for-hire service."[8] The Local Law specifically states that, in establishing such method, TLC must consider driver expenses.[9]

TLC subsequently adopted rules in December of 2018 establishing minimum per trip payments for HV trips, based on a formula, to provide drivers a minimum take-home pay after covering their expenses and taking into account drivers' total working time, both time spent driving passengers as well as time waiting for a dispatch and driving to pick up passengers.[10]

The policy has three critical elements: the **per mile rate**, the **per minute rate**, and the **utilization rate**. The **per mile rate** was calculated to cover a typical driver's expenses such as the vehicle, fuel, maintenance, and insurance.[11] The original per mile rate for a standard trip was set at $0.631. The **per minute rate** was calculated to result in an average net income of $17.22 per hour, the independent contractor equivalent of a $15.00 minimum wage, adding 90 cents for paid time off, which can include sick leave, and $1.32 for the employer share of the payroll tax.[12] The original per minute rate for a standard trip was set at $0.287 (the $17.22 hourly rate divided by 60 minutes). The **utilization rate** accounts for the time that drivers spend without a passenger in the vehicle. It is calculated by dividing the total time that a high-volume for-hire service's drivers spend transporting passengers by the total amount of time that drivers are logged into the app (including time waiting for a dispatch, time en route to pick up a passenger, and time with a passenger). TLC analyzed utilization rates at the time, set an industrywide utilization rate of 58%, and intended to move to company specific utilization rates after one year. Because of the impacts of the COVID-19 pandemic, during which time TLC suspended the calculation of new utilization rates as trip volumes plummeted across all sectors, the industrywide 58% utilization rate remains in place.

Below is the driver pay formula as presented in 2019 for a standard trip and then a sample calculation for a trip of 7.5 miles and 30 minutes, with a utilization rate of 58%, which would result in driver pay of $23.00 under the original rates.

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[7] Id. p. 4-5.
[8] Local Law 150 of 2018, codified as New York City Ad. Code § 19-549, *available at* https://nyc.legistar.com/LegislationDetail.aspx?ID=3487613&GUID=E47BF280-2CAC-45AE-800F-ED5BE846EFF4&Options=ID|Text|&Search=150.
[9] Ad. Code § 19-549(b).
[10] That 2018 rule package is available at https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf.
[11] For simplicity, the description of the driver pay formula uses the rate for trips within the city limits performed in a vehicle that is not a wheelchair accessible vehicle (WAV). TLC has set different rates for those trips based on the higher expenses for WAVs and lower utilization rates for trips that begin in the city but end outside of the city.
[12] Parrott and Reich (2018) p. 34, 36.

$$Per\ Trip\ Driver\ Pay = \left(\frac{\$0.631\ x\ Trip\ Miles}{Company\ Utilization\ Rate}\right) + \left(\frac{\$0.287\ x\ Trip\ Minutes}{Company\ Utilization\ Rate}\right)$$

$$\frac{(\$.631 * 7.5\ miles)}{.58\ utilization} + \frac{(\$.287 * 30\ minutes)}{.58\ utilization} = \$23.00$$

TLC rules also established yearly adjustments to the per minute and per mile rates to account for inflation, using the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area (CPI-W),[13] to ensure that real driver earnings were not reduced over time.

Following litigation brought by Lyft, the pay standard went into effect in February of 2019.

CPI Adjustments in 2020 and 2022

TLC has increased the per mile and per minute rates pursuant to the increase in CPI-W twice since the rules were implemented in February of 2019. In February of 2020, both the per mile and the per minute rates were increased by 1.46%, which was the percent change in CPI-W between 2018 and 2019. In March of 2022, TLC increased the per mile rate and the per minute rate by 5.30%, which was the percent change in CPI-W between 2019 and 2021. According to TLC analysis of publicly available inflation data and transportation costs as part of that inflation data, transportation costs—and thus driver expenses—increased between 2018 and 2021 at roughly the same rate as inflation.[14]

The Amendments

As described above, the per mile rate is meant to account for driver expenses. When the scheduled CPI-W increases are less than the rate of increase in driver expenses, the driver pay formula as a whole is rendered less effective because it fails to account for the reality of drivers' economic conditions: drivers pay more out of pocket for their expenses than the per mile rate covers, which reduces their take-home pay to an amount less than the driver pay formula is meant to provide. For example, if driver expenses are up 15% and the CPI-W is up only 5%, that 10% difference is paid by drivers out of what should be their take-home, net, after-expenses pay. Indeed, this is precisely what occurred in 2022. While the CPI-W and the Transportation Index remained roughly equivalent between 2018 and 2021,[15] between 2021 and 2022 the Transportation Index increased at more than double the rate of the CPI-W.[16]

[13] In rules passed in 2018 as § 59B-24(a)(4); now § 59D-22(a)(4).
[14] Comparing the percent change in annual average CPI-W NY-NJ-PA metro to the Transportation Index (introduced and discussed more below), CPI-W increased by 6.94% while the Transportation Index increased by 6.90% between 2018 and 2021.
[15] Id.
[16] Comparing the annual average for 2021 to the annual average for 2022, the CPI-W increased 6.39% while the Transportation Index increased 12.91%.

Drivers began to feel this divergence acutely, demanding increased wages to address these increased costs.[17] In March of 2022, the impacts of high gas prices and increased transportation costs grew so severe that drivers caravanned across the Brooklyn Bridge to publicly demand relief.[18] Uber itself noted the impacts of the increased transportation costs, instituting a temporary gas surcharge for its drivers in every U.S. market except, crucially, New York City.[19]

In response to the public outcry from drivers over the need to address their rapidly increasing expenses, and the high-volume for-hire services' unwillingness to address these increases on their own, TLC began exploring ways to account for increased driver expenses. TLC held a public hearing on May 24, 2022 at which the Commission received written comments and testimony regarding driver pay and utilization rates. TLC specifically invited testimony on, among other things, driver expenses, and received much testimony from drivers on their expenses. Of particular emphasis was concern about the rapid increase in driver expenses, and that the increase in driver expenses—especially the costs of vehicles and fuel—had exceeded the general CPI-W. In other words, specific driver expenses like vehicles and fuel had increased at a higher rate than other consumer items like food and clothing that are captured in the CPI-W.

At the same time, TLC issued a driver expense survey in the spring of 2022. The results were generally informative but TLC determined that the limited self-reported figures were not reliable enough to use in updating the expense calculations. Instead, TLC sought a widely reported and widely used metric similar to the Consumer Price Index but more narrowly tailored to expenses borne by drivers. TLC determined that the best such metric was included in the CPI itself: the Transportation Index.

The CPI contains many buckets of consumer goods. One of those, as categorized by the U.S Bureau of Labor Statistics, is Transportation. It includes new and used motor vehicles and motor fuel.[20] TLC determined that the Transportation Index, as included in the CPI-U NY-NJ-PA metro, was an appropriate metric upon which to rely because:

- Testimony indicated that changes in the costs of vehicles and motor fuel were the primary causes of driver expenses outpacing general inflation, and the Transportation Index includes those expenses;
- The metric is publicly available, well established, widely reported, widely relied upon, transparent, and created by a reputable expert third party, the federal government;[21]

[17] https://www.ny1.com/nyc/all-boroughs/traffic/2022/03/29/uber-drivers-seek-fuel-surcharge

[18] https://nypost.com/2022/03/29/uber-drivers-take-to-nyc-streets-to-demand-relief-from-soaring-gas-prices/

[19] At the time, Uber argued a surcharge in New York City was unnecessary because the CPI-W adjustments accounted for the increased costs of gas in New York City. See https://www.cnbc.com/2022/03/11/uber-adds-fuel-surcharge-because-of-high-gas-prices.html. However, today even Uber recognizes the divergence between the CPI-W and the increase in gas and transportation costs, arguing that to address high gas prices, TLC should have instituted a temporary gas surcharge. See https://gizmodo.com/uber-rideshare-rate-hike-taxi-nyc-ride-hail-1849881880

[20] U.S. Bureau of Labor Statistics, "Consumer Price Index, New York-Newark-Jersey City — December 2022," *available at* https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex_newyorkarea.htm.

[21] TLC determined that it would use the transportation component of the CPI-U rather than the transportation component of the CPI-W because the CPI-U and its components are more widely reported and available as the more "general" and less "specialized" index, making it significantly easier for members of the public and stakeholders to track and review. *See* U.S. Bureau of Labor Statistics, "What is the difference between the CPI-U and the CPI-W?" *available at*

- The index is specific to the New York City metropolitan area and is not a nationwide figure;
- As a CPI component, it is closely related to the scheduled CPI adjustments that TLC already performs and can be calculated in much the same way; and
- It is relatively simple to determine the percent increase of the Transportation Index and apply it to the per mile rate, and it does not require complex methodology.

TLC considered other options including other components of the regional CPI, components of the national CPI, weighting the components in different ways, and using the Internal Revenue Service mileage reimbursement rate. These other options were rejected because they were inferior to the Transportation Index with respect to some or all of the bulleted characteristics immediately above. Specifically, for example, the IRS mileage reimbursement rate is not specific to the New York City metro area and is further divorced from TLC's use of the CPI as an appropriate index to monitor and rely on, and adjustments pursuant to the general CPI-W or general CPI-U, for the New York City metro area or for other areas, were not sufficiently itemized, were not specific enough for driver expenses, or were not as geographically specific.

Following this extensive research, TLC proposed rules that, among other things, increased the per minute rate pursuant to the general CPI-W and increased the per mile rate pursuant to the Transportation Index. Those proposed rules received a public hearing on October 6, 2022 and were passed unanimously by the Commission on November 15, 2022. The rules were scheduled to go into effect on December 19, 2022, before Uber sued to challenge them. After an initial temporary restraining order was issued by the court, on January 10, 2023, the court issued its final written decision in Uber's favor. The judge found that though the case "appears faintly ridiculous," a "legal technicality" requires TLC to further explain its reasoning in adopting proposed increases to the pay rates and urged TLC to do so. The rules now being proposed seek to similarly increase the per mile rate by the changes in the Transportation Index and provide that additional explanation as to the reasons and methodology for doing so.

As such, to determine the increase to the per mile rate in accordance with the Transportation Index in these proposed rules, TLC did the following:[22]

1) Look up the monthly Transportation Index since January of 2018, using public reports on the U.S. Bureau of Labor Statistics website.[23]

2) Using that monthly data, calculate the annual average for 2018 and the annual average for 2022 by adding up each monthly figure and dividing by 12. The results, rounded to the nearest three decimal points, are as follows:
   2018 Transportation Index annual average: 221.680

https://www.bls.gov/newsroom/faqs.htm#:~:text=The%20CPI%2DU%20is%20a,wage%20earners%20and%20clerical%20workers.

[22] For simplicity, these steps show the methodology for the per mile rate as it applies to trips that begin and end within city limits and are done in a vehicle other than a wheelchair accessible vehicle. To determine those other rates, TLC applied the same methodology, multiplying each rate by 20.71%. The original and new rates for these other categories are provided in the table that follows.

[23] E.g., U.S. Bureau of Labor Statistics, "Consumer Price Index, New York-Newark-Jersey City — December 2022," *available at* https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex_newyorkarea.htm.

2022 Transportation Index annual average: 267.580

TLC determined that 2018 was the appropriate baseline because that is the year in which TLC collected driver expense data to inform the original rates. Rather than update the most recent rates, which themselves had already been adjusted twice in accordance with the general CPI, TLC returned to the original per mile rate as the most appropriate baseline because that rate was the direct result of the initial analysis done by Parrott and Reich. TLC also determined that the best timeframes for comparison were annual averages, which reduce month-to-month instability and are consistent with TLC's existing practice of comparing annual averages for CPI adjustments.

3) Calculate the percent increase between the 2018 annual average and the 2022 annual average, rounded to the nearest two decimal places: 20.71%

4) Multiply this percent increase by the per mile rate as implemented in 2019, with the result rounded to the nearest three decimal places:
   2019 per mile rate: $0.631
   Percent increase: 20.71%
   New rate: $0.762

As such, following this methodology and for the reasons given, TLC is updating the per mile rates as follows:[24]

Category	**Original per mile rate**	**Percent increase**	**New per mile rate**
Standard	$0.631	20.71%	$0.762
WAV	$0.818	20.71%	$0.987
Out-of-town[25]	$1.262	20.71%	$1.523
Out-of-town WAV	$1.636	20.71%	$1.975

Combined with the scheduled CPI-W increase of 6.39% effective February 1, 2023, increasing the original per mile rate by 20.71% will result in a **minimum driver pay of $26.76 for a sample trip of 7.5 miles and 30 minutes**. This is an increase of $2.16, or 8.78%, from the rates in effect from March 2022 through January 2023, and an increase of $3.76, or 16.35%, from the original rates effective in 2019. Analysis of trip data further revealed that the high-volume FHV sector has substantially recovered from the pandemic, and has recovered faster than any other TLC-licensed sector or any mode of public transit in New York City. This indicates that the high-volume FHV sector is strong and can likely absorb a reasonable increase to minimum driver pay without significantly upsetting trip volume.

In addition to the per mile rate, TLC made the following amendments to Chapter 59D for the following reasons:

[24] The per minute rate, which is not reflective of driver expenses and instead serves as the take-home pay, will continue to be adjusted pursuant to the CPI-W as described and amended in these proposed rules.

[25] Higher rates apply to any portion of a trip dispatched by an HV that occurs outside of New York City's boundaries to account for deadheading back into the City for the driver's next passenger fare.

- Clarifying CPI increases going forward:
    - TLC will continue to adjust the per minute and the per mile rates using the CPI-W for the NY-NJ-PA metro area. The amendments clarify that TLC will use the CPI-W percent increase, if any,[26] in the annual average between the previous calendar year and two calendar years prior.[27]
    - Moving forward, new rates pursuant to the CPI adjustments will go into effect March 1 of each year.
- Changes and clarifications to utilization rate calculation and application:
    - To align with driver expectations following the previous four years, TLC is applying a uniform utilization rate to all high-volume for-hire services, as has been the case for the first four years of the minimum pay standards policy.
    - Following requests from high-volume for-hire services and drivers to reduce the incentive for driver lock-outs and other supply control measures, the uniform utilization rate applied to each company for purposes of calculating the minimum per mile and per minute rates will continue to be 58%, the utilization rate that has been in effect since the beginning of the minimum driver pay policy. However, to ensure that drivers are properly compensated for their time without passengers, and to ensure that high-volume for-hire services efficiently use their drivers' time, if the utilization rate for the high-volume for-hire service industry falls below 53% in a calendar year, the utilization rate for all high-volume for-hire services the following calendar year will be the actual utilization rate of all high-volume for-hire services, effective March 1 of that year. The proposed rules set the utilization rate floor at 56%. In response to driver and stakeholder feedback, TLC is reducing this floor to 53% to further reduce the incentive for driver lock-outs.
    - The utilization rate definition is amended to (1) calculate utilization rates in aggregate and (2) clarify that the utilization rate is calculated by dividing the total time passengers are in the vehicle (trip time) by the total time a driver is logged into a company's app. The total time includes the time a driver is en route to pick up a passenger, but the trip time does not include en route time. Because TLC's minimum pay rates only apply to the time and distance that passengers are in the vehicle, drivers are not paid for en route time, and therefore en route time is not fairly categorized as utilized time. This is only a clarification and does not change existing practice in how TLC calculates driver pay and utilization.
- Other changes:
    - Repealing the assessment of daily average trip volumes because it is no longer necessary as that process now occurs through the issuance and renewal of the high-volume for-hire service license.
    - Repealing references to a shared ride bonus, which was never specified or implemented, so is not necessary to include in TLC rules at this time.

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[26] Using a "percent increase, if any" is consistent with many minimum wage laws that are indexed to inflation, including New York City's Living Wage Law, and ensures that for-hire drivers, already earning near a minimum wage, are not burdened with pay reductions should there be a rare deflationary period. *See, e.g.,* Admin. Code § 6-134(b)(9) ("rate shall be adjusted based upon the twelve-month percentage increases, if any, in the Consumer Price Index").

[27] TLC may, of course, revisit this at any time, including under circumstances similar to those in the past year in which there is a high divergence between the general CPI-W and driver expenses.

- Repealing the set schedule whereby TLC must reevaluate the rates as TLC may reevaluate the rates, as it may reevaluate all aspects of its rules, at any time.

The Commission's authority to promulgate this rule is found in sections 2303 of the New York City Charter and section 19-503 of the New York City Administrative Code. The rules that the Commission amends are contained within Chapter 59 of Title 35 of the Rules of the City of New York.

<u>New material is underlined.</u>
[Deleted material is in brackets.]

Section 1. Subparagraph (ii) of paragraph (5) of subdivision (f) section 59B-18 of Title 35 of the Rules of the City of New York is amended to read as follows:

(iii) For Driver and Vehicle owner earnings, in addition to the items specified in subparagraph (ii) of this paragraph, the receipt must also include the amount paid by passengers for trips during the time period covered by the receipt and any calculation used to determine the earnings, including the per-trip minutes and miles for which the Driver is being paid [and the number of shared rides subject to the Shared Ride Bonus provided in Section 59D-22(a)(3), if applicable]. Such calculation must conform to the applicable policy, formula or schedule provided in the Base Agreement.

§ 2. Subdivision (j) of section 59D-03 of Title 35 of the Rules of the City of New York, in relation to a Shared Ride Bonus, is REPEALED; subdivision (k) of such section is re-lettered subdivision (j); and subdivision (l) of such section re-lettered subdivision (k).

§ 3. Subdivision (j) of section 59D-03 of Title 35 of the Rules of the City of New York, as relettered by this rule, is amended to read as follows:

(j) **Utilization Rate** refers to the percentage of time<u>, in aggregate,</u> that <u>all </u>Drivers who have made themselves available to accept dispatches from [a] High-Volume For-Hire Service<u>s</u> spend transporting passengers on trips dispatched by [the] High-Volume For-Hire Service<u>s</u>. [A High-Volume For-Hire Service's] <u>The</u> Utilization Rate is calculated by dividing the total amount of time those Drivers spend transporting passengers on trips dispatched by [the] High-Volume For-Hire Service<u>s</u> by the total amount of time Drivers are available to accept dispatches from [the] High-Volume For-Hire Service<u>s, have been dispatched by a High-Volume For-Hire Service to pick up a passenger but do not have a passenger in the vehicle, and are transporting passengers on trips dispatched by a High-Volume For-Hire Service</u>.

§ 4. Section 59D-22 of Title 35 of the Rules of the City of New York is amended to read as follows:

§59D-22 Minimum Driver Payment Requirements

(a) A High-Volume For-Hire Service must pay Drivers, at a minimum, the following amounts for each trip dispatched by the Base:

(1) *Per Mile Rate*. [Beginning January 1, 2019, for] For each mile a Driver transports a Passenger in the City on a trip dispatched by the High-Volume For-Hire Service, the High-Volume For-Hire Service must pay the Driver no less than [$0.631] $0.762 per mile for a trip dispatched to a Vehicle that is not an Accessible Vehicle and [$0.818] $0.987 for a trip dispatched to an Accessible Vehicle, divided by the High-Volume For-Hire Service's Utilization Rate, and for trips that begin in the City but end outside of the City, the Base must pay the Driver no less than [$1.262] $1.523 per mile for a trip dispatched to a vehicle that is not an Accessible Vehicle and no less than [$1.636] $1.975 per mile for a trip dispatched to an Accessible Vehicle for each mile a Driver transports a Passenger outside of the City; and

[(i) RESERVED – expense formulation for luxury vehicles]

(2) *Per Minute Rate*. Beginning January 1, 2019, for each minute a Driver transports a Passenger in the City on a trip dispatched by the High-Volume For-Hire Service, the High-Volume For-Hire Service must pay the Driver no less than $0.287 per minute, divided by the High-Volume For-Hire Service's Utilization Rate, and for each minute a Driver transports a Passenger outside of the City on a trip dispatched by the High-Volume For-Hire Service that began in the City and ended outside of the City, the High-Volume For-Hire Service must pay the Driver no less than $0.574 per minute[, and].

(3) [*Shared Ride Bonus*. For each separate pick up on a trip where a Passenger shares the Vehicle for part or all of the trip with a Passenger from a separately dispatched call, the High-Volume For-Hire Service must pay the Driver the Shared Ride Bonus, in addition to the per mile and per minute rates.] Reserved.

(4) *Consumer Price Index Adjustments*. Beginning [January 1, 2020,] March 1, 2024 and continuing each calendar year thereafter, the dollar amounts in the per mile rates and per minute rates contained in this subdivision will be adjusted using the [12-month Percentage Change] percent increases, if any, in the annual average Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area between the previous calendar year and two calendar years prior. The Consumer Price Index adjusted per mile and per minute rates will be posted on the Commission's website.

(5) *Hourly Payments*. If a High-Volume For-Hire Service [subject to this section] pays drivers on an hourly basis, the payment the Driver receives for each hour the Driver

accepts dispatches from the High-Volume For-Hire Service must be at least the sum of the Per Mile Rate for all miles the Driver transported Passengers during the hour[,] and the Per Minute Rate for all minutes the Driver spent transporting Passengers during the hour[, and the Shared Ride Bonus for each applicable pick up performed during the hour].

§59D-22(a)	Fine: $500 per instance of under payment. In addition to the penalty payable to the Commission, the Hearing Officer must order the High-Volume For-Hire Service to pay restitution to the Driver, equal to the amount not paid to the Driver in violation of this rule.	Appearance REQUIRED

(b) [*Utilization Rate*: The Commission will assess, and post on its website, the Utilization Rate for each High-Volume For-Hire Service subject to this section every six months.

(1) *Initial Utilization Rate*. Prior to the Commission assessing and posting on its website the Utilization Rate for each High-Volume For-Hire Service and notifying each High-Volume For-Hire Service of such High-Volume For-Hire Service's Utilization Rate, the Utilization Rate for all High-Volume For-Hire Services will be the aggregate Utilization Rate of all High-Volume For-Hire Services, as calculated by the Commission. A High-Volume For-Hire Service may petition the Commission to calculate a Utilization Rate specific to that High-Volume For-Hire Service prior to the expiration of the Initial Utilization Rate period, but in no event will a High-Volume For-Hire Service have a Utilization Rate lower than the aggregate Utilization Rate of all High-Volume For-Hire Services for the Initial Utilization Rate period.] *Applied Utilization Rate*. The applied Utilization Rate for purposes of calculating the per-minute and per-mile rates for all High-Volume For-Hire Services will be 58%. Each January, the Commission will calculate the Utilization Rate for all High-Volume For-Hire Services for the prior calendar year. If the Utilization Rate for all High-Volume For-Hire Services for the prior calendar year is at least 53%, the applied Utilization Rate will be 58% for the following calendar year. If the Utilization Rate for all High-Volume For-Hire Services for the prior calendar year is below 53%, the applied Utilization Rate for all High-Volume For-Hire Services for the following year, effective from the immediately following March 1 until the subsequent March 1, will be the actual Utilization Rate from the prior calendar year. When a High-Volume For-Hire Service Driver is without a passenger and available for dispatch on more than one High-Volume For-Hire Service's application, such time will be divided evenly between each High-Volume For-Hire Service for which the Driver was available for dispatch.

[(c) *Daily Average Trip Volumes*: The daily average trip volume for each High-Volume For-Hire Service will be assessed every six months.

(d) *Evaluation by the Commission*. No less than annually, the Commission will review Driver, Vehicle Owner, and High-Volume For-Hire Service expenses, Driver earnings, the impact on Utilization Rates of Drivers making themselves available to accept dispatches from multiple Bases or High-Volume For-Hire Services, service levels, and any other information it deems relevant to determine if adjustments need to be made to the rates set forth in subdivision (a) of this section.]

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to Section 1043(f)(1)(c) of the New York City Charter, that there is a substantial need for the implementation of the amendments to minimum driver payment rules for high-volume for hire services, including increasing the minimum pay amounts to account for increased driver expenses and changing the way utilization rates are calculate and applied, immediately upon publication of the promulgated rule in the City Record.

The City intended for this rulemaking, which provides an urgently needed adjustment to minimum driver pay requirements in the high-volume for-hire vehicle sector, to go into effect on December 19, 2022. However, Uber challenged the rule in New York State Supreme Court and obtained a ruling which, though not affecting the substance of the rule, required TLC to begin the rulemaking process again. TLC moved swiftly to make the changes required by the Court, held a public hearing and approved the final rule. This rule, more than two months after its originally intended effective date, is needed more urgently than ever by high-volume for-hire service drivers. Accordingly, the 30-day period normally provided for between a rule's promulgation and the time it goes into effect is hereby waived.

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David Do, Commissioner/Chair
NYC Taxi and Limousine Commission

Approved: __________________________
Eric Adams, Mayor

Date: _________________