**CONCISE EXPLANATORY STATEMENT**

In accordance with the Administrative Procedures Act, Section §42-35-2.6 of the General Laws of Rhode Island, following is a concise explanatory statement:

**AGENCY: Division of Public Utilities and Carriers**
**RULE IDENTIFIER**: **815-RICR-50-10-5**
**RULE TITLE: Transportation of Passengers via Transportation Network Companies**
**REASON FOR RULEMAKING**: Consistent with a 2016 legislative mandate providing for the regulation of intrastate for-hire passenger transportation services provided by "Transportation Network Companies," enacted through R.I. Gen. Laws § 39-14.2, these rules and regulations are deemed by the Division to be necessary to assure adequate, safe and compliant service under this new Chapter of the Rhode Island General Laws. These rules and regulations further acknowledge that the Division is authorized to conduct investigations into complaints, conduct investigations initiated on its own, and to hold hearings and impose sanctions as it deems necessary to fulfill the proper administration of R.I. Gen. Laws § 39-14.2
**ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:** *(See Above)*
**TESTIMONY AND COMMENTS:**
The following is discussed in the Report and Order:
**-Level playing field**
Witnesses representing taxicab and PMV interests, uniformly spoke in favor of more TNC regulation in order to level the playing field in what they see as an unfair competitive landscape. Specifically, these speakers lamented that TNC companies and TNC drivers operate at a significant economic advantage over taxicabs and PMVs due to the fact that their insurance premiums are much lower and that TNC vehicle standards are far less stringent than they are for taxicabs and PMVs. As a result of these reduced overhead costs, TNCs are able to charge lower rates, which, according to these speakers, is devastating the taxicab and PMV industries in Rhode Island.
The Division recognizes that the advent of TNC services in Rhode Island has had a dramatic negative impact on the economic and competitive viability of the State's taxicab and PMV companies. The Division acknowledges that many of these companies have gone out of business or have been forced to significantly reduce their operations due to revenue losses directly related to TNCs. Unfortunately, the Division's authority to alleviate this hardship for taxicabs and PMV companies, through rulemaking, is severely limited. The inherent disparate operating costs for TNCs has its roots in Rhode Island statutory law, which cannot be altered through administrative regulations. The Legislature has approved the TNC model with a full understanding that such services would be provided with drivers' personal vehicles and that such services would be provided in direct competition with existing taxicabs and PMVs. Under this statutory law (R.I.G.L. Chapter 14.2), TNCs and their drivers have been exempted from many of the vehicle-related and driver-related regulations that apply to taxicabs and PMVs. This change in the traditional regulatory scheme for TNC services has created a transportation modality that places taxicabs and PMVs, which are still regulated under the traditional regulatory framework, at a competitive disadvantage. If this unbalanced competitive interaction between TNCs and taxicabs and PMVs is to be placed on a different trajectory, it will have to be accomplished through a legislative initiative – not through rulemaking.
That said, the Division wants to make it clear that it takes its regulatory responsibilities very seriously and will fully exercise its plenary authority within the limits of statutory law. Consistent with the Division's legislative charge under R.I.G.L. Chapter 14.2, the Division shall take all necessary steps to enforce the regulatory standards that do apply to TNCs and their drivers to ensure that the "playing field" between TNCs, taxicabs and PMVs remains as "level" as statutorily possible, and that the public is safely and adequately serviced by all transportation services.

**-Pre-hearing suspensions**
Uber and Lyft both maintain that it would unreasonable for the Division to impose an "immediate suspension" under Rule 5.3(K) without first providing the TNC driver with a hearing and opportunity to be heard. The Division disagrees. Under R.I.G.L. §39-14.2-3, the Division is authorized to promulgate rules

and regulations that the Division deems necessary to maximize TNC passenger/rider safety. The Division strongly maintains that without the ability to enforce an immediate suspension, when circumstances warrant, the Division's ability to assure safety, in real-time, is substantially jeopardized. Rule 5.3(K) provides that in such cases the Division will endeavor to schedule and conduct a hearing "as soon as possible to gauge the appropriateness of the immediate suspension and to determine if the suspension shall continue." The Division finds this post-suspension hearing to be a sufficient balance between passenger safety and driver due process.
Related to this issue, Lyft also sought an amendment to Rule 5.9(C) to guarantee that a TNC or TNC driver could only be suspended after a hearing and opportunity to be heard. However, for the same reason stated above, the Division finds a post-suspension hearing to be a sufficient balance between the need to guarantee passenger safety and the driver's due process rights.

**-Driver time verification**
Lyft and Uber have also objected to the requirement contained in Rule 5.5(M) that requires TNCs to inquire whether its drivers have been driving for another TNC(s) when they connect to the TNC's digital network to assist in enforcing maximum daily driving time restrictions. Lyft contends that because it cannot verify the accuracy of the information, it should not have to pose the question. Uber has argued that this requirement is outside the scope of statutory law and would further constitute an invasion of the drivers' privacy.
While the Division agrees that verification cannot be made by the TNC, the importance of asking the question is twofold. First, it places the driver on notice that there is a daily limitation on how many hours the driver may drive for a TNC without rest. Second, it establishes a record in the event that driver fatigue later results in an accident, which may subsequently form the basis of a complaint and regulatory action regarding that driver. The Division also finds that making such inquiry to the drivers is neither a violation of the drivers' privacy rights nor inconsistent with the authority conferred under R.I.G.L. §39-14.2-3. Accordingly, the Division shall retain this Rule 5.5(M) requirement.

**-Record keeping and reporting on complaints**
Uber has expressed concern with the requirements contained in Rule 5.5(K) that require TNCs to keep records of complaints made by riders against drivers. Uber has also objected to reporting such complaints to the Division.
Addressing the second concern first, Rule 5.5(K) does not require TNCs to report all complaints to the Division. The only requirement for such reporting is related to "zero-tolerance" complaints, pursuant to Rule 5.5(H)(1). Under Rule 5.5(M), TNCs are simply required to maintain records of complaints against drivers for a period of at least two years.
With respect to the requirement that the records be maintained by TNCs, the Division finds that complaint record keeping against drivers is essential in the context of investigating complaints made to the Division by riders claiming mistreatment by drivers. Patterns of misbehavior that result in repeated complaints against drivers cannot be ignored in cases where the fitness of a driver is called into question by a rider(s). The Division shall retain this requirement in the rules.

**-Record keeping on log-in and log-out times**
Uber has also expressed concern with the requirement contained in Rule 5.5(K) that mandates that TNCs maintain all driver 'logs into' and 'log out of' and related records. Uber contends that maintaining such records "far exceeds any step necessary to ensure [the] safety of drivers and riders…" Uber also contends that the maintenance of these records would constitute an administrative burden and violate the drivers' privacy rights. However, the Division finds that this information may be required and necessary in cases where the Division is conducting an investigating into a complaint. The Division also believes that TNCs will have ready access to such information through their own record-keeping efforts and, as such, finds that such record- keeping should not be unnecessarily burdensome on the TNCs.

The Independent Insurance Agents have argued that in the interest of the public's financial safety, TNCs should be compelled to provide the Division with a "Certificate of Insurance" copy in order to make policy information readily available to the public. The Division agrees. Moreover, the Division will require TNCs to provide the Division with a copy of the entire insurance policy to ensure that each TNC is operating in full compliance with the requirements contained in R.I.G.L. §39-14.2-14. TNCs shall also require their

insurance providers to notify the Division in the event the prescribed insurance protections lapse. This change has been incorporated into the Division's final TNC Rules (specifically Part 5.7(A))

**-Smoking in TNC vehicles**
Sentinel Limousine has asserted that Rule 5.3(H), which permits a TNC driver to allow passengers to smoke in their vehicle, is "unlawful" under Rhode Island Department of Health rules and regulations ("RIDOH Rules"). However, after reviewing the applicable RIDOH Rules, the Division must question whether these rules apply to the personal vehicles used by TNC drivers. Based on the definitions contained in the RIDOH Rules, the Division finds that such personal vehicles would not fall into the rubric of "public places," which is a necessary criterion for applicability. The only sub-category of "public place" that comes close are "public transportation facilities," which includes "buses and taxicabs, under the authority of the state of Rhode Island…." However, the vehicles used by TNC drivers do not come under the authority of the state of Rhode Island. There are personal license plates on these vehicles, not "public" plates like on buses and taxicabs. Indeed, R.I.G.L. §39-14.2-1(12) provides that TNC services shall not be considered to be akin to jitney, taxicab, public motor vehicle or other common carrier services. Additional evidence of non-public treatment is also evident from the fact that the State is not requiring special licensing or permitting for TNC drivers or the vehicles used to provide TNC services. Further support for this non-public treatment is apparent from the fact that the prohibition against smoking in "places of employment," also contained in the RIDOH Rules, would similarly not apply. Under R.I.G.L. §39-14.2-16, the General Assembly has made it clear that TNC drivers are not employees of the TNC. They are independent contractors. Based on the above observations, the Division does not believe that the RIDOH Rules apply to vehicles used to provide TNC services. Moreover, as the option for passenger smoking in the vehicle is controlled by the vehicle's driver, and that non-smoking TNC riders can opt out of riding in vehicles that permit smoking, the Division see little potential for conflict over this issue.

**-State vehicle inspections**
Lyft has taken the position that Part 5.3(B)(3) ought to be amended to avoid any confusion regarding the use of uninspected vehicles from states that do not require such inspections. However, the Division finds no such potential for confusion under Part 5.3(B)(3). Inasmuch as the Rule conforms exactly to the relevant statutory provision and because the Rule (and statute) makes clear that the safety inspection requirement is linked to the inspection requirements of the state where the vehicle is registered, there can be no confusion. The Division therefore finds Lyft's requested amendment to be unnecessary.

**-TNC vehicle restrictions on passengers and baggage**
Lyft contends that Part 5.3(J) should be amended to remove the provision that prohibits the operation of a vehicle "when it is so loaded or when there is in the front seat such number of persons as to obstruct the view of the driver to the front or sides, or to interfere with his/her control over the vehicle." Instead, Lyft suggests a prohibition limited only to the passenger carrying capacity of the vehicle. The Division rejects this proposed amendment. The safety-related intent of this rule is obvious and eminently reasonable.

**-Grounds for suspension/revocation/fines**
Both Lyft and Uber have voiced concerns that Part 5.3(K) authorizes what they consider to be unreasonably broad discretion for fining and suspending TNC drivers. Also related to this issue, Lyft seeks an amendment to Part 5.9(D) to limit the Division's ability to immediately suspend a TNC driver for his or her failure to appear for a duly noticed scheduled hearing. Specifically, Lyft contends that the Division's authority to suspend a TNC driver should only be exercised for TNC drivers who "repeatedly" fail to appear for a hearing; and even then, only after the driver "received appropriate notice of hearing, and failed to provide good cause for his or her inability to appear…. following final notice of a hearing." Uber also expresses concerns with the penalty provisions of Part 5.9(B). Specifically, Uber contends that the "discretionary thresholds for [suspending or] revoking a TNC permit or a driver's right to drive" are "extreme and disproportionate." Uber argues that these potential penalties will discourage TNCs from investing in Rhode Island. Uber further argues that the Division must "impose functional parameters on what violations of applicable rules and regulations would implicate TNCs' licenses, and which violations would carry a lesser penalty." Uber recommends that revocation should only be warranted in cases of "intentional or reckless violations."

Uber also opposes the provision in Part 5.9(C) that authorizes sanctions for TNCs and drivers who fail "to adhere to and comply with any of these rules and/or any applicable state statutes…" Uber maintains that sanctions should only be imposed for "repeated or substantial violations."

First, with respect to Lyft's concerns about immediate suspensions for drivers who failure to appear for a hearing, the Division finds this recommendation to be completely devoid of merit. On the one hand, Lyft is arguing that a TNC driver should never be suspended without a hearing first. On the other hand, Lyft is arguing that its drivers should not be suspended for failing to appear for a duly noticed hearing. Clearly, these positions are in conflict. The Division finds that protecting the public from TNC drivers who are suspected of violating the law or who pose a potential immediate danger to the riding public is paramount; that objective cannot be jeopardized by allowing drivers to evade regulation by failing to show up for a duly noticed hearing. If it is determined that the driver had a reasonable excuse for not attending a hearing, the Division may certainly grant the appropriate relief.

As it relates to the Division's discretion to impose sanctions for any violations of the law, the Division relies on R.I.G.L. §39-14.2-22(a). Under this law, the Division "may impose civil sanctions upon any TNC or TNC operator subject to the applicable provisions of this chapter and/or any rules and regulations promulgated under it, who or that shall knowingly or willfully cause to be done any act prohibited by applicable sections of this chapter, or who or that shall be guilty of any violation of this chapter or the rules and regulations. The sanctions may include a civil penalty (fine) or the suspension or revocation of the TNC's license." R.I.G.L. §39-14.2-22(c) further provides that "[n]othing in this section shall be construed to limit the division's authority to fine TNCs or TNC drivers or suspend or revoke TNC licenses." With respect to the Division's proposed rules, the only limitation is that the rules be "consistent" with the statutory law and be, in the opinion of the Division, "necessary to assure adequate, safe, and compliant service…" (R.I.G.L. §39-14.2-3). Predicated on this broad legislative grant of regulatory authority, the Division shall not accept any recommendations that would effectively limit or impede the Division's legislative charge to assure adequate, safe and compliant service. Accordingly, the Division must reject Lyft's and Uber's proposed amendments to Parts 5.3(K) and 5.9(B), (C) and (D).

**-Limit on records subject to inspection**

Lyft contends that the Division should limit the number of records it may inspect under its audit powers to 25. However, the Division is not inclined to voluntarily limit the authority it is granted under R.I.G.L. §39-14.2-3 through its TNC Rules. Pursuant to statutory law, the Division "shall have the right to visually inspect a sample of records that the TNC is required to maintain." The Division finds no regulatory benefit to interpret "a sample" to mean just 25 records. Accordingly, the Division must reject Lyft's proposed amendment to Part 5.8(A).

**-Notice of hearings**

Lyft has requested that the Division amend Part 5.11(A)(1) to include language "that will ensure that parties receive appropriate notice of a hearing." Specifically, Lyft urges the Division to remove a provision that would allow a Division hearing officer to reduce the prescribed 10-day notice requirement if he or she "determines that less notice is reasonable."

Uber has similarly requested that the Division amend Part 5.11(A)(1) to require "that the Division deliver notice by traditional means, and not require partners [drivers] to submit to potential notice by publication alone."

With respect to Lyft's comments, unfortunately, it appears that Lyft has misconstrued the Division's intentions behind this provision. The latitude granted the hearing officer is to primarily allow for a more expeditious hearing if requested by a TNC or TNC driver. Presumably, this would be especially important to a TNC driver in cases where the Division has imposed an immediate suspension – pending a hearing. In order to preserve this latitude, the Division must reject Lyft's recommendation to remove this language. Uber's concerns are also unfounded. The Division's use of a notice by "publication" would represent an "additional" form of notice – not an alternative form of notice. The Division would always provide a hearing notice to a TNC and/or TNC driver by first class mail or personal service.

**. Zero-tolerance suspensions**

Both Lyft and Uber have expressed concerns with the requirement in Part 5.5(H)(1) that requires a TNC to immediately suspend a TNC's driver's access to the digital network upon receipt of a complaint from a

TNC rider that alleges that the driver was influenced by drugs or alcohol while driving. The rule requires the suspension to remain in effect until the TNC completes its investigation into the complaint. The TNC is also required to provide the Division with a copy of the complaint and a report relative to its investigatory findings and action. Lyft contends that discerning whether the feedback it receives from its rider rises to the level of a complaint is difficult. Lyft also maintains that providing the Division with copies of the complaint and its investigatory findings may raise legal privacy issues. Lyft requests clarification from the Division on the meanings of "complaint" and "report," as used in the rule.
Uber contends that because the Division is already authorized to conduct investigations into complaints, and conduct hearings when necessary, there "is simply no need for additional reporting of complaints." Uber also asserts that its technology better facilitates the removal of problem drivers. Additionally, Uber argues that this reporting requirement would add a "substantial burden without proportionate gains in favor of safety or public welfare."
The Division finds that minimal clarification is required in this matter. The term "complaint," as used in the rule, means that if the rider communicates dissatisfaction with the ride based on the rider's perception that the driver was behaving in an intoxicated manner – that constitutes a complaint within the meaning of the rule. The term "report," as used in the rule, denotes a written document from the TNC that describes what investigation it conducted in response to the complaint and what findings and action resulted therefrom. Further, in response to Lyft's concerns about privacy, and Uber's concerns about the burden of reporting complaints, the Division finds that the "zero tolerance" nature of this type of complaint demands a prompt and reviewable response from the TNC. Part 5.5(H)(1) is designed to ensure that prompt response.

**-Operating a TNC without a permit**
Uber has questioned why Part 5.5(A) does not provide reference to R.I.G.L. §39-14.2-5(a), which authorizes TNCs that were operating in Rhode Island before November 3, 2016 to continue to operate "…until the division creates a permit process… and provides a reasonable period in which to apply and obtain a permit." In response to Uber's concern, the Division finds that the need to reference this statutory provision in the TNC Rules is unnecessary. The statutory provision in issue is known to Lyft and Uber (the only two TNCs that were operating in Rhode Island on November 3, 2016) and the Division; there is no compelling reason to repeat it in the TNC Rules.

**-Background check mechanics**
Uber expressed concern with Part 5.5(B)(3)'s requirement that a TNC applicant identify the entity that conducts its background checks, provide details on the methodology to be used in conducting background checks and provide details on the information required to be provided by prospective drivers in furtherance of conducting background checks. Uber believes that providing such information exceeds the relevant statutory requirements and could implicate potential trade secrets. The Division, however, does not share this concern. The importance of guaranteeing the integrity and efficaciousness of TNC driver background checks is of paramount interest to the Division. The Division finds that the prescribed regulatory requirements contained Part 5.5(B)(3) will better assist the Division in establishing a meaningful level of confidence in the accuracy of the non-biometric background checks conducted by TNCs. The Division maintains that this additional layer of scrutiny is required in order for the Division to carry out its core mission to assure adequate, safe and compliant TNC services in Rhode Island.

**CHANGE TO TEXT OF THE RULE**:

In response to industry Testimony Parts 5.4(A)(1), 5.4(B)(5) and 5.5(B)(4) have been amended to remove a proposed mandate of notification to and written authorization from the vehicle owner/insured when such person is not the prospective TNC driver.

Part 5(3)(E) In view of the apparent efforts TNCs unilaterally make to protect against driver fatigue, the Division agrees to limit the prohibition to the amount of time drivers spend providing prearranged rides

Part 5(4)(C) – Changed in response to industry testimony in opposition to the proposed requirement of TNC Companies filing Daily Driver lists, amended to a Weekly Drivers list requirement.

Part 5.7 (A) The Independent Insurance Agents have argued that in the interest of the public's financial safety, TNCs should be compelled to provide the Division with a "Certificate of Insurance" copy in order to make policy information readily available to the public. The Division agrees. Moreover, the Division will require TNCs to provide the Division with a copy of the entire insurance policy to ensure that each TNC is operating in full compliance with the requirements contained in R.I.G.L. §39-14.2-14. TNCs shall also require their insurance providers to notify the Division in the event the prescribed insurance protections lapse.

Part 5.3(I) Lyft has suggested an amendment to Part 5.3(I) to make it clear that all TNC insurance requirements apply only when a TNC driver is engaged in TNC services. The Division has incorporated this change.

Part 5.6(D)(4)Lyft has urged the Division to strike Part 5.6(D)(4), which requires a TNC-issued receipt to include a warning to riders that there is no insurance protection in place when riding with a TNC driver who is not providing services through the TNC's digital network. Lyft contends that that there "does not appear to be real utility in providing this information." The Division agrees. Upon further consideration, the Division is inclined to accept Lyft's argument that such notice is not likely to bring about the desired result of discouraging non-network services; even assuming that there is a de facto need to provide the notice in the first place.

Part 5.7(B)(1) Lyft has also recommended that the Division amend part 5.7(B)(1) to strike coverage requirements that would extend insurance responsibilities for TNCs. Lyft argues that not only is this requirement inconsistent with statutory law, it would also be "extremely burdensome" for the Company. In view of the Division's decision to excise the notice requirement to vehicle owners/insureds that was originally contained in Parts 5.4(A)(1), 5.4(B)(5) and 5.5(B)(4), supra, the Division finds the "hold-harmless" provisions of Part 5.7(B) to be unnecessary. Accordingly, the Division will strike Part 5.7(B) from the final TNC Rules.

Dynamic Pricing Provisions- addition of Part 5.6(E) - During the hearing, the Motor Carrier Section indicated that it wished to add an additional provision to the TNC Rules, which corresponds to a statutory requirement contained in R.I.G.L. §39-14.2-3(b). The new rule language, offered as Part 5.6(E) and which substantially parallels the statute, reads as follows: All TNCs shall establish and implement a written policy capping dynamic pricing during disasters and relevant states of emergency and make this policy available on its website and in its web-application. The policy shall also be filed with the Division at the time the TNC applies for its initial TNC Permit, and re-filed with the Division upon any change/amendment to the policy.
In its post-hearing written comments, Uber requested that the Division narrow proposed Part 5.6(E) to "declared" disasters and states of emergency to avoid potential ambiguity about what situations it might include. Upon review of the actual statutory provision contained in R.I.G.L. §39-14.2-3(b), the Division is inclined to reject Uber's recommendation to narrow the rule. Under R.I.G.L. §39-14.2-3(b), the legislature has applied the requirement for a written policy capping dynamic pricing to the periods "during disasters and relevant states of emergency…." This is the same exact language that appears in proposed Part 5.6(E). As the Division is uncertain as to the meaning and likelihood of a so-called "declared" disaster, the Division finds that proposed Part 5.6(E) is more consistent with the legislative mandate. Accordingly, the Division shall adopt this Rule 5.6(E) requirement. This new section 5.6(E) has been incorporated into the Division's final TNC Rules.

**REGULATORY ANALYSIS**:
In the development of the proposed adoption, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. This regulation has been reviewed by the Office of Regulatory Reform.

**DATE THE FINAL RULE WAS SIGNED BY THE AGENCY HEAD**:
DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 18, 2017.