

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 establishing a method for determining the minimum payments that must be made to a food delivery worker by a third-party food delivery service or third-party courier service, as required by New York City Administrative Code § 20-1522.

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 Friday, December 16. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-893-7101
 - Meeting ID: 257 490 864 03
 - Passcode: Zkw9TY
- To participate in the public hearing via videoconference, please follow the online link:
https://teams.microsoft.com/registration/x2_1MoFflk6pWxXaZIE77w,PgVNkwMwUkqnyO28hSWZzg,UWNLEqQRkkmQAhvngWBsKA,vkv_etaPGkGhR3RuyrCABg.l2D3pBkHsUe9xIW4YB2Bjw,tD0qNaBm_UefIz1J7hVktQ?mode=read&tenantId=32f56fc7-5f81-4e22-a95b-15da66513bef&webinarRing=gcc
 - Meeting ID: 257 490 864 03
 - Passcode: Zkw9TY

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@dcwp.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) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Friday, December 16. 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 Friday, December 16.

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) 436-0396 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Wednesday, December 7.

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 Sections 20-1506(a), 20-1507(c), and 20-1522(a)(3) and (d) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. The proposed rule was included in the agency’s regulatory 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 a rule to implement Local Law 115 of 2021, which requires DCWP to study the pay and working conditions of food delivery workers and, based on the results of its study, to establish a method for determining the minimum payments that third-party food delivery services and third-party courier services (“apps”) must pay to food delivery workers. *See* NYC Admin. Code § 20-1501 (defining “food delivery worker,” “third-party food delivery service,” and “third-party courier service”).

DCWP is also proposing rule amendments pursuant to Local Law 114 of 2021, adding recordkeeping and reporting requirements that will allow DCWP to assess apps’ compliance with the minimum pay rate.

The proposed amendments are as follows:

- Section 7-801 to add definitions of “on-call time”, “pay period”, and “trip time;
- Section 7-805 to add the recordkeeping and reporting obligations for a third-party food delivery service or third-party courier service;
- Section 7-806 to clarify what constitutes “required” travel across a bridge or through a tunnel;
- Section 7-807 to establish that compensation must be calculated for each pay period; and
- Section 7-810 to set the minimum pay rates, the time periods for which such pay rates apply, the inflation adjustments required for such pay rates, and to provide clarity and examples of how to calculate such pay rates.

Background. The app-based food delivery industry in New York City is dominated by four companies, Uber Eats, DoorDash, Grubhub, and Relay, which account for 99% of all app-based food deliveries within the five boroughs. Despite explosive growth of app delivery in recent years, prior to the passage of Local Law 115 there were no minimum earnings protections for food delivery workers, and the legislative record indicated that these workers faced low pay and high expenses. DCWP was charged by Local Law 115 of 2021 with studying this workforce and developing an appropriate minimum pay rate to ensure adequate compensation for New York City food delivery workers.

Worker Earnings and Expenses. To identify food delivery worker earnings and expenses and establish minimum pay, DCWP economists and data scientists analyzed record-level and aggregate data obtained from apps, received survey responses from over 8,000 food delivery workers and over 350 restaurant operators, conducted interviews with worker advocates, app representatives, and industry experts, and obtained public testimony at a hearing in June 2022. DCWP then developed this minimum pay rule for food delivery workers based on the results of the study. DCWP is publishing a report summarizing the results of the study on its website at nyc.gov/deliveryapps concurrently with this proposed rule, which is incorporated herein by reference.

Summary of Minimum Pay Rule. The proposed rule would establish a minimum pay rate of \$23.82 per hour, phased in over two years and subject to inflation adjustments. The rate is applicable to a food delivery worker’s own trip hours and all food delivery workers’ trip hours and on-call hours, in aggregate. This rate represents the sum of a base pay component (\$19.86), a workers’ compensation component (\$1.70), and an expense component (\$2.26).

Base Pay Component. The base pay component of \$19.86 per hour is similar to the compensation food delivery workers would receive if they were classified as employees under state and City law. DCWP adopted this amount from the TLC’s minimum payment standard for high-volume for hire vehicle service drivers (“high-volume drivers”), as reflected in TLC’s recent proposed rule. Proposed R.C.N.Y § 59D-22(a). For purposes of the base pay component of the minimum pay rate, there are no meaningful distinctions between food delivery workers and high-volume drivers. Like all low-wage workers in NYC, food delivery workers and high-volume drivers must cover the costs of housing, food and other basic necessities. Adopting the same base pay amount for food delivery workers builds on the City’s existing determination of appropriate compensation for low-wage independent contractors and sets a clear and consistent standard for independent contractors working for apps in related industries in NYC.

The \$19.86 base pay component reflects the \$15.00 per hour minimum wage applicable to most employees in NYC since December 31, 2018, N.Y. Lab. L. § 652(1)(a), plus adjustments for differences in tax treatment between employees and independent contractors and increases in the cost of living since the TLC minimum payment standard was first implemented in early 2019. Additionally, the \$19.86 minimum payment standard for high-volume drivers includes compensation in lieu of paid time off, derived from the Bureau of Labor Statistics' published estimate of average paid time off received by production, transportation and material moving employees, an occupational category which includes both food delivery workers and high-volume drivers. Incorporating an amount in lieu of paid time off within the base pay amount enables food delivery workers to take unpaid time off to rest, recuperate, and address healthcare needs without an undue reduction in annual pay.

The \$19.86 base pay component is also very close to the total compensation that apps would be required to provide if they classified their delivery workers as employees. This consists of a base wage of \$15.00 per hour, plus the value of paid safe and sick leave benefits, unemployment insurance, health insurance, and federal Medicare and Social Security contributions. This sums to \$19.90, and excludes workers' compensation, which is addressed separately in the minimum pay rate.

Workers' Compensation Component. The purpose of the workers' compensation component is to compensate for expected income loss and medical expense associated with on-the-job injuries that food delivery workers experience. Although food delivery workers experience high rates of injury on the job, they do not have access to traditional workers' compensation, as workers classified as employees in New York State do. Unlike high-volume drivers, who have the Black Car Fund, food delivery workers also do not have access to an alternative system for medical care and wage replacement for on-the-job injuries. DCWP calculated the workers' compensation component of \$1.70 to provide for comparability to the actuarial value of the workers' compensation coverage received by employed restaurant delivery workers in New York State (7.84% of payroll). The workers' compensation component also includes an adjustment to reflect differences in how federal Medicare and Social Security contributions apply to independent contractor income and employee benefits, to ensure that food delivery workers receive the same value, despite less advantageous tax treatment.

Expense Component. The purpose of the expense component is to compensate food delivery workers for necessary expenses they incur to perform delivery work. The expense component of \$2.26 is DCWP's estimate of average hourly expenses for workers who perform deliveries using an electric bicycle ("e-bike"), less the cost of traffic or parking tickets, which are not deductible under IRS rules. E-bike worker expenses fall into two main categories: vehicle expenses and phone expenses. Vehicle expenses include the cost of purchasing an e-bike, batteries, safety equipment and other accessories. Phone expenses include the phone itself and a data plan. Among other reasons, DCWP determined that it is appropriate to base the expense component of the rate on the expenses of e-bike workers because e-bike delivery is the most cost-effective and efficient form of app-based restaurant delivery, and because the proportion of deliveries performed using e-bikes is increasing.

Basis of Pay. To comply with the proposed minimum pay rule, each week an app would have to satisfy two requirements:

- **Individual Requirement.** Each app's payment to each delivery worker, individually, must meet or exceed the minimum pay rate multiplied by the sum of that worker's own "trip time" during the week.
- **Aggregate Requirement.** Each app's total payments to its delivery workers, in aggregate, would have to meet or exceed the minimum pay rate multiplied by the sum of these workers' total "trip time" and "on-call time" during the week.

"Trip time" and "on-call time" are defined terms in the rule. This dual approach provides protection to each worker individually, ensures appropriate average pay among the workforce as a whole, and affords each app flexibility to make aggregate payments using a methodology of its choosing while minimizing disruption to current business models. The rule will also incentivize apps to increase the amount of time workers spend engaged in trips and reduce the amount of time workers spend waiting for trip offers.

Inflation Adjustment: To ensure that the rate keeps pace with the cost of living, the proposed rule provides for inflation adjustments to the minimum pay rate on April 1 of every year. DCWP chose the Consumer Price Index for Urban Wage

Earners and Clerical Workers for the New York-New Jersey-Pennsylvania metropolitan area as the most appropriate index to capture changes in NYC delivery workers' cost of living. Though inflation in delivery workers' expenses and workers' compensation coverage may differ from inflation in workers' general cost of living, the proposed rule does not separately adjust each component, but rather applies the chosen index to the entire rate.

Phase-in. The proposed rule provides that the minimum pay rate will phase in over two years, with the rates in 2023 and 2024 representing 75% and 85% of the full rate, respectively. This is modelled on the phase-in of the \$15.00 minimum wage in NYC for large employers between 2016 and 2018. This phase-in will provide apps with more time to improve their productivity before bearing the full cost of the minimum pay rate.

Recordkeeping and Reporting Obligations. The proposed rule would require apps to maintain records regarding the compensation paid and time worked by food delivery workers both on an individual and aggregate level. The proposed rules also create reporting requirements for apps to share certain aggregated statistical data with DCWP. These requirements will help DCWP effectively investigate violations of the minimum pay rule, analyze the effect of the minimum payment method and determine whether updates to the minimum payment obligations are warranted.

Sections 1043 and 2203(f) of the New York City Charter and Sections 20-1506(a), 20-1507(c), and 20-1522(a)(3) and (d) 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

Subchapter H of Chapter 7 of Title 6 of the Rules of the City of New York is amended 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) “On-call time” means the time a food delivery worker is connected to a third-party food delivery service or third-party courier service’s electronic system for arranging or monitoring trips in a status where the food delivery worker is available to receive or accept trip offers or assignments with a pickup or drop-off location in New York City, and excludes all trip time.

(3) “Pay period” means a fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods.

([2]4) “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.

(5) “Trip time” means the span of time between the moment a food delivery worker accepts an offer from a third-party food delivery service or third-party courier service to perform a trip or receives an assignment to perform a trip with a pickup or drop-off location in New York City through the moment a trip is completed or cancelled.

(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.”

§ 7-805 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]if such written request or subpoena is the subject of a [pending]timely-filed pre-compliance review 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 6 RCNY § 7-806[7]([e]f) 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 6 RCNY § 7-806[7](h), 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, for the location(s) to which the food, beverage, or other goods must be delivered, the zip code 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 service 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 pay[ment to a] period during which a food delivery worker had any trip time:

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

(ii) The date, [and]time, and amount of any payment[,the start and end date of the pay period, the amount of compensation, and all fees or deductions from compensation, itemized by type.] made to the food delivery worker;

(iii) The start date and time and end date and time of the pay period;

(iv) The minutes of trip time worked by the food delivery worker;

(v) The minutes of on-call time worked by the food delivery worker;

(vi) The compensation paid to the food delivery worker and the basis for such compensation, including rates of pay and units of pay. Such records must distinguish between (a) compensation creditable towards a third-party food delivery service or third-party courier service's obligation under Section 7-810(b) and (c) and any other compensation the food delivery worker may have received;

(vii) The gratuities paid to the food delivery worker for trips with a pickup or drop off location in New York City;

(viii) All deductions from, additions to, or adjustments of compensation owed or paid to the food delivery worker, itemized by type.

(6) With respect to each pay period:

(i) The start date and time and end date and time of the pay period;

(ii) The total minutes of trip time for all food delivery workers;

(iii) The total minutes of on-call time for all food delivery workers;

(iv) The total compensation paid to all food delivery workers. Such records must distinguish between (a) compensation creditable towards a third-party food delivery service or third-party courier service's obligation under Section 7-810(b) and (c) any other compensation the food delivery worker may have received.

([6]7) 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]8) 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;

(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.

(9) With respect to each instance in which a food delivery worker is connected to a third-party food delivery service or third-party courier service's electronic system for arranging, monitoring, and performing trips:

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

(ii) The start date and time and end date and time of each span of on-call time;

(iii) The start date and time and end date and time of each span of trip time; and

(iv) The start date and time and end date and time of each span of time that the food delivery worker is connected to such system in any other status, other than on-call time or trip time, itemized by status.

(d) For pay periods that include time before and after the minimum pay rate under Section 7-810 takes effect or changes, the records required to be maintained under Section 7-805(c)(5) or Section 7-805(c)(6) must be maintained separately for the part of the pay period preceding the effective date of the rate or rate change and the part of the pay period covered by the new or changed rate.

(e) In accordance with applicable law and upon receipt of appropriate notice, a third-party food delivery service or third-party courier service must produce reports to the Department concerning such third-party food delivery service or third-party courier service's operations in New York City for periods beginning on or after January 1, 2022. Such reports may be required by the Department no more frequently than monthly and must be produced in accordance with record layouts prescribed by the Department, provided such record layouts have been published and made available on the Department's website. A third-party food delivery service or third-party courier service must maintain all records necessary to produce such reports. Such reports must include the following information aggregated at a citywide level and by zip code of the pickup location in New York City, mode of transportation, and merchant line of business:

(i) The number of food delivery workers who engaged in any trip time or on-call time;

(ii) The number of trips with a pickup or drop-off location in New York City;

(iii) The minutes of trip time;

(iv) The minutes of on-call time;

(v) The number of trip miles with a pickup or drop-off location in New York City;

(vi) The amount paid to food delivery workers, excluding gratuities, creditable towards a third-party food delivery service or third-party courier service's obligation under Section 7-810(c);

(vii) The amount of gratuities paid to food delivery workers for trips with a pickup or drop-off location in New York City;

(viii) The number of consumers who received at least one delivery with a pickup or drop-off location in New York City;

(ix) The number of completed deliveries with a pickup or drop-off location in New York City;

(x) The number of cancelled deliveries with a pickup or drop-off location in New York City;

(xi) The amount charged to consumers for delivery of food, beverage, or other goods with a pickup or drop-off location in New York City;

(xii) The fees charged to consumers on orders for delivery with a pickup or drop-off location in New York City, itemized by type;

(xiii) The number of merchants in New York City who prepared at least one order for delivery;

(xiv) The delivery fees, payment processing fees, and other fees charged to merchants in New York City, itemized by type.

§ 7-806 Delivery Distance and Route.

(j) For purposes of Section 20-1521(a)(1) - (3) of the Administrative Code and this section, 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 for the use of a form of payment selected by such service if (1) the service 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) A third-party food delivery service or third-party courier service must calculate compensation owed to each food delivery worker, and to all food delivery workers, for each pay period. The pay period need not coincide with the calendar week but may begin on any day and at any hour of the day. A third-party food delivery service or third-party courier service must establish a single pay period for all food delivery workers it engages. Once the beginning time of the pay period is established, it must remain fixed, and may be changed only if the change is intended to be permanent.

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

§ 7-810 Minimum Pay.

(a) When the [d]Department issues a subpoena for data, information or documents under Section [§] 20-1522(a)(2) 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 [d]Department within 30 days of receiving such subpoena and, if so requested, in the comma-delimited formats and layouts prescribed by the [d]Department in such subpoena.

(b) A third-party food delivery service or third-party courier service must pay to a food delivery worker who engages in trip time in a pay period no less than the sum of such food delivery worker's trip time in that pay period multiplied by the following minimum pay rates:

(i) \$17.87 per hour, on or after January 1, 2023;

(ii) \$17.87 per hour, adjusted for inflation, on or after April 1, 2023;

(iii) \$20.25 per hour, adjusted for inflation, on or after April 1, 2024, and

(iv) \$23.82 per hour, adjusted for inflation, on or after April 1, 2025.

(c) A third-party food delivery service or third-party courier service must pay, in aggregate, to the food delivery workers who engaged in trip time or on-call time in a pay period no less than the sum of all such food delivery workers' trip time and on-call time in that pay period multiplied by the following minimum pay rates:

(i) \$17.87 per hour, on or after January 1, 2023;

(ii) \$17.87 per hour, adjusted for inflation, on or after April 1, 2023;

(iii) \$20.25 per hour, adjusted for inflation, on or after April 1, 2024, and

(iv) \$23.82 per hour, adjusted for inflation, on and after April 1, 2025.

(d) A third-party food delivery service or third-party courier service may fulfill its obligation under subdivision (b) and subdivision (c) of this section using any method it chooses, including paying an hourly rate, a per-trip rate or other piece rate, a bonus or other lump-sum payment, or by any other method.

Example: In a pay period that ends on October 25, 2023, 10,000 food delivery workers, in aggregate, engage in 200,000 hours of trip time and 50,000 hours of on-call time. Worker A, individually, engages in 30 hours of trip time and 5 hours of on-call time.

Payment Method 1: The third-party food delivery service pays its food delivery workers a combination of per-trip payments and end-of-week bonuses. The third-party food delivery service meets the requirements of both subdivision (b) and subdivision (c) of this section if it pays its food delivery workers as follows:

1. Each food delivery worker is paid at least an amount equal to their trip time multiplied by \$17.87. For instance, worker A receives at least \$536.10, which is \$17.87 multiplied by 30 hours; and
2. The total per-trip payments and bonuses the third-party food delivery service pays in the pay period meets or exceeds the aggregate amount of trip time and on-call time (250,000 hours) multiplied by \$17.87, which equals \$4,445,000. Worker A's payment of at least \$536.10 for trip time is credited towards the obligation and Worker A may, or may not, receive an additional payment.

Payment Method 2: The third-party food delivery service pays a fixed hourly rate of \$17.87 per hour to each of the 10,000 food delivery workers for trip time and on-call time. The third-party food delivery service meets the requirements of both subdivision (b) and subdivision (c) of this section if it pays its food delivery workers as follows:

1. Worker A receives \$625.45, which is \$17.87 multiplied by 35 hours; and
2. The total hourly pay issued to all 10,000 food delivery workers for 250,000 hours of trip time and on-call time is \$4,467,500.

(e) For purposes of subdivisions (b) and (c) of this section, a third-party food delivery service or third-party courier service must calculate time to the nearest whole minute worked.

(f) A third-party food delivery service or third-party courier service may not use gratuities paid to a food delivery worker to offset such third-party food delivery service or third-party courier service's obligation to pay food delivery workers the full amounts required by subdivisions (b) and (c) of this section.

(g) A third-party food delivery service or third-party courier service may not use amounts paid to a food delivery worker for trips with a pickup and drop-off location outside of New York City or performed prior to January 1, 2023 to offset such third-party food delivery service or third-party courier service's obligation to pay the full amounts required by subdivisions (b) and (c) of this section.

(h) The Department shall perform the inflation adjustments required by §7-810(b)(ii) and §7-810(c)(ii) by multiplying \$17.87 by the percent change in the All Items Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area between June 2022 and December 2022, provided that if the percentage change is zero or negative, the adjustment shall be zero. The Department shall post the Consumer Price Index adjusted minimum payment rates on its website on or before the first day of February 2023.

(i) The Department shall perform the inflation adjustments required by §7-810(b)(iii) and §7-810(c)(iii) by multiplying \$20.25 by the percent change in the All Items Consumer Price Index for Urban Wage Earners and Clerical Workers for

the NY-NJ-PA metro area between June 2022 and December 2023, provided that if the percentage change is zero or negative, the adjustment shall be zero. The Department shall post the Consumer Price Index adjusted minimum payment rates on its website on or before the first day of February 2024.

(j) The Department shall perform the inflation adjustments required for April 1, 2025 by §7-810(b)(iv) and §7-810(c)(iv) by multiplying \$23.82 by the percent change in the All Items Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area between June 2022 and December 2024, provided that if the percentage change is zero or negative, the adjustment shall be zero. The Department shall post the Consumer Price Index adjusted minimum payment rates on its website on or before the first day of February 2025.

(k) Beginning with the minimum payment rate effective April 1, 2026, and continuing each calendar year thereafter, the Department shall post the inflation-adjusted minimum payment rates required by §7-810(b)(iv) and §7-810(c)(iv) on its website on or before the first day of February of the calendar year in which the rate will take effect. Such inflation adjustments will be performed by multiplying the current minimum payment rate by the most recent December to December percent change in the All Items Consumer Price Index for Urban Wage Earners and Clerical Workers for the NY-NJ-PA metro area, provided that if the percentage change is zero or negative, the adjustment shall be zero.

(l) If the minimum pay rate under Section 7-810 takes effect or changes during a pay period, the prior rate, if any, shall apply to a food delivery worker's trip time or on-call time that occurred before the new rate took effect and the new rate shall apply to a food delivery worker's trip time or on-call time that occurred after the new rate took effect.

(m) For purposes of the timely minimum pay requirement of Section 20-1208(a)(3)(c) of the Administrative Code, payments required under this section shall be made as set forth in section 7-807.

**NEW YORK CITY LAW DEPARTMENT
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100 CHURCH STREET
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212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Calculation of Minimum Pay for Food Delivery Service Workers

REFERENCE NUMBER: 2022 RG 076

RULEMAKING AGENCY: 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: November 2, 2022

Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Calculation of Minimum Pay for Food Delivery Service Workers

REFERENCE NUMBER: DCWP-26

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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

November 3, 2022

Date