

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 amendments to its minimum driver payment rules for high-volume for hire services, including increasing the minimum pay amounts to account for inflation and increased driver expenses, and changing the way utilization rates are calculated and applied.

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 October 6, 2022. 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 October 5, 2022. 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.** To sign up to speak and provide testimony, you must e-mail the TLC at tlcrules@tlc.nyc.gov or call 212-676-1135 by 5:00 p.m. on October 5, 2022. Speakers will not be able to sign up to testify the day of the hearing. Those who did not sign-up in advance to testify are welcome to view the live-stream of the meeting on TLC’s website

Is there a deadline to submit written comments? Yes, you must submit written comments by October 5, 2022.

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 September 30, 2022. 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 Section 19-503 of the New York City Administrative Code authorize the Commission to make this proposed rule. This proposed rule was included in TLC's regulatory agenda for fiscal year 2023.

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

In response to falling driver earnings, TLC commissioned a study of the economics of New York City's for-hire vehicle (FHV) industry. Based on the study results,¹ TLC adopted rules in 2018 to require minimum per trip driver pay for trips dispatched by high-volume for-hire services, which currently includes Lyft and Uber.²

Based on TLC, driver, and industry experience with the implementation of the 2018 rules, and following a hearing held on May 24, 2022, at which the Commission received evidence and testimony regarding driver pay and utilization rates, TLC is now proposing several amendments to its high-volume driver pay rules. These amendments are based on the testimony and written comments received at the May hearing, reviews of driver compensation and passenger fares, analysis of trip data, and changes in inflation as reflected in the Consumer Price Index (CPI) and the transportation costs component of that index, and industry and driver feedback, among other considerations.

Specifically, the Commission is proposing the following amendments to Section 59D-22 of its rules:

- Adjustments to the per minute and per mile rates:
 - The per minute rates would be adjusted to reflect previous CPI adjustments already adopted and posted on the Commission's website as well as an additional 7.82% increase to reflect the CPI-W NY-NY-PA metro area percentage change from the 2021 average to June 2022.

¹ June 2018 report: <http://www.centrernyc.org/an-earnings-standard>; updated expense numbers from January 2019: <http://www.centrernyc.org/the-new-york-city-app-based-driver-pay-standard-revised>

² That rule package is available here:

https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf

- The per mile rates would be adjusted to reflect the change in the transportation costs component of the CPI-U NY-NJ-PA metro area from January 2019, when driver expenses were last calculated for the pay rates, as implemented in February of 2019 and June of 2022. The transportation costs component of the CPI over this time increased 34.04%.
- For a 30-minute, 7.5-mile trip in a standard vehicle, these new rates would require drivers to be paid a minimum of more than \$28, up more than \$5 from the original rates and up about \$3.50 from the current rates.
- Changes to the way utilization rates are calculated and considered:
 - The Utilization Rate for the prior calendar year for each High-Volume For-Hire Service would be assessed every January.
 - The Initial Utilization Rate would be 58% for each High-Volume For-Hire Service unless a High-Volume For-Hire Service’s average Utilization Rate for a calendar year decreases below 52% or increases above 64%.
 - Specifying that “multi-apping” time—time a driver is available to be dispatched on multiple high-volume for-hire services—will be allotted in full to each company.
- Additional changes including:
 - Clarifying that future CPI adjustments will use the percentage change in the annual average Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area instead of 12-month Percentage Change, with the exception of the next two CPI adjustments, which in January of 2023 will compare December 2022 with June of 2022, and in January of 2024 will compare the annual average for 2023 with December of 2022.
 - Repealing the shared ride bonus, which was never specified or implemented.
 - Repealing the evaluation of the rates by the Commission as it is no longer necessary in view of the annual CPI adjustments.

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 is seeking to amend are contained within Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (a) of section 59D-22 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (a) A High-Volume For-Hire Service must pay Drivers, at a minimum, the following amounts for each trip dispatched by the Base:
 - (1) [January 1, 2019] As of October 1, 2022, 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] \$0.846 per mile for a trip dispatched to a Vehicle that is not an Accessible Vehicle and [\$0.818] \$1.096 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~~] \$1.692 per mile for a trip dispatched to a vehicle that is not an Accessible Vehicle and no less than [~~\$1.636~~] \$2.193 per mile for a trip dispatched to an Accessible Vehicle for each mile a Driver transports a Passenger outside of the City;

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

- (2) *Per Minute Rate.* Beginning [January 1, 2019] As of October 1, 2022, 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~~] \$0.331 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~~] \$0.661 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] January of 2025, 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] percentage change in the annual average Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area. The Consumer Price Index adjusted per mile and per minute rates will be posted on the Commission's website. Such new rates shall be effective February 1 of each year.
 - (i) The rates effective February 1, 2023 will be the rates adjusted according to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area from June of 2022 to December of 2022. The rates effective February 1, 2024 will be the rates adjusted according to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area from December 2022 to the annual average for 2023.
- (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
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§ 2. Subdivisions (b) and (c) of section 59D-22 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York are amended to read as follows:

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

(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.] The Commission will maintain the Initial Utilization Rate of 58% for each High-Volume For-Hire Service unless a High-Volume For-Hire Service’s average Utilization Rate for a calendar year decreases below 52% or increases above 64%, in which case the High-Volume For-Hire Service’s pay rate from February 1 to the following January 31 will be based on that Utilization Rate, not the Initial Utilization Rate of 58%, until the next reassessment. Such reassessments will occur each January. When a High-Volume For-Hire Service Driver is available for dispatch on more than one High-Volume For-Hire Services application, such time will be included in the calculations for 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] each January.

§ 3. Subdivision (d) of section 59D-22 of Subchapter 59D of Chapter 59 of Title 35 of the Rules of the City of New York, relating to review of expenses, earnings and service levels in the high volume for-hire vehicle sector, is REPEALED.

**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: Amendment of Rules Relating to Payment of High Volume For Hire Vehicle Drivers

REFERENCE NUMBER: 2022 RG 069

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: August 26, 2022

**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 Rules Relating to Payment of High Volume For Hire Vehicle Drivers

REFERENCE NUMBER: TLC-128

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.

/s/ Francisco X. Navarro
Mayor's Office of Operations

August 28, 2022
Date