

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302 (21 Del.C. §302)

PROPOSED

PUBLIC NOTICE

2289 Transportation Network Companies

The Delaware Division of Motor Vehicles (DMV) gives notice of intent to create a new regulation Title 2 Transportation Regulation 2289 Transportation Network Companies. This regulation sets forth regulations and procedures to clearly identify the roles and responsibilities of each party as they relate to Transportation Network Companies (TNC) and the safe movement of persons using a TNC service for transportation via a TNC digital network in the State of Delaware.

Public Comment Period

The DMV will take written comments on the proposed new Regulation 2289 of Title 2, Delaware Administrative Code, from February 1, 2016 through March 2, 2016.

The public may submit their comments to Ken Shock, Chief of Compliance and Investigations, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 736-7993 Attn: Ken Shock.

2289 Transportation Network Companies

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302.

2.0 Purpose

This administrative rule sets forth regulations and procedures to clearly identify the roles and responsibilities of each party as they relate to Transportation Network Companies (TNC) and the safe movement of persons using a TNC service for transportation via a TNC digital network in the State of Delaware.

3.0 Definitions

For purposes of this regulation:

"Department" means the Delaware Department of Transportation.

"Digital Network" means any online-enabled application, software, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

"Director" means the Director or Chief Executive Officer of the Delaware Transit Corporation of the Department of Transportation.

"Division" means the Delaware Transit Corporation.

"Highway" means any road, lane, or street maintained by the State, or any municipality or county thereof, for use by the traveling public.

"Permit" means a formal authorization granted to a transportation network company, issued by the Delaware Department of Transportation, to operate a transportation network company's digital network or software application. The permit does not limit the number of transportation network company drivers and vehicles vetted by the transportation network company to operate on the digital network or software application.

"Permit Holder" means a transportation network company approved by the Delaware Department of Transportation to operate in State of Delaware.

"Personal Vehicle" means a motor vehicle that has been approved to be used by a transportation network company driver to perform rides arranged through a transportation network company digital network.

"Prearranged Ride" means the period of time that begins when a transportation network company driver accepts a requested ride through a digital network, continues while the transportation network company driver transports the rider in a personal vehicle, and ends when the rider departs from the personal vehicle.

"Rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network driver who provides prearranged rides to the rider in the transportation network company driver's personal vehicle between points chosen by the rider.

"Transportation Network Company (TNC) Driver" means an individual who uses a personal vehicle for hire, displaying the emblem or logo of the TNC they are operating for, to provide transportation services for passengers that are matched to that individual through a TNC's digital network, regardless of whether the individual is an employee or independent contractor for the TNC.

"Transportation Network Company (TNC) Services" means transportation of a rider between points chosen by the passenger and prearranged through the use of a TNC digital network or software application. TNC Services shall begin when a TNC driver accepts a request for transportation received through the approved TNC's digital network, continue while the TNC driver transports riders in the TNC driver's vehicle, and end when the rider exits the TNC driver's vehicle.

"Transportation Network Company (TNC) Vehicle" shall mean a personal vehicle that is used by a TNC Driver to provide transportation services requested through TNC's digital network or software application.

4.0 TNC responsibilities

4.1 To operate within the State of Delaware, a TNC must:

- 4.1.1 File with the Delaware Secretary of State Articles of Incorporation or Foreign Articles of Incorporation.
- 4.1.2 Meet all applicable business licensure requirements under the Delaware Code and Delaware Department of Revenue's regulations.
- 4.1.3 Obtain a permit authorizing the operation of TNC services in the State of Delaware.
- 4.1.4 Verify that every TNC driver authorized to operate on the TNC's digital network has the insurance coverage in accordance with Section 6.0 of this regulation.
- 4.1.5 Verify that each TNC driver is at least 18 years of age and has a valid driver license.
- 4.1.6 Advise each TNC driver that they are responsible for complying with applicable law, including Delaware's hands free cell phone law.
- 4.1.7 Advise each TNC driver that any person conducting business in the State of Delaware is required to obtain a Delaware business license from the Delaware Division of Revenue. In addition, each TNC driver may also be required to obtain a business license within each municipality the TNC driver provides TNC services in.
- 4.1.8 Undertake the necessary steps as described in Section 5.0 to ensure the safety of its riders.
- 4.1.9 Maintain the following information about each TNC driver:
 - 4.1.9.1 The TNC driver's driver license number and state of licensure;
 - 4.1.9.2 Documentation showing the TNC driver is authorized to operate in accordance with this regulation;
 - 4.1.9.3 The vehicle registration number, license plate number, and state of vehicle registration for each personal vehicle that the TNC driver uses for TNC Services; and
 - 4.1.9.4 Documentation showing that the vehicle has been inspected in accordance with this regulation.
- 4.1.10 Provide a customer support telephone number, email address, or hyperlink on its digital application or website for rider inquiries.
- 4.1.11 Prior to a rider entering a TNC driver's personal vehicle, make available to the rider the method by which the TNC calculates fares, the applicable rate being charged, and the option to receive an estimated fare.
- 4.1.12 Within 24 hours following the completion of a trip, cause to be transmitted an electronic receipt to the passenger that lists:
 - 4.1.12.1 The origin and destination of the trip;
 - 4.1.12.2 The total time and distance of the trip; and
 - 4.1.12.3 An itemization of the total fare paid, if any.
- 4.1.13 Comply with all applicable laws relating to accommodation of service animals.
- 4.1.14 Require all TNC drivers to display, at all times, while logged into the TNC's digital network, a sign, emblem, or logo that can sufficiently identify the vehicle as being associated with the TNC or its associated digital network.
- 4.1.15 Submit to the Division at the time of application and each year thereafter,
 - 4.1.15.1 An attestation that the requirements set forth in this regulation have been met, and
 - 4.1.15.2 Within 30 days of submitting its initial and annual attestation, the TNC shall also submit a permit fee of \$5000.00.

5.0 Rider and TNC Vehicle Safety

- 5.1 A TNC must obtain and review a driving history research report for each prospective TNC driver.
 - 5.1.1 A TNC must check, at least annually, the driving record of every TNC driver in order to verify that the TNC driver has not accrued any disqualifying moving violations as described in this regulation.
- 5.2 Prior to approving a TNC driver to provide TNC services, a TNC must conduct, or have a third party conduct, a local, state and national criminal background check for each prospective TNC driver that includes:
 - 5.2.1 Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and
 - 5.2.2 National Sex Offender Registry database.
- 5.3 A TNC must disqualify any prospective TNC driver whose background check or driving history reveals that:
 - 5.3.1 The individual is a match in the National Sex Offender Registry database;
 - 5.3.2 Within the last three years, the prospective TNC driver has been convicted of or has pled guilty to any of the following offenses, either under Delaware law or a substantially similar law of another state or of the United States:
 - 5.3.2.1 More than three moving violations;
 - 5.3.2.2 Driving while license is suspended or revoked under 21 Del.C. §2756;
 - 5.3.2.3 Attempting to flee or elude a police officer under 21 Del.C. §4103;
 - 5.3.2.4 Speeding 20 miles per hour or more over the posted speed limit;
 - 5.3.3 The prospective TNC driver has had his or her license suspended, revoked, or disqualified in this State or any other jurisdiction for moving violations during the preceding 3 years;
 - 5.3.4 The prospective TNC driver has ever been convicted of or has pled guilty to any of the following offenses, either under Delaware law or a substantially similar law of another state or of the United States:
 - 5.3.4.1 An offense classified as a Class A or violent Class B felony;
 - 5.3.4.2 Any crime against a child;
 - 5.3.4.3 Any crime constituting a felony sexual offense;
 - 5.3.4.4 Any crime constituting a felony homicide, including, but not limited to, murder, manslaughter and vehicular homicide;
 - 5.3.5 Within the last seven years, the prospective TNC driver has been convicted of or has pled guilty to any of the following offenses, either under Delaware law or a substantially similar law of another state or of the United States:
 - 5.3.5.1 Driving under the influence under 21 Del.C. §§4177, 4177J, 4177L, or 4177M;
 - 5.3.5.2 Any crime constituting a felony offense, including any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office;
 - 5.3.5.3 A hit and run offense under 21 Del.C., Ch. 42;
 - 5.3.5.4 Driving over 100 mph; or
 - 5.3.5.5 Reckless driving under 21 Del.C. §4175.
- 5.4 The indefinite review period described in subsection 5.3.4 shall only apply to prospective TNC drivers who reside in a state where a consumer reporting agency may disclose criminal offense convictions rendered at any time. For all other prospective TNC drivers, the review period for the offenses described in subsection 5.3.4 shall be equivalent to the maximum time period for which convictions may be reviewed under applicable state law.
- 5.5 A TNC must on an annual basis verify that:
 - 5.5.1 Each TNC driver's personal vehicle, authorized for providing TNC services, is registered in Delaware, and it required to pass a safety inspection for said registration; has a valid safety inspection certificate or sticker issued by the Delaware Division of Motor Vehicles; and
 - 5.5.2 Each TNC driver's personal vehicle with over 10,000 miles, authorized for providing TNC services, and that is registered in another state; has passed a motor vehicle safety inspection authorized or approved by a state governmental agency for personal vehicles; provided that, the initial safety inspection for a personal vehicle used by a new TNC driver may be conducted within 90 days of beginning TNC services.
 - 5.5.2.1 A copy of a TNC driver's personal vehicle safety inspection shall be kept in the vehicle at all times.
 - 5.5.2.2 At a minimum the TNC driver is responsible for maintaining his or her personal vehicle in accordance with safety inspection requirements set forth in 21 Del.C. §2143.
- 5.6 A TNC must implement a zero tolerance policy regarding a TNC driver's activities while accessing the TNC's digital network and/or providing TNC services.

- 5.6.1 The zero tolerance policy shall address the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC Services, and the TNC shall provide notice of this policy on its website, as well as procedures to report a complaint about a TNC driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the trip.
- 5.6.2 Upon receipt of such rider complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend such TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last, at a minimum, the duration of the investigation.
- 5.7 No personal vehicle shall be driven recklessly, or so as to endanger life, limb, or property. Extreme caution in the operation of motor vehicles shall be exercised under hazardous conditions, such as snow, ice, sleet, fog, mist, rain, dust, smoke, or any other condition, which adversely affects visibility or traction.
- 5.8 No personal vehicle shall be driven by a TNC driver while his/her ability or alertness is so impaired through fatigue, illness, or any other cause, as to make it unsafe for him/her to drive or to continue to drive a motor vehicle; nor shall he/she be required or knowingly be permitted to drive while in such condition, except in case of grave emergency where the hazard to passengers would be increased by observance of the foregoing regulation.
- 5.9 No TNC driver provide TNC services while under the influence of intoxicating liquor or narcotic or habit producing drugs, use drugs or drink while on duty any alcoholic liquor or beverage, nor shall he/she knowingly be permitted to do so.
- 5.10 No TNC or TNC driver shall knowingly permit the transportation of high explosives, acids, inflammable liquids, loaded guns or any other article which will endanger life or limb, in any personal vehicle used for providing TNC services. This provision shall not apply to firearms carried by police officers or by members of the armed forces while on duty or while en route to or from duty.
- 5.11 No TNC or TNC driver shall permit the transportation of express or parcel freight to such an extent as will interfere with the safety or reasonable comfort of riders.

6.0 Insurance Requirements

- 6.1 All TNCs, TNC drivers, and personal vehicles must be covered with insurance as specified in the regulation. It shall be unlawful and a violation of this regulation to lease or operate a personal vehicle that is not insured to the extent required herein.
- 6.2 The insurance coverage required by this regulation may be placed with an insurer licensed under Delaware law or with a surplus lines insurer eligible under Delaware law.
- 6.3 The insurance coverage required by this regulation may be satisfied by any combination of policies maintained by either a TNC or TNC driver.
- 6.4 The insurance requirements must be disclosed on each TNC's digital network and website.
- 6.5 Each TNC must file its insurance policies under seal with the Department as part of applying for a permit. The permit for the TNC will automatically expire upon expiration of the insurance policy, unless and until the TNC provides an updated insurance policy and applies to renew the permit.
- 6.6 A TNC's insurance shall provide coverage in the event a TNC driver maintains an insurance policy as described in this regulation and the TNC driver's policy has declined coverage, ceased to exist or has been cancelled.
- 6.7 TNC insurance requirements are defined by three service periods:
Period 1: Software Application open - waiting for a match.
Period 2: Match accepted - but passenger not yet picked up (i.e. driver is on his/her way to pick up the passenger).
Period 3: Passenger in the vehicle and until the passenger exits the vehicle.
- 6.7.1 Period 1 - TNCs shall provide primary insurance in the amount of at least fifty thousand dollars (\$50,000) for death and personal bodily injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and twenty-five thousand dollars (\$25,000) for property damage. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver; (b) TNC insurance maintained by the TNC that provides coverage if a driver does not maintain the required TNC insurance, or if the driver's TNC insurance ceases to exist or is cancelled; or (c) a combination of (a) and (b).
- 6.7.2 Periods 2 and 3 - TNCs must provide primary commercial liability insurance in the amount of one million dollars (\$1,000,000) per accident. TNCs may satisfy this requirement through: (a) TNC insurance

maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b).

6.7.3 Period 2 and 3 - TNCs shall also provide uninsured motorist coverage and underinsured motorist coverage in the minimum amount required under 18 Del.C. §3902. TNCs may satisfy this requirement through: (a) TNC insurance maintained by the driver, if the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; (b) TNC insurance maintained by the TNC; or (c) a combination of (a) and (b). The policy may also provide this coverage during any other time period, if requested by a participating driver relative to insurance maintained by the driver.

6.8 If involved in an accident while providing TNC Services:

6.8.1 The TNC and/or a TNC driver must provide proof of insurance information to the other party involved in the accident.

6.8.2 Notify the TNC and the Division of the accident within 30 days.

7.0 Additional Requirements

7.1 A TNC driver shall not solicit riders or service through a street hail or pick up, nor shall a TNC driver discharge a rider at a designated taxicab stand, no stopping or standing zone, or other area where a personal vehicle may not enter.

7.2 No TNC driver shall operate a personal vehicle within the State of Delaware, without first complying with all applicable business licensing requirements as determined by the Delaware Division of Revenue,

7.3 No TNC driver shall operate a vehicle that has not been approved for TNC services or is unaffiliated with a TNC while on the TNC's digital network.

7.4 Payment for TNC services shall only be made electronically via the TNC digital network. Cash payment shall not be accepted by the TNC driver.

7.5 Smoking is not permitted in a personal vehicle while providing TNC services.

7.6 The rider area of a TNC vehicle shall be clean, sanitary, and free of debris at all times.

8.0 Audit and Compliance

8.1 To maintain sufficient recordation of TNC operations in Delaware, the Division shall:

8.1.1 Maintain a file which includes, at a minimum:

8.1.1.1 A copy of the TNC's business license filed with the Delaware Division of Revenue if the TNC is required to obtain a business license.

8.1.1.2 A copy of the TNC's Certificate of Insurance for the policy required to be maintained under this regulation which identifies the Office of Public Carrier Regulation as a Certificate Holder.

8.1.1.3 A copy of the attestation provided by the TNC in accordance with Section 4.0.

8.2 To ensure a TNC's compliance with this regulation, the Division or its employees or duly authorized agents:

8.2.1 In response to a specific complaint or accident, may inspect those records held by the TNC whose review is specifically necessary for the investigation and resolution of the complaint or accident.

8.2.2 No more than quarterly, request that the TNC transmit to the Division records and information that the TNC is required to maintain in accordance with this regulation for up to fifty (50) TNC drivers; provided that, the TNC shall undertake best efforts not to share records and information about the same TNC driver during consecutive reporting periods.

8.2.2.1 Within ten (10) business days of receiving a request, the TNC shall transmit the records to the Division via a secure delivery method, which may include use of encryption security. If, after this initial review, the Division has a reasonable basis to conclude that the TNC is not in compliance with this regulation, the Division may, upon reasonable notice, conduct a supplemental audit of records and information for an additional selection of TNC drivers at a mutually agreed location.

8.3 Any records or information that the TNC discloses to the Division pursuant to this regulation are deemed to be confidential, regardless of whether the records or information are marked as such, and shall not be disclosed by the Division to a third party or another governmental entity without the TNC's express written permission, unless required to be disclosed by applicable law or court order.

8.3.1 In the event that a third party submits a request to the Division for a TNC's confidential information under the Delaware Freedom of Information Act, 29 Del.C. §10001, et seq. or any other law or a lawsuit is filed seeking the disclosure of the TNC's confidential information, the Division shall: (i) assert applicable exemptions to the request as set forth in the Delaware Freedom of Information Act, 29 Del.C. §10001, et seq., or other applicable law; and (ii) promptly notify the TNC that it has received a request and inform the

TNC of whether it will release the requested record(s) so that the TNC has an opportunity to prevent disclosure.

- 8.4 The Division shall destroy any records it receives from the TNC pursuant to subsection 9.2.2 within one hundred and eighty (180) days of receiving such records unless required by law to retain the records for a longer period or the record relates to a TNC driver who the Division has a reasonable basis to believe is not properly authorized to operate in Delaware.
- 8.5 The Division shall review the status of the TNC to ensure the TNC remains in good standing with the Delaware Division of Corporations.
- 8.6 A TNC shall keep and make available to the division, when required, records in accordance with this regulation for a period of at least four years.
- 8.7 Per 21 Del.C. §2144, at any time and notwithstanding the possession of current registration plates, as provided by this title, the Secretary, or any authorized agent of the Department or any police officer may, upon reasonable cause, require the owner or operator of a vehicle to stop and submit such vehicle and the equipment to such further inspection and test with reference thereto as may be appropriate. In the event such vehicle is found to be in an unsafe condition or lacking the required equipment or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy thereof to the Department. The notice shall require that such vehicle and its equipment be placed in safe condition and in proper repair and adjustment and/or that proper equipment be obtained, and that a certificate of inspection and approval for such vehicle be obtained within 5 days thereafter.
- 8.8 Within sixty (60) days of notification of audit results, the TNC may file with the Division a petition for redetermination of such assessments. Petitions for redetermination shall not be considered after sixty (60) days. Every petition for redetermination shall state specifically the reason(s) which the petitioner believes entitles the petitioner to such determination. It shall be the duty of the Director, within ninety (90) days after the receipt of the petition, to provide in writing to the petitioner, a determination affirming the original audit results or any changes that resulted from the petitioner's request for redetermination.

9.0 Fines and Permit Revocation

The Division may impose a fine or revoke a permit consistent with Delaware law, after providing to the TNC thirty (30) days' notice and the opportunity for a hearing, if a TNC fails to comply with the requirements of this regulation. Revocation of a permit would terminate a TNC's ability to operate its digital network within the State of Delaware.

10.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by the court of competent jurisdiction, said portions shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

19 DE Reg. 731 (02/01/16) (Prop.)