Statement of Emergency

601 KAR 1:112E

This emergency administrative regulation establishes the requirements for a Transportation Network Company to apply for and maintain operating authority in the Commonwealth. The current lack of oversight of businesses that use web-related mobile applications to connect drivers using their personal vehicles with potential passengers has created a public safety concern. An increasing number of people in the Commonwealth rely on the transportation network companies and their drivers as a means of transportation. This emergency administrative regulation has been promulgated to address an imminent risk to public safety caused by a lack of oversight of businesses on which the public increasingly relies for transportation. It will include the requirement of a criminal background check for TNC drivers, and will ensure that safety inspections are performed on vehicles used to transport the public. In this emergency regulation, regulatory requirements are established for the operation of a Transportation Network Company with an emphasis on public safety.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

MICHAEL W. HANCOCK, Secretary
TRANSPORTATION CABINET

Department of Vehicle Regulation
Division of Motor Carriers

(New Emergency Administrative Regulation)

601 KAR 1:112E. Transportation Network Company.

RELATES TO: KRS 17.500, 61.878(1)(c), 186.281, 189.290, 189A.010, 281.600, 281.620,
532.060

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of
Vehicle Regulation ("department") to promulgate administrative regulations to regulate and
establish requirements for the safe operation of motor vehicles and motor carriers. This
administrative regulation establishes the requirements for a transportation network company
("TNC") to operate in Kentucky.

Section 1. Definitions. (1) "Mobile application" means an application or a computer
program designed to run on a smartphone, tablet computer, or other mobile device that is used by a
TNC to connect TNC drivers with potential passengers.

(2) "Operating Authority" means the authority granted to operate as a TNC in the
Commonwealth through the application process with the department.

(3) "Prearranged ride" means the period of time that begins at the time a TNC driver
accepts a requested ride through a TNC's digital network or mobile application, continues while the
driver transports the rider in a personal vehicle, and ends at the time the rider departs from the vehicle.

(4) "Pre-trip acceptance liability policy" means the TNC insurance liability coverage that may apply if a TNC driver is logged into a TNC mobile application and available to receive requests for TNC services if the driver has not accepted a request, is not in route to pick up a passenger, or is not transporting a passenger.

(5) "Street hail" means a request for service made by a potential passenger by using hand gestures or verbal statements.

(6) "Transportation Network Company" ("TNC") means an entity operating in Kentucky as a motor carrier that uses a digital network or mobile application service to connect passengers to TNC drivers providing transportation network company services.

(7) "Transportation Network Company driver" ("TNC driver") means an individual who operates a motor vehicle that is owned or leased by the individual and used to provide transportation network company services.

(8) "Transportation Network Company Services" ("TNC Services") means the transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application.

Section 2. Application. (1) A TNC shall register as a business with the Kentucky Secretary of State unless the applicant is a sole proprietor.

(2) A TNC shall submit a completed Transportation Network Company Authority Application, TC 95-627 and an application fee pursuant to KRS 281.620 to the Division of Motor Carriers.

(3) An application may be submitted electronically, by mail, or by hand delivery.
(4) A TNC shall submit an annual renewal fee to the Division of Motor Carriers pursuant to KRS 281.650.

(5) Operating authority obtained pursuant to this section is not transferable.

(6) The following documents shall be submitted with an application and thereafter with each annual renewal:

(a) An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in Section 5 of this administrative regulation shall be completed prior to allowing the TNC driver to accept rides on the digital network; and

(b) One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(7) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance. (1) While engaged in a prearranged ride a TNC shall have primary liability insurance coverage of no less than $1,000,000 per occurrence for damages arising out of claims for bodily injury, death, or destruction of property.

(2) Primary liability insurance coverage during a prearranged ride shall include:

(a) Basic reparation benefits as defined in KRS 304.39-020(2);

(b) Uninsured vehicle coverage as established in KRS 304.20-020; and

(c) Underinsured vehicle coverage as established in KRS 304.39-320.

(3) While a TNC driver is logged into a TNC mobile application but prior to accepting a prearranged ride a TNC shall maintain pre-trip acceptance liability insurance coverage for TNC drivers in accordance with subsection (4) of this section if:
(a) A TNC driver is logged into a TNC mobile application and is available to receive requests for transportation services from a passenger through the mobile application;

(b) A TNC driver has not accepted a request for TNC services through the mobile application;

(c) A TNC driver is not in route to pick up a passenger; and

(d) A TNC driver is not transporting a passenger to his or her destination.

(4) A TNC shall maintain a pre-trip acceptance liability insurance policy of no less than $50,000 for death and personal injury per person, $100,000 dollars for death and personal injury per incident, and $25,000 dollars for property damage during the periods of time established in subsection (3). This policy shall provide coverage in the event the driver's personal motor vehicle liability policy does not provide coverage for an incident.

(5) The insurance coverage required by subsections (1) and (3) may be provided either by an insurer licensed pursuant to KRS 304.3-070 or with a surplus lines insurer eligible under KRS 304.10-010 through KRS 304.10-070.

(6) The insurance coverage prior to a prearranged ride shall include basic reparation benefits pursuant to KRS 304.39-040.

(7) A certificate of liability insurance that meets the required insurance coverage under subsection (3) on a standard Acord form shall be filed with the department for each policy.

(8) A TNC shall require TNC drivers to maintain a personal motor vehicle liability insurance policy that provides coverage in accordance with KRS 304.39 for the vehicle and TNC driver if the driver is not logged into the TNC's digital network or mobile application or engaged in a prearranged ride.
Section 4. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by
the department to operate by submitting a completed Transportation Network Company Authority
Application, TC 95-627 and the minimum annual license fee pursuant to KRS 186.281(3) at the
time of the application process established in Section 2.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers
shall be subject to an annual safety inspection by an automotive technician who holds a valid
automotive service excellence (A.S.E.) certification.

(3) A TNC shall collect and maintain information on the vehicles being used to provide
service by TNC drivers including:

(a) The VIN and license plate number; and

(b) Records of official vehicle inspections by the automotive technician.

(4) Records of vehicle inspection and VIN and license plate numbers shall be kept by the
TNC for a minimum of three (3) years from the date of inspection and the TNC shall make the
records available to the department or its representative on request. The information and records
may be submitted as proprietary information pursuant to KRS 61.878(1)(c)1.

(5)(a) A vehicle used to provide TNC services shall be readily identifiable by the
following:

1. A decal affixed to the front windshield on the passenger side of the vehicle provided by
the department to the TNC to distribute to qualified vehicles; and

2. An optional decal or trade dress that is company specific and issued by the TNC.

(b) A vehicle fee receipt card that shall be presented on inspection.
(6) A driver who is no longer providing TNC service shall return the department issued decal and the vehicle fee receipt card to the TNC who shall return it to the Division of Motor Carriers.

(7) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:
   (a) Have at least four (4) doors;
   (b) Be designed to carry no more than eight (8) persons including the driver; and
   (c) Be no more than ten (10) model years old with an odometer reading of less than 200,000 miles.

Section 5. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services. The background check shall be updated every three (3) years that a driver provides TNC services.

(2) The TNC shall submit verification of the background check via an affidavit to the department pursuant to Section 2 of this administrative regulation. The national criminal background check shall be either:
   (a) A comprehensive background check using fingerprint analysis; or
   (b) An individual analysis using a social security number.

(3) The analysis required in subsection (1) shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:
   (a) Is at least twenty-one (21) years old and the registered owner of the vehicle;
   (b) Has a valid state-issued driver license and vehicle registration;
   (c) Has personal automobile insurance coverage as established in Section 3;
   (d) Has completed an annual driver safety training course approved by the department;
(e) Provides a written or electronic affirmation that he or she is fit and able to operate a
motor vehicle to provide TNC services;

(f) Is in compliance with applicable state law and local ordinances.

(5) A current list of drivers shall be kept on file with the TNC and made available for
inspection by the department on request. A TNC driver's electronic file shall include the following:

(a) A current driving history record to be updated annually;

(b) The current address of the driver;

(c) A copy of a valid state-issued driver's license and the operator's license number;

(d) Proof of his or her personal automobile insurance coverage;

(e) Proof of personal vehicle registration;

(f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate
a motor vehicle to provide TNC services;

(g) Verification of the criminal background check required in subsection (1);

(h) Records indicating whether a driver has refused to accept a prearranged ride and the
reason for doing so; and

(i) Records of complaints against a driver.

(6) No person shall be a TNC driver whose driving history record shows a conviction of
driving under the influence of alcohol or drugs in the previous five (5) years before application to
become a driver.

(7) A TNC driver shall not provide transportation services if he or she has been convicted
of one (1) of the following offenses:

(a) A Class A felony:

(b) A Class B felony:
(c) An offense involving unlawful sexual behavior as established in KRS 17.500;
(d) Leaving the scene of a traffic accident;
(e) Causing a fatality or fatalities through negligent operation of a vehicle; or
(f) Using a vehicle in the commission of a felony involving the manufacture or distribution
of a controlled substance; and

(g) Four (4) moving violations in the past three (3) years or one (1) major violation in the
past three (3) years including:

1. Driving on a suspended license;
2. Speeding in excess of twenty-six (26) miles per hour; or
3. Reckless driving as established in KRS 189.290.

(8) A person who has been convicted in another jurisdiction of an offense comparable to
one of the offenses in subsections (6) and (7) shall not serve as a TNC driver.

Section 6. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based
on the following:

(a) Destination;
(b) Race or color;
(c) National origin;
(e) Religious belief or affiliation;
(f) Sex and sexual orientation or identity;
(g) Disability;
(h) Age; and
(i) The presence of a passenger's service animal.
(2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1).

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1). A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

(a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;

(b) Accepting a "street hail" by a potential rider;

(c) Directly soliciting a passenger or responding to a direct solicitation;

(d) Providing services for cash.

(6) A driver shall immediately report the following to their affiliated TNC:

(a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal where the refusal occurred after the ride had been accepted by the driver;

(b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or

(c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its website and mobile device application software:
(a) A schedule of its rates or the method used to calculate rates and peak pricing;
(b) Information indicating a zero tolerance policy related to drug and alcohol usage by its
drivers while performing TNC services and a passenger support telephone number or email
address where a suspected violation may be immediately reported;
(8) A TNC shall provide the following information to a person requesting a ride through its
mobile application:
(a) A statement indicating that cash shall not be accepted in payment for the transportation
service and that the acceptance of cash may invalidate insurance coverage in the event of an
accident;
(b) The expected cost of the trip if requested by a potential passenger;
(c) The first name and a photograph of the TNC driver accepting the ride request;
(d) A photograph or description, including license plate number, of the vehicle that will be
used for the ride.
(9) At the completion of the prearranged ride a TNC shall electronically provide the
passenger with a receipt showing:
(a) The point of origin and destination of the ride;
(b) The duration and distance of the ride;
(c) The cost of the ride broken down into base fare and additional charges; and
(d) The driver’s first name.
(10) Hours of service for a TNC driver shall be the same as established in KRS 281.730(1).

Section 7. Terms of Service. (1) The TNC shall not require a hold harmless or
indemnification clause in the terms of service for a TNC driver or passenger that may be used to
evade the insurance requirements of this administrative regulation and KRS Chapter 281.
(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

(a) The TNC obtains the user's consent to disclose personally identifiable information;

(b) The disclosure is required to comply with a legal obligation; or

(c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver in order to facilitate correct identification of the passenger by the driver, or to facilitate communication between the passenger and the driver.

Section 8. Penalties. (1) Penalties for a violation of the provisions of this administrative regulation shall be assessed pursuant to KRS 281.990.

(2) A TNC shall be responsible for an affiliated TNC driver's failure to comply with these administrative regulations if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

Section 9. Incorporation by Reference. (1) "Transportation Network Company Authority Application," TC 95-627, November, 2014;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622. This material may also be obtained by accessing the department's Web site at http://transportation.ky.gov/.
APPROVED:

Michael W. Hancock, P. E.
Secretary
Kentucky Transportation Cabinet

12/4/14
Date

APPROVED:

Rodney Kuhl
Commissioner
Department of Vehicle Regulation

12-4-14
Date

APPROVED AS TO FORM
AND LEGALITY:

D. Ann DAngelo
Office of Legal Services
Kentucky Transportation Cabinet

Dec. 4, 2014
Date
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann D'Angelo  
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Office of Legal Services  
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(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation establishes the requirements for a transportation network company to operate in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to address the growing use of online mobile applications to connect riders with vehicles for hire.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 281.600 authorizes the cabinet to promulgate administrative regulations to establish requirements for the safe operation of motor vehicles and motor carriers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements for the safe operation of a transportation network company.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.

(a) How the amendment will change this existing administrative regulation: n/a
(b) The necessity of the amendment to this administrative regulation: n/a
(c) How the amendment conforms to the content of the authorizing statutes: n/a
(d) How the amendment will assist in the effective administration of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation
will affect companies desiring to operate as a transportation network company and the cabinet's Division of Motor Carriers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
A business desiring to operating as a transportation network company will be required to submit an application and attachments to the department; ensure that a criminal background check is performed for each driver; ensure that a vehicle safety check has been performed on vehicles used to transport the public; and maintain up to date files on drivers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A transportation network company applying to operate in Kentucky will submit a fee pursuant to KRS 281.620; an annual renewal fee pursuant to KRS 281.650, and an annual license fee pursuant to KRS 186.281(3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If compliant with the requirements of this regulation, businesses desiring to operate as transportation network companies will be granted operating authority.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation:

(a) Initially: Approximately $7,500

(b) On a continuing basis: Approximately $1,000 annually

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: road funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees shall be pursuant to statute.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.
(9) TIERING: Is tiering applied? (Explain why or why not)  No. Tiering is not applied.
All TNC applications for operating authority will be handled the same.
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 601 KAR 1:112E
Contact Person: Ann DAngelo
Phone number: 564-7650

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Division of Motor Carriers, Department of Vehicle Regulation

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 281.600

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Initial programming fees of approximately $7,500 will affect the expenditures and revenue of the Division of Motor Carriers at KYTC.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation may generate approximate $9,000 annually. The amount is dependant on the number of TNC vehicles qualified under the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Approximately $7,500.

(d) How much will it cost to administer this program for subsequent years? Approximately $1,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:
SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

601 KAR 1:112E

1. TC Form 95-627 "Transportation Network Company Authority Application" is a nine (9) page form dated November, 2014 that must be completed in order to obtain a permit to operate a transportation network company.

Total pages: 9