

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement new legislation regarding third-party food delivery service workers.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00AM on Thursday, March 31, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-558-8656.
 - Meeting ID: 856 7931 7475
- To participate in the public hearing via videoconference, please follow the online link:
 - <https://us02web.zoom.us/j/85679317475?pwd=RTRkcHorQXEyb1NleTNJWmo0a292dz09>
 - Meeting ID: 856 7931 7475

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on March 31. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before March 31, 2022.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Wednesday, March 30, 2022.

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 <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-1507(c) of the New York City Administrative Code, enacted by Local Law 114 of 2021, authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in DCWP’s regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP 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 of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement Local Law 113 of 2021, Local Law 114 of 2021, Local Law 115 of 2021, Local Law 116 of 2021, and Local Law 118 of 2021, regarding third-party service workers. The new rules will implement new protections for food delivery workers ensuring they can set limitations on the distances and routes of trips, that they are given information about trips before accepting, are provided with delivery bags, and are paid all that they are entitled to.

Specifically, these proposed new rules would:

- Clarify the scope of covered delivery and courier services under Chapter 15 of Title 20 of the Administrative Code.
- Clarify the scope of the retaliation provision protecting food delivery workers.
- Clarify the procedures for provision of a notice of rights to food delivery workers.
- Require third-party food delivery services and third-party courier services to maintain and produce certain records.
- Clarify the requirements for allowing food delivery workers to set limits on route distances, bridges, and tunnels that they will use.
- Identify the bridges and tunnels covered by Section 20-1521 of the Administrative Code.
- Clarify the requirements for payments to food delivery workers.
- Clarify the requirements for providing insulated food delivery bags to food delivery workers.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-1507(c) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Chapter 7 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter H to read as follows:

Subchapter H: Third-Party Service Workers

§ 7-801 Definitions.

(a) As used in this subchapter, the following terms have the following meanings:

(1) “Deactivation” means a third-party food delivery service or third-party courier service ceases to offer shifts or trips to a food delivery worker on a temporary or permanent basis.

(2) “Trip” has the same meaning as set forth in Section 20-1501 of the Administrative Code, provided that a single trip may encompass multiple deliveries.

(b) As used in this subchapter, the following terms have the same meanings as set forth in Section 20-1501 of the Administrative Code: "Food delivery worker," "food service establishment," "third-party courier service," and "third-party food delivery service."

§ 7-802 Coverage.

(a) If a third-party food delivery service or third-party courier service offers a trip to a food delivery worker that involves pickup or delivery of goods solely from a business or businesses other than a food service establishment, such trip is covered by Title 20, Chapter 15 of the Administrative Code and this subchapter, except that the requirements of Section 20-1521(a)(1) shall not apply to that trip.

(b) If a third-party food delivery service offers a trip to a food delivery worker on behalf of a different third-party food delivery service, a food service establishment, or other business, such trip is covered by Title 20, Chapter 15 of the Administrative Code and this subchapter.

(c) If a third-party courier service offers a trip to a food delivery worker on behalf of a person other than a third-party food delivery service, such trip is covered by Title 20, Chapter 15 of the Administrative Code and this subchapter.

(d) If a third-party food delivery service or third-party courier service offers a trip to a food delivery worker who is physically located in New York City at the time of the offer, for purposes of Title 20, Chapter 15 of the Administrative Code, such trip originates in New York City.

§ 7-803 Retaliation.

(a) "Denial of work opportunities" under Section 20-1504 of the Administrative Code and "denial of future work opportunities" under Section 20-1508 of the Administrative Code include suspensions, deactivations, or any other act that results in a food delivery worker not being offered a trip, provided however that such terms do not include any act or omission required of a third-party food delivery service or third-party courier service in order to comply with a food delivery worker's maximum distance, bridge, and tunnel specifications in accordance with Section 20-1521(c) of the Administrative Code.

(b) If a third-party food delivery service or a third-party courier service maintains a system in which food delivery worker suspensions, deactivations, trip or shift offers depend, in whole or in part, on food delivery workers' internal or public ratings, it is a retaliatory denial of work opportunity under Section 20-1504 of the Administrative Code and a retaliatory denial of a future work opportunity under Section 20-1508 of the Administrative Code when such third-party food delivery service or third-party courier service downgrades a food delivery worker's rating based on the exercise or attempted exercise of a right protected under Title 20, Chapter 15 of the Administrative Code.

(c) It shall constitute retaliation under Section 20-1504 of the Administrative Code if a third-party food delivery service, a third-party courier service, or any other person takes an adverse action against a food delivery worker on account of such worker refusing a trip offered in violation of Section 20-1521 of the Administrative Code.

(d) Each downgrading of a food delivery worker's internal or public rating as a result of such worker's exercise or attempted exercise of a right protected under Chapter 15 of Title 20 of the Administrative Code shall constitute a separate instance of retaliation and a separate instance of a violation of Section 20-1508(a)(3)(a) of the Administrative Code.

§ 7-804 Notice of Rights.

(a) A third-party food delivery service or third-party courier service must provide the notice of rights required by Section 20-1505 of the Administrative Code to a food delivery worker no later than April 22, 2022 or prior to the food delivery worker's first trip, whichever is later.

(b) For purposes of this section, if a third-party food delivery service or a third-party courier service hires, retains or engages a food delivery worker following a break in service of six months or more with such third-party food delivery service or third-party courier service, such food delivery worker shall be considered a new food delivery worker and the notice of rights must be provided to them as required by Section 20-1505 of the Administrative Code and subdivisions (a) and (b) of this section.

(c) In addition to the requirements in subdivisions (a) through (c) of this section, upon request by a food delivery worker, a third-party food delivery service or third-party courier service must provide the notice of rights required by Section 20-1505 of the Administrative Code to such food delivery worker within fourteen (14) days of the date the request for such notice was received by the third-party food delivery service or third-party courier service.

(d) The notice of rights required by Section 20-1505 of the Administrative Code must be provided by email and as a link within a text message sent to the food delivery worker. In addition to provision by text or email, such notice must also be made continuously available to all active food delivery workers through any website, mobile application, or other internet service used by a food delivery worker to perform work for a third-party food delivery service or third-party courier service.

(e) When a third-party food delivery service or third-party courier service downloads or otherwise uses a notice of rights prepared by the commissioner and made available on the city's website, such third-party food delivery service or third-party courier service must provide such notice in accordance with any accessibility requirements set forth by the commissioner on the city's website.

(f) If the commissioner updates the information in the notice of rights pursuant to Section 20-1505(a) of the Administrative Code, no later than thirty (30) days following the effective date of such update, a third-party food delivery service or third-party courier service must provide such updated notice to all food delivery workers in the manner provided in subdivisions (a) through (f) of this section.

§ 7-805 Recordkeeping.

(a) (1) A request or subpoena for information or records from the Department must be served on a third-party food delivery service or third-party courier service in writing in person, via mail, or via email. When the Department issues a written request or subpoena for data, information or documents under Section 20-1506(a) of the Administrative Code, a third-party food delivery service or third-party courier service must provide all responsive data, information, or documents to the Department within thirty (30) days of receiving such request or subpoena.

(2) A deadline of more than 30 days may be agreed to on consent by the Department and the third-party food delivery service or third-party courier service.

(3) A third-party food delivery service or third-party courier service must provide data, information or documents to the Department in their original format or, if so requested, in the comma-delimited formats and layouts prescribed by the Department in such written request or subpoena.

(4) The Department may issue a notice of violation to a third-party food delivery service or third party courier service who fails to provide true and accurate electronic records or information by the deadline provided in the written request or subpoena or the deadline agreed to by the parties, provided that any monetary penalties

authorized by law for a violation of section 20-1506 of the Administrative Code shall not apply while such written request or subpoena is the subject of a pending proceeding.

(b) A third-party food delivery service or third-party courier service must create and maintain contemporaneous, true, and accurate records documenting compliance with the requirements of Chapter 15 of Title 20 of the Administrative Code for a period of three years. If, in the ordinary course of business, any record required to be maintained under this subdivision is created by a person other than such third-party food delivery service or third-party courier service, it is the responsibility of such third-party food delivery service or third-party courier service to obtain a copy of such record.

(c) A third-party food delivery service or third-party courier service must maintain the data specified in this subdivision, or a copy of such data, according to record layouts prescribed by the Department, provided that such record layouts have been published and made available on the Department's website.. Such data shall include:

(1) With respect to all food delivery workers, first name, last name, phone number, email address, a unique identifier for the worker, preferred language, first date hired, retained or engaged, and last date hired, retained or engaged.

(2) With respect to the notice of rights, data sufficient to show each email or text message containing the notice of rights that was sent to a food delivery worker, the date and time such email or text message was sent, the first name, last name, and a unique identifier of the recipient, and, as applicable, the phone number or email address of the recipient.

(3) With respect to the maximum distance, bridge, or tunnel parameters set or updated under Sections 20-1521(a)-(b) of the Administrative Code, the date, time, and content of every selection of or update to such parameters and the first name, last name, and a unique identifier of the food delivery worker who selected or updated such parameters.

(4) With respect to each trip offered to a food delivery worker:

(i). All information disclosed to a food delivery worker before such worker accepts a trip under Section 20-1521(d) of the Administrative Code, including:

a. The address(es) where the food, beverage or other goods must be picked up;

b. The estimated distance for the trip;

c. The estimated time for the trip or, if disclosed in lieu of estimated time for the trip pursuant to 7-807(e) of this subchapter, the expected or required time of the last drop-off on the trip;

d. The amount of any gratuity(ies) specified by the consumer(s); and

e. The amount of compensation excluding gratuity to be paid to the food delivery worker for the trip or, if disclosed in lieu of compensation excluding gratuity pursuant to 7-807(h) of this subchapter, the hourly pay rate applicable to the trip;

(ii) The date and time that the trip offer was made to the food delivery worker;

(iii) If different from the date and time that the trip offer was made to the food delivery worker, the date(s) and time(s) that the information required to be disclosed by Section 20-1521(d) of the Administrative Code was first disclosed to a food delivery worker;

(iv) Whether the offer was accepted, declined, or expired, and the date and time at which this status was recorded;

(v) The route used to generate the estimated trip distance disclosed to a food delivery worker pursuant to Section 20-1521(d)(2) of the Administrative Code and the date and time it was generated. Such route must include a sequence of latitude and longitude coordinates;

(vi) The route distance between the first food service establishment from which the food, beverage or other goods must be picked up on the trip and the last delivery address on the trip;

(vii) The address(es) of where the food, beverage or other goods must be picked-up and the latitude and longitude of the location(s) to which the food, beverage, or other goods must be delivered, accurate to a precision of three decimal places;;

(viii) The gratuity the third-party food delivery service or third-party courier service charged to the consumer(s) for the order(s) on the trip;

(ix) The gratuity the third-party food delivery service or third-party courier service paid to the food delivery worker for the trip;

(x) The compensation, excluding gratuity, paid to the food delivery worker for the trip. If a third-party food delivery service or third-party courier services compensates a food delivery worker on an hourly basis, the amount of compensation for a trip is the time between the acceptance of an offered trip and its completion or cancellation, multiplied by the hourly payment rate for that trip;

(xi) Whether the trip was completed or cancelled, and the date and time of completion or cancellation; and if cancelled, whether the cancellation was initiated by the food delivery worker, the customer, the business from which the food, beverage, or other good was to be picked-up, or the third-party food delivery service or third-party courier service;

(xii) The first name, last name, and a unique identifier of the food delivery worker to whom the offer was made; and

(xiii) Whether each business from which the food, beverage or other goods must be picked up was a food service establishment.

(5) With respect to each payment to a food delivery worker:

(i) The first name, last name, and a unique identifier of the food delivery worker receiving payment; and

(ii) The date and time of payment, the start and end date of the pay period, the amount of compensation, and all fees or deductions from compensation, itemized by type.

(6) With respect to each insulated food delivery bag provided to a food delivery worker:

(i) The first name, last name, and a unique identifier of the worker to whom the delivery bag was provided; and

(ii) The date of provision, and whether provision was by pickup or whether the third-party food delivery service or third-party courier service sent the insulated delivery bag to the food delivery worker.

(7) With respect to each deactivation of a food delivery worker:

(i) The first name, last name, and a unique identifier of the worker who was deactivated or suspended;

(ii) The date and time of deactivation;

(iii) The date and time of reactivation, if applicable;

(iv) The reason for the deactivation; and

(v) Whether the deactivation was effected through an automatic or a manual process.

§ 7-806 Delivery Distance and Route.

(a) For purposes of Section 20-1521(a)(1) of the Administrative Code, maximum distance per trip refers to the route to be travelled from the first pick-up from a food service establishment on a trip to the last drop-off on such trip.

(b) Pursuant to Subdivisions (a) and (b) of Section 20-1521 of the Administrative Code, a third-party food delivery service or third-party courier service must provide a food delivery worker with the ability to set and update the maximum distance parameter and preferences in respect to the bridges and tunnels listed in subdivisions c and d of this section using the third-party food delivery or third-party courier service's website, mobile application, or other internet service through which trips are offered to such worker. Such distance, bridge, and tunnel parameters, when set or updated, shall take effect automatically and as soon as practicable, without requirement for review, approval, or any other act by a natural person employed by or acting on behalf of the third-party food delivery service or third-party courier service. The functions to set and modify such parameters must be included within a user interface easily accessible to workers through the website, mobile application, or other internet service and no less accessible than other settings or profile information a food delivery worker can select or input. A food delivery worker must be able to select and deselect the bridges and tunnels listed in subdivisions c and d of this section using a list or map within the user interface.

(c) A third-party food delivery service or a third-party courier service must include the following selectable bridges in the user interface provided to a food delivery worker pursuant to subdivision b:

(1) Ed Koch Queensboro Bridge;

(2) Brooklyn Bridge;

(3) Williamsburg Bridge;

(4) Manhattan Bridge;

(5) Broadway Bridge;

(6) University Heights Bridge;

(7) Washington Bridge;

(8) Alexander Hamilton Bridge;

(9) Macombs Dam Bridge;

(10) 145th Street Bridge;

- (11) Madison Avenue Bridge;
- (12) Third Avenue Bridge;
- (13) Willis Avenue Bridge;
- (14) Pulaski Bridge;
- (15) Greenpoint Avenue Bridge;
- (16) Grand Street Bridge;
- (17) Kosciuszko Bridge;
- (18) Robert F Kennedy Bridge (Triborough Bridge);
- (19) Roosevelt Island Bridge;
- (20) Bronx Whitestone Bridge;
- (21) Throgs Neck Bridge;
- (22) Verrazzano-Narrows Bridge;
- (23) Marine Parkway-Gil Hodges Memorial Bridge;
- (24) Cross Bay Veterans Memorial Bridge;
- (25) Henry Hudson Bridge;
- (26) High Bridge;
- (27) George Washington Bridge;
- (28) Bayonne Bridge;
- (29) Goethals Bridge; and
- (30) Outerbridge Crossing.

(d) A third-party food delivery service or a third-party courier service must include the following selectable tunnels in the user interface provided to a food delivery worker pursuant to subdivision b:

- (1) Lincoln Tunnel;
- (2) Holland Tunnel;
- (3) Queens Midtown Tunnel; and
- (4) Hugh L. Carey Tunnel (Brooklyn Battery Tunnel).

(e) For any bridge or tunnel not listed in subdivisions c or d, a third-party food delivery service or third-party courier service may require a food delivery worker to specify such bridge or tunnel parameter via the user interface or by any other reasonable means, provided that the third-party food delivery service or third-party courier service has notified a food delivery worker of how they may set such parameter.

(f) Pursuant to Section 20-1251(d)(2) of the Administrative Code, the estimated time and distance for a trip must include the total time and the total distance for a food delivery worker to complete the trip, including travel to a business from the location where the worker accepted the trip offer, picking up the food, beverage, or other goods for delivery, taking and depositing such delivery at a different location as requested, any waiting time, and any time spent placing the order with a food service establishment or other business, transmitting payment for the order to a food service establishment or other business, or assembling the order. The expected or required time of the last drop-off on a trip may be disclosed in lieu of the estimated time for the trip.

(g) Pursuant to Section 20-1251(d)(3) of the Administrative Code, a third-party food delivery service or third-party courier service that engages a food delivery worker to perform a delivery must disclose to the food delivery worker the amount of any gratuity, if specified by the consumer, even if such third-party food delivery service or third-party courier service does not receive the order for delivery directly from the consumer.

Example: If a consumer places an order for delivery with a third-party food delivery service, and such third-party food delivery service transfers the order to a third-party food courier service that then facilitates the delivery, such third-party food courier service must disclose to the food delivery worker the amount of gratuity, if any, specified by the consumer.

Example: If a consumer places an order for delivery with a food service establishment or other business, and such food service establishment or other business transfers the order to a third-party food delivery service or third-party courier service that then facilitates the delivery, such third-party food delivery service or third-party courier service must disclose to the food delivery worker the amount of gratuity, if any, specified by the consumer.

(h) A third-party food delivery service or third-party courier service must pay a food delivery worker for a completed trip no less than the amount it discloses pursuant to Section 20-1521(d)(4) of the Administrative Code, in addition to any gratuity owed for such trip. If, pursuant to subdivision (h) of this section, a third-party food delivery service or third-party courier service discloses an hourly pay rate to a food delivery worker, such third-party food delivery service or third-party courier service must pay such food delivery worker for the time such food delivery worker spends on the trip a rate no less than such hourly pay rate.

(i) If a third-party food delivery service or a third-party courier service compensates a food delivery worker on an hourly basis, such third-party food delivery service or third-party courier service must satisfy the requirements of Section 20-1521(d)(4) of the Administrative Code by disclosing the hourly pay rate that will be applied to the time such food delivery worker spends performing the offered trip.

(j) For purposes of Section 20-1521(a)(1)-(3) of the Administrative Code, a trip offered to a food delivery worker by a third-party food delivery service or third-party courier service requires travel across a bridge or through a tunnel if the shortest route generated by a routing engine selected by the Department for such trip involves passage over such bridge or through such tunnel, unless such third-party food delivery service or third-party courier service produces contemporaneous records showing that it provided an alternative route not requiring passage over such bridge or through such tunnel to such food delivery worker and that such route was consistent with the time and distance disclosed under Section 20-1521(d)(2) of the Administrative Code.

§ 7-807 Payments to Workers.

(a) For purposes of Section 20-1523(a) of the Administrative Code, a third-party food delivery service or third-party courier service shall be considered to have charged or imposed a fee on a food delivery worker if (1) it does not offer a form of payment to a food delivery worker free from any fees charged or imposed by a financial intermediary or other person or (2) a fee for payment is charged or imposed on a food delivery worker by any parent, affiliate, or subsidiary entity of the third-party food delivery service or third-party courier service.

(b) For purposes of Section 20-1523(a) of the Administrative Code, any form of payment a third-party food delivery service or third-party courier service makes available to or requires for a food delivery worker is a form of payment selected by such service.

(c) Pursuant to Section 20-1523(b) of the Administrative Code, a third-party food delivery service or third-party courier service must pay a food delivery worker for work performed weekly and no later than seven (7) calendar days after the end of the week in which the work was performed.

§ 7-808 Insulated Food Delivery Bags.

(a) A third-party food delivery service or third-party courier service must make an insulated food delivery bag required by Section 20-1524(a)(1) of the Administrative Code available for pickup by a food delivery worker or deliver such bag to a food delivery worker no later than seven (7) days following the day of such worker's sixth delivery for that third-party food delivery service or third-party courier service.

(b) A third-party food delivery service or third-party courier service must provide a food delivery worker with the option of having an insulated food delivery bag required by Section 20-1524(a)(1) of the Administrative Code delivered to such worker.

(c) In cases of loss, damage, theft, or deterioration, a third-party delivery service or third-party courier service must make available replacement insulated food delivery bags for a food delivery worker at no expense to such food delivery worker.

NEW YORK CITY LAW DEPARTMENT
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CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Proposed Rules Governing Labor Standards for Third Party Service Workers

REFERENCE NUMBER: 2021 RG 096

RULEMAKING AGENCY: New York City Department of Consumer and Worker Protection

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

Date: February 18, 2022

Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
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NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Proposed Rules Governing Labor Standards for Third Party Service Workers

REFERENCE NUMBER: DCWP-12

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

February 18, 2022

Date