

Notice of Proposed Rule Making

Niagara Frontier Transportation Authority
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. <i>Proposed action:</i>			
Amendment of	Part 1160	Title	21 NYCRR
_____	_____	Title	_____ NYCRR
_____	_____	Title	_____ NYCRR
_____	_____	Title	_____ NYCRR
_____	_____	Title	_____ NYCRR
_____	_____	Title	_____ NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No. _____. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed:*

Public Authorities Law 1299-e(5)
Public Authorities Law 1299-e(14)
Vehicle and Traffic Law 1700(4)

3. *Subject of the rule:*

Transportation Network Company Operators providing commercial ground transportation services at NFTA airports.

4. *Purpose of the rule:*

To provide cohesive operating procedures and practices for Transportation Network Companies operating at NFTA airports.

5. *Public hearings (check box and complete as applicable):*

- A public hearing is not scheduled. (SKIP TO ITEM 8)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 45 days after publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

<i>Time:</i>	<i>Date:</i>	<i>Location:</i>
07:00 PM	11/01/2018	120 Amherst Villa, Cheektowaga, NY 14225
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

A. The full text of the rule is attached because it does not exceed 2,000 words.

B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

<http://www.nfta.com/About/PublicInfo.aspx>

C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact Mary Perla, Esq.

Agency Name Niagara Frontier Transportation Authority

Office address Buffalo Niagara International Airport

4200 Genesee Street, Buffalo, New York 14225

Telephone (716) 630-6034 *E-mail:* Mary_Perla@NFTA.com

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact _____

Agency name _____

Office address _____

Telephone _____ *E-mail:* _____

11. *Public comment will be received until:*

45 days after publication of this notice (MINIMUM public comment period).

5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).

Other: (specify) 11/14/2018.

12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.

13. *Expiration date* (check only if applicable):

This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. *Additional matter required by statute*:

Yes (include below material required by statute).

No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:
_____.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.

Not applicable.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

An assessment of public comments is not attached because no comments were received.

Not applicable.

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

subject to a consolidated RIS printed in the *Register* under I.D. No.: _____; issue date: _____.

exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:

- The full text of the RFA.
- A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**, because this rule:

- is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____ ; issue date: _____ .
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. Rural Area Flexibility Analysis (RAFA)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

- The full text of the RAFA.
- A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**, because this rule:

- is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ ; issue date: _____ .
- is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
- is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. **Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

The full text of the JIS.

A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____, issue date: _____.

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Mary E. Perla Signature _____

Address 4200 Genesee Street

Telephone (716) 630-6034 E-Mail Mary_Perla@NFTA.com

Date 08/28/2018

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word), should be e-filed via the Department of State website.

SUMMARY OF PROPOSAL

INTRODUCTION AND OBJECTIVE

The recent surge in popularity of Transportation Network Companies, or “TNCs”, has required the Niagara Frontier Transportation Company (“NFTA”) to revisit its commercial ground transportation regulations (21 NYCRR Part 1160 *et seq.*), for the landside terminal operations at the Buffalo Niagara International Airport and Niagara Falls International Airport (collectively, the “Airports”), to create rules governing the operation of such entities. The proposed rules are intended to promote high quality and reasonably priced ground transportation services consistent with the public safety, while simultaneously fostering and cultivating fair competition among providers of ground transportation services, ensuring the efficient movement of passengers, and developing revenues for support of the airport system.

DEFINITIONS

The proposed rules create and/or amend the definitions contained in 21 NYCRR 1160.2 for the following terms:

- Airport
- Commercial Ground Transportation Operator
- Digital Network
- Geo-Fence
- Transportation Network Company
- TNC Drive
- TNC Drop-Off Trip
- TNC Permitted Use

- TNC Pick-Up Trip
- TNC Operator
- TNC Vehicle
- TNC Waybill
- Trade Dress

AMENDMENTS

The proposed rules would also amend 21 NYCRR Part 1160.17 and 21 NYCRR Part 1160.18 to incorporate the revised definition of “Airport” created by the amendments to 21 NYCRR Part 1160.2.

TEXT

Set forth hereafter are the sub-text hearings made up by section which comprise the body of the proposed Rules and Regulations:

A. Operating Agreement

B. Operations

1. New York State Requirements and License.
2. Designated Areas.
3. Geo-Fence.
4. Trade Dress.
5. TNC Drive Identification.
6. Tracking TNC Vehicles on Airport Property.
7. Tracking Triggers.
8. TNC Driver Training.

C. Reporting and Record Keeping.

1. Monthly Report.
2. Statement Confirming Accuracy of Monthly Report.
3. Books and Records.
4. Audit.
5. Insurance.
 - i. Commercial Automobile Insurance.
 - ii. Commercial General Liability Insurance.
 - iii. Workers' Compensation and Employer's Liability Insurance.
 - iv. Inclusion of TNC Vehicles under TNC Operator's Insurance

Each section sets forth the general contractual and operational requirements for TNC Operators that wish to offer (or continue offering) commercial ground transportation services at the Airports, along with specific rules applicable to those operators.

PROPOSED REGULATIONS

Section 1160.2 is amended to read as follow:

(b) Airport. Buffalo Niagara International Airport. For purposes of 21 NYCRR Part 1160.22 only, the definition includes the Niagara Falls International Airport.

* * *

(h) Commercial Ground Transportation Operator. A person, [or] enterprise, corporation, partnership, sole proprietorship, transportation network company, or other entity engaged in any type of commercial ground transportation service.

* * *

(ad) Digital Network. Any system or service offered or utilized by a transportation network company that enables transportation network company prearranged trips with transportation network company drivers.

(ae) Geo-Fence. A software application utilizing a global positioning or radio frequency identification to establish a virtual fence or perimeter around the Airport or a specified geographical area within the Airport which, when used in conjunction with a mobile application, is capable of recording, and showing in real time on hand held devices being carried by TNC drivers or personnel of the NFTA, the on Airport location of the TNC drivers and information describing the prearranged trips that such TNC drivers are in the course of providing. The Geo-Fence shall be comprised of one or more polygons whose points are geographic coordinates defined by the NFTA and on NFTA Airport property.

(af) Transportation Network Company (TNC). A person, corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to §1692 of the New York Vehicle and

Traffic Law (V&T Law) and is operating in New York state exclusively using a digital network to connect transportation network company passengers to transportation network company drivers who provide TNC prearranged trips.

(ag) TNC Driver. The meaning prescribed in §1691 (4) of the V&T Law.

(ah) TNC Drop-Off Trip. The transportation by a TNC Driver affiliated with a TNC operator, for compensation, of a passenger culminating in the passenger's drop-off at the Airport.

(ai) TNC Permitted Use. The use by a TNC operator and TNC Drivers of the non-exclusive designated pick up and drop off areas and designated staging areas at the Airport for the purpose of providing prearranged transportation services to passengers and their personal baggage to or from the Airport in TNC Vehicles operated by TNC Drivers.

(aj) TNC Pick-Up Trip. The transportation by a TNC Driver affiliated with a TNC Operator, for compensation, of a passenger beginning from a location on the Airport.

(ak) TNC Operator. The TNC to which the NFTA has authorized to operate on the Airports.

(al) TNC Vehicle. The meaning prescribed in §1691 (1) of the V&T Law.

(am) TNC Waybill. The electronic documentation for every pre-arranged reservation made between a passenger and TNC Driver for either a TNC Drop-Off Trip and TNC Pick-Up Trip at the Airport which Waybill must include the license plate number, make and model of the TNC Vehicle, the name of the TNC Driver and license number, the names of the party to be transported, the date and time of pick-up or drop-off, a photograph of the TNC Driver, a picture of the TNC Vehicle and must be viewable upon request by any NFTA or law enforcement official.

The Title of Part 1160.17 is amended to read as follows:

Guidelines for meet and greet services at [Greater Buffalo Niagara International Airport]
Buffalo Niagara International Airport.

Section 1160.18 is amended to read as follows:

No skycap performing services at [Greater Buffalo International Airport] the Airport shall accept payment of any kind in exchange for referral of a customer to a commercial ground transportation operator, or otherwise solicit business on behalf of a commercial ground transportation operator; provided, however, that this rule shall not be construed to prevent a skycap from receiving tips for the performance of his or her own services.

A new Section 1160.22 is added as follows:

Section 1160.22 Transportation Network Companies.

(a) Operating Agreement. A TNC must obtain the NFTA's permission to operate on the Airport through the execution of an operating agreement. No TNC may pick-up or drop-off a TNC passenger without a valid operating agreement with the NFTA. TNC Operator must pay the access fee established or changed by resolution of the NFTA members as set forth in Section 1299-f of the Public Authorities Law.

(b) Operations.

- (1) New York State Requirements and License. TNC Operator must comply with Article 44-B of the V&T Law (“NY TNC Requirements”) at all times during any operations on the Airport. TNC Operator must be properly licensed by the State of New York and maintain the insurance as prescribed by the NY TNC Requirements and each TNC Driver operating on the Airports shall be permitted by TNC Operator and maintain the insurance as prescribed by the NY TNC Requirements. TNC Operator shall be responsible to verify, monitor and track the insurance that TNC Drivers are required to maintain under NY TNC Requirements. TNC Operator must comply with the criminal history background check requirements prescribed by the NY TNC Requirements.
- (2) Designated Areas. TNC Operator and its permitted TNC Drivers, in common with others so authorized, may use on a non-exclusive use basis the pick-up, drop-off and staging areas designated by the NFTA from time to time for TNC Permitted Use and for no other purpose.
- (3) Geo-Fence. TNC Operator shall demonstrate to the NFTA that TNC Operator has established a Geo-Fence for the Airports(s) to manage its Airport(s) operations and shall notify permitted affiliated TNC Drivers about the Geo-Fence. The Geo-Fence shall be comprised of one or more polygons whose points are geographic coordinates defined by the NFTA and on NFTA owned Airport property. The Geo-Fence will preclude or “black-out” a TNC Driver’s ability to accept ride requests while within the Geo-Fence boundaries, unless otherwise approved by the Authority. The Geo-Fence shall be fully functioning and operational on the commencement date of TNC

Operator's operating agreement and must remain fully functioning and operational throughout the term of the operating agreement.

- (4) Trade Dress. All TNC Vehicles operating on the Airports must at all times display Trade Dress that is clearly visible and identifying as prescribed in §1696 (5) of the V&T Law.
- (5) TNC Driver Identification. TNC Operator must provide the NFTA with the unique identifier for each TNC Driver that operates on the Airports. TNC Drivers must have available for inspection in digital format information that provides driver identification with a color photo of the driver, vehicle make and model, license plate number, certificates of insurance, electronic equivalent of a waybill, and verification that TNC Operator has issued the TNC Driver a permit in accordance with §1696 of the V&T Law.
- (6) Tracking TNC Vehicles on Airport Property. TNC Operator must develop a vehicle tracking protocol based on a Geo-Fence established by the NFTA and as may be required to interface with the NFTA's ground transportation support management system. TNC Operator must provide the necessary access and data to the NFTA or NFTA's authorized ground transportation support management vendor to implement NFTA's ground transportation management system. TNC Operator may be required to enter into a third party agreement with the NFTA's ground transportation support management vendor for the administration and enforcement of the NFTA's Ground Transportation Rules and Regulations.
- (7) Tracking Triggers. TNC Vehicle Drop-Off Trips and Pick-Up Trips must be tracked at various stages based on transaction type and the applicable Airport. For each

transaction type, TNC Operator shall provide the transaction type, date, time, geographical location, TNC identification, TNC Driver unique identifier and vehicle license plate number. TNC Driver must maintain an open application at all times while on Airport property. The tracking triggers, include, but are not limited to ride completion which occurs when the TNC Driver completes a Drop-Off Trip on Airport property by indicating on the Digital Network that the ride is complete and a Pick-Up Trip which occurs when the TNC Driver pick-up a passenger on Airport property by indicating on the Digital Network that a passenger has been picked-up.

(8) TNC Driver Education. TNC Operator must provide information to all TNC Drivers regarding the authorized use of the Airport, the TNC Designated Areas for operations and the TNC Driver's responsibilities for compliance with the NFTA's Ground Transportation Rules and Regulations and with NY TNC Requirements. TNC Operator shall promptly notify TNC Drivers of any and all violations thereof and immediately notify the TNC Driver to come into compliance.

(c) Reporting and Record Keeping.

(1) Monthly Report. Within twenty (20) days after the close of any calendar month, TNC Operator must submit an operations report to the NFTA for the previous calendar month (Monthly Report). The Monthly Report may be in an agreed upon electronic or paper format as specified by the NFTA and must contain the total number of Drop-Off Trips and Pick-Up Trips conducted for all of TNC Vehicles associated with TNC Operator using either Airport during the reporting period and must report Buffalo Niagara International Airport and Niagara Falls International Airport trips separately. Each Airport may be shown in the same report, but each Airport's trip count must be

separately stated. Drop-Off Trips and Pick-Up Trips must be stated separately. The Monthly report must include the TNC Driver Identification number, TNC Operator name, TNC Vehicle license plate number, timestamp, transaction type, longitude, latitude, date and time of each trip. The NFTA reserves the right to require additional data to account for technological changes and to ensure compliance with and to enforce the Ground Transportation Rules and Regulations and other applicable laws and regulations.

- (2) The Monthly Report must include a statement, attested to be an executive (of at least Vice President level) of TNC Operator that systems, processes and procedures of TNC Operator have been fairly and accurately compiled, recorded, and transmitted, in all material respects, the information referenced above in (c) (1) as stated in the Monthly Report is fairly and accurately presented, in all material respects, both the actual number of Pick-Up Trips and Drop-Off Trips occurring at the Airports in the period covered by the Monthly Report and the amount of the Access Fees TNC Operator was required to remit to the NFTA on account of such trips. Payment of the Access Fees shall be made as set forth in the Operating Agreement.
- (3) Books and Records. TNC Operator must maintain and make available, in either electronic or physical form, to the NFTA accurate and detailed books and accounting records reflecting TNC Operator's operations at the Airport. TNC Operator shall use either reasonable efforts to work towards maintaining such books and records in accordance with generally accepted accounting principles ("GAAP"), or shall actually maintain in accordance with GAAP.

(4) Audit. Upon the NFTA's prior written request, which shall not occur more than once per calendar year, TNC Operator shall permit the NFTA to audit and examine such books and records relating to its operations at the Airport. TNC Operator will permit the NFTA, during its audit, to make reasonable excerpts and transcripts from such books and records, and to make audits of all invoices, materials, records and other data related to the operations authorized under these Ground Transportation Rules and Regulations. TNC Operator shall maintain such data and records for a period of not less than six (6) years from the expiration of its Operating Agreement or the last date of operations at the Airports, whichever is later. Should any examination, inspection and audit of TNC Operator's books and records by the NFTA disclose an underpayment by TNC Operator of the Access Fees due, TNC Operator shall promptly pay the NFTA the amount of such underpayment. If said underpayment exceeds five percent (5%) of the consideration due, TNC Operator shall reimburse the NFTA for all reasonable costs incurred in the conduct of such examination, inspection and audit.

(5) Insurance. TNC Operator and all TNC Drivers, in addition to the requirements set forth in this section, shall at all times comply with §1693 and §1695 of the V&T Law and all other applicable laws, rules and regulations prescribing insurance requirements in the conduct of its operations under this Agreement. TNC Operator shall be responsible to verify, monitor and track the insurance that TNC Drivers are required to maintain under §1693 of the V&T Law. TNC Operator shall procure and maintain, at its sole cost and expense insurance of the kind and in the amount hereinafter provided, by financially responsible and qualified companies eligible to do business in the State of New York, or New York Department of Insurance approved eligible surplus lines

insurer, covering all operations on the Airports (including those of TNC Drivers). TNC Operator shall provide a certificate of insurance to the NFTA naming the NFTA as an additional insured, via blanket endorsement, in a form acceptable to the NFTA, showing that TNC Operator has complied with the obligations of this Section and §1693 and §1695 of the V&T Law. The certificate of insurance shall provide an obligation that the insurer provide the Airport Authority with at least thirty (30) days prior written notice of cancellation. The following insurance coverages are required to be provided by TNC Operator:

(i) Commercial Automobile Liability Insurance with limits of not less than One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) for each accident for third party bodily injury and property damage. This coverage applies to TNC Vehicles operated by TNC Drivers while:

(a) The TNC Driver is located on the Airports during the course of providing an accepted trip including the picking-up and dropping-off of passenger(s);

(b) The TNC Driver is located on the Airports immediately following the conclusion of a requested trip and while in the course of exiting the Airports; and

(c) The TNC Driver has logged into the Digital Network controlled by TNC Operator and is “available to receive requests” for transportation services from passengers using the Digital Network TNC the TNC Driver is located on the airport premises.

(ii) Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the

aggregate, insuring TNC Operator from liability from bodily injury (including wrongful death), personal injury, and damage to property resulting from the performance of this Agreement by TNC Operator.

(iii) Workers' Compensation and Employer's Liability as may be prescribed by the laws of the State of New York.

(iv) All TNC Vehicles must be included under TNC Operator's Commercial Automobile Liability Policy or covered by a blanket coverage form or endorsement in accordance with the V&T Law.

REGULATORY IMPACT STATEMENT

1. Statutory authority: The enabling legislation of the Niagara Frontier Transportation Authority (“NFTA”) permits the NFTA to make rules and regulations governing the exercise of its powers. New York Public Authorities Law (“PAL”) §§ 1299-e(5), (14). The powers of the NFTA include the power to operate its transportation facilities, enter into contracts, and the power to establish rates, charges, and other fees. *See id.* NFTA is also specifically authorized to regulate activities on its airport properties by Section 1700(4) of the New York State Vehicle and Traffic Law.

2. Legislative objectives: The recent surge in popularity of Transportation Network Companies, or “TNCs”, has required the NFTA to revisit its commercial ground transportation regulations for the landside terminal operations at the Buffalo Niagara International Airport and Niagara Falls International Airport (collectively, the “Airports”), to create rules governing the operation of such entities. The proposed rules are intended to promote high quality and reasonably priced ground transportation services consistent with the public safety, while simultaneously fostering and cultivating fair competition among providers of ground transportation services, ensuring the efficient movement of passengers, and developing revenues for support of the airport system.

3. Needs and benefits: The enactment of the proposed rules are necessary to provide cohesive operating procedures and practices for TNC Operators servicing the Airport, which will promote high quality and reasonably priced ground transportation services consistent with the public safety and convenience. The proposed rules are also necessary to foster competition and create equitable operating conditions amongst providers of commercial ground transportation services

given the introduction of TNC Operators as an alternative to more traditional ground transportation methods, and to raise revenue for the continued operation of the Airports. NFTA will benefit by having in place a unified system of ground transportation at the Airport that incorporates TNC operators, and from being able to generate revenues from TNC Operators who use or operate through the Airport. The revenues will help NFTA defray its costs to maintain and operate the Airport.

4. Costs:

(a) Regulated persons. TNC Operators will be required to pay NFTA a \$2.50 fee for each “Drop-off” trip, and a \$2.50 fee for each “Pick-up” trip, as those terms are defined in the proposed rules. TNC Operators will also incur initial implementation costs of approximately \$1,920.00 to install, program and/or set up the technology necessary to provide NFTA with the operational information required by the proposed rules.

TNC Operators may require staff time to review and organize the electronic tracking data required to be reported to NFTA under the Proposed Rules. However, both TNC Operators offering their services at the Airports already track and report this data under their respective contractual agreements with the NFTA. Thus, the enactment of the proposed rules will not create any additional labor costs for these entities.

(b) NFTA, the State and Local Governments. NFTA will incur data interface costs of approximately 5% of each \$2.50 fee associated with a “Drop-off” and/or “Pick-up” trip occurring at the Airports. NFTA staff will be required to review information/data submitted by TNC Operators. However, NFTA staff has already been receiving and reviewing that

information pursuant to contractual arrangements with TNC Operators operating at the Airports, so no change in staff labor time is expected by reason of implementing the proposed rules (i.e. the information required by the proposed rules is already being submitted and reviewed, meaning that same process will continue).

The effect of the proposed rules is limited to operations occurring on NFTA property at the Airports. It will not affect the operations of State and Local Governments, nor impose additional costs on those parties.

(c) Methodology. The estimated costs to implement and monitor the proposed rules, was performed by NFTA staff. A third party engineering firm was also used to estimate the costs to TNC Operators to install the technology required to comply with those rules. This cost analysis was also based upon the access fees proposed as part of the rules, which are authorized by PAL § 1299-f.

5. Local government mandates: The proposed rules do not impose any new programs, services, duties or responsibilities on local governments.

6. Paperwork: The proposed rules require TNC Operators to submit monthly reports specifying, among other things, the number of drop-off and pick-up trips conducted at the Airport by all TNC Vehicles associated with that operator, along with TNC driver, trip and vehicle information. TNC Operators must also maintain detailed records of their activities at the Airport, and financial figures concerning those operations.

7. Duplication: The NFTA is not aware of any other relevant rules or other legal requirements of the State or Federal governments.

8. Alternatives: Alternatives to the proposed “Drop-off” and “Pick-up” fee-based rules were considered, such as charging a flat fee for a permit for TNC Operators to operate at the Airport, monthly operating privilege fees, and/or imposing penalties related to the amount of time TNC Operators remain/idle at the Airports while offering commercial ground transportation services.

These alternatives were rejected as inappropriate for a variety of reasons. It would be difficult to set fair and equitable flat and/or monthly operating fees for all TNC Operators, and lump sum payments would likely be cost prohibitive for smaller companies. Charging fees as penalties based on time TNC Drivers spent at the Airports would be impractical because of the difficulties associated with monitoring those activities, as well as the challenges associated with determining what sort of penalties would be appropriate. Per-trip fees like those described in the proposed rules impose costs equitably on businesses of all sizes as they are levied directly in proportion to a TNC Operator’s level of activity on Airport property.

Technology-based tracking systems for TNC Vehicles were also explored as a potential alternative to the self-reporting of trips by TNC Operators required under the proposed rules. However, the initial capital outlay required to implement those solutions was cost prohibitive to NFTA, and would have required the authority to pass those costs along to TNC Operators in the form of higher fees.

9. Federal standards: The regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule: Each TNC Operator will require time to implement the operational standards created by 21 NYCRR 1160.22(b), create procedures for complying with the recordkeeping requirements under 22 NYCRR 1160.22(c), and/or address other requirements that may become applicable to each TNC Operator under the unique terms of their respective operating agreements. That said, TNC Operators currently offering their services at the Airports have been successfully operating under existing contractual agreements that contain similar (if not identical) requirements to those in the proposed rules. Because the proposed rules are not imposing any additional burdens beyond what is already required for TNC Operators operating at the Airports under these agreements and/or state law, NFTA anticipates these operators will not require any additional time to bring themselves into compliance with the proposed rules, if they are adopted.

For TNC Operators that are not currently operating at the Airports but wish to do so in the future, a brief period (approximately a day to one week) may be required to implement the technology and reporting structure required to comply with the proposed rules.

REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

1. Effect of rule: The NFTA is aware of two Transportation Network Company (“TNC”) Operators that currently provide commercial ground transportation services to and from the Buffalo Niagara International Airport and Niagara Falls International Airport (collectively, the “Airport” or “Airports”), that would be affected by the proposed rules. While NFTA is open to other TNC Operators conducting business and offering such services at the Airports, no other such entities have approached NFTA and requested to do so at this time. The proposed rules do not apply to local governments and will therefore not result in any adverse economic impacts to, nor impose any reporting, recordkeeping or other compliance requirements on, those entities.

2. Compliance requirements: To the extent that any TNC Operator is a small business, all of the requirements of the proposed rules will apply to those entities. The proposed rules would require all TNC Operators to enter into operating agreements to continue offering commercial ground transportation services at the Airport. TNC Operators would also need to comply with the substantive provisions of the proposed rules, which create certain tracking, insurance, training and other requirements for TNC Drivers and TNC Vehicles operating at the Airport. TNC Operators would also be required to keep financial books and records detailing their activities at the Airport, and submit monthly reports to the NFTA indicating the number of drop-off and pick-up trips for all TNC Vehicles associated with a TNC Operator during the applicable reporting period. These requirements will not impose significant additional costs or other adverse effects on small businesses.

3. Professional services: A TNC operator that is a small business would likely need to retain a professional software engineer or similar expert to install/program the technology required to comply with the proposed rules. TNC Operators may wish to seek the advice of an attorney to ensure compliance with the regulations, and/or to assist in the operator's reporting obligations, but the retention of outside legal representation is not required by the regulations. Local governments would not be affected by the proposed rules and would therefore not require any professional services if they were enacted.

4. Compliance costs: Like all businesses subject to the proposed rules, small businesses will be responsible for ensuring that they are in compliance with the proposed rules, which will impose some costs on their operations. NFTA believes that the need for compliance outweighs the adverse effects of those costs. The estimated costs of compliance with the proposed rules are further discussed in the Regulatory Impact Analysis. The proposed rules will not create any compliance costs for local governments.

5. Economic and technological feasibility: NFTA believes that it will be economically and technologically feasible for small businesses to comply with the requirements of the proposed rules. The initial capital implementation costs are projected to be very low (\$1,920).

Aside from this initial outlay, all fees are activity based, meaning that the amount owed by a TNC Operator will be directly proportional to its level of activity at the Airports. Smaller TNC Operators that have a lower volume of drop-off/pick-up trips would therefore owe less in fees than larger TNC Operators.

In addition, because the fees are chargeable to the TNC Operators, as opposed to individual TNC Drivers, the proposed regulatory scheme is supportive of the individual TNC Drivers as small businesses/independent contractors. The proposed rules are technologically feasible for small businesses because TNC Operators and their drivers may use existing GPS technology to comply. The proposed rules do not impact local governments.

6. Minimizing adverse impact: The proposed rules were designed to have the minimum impact necessary to achieve their purpose of streamlining the rules concerning commercial ground transportation services at the Airport while addressing the rising prevalence of TNC Operators operating at those locations. To the extent the proposed rules will apply to any small businesses, the impacts of the proposed rules on that business will not be greater than on any other business subject to the rules, and are necessary to effectuate the purpose of the regulation. The fee-based structure of the proposed rules levels the playing field for small and large businesses alike by making the fees owed to NFTA proportional to the level of activity each business conducts at the Airports.

Small and large businesses are subject to the same compliance and self-reporting requirements under the proposed rules. However, many of the substantive operational requirements in the proposed rules, such as insurance limits, are already required under State law and therefore place no additional burdens on TNC Operators. By the same reasoning, no exemptions from these operational requirements could be created for small businesses that would create some lower standards than what is already required by State law.

The reporting requirements are not burdensome in that the data required to be reported is compiled electronically by the tracking/GPS software proposed to be used. The proposed rules

call for performance standards, as opposed to design standards, because they set operational requirements for TNC Operators and pre-determined fees, but do not direct how TNC Operators are required to go about achieving compliance.

7. Small business and local government participation: The proposed rules will be published publicly in the State Register and posted on NFTA's website, and made available for notice and comment, which will provide small businesses with the opportunity to participate in the rule making process. NFTA intends to complete an assessment of all public comments received on the proposed rules. The proposed rules do not impact local governments.

8. Rules that either establish or modify a violation or penalties: Pursuant to New York Public Authorities Law § 1299-f(3), by resolution, the NFTA may establish, levy and collect or cause to be established such fares, tolls, rentals, rates, charges and other fees it may deem necessary, convenient, or desirable for the use and operation of any transportation facility and related services operated by the NFTA. The proposed rules state that NFTA may establish a fee and penalty schedule. These fees and penalties are necessary to ensure compliance with the proposed rules, and to impose fees to maintain the combined operations of the NFTA and the Airports on a self-sustaining basis. Penalties imposed under this schedule would only be imposed following notice of the alleged violation at issue and the opportunity to be heard, so the alleged violator could present any defenses that may exist.

The proposed rules also provide that a TNC Operator must reimburse NFTA for its reasonable costs incurred in conducting an audit of the TNC operator's books and records relating to its operation at the Airport, if the audit determines that the TNC Operator has

underpaid the NFTA by more than 5% of the consideration due under the TNC Operator's operating agreement. There is no cure period provided in this provision because NFTA may only conduct these audits up to two times per year, and, if a cure period were permitted, the TNC Operator would have no incentive to keep accurate books and records, as those records could simply be fixed in the event an audit did occur. Moreover, requiring TNC Operators to keep accurate books and records ensures that NFTA will receive the appropriate access fees set by their respective operating agreements.

RURAL AREA FLEXIBILITY ANALYSIS

1. Types and estimated numbers of rural areas: The proposed rules concern the regulation of activities by Transportation Network Companies (“TNC”) providing commercial ground transportation services on NFTA property at the Buffalo Niagara International Airport and Niagara Falls International Airport (collectively, the “Airport” or “Airports”). NFTA does not anticipate that any entity subject to the proposed rules operates in a rural area. To the extent that a TNC Operator does operate in a rural area, the proposed rules would apply to that entity.

2. Reporting, recordkeeping and other compliance requirements; and professional services: TNC Operators subject to the proposed rules will be required to enter into operating agreements with NFTA to continue offering commercial ground transportation services at the Airport. TNC operators subject to the proposed rules will also be required to comply with the substantive provisions of the proposed rules, which create certain tracking, insurance, training and other requirements for TNC Operators, TNC Vehicles, and TNC Drivers. The proposed rules further requires TNC Operators to submit monthly reports to NFTA concerning the entity’s activities at the Airport, and maintain certain financial books and records concerning Airport operations.

3. Costs: Compliance cost estimates for the proposed rules are discussed in detail in the accompanying Regulatory Impact Statement and Regulatory Flexibility Analyses for Small Businesses and Local Governments. TNC Operators subject to the proposed rules will be responsible for ensuring they are in compliance with the proposed rules, which will impose some costs on their operations. The costs are not expected to be any higher for TNC Operators servicing or operating in rural areas than for any other entity subject to the proposed rules.

4. Minimizing adverse impact: The scope of the proposed rules is limited to regulating TNC Operators on NFTA property at the Airports. The proposed rules are not expected to have an adverse impact on public or private sector interests in rural areas, as their application is limited to those specific NFTA properties.

5. Rural area participation: The proposed rules will be published publicly in the State Register, include on NFTA's website, and made available for notice and comment, which will provide public and private interests in rural areas with the opportunity to participate in the rule making process. NFTA intends to complete an assessment of all public comments received on the proposed rules.

STATEMENT REGARDING LACK OF JOB IMPACTS

The rule making proposed by the Niagara Frontier Transportation Authority (“NFTA”) will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement for the proposed rules is not required.

Rationale:

Transportation Network Companies (“TNCs”) provide commercial ground transportation services throughout the Western New York area. The effects of the proposed rules will be limited to TNCs that wish to provide (or continue providing) commercial ground transportation services on NFTA property at the Buffalo Niagara International Airport and Niagara Falls International Airport (collectively, the “Airport” or “Airports”). The proposed rules will otherwise have no impact on TNCs with respect to operations that occur outside of the Airports.

As further explained in the NFTA’s regulatory impact analysis for the proposed rules, the cost of implementation and continued compliance with the proposed rules to TNC Operators are insignificant and should not affect the number of jobs or employment opportunities offered by these companies. Both of the TNC Operators that currently offer commercial ground transportation services at the Airports have entered into contractual agreements with the NFTA and already pay similar operating/per-trip fees to those contained in the proposed rules. The proposed rules are merely intended to codify the terms of those existing contractual relationships, and create uniform rules for other TNC Operators that may wish to begin offering similar services at the Airports in the future.

The Legislature of the State of New York has specifically acknowledged the NFTA’s right to regulate TNC Operators on Airport property, and, pursuant Vehicle and Traffic Law §

1700(4), determined that it was appropriate for public authorities like NFTA to adopt regulations governing the scope of those activities. The proposed rules are being adopted pursuant to that authority, and NFTA does not anticipate that implementation of its TNC regulations will have a negative impact on jobs.

- d. Carry out a legal requirement that would likely have the effect of raising property taxes.

Yes

No

If the answer to all questions above are “no,” ensuring the regulation will not result in a mandate on local governments and property taxpayers, an accounting and the approval of the Office for Taxpayer Accountability are not required. If the answer to any question above is “yes,” and the regulation may have a fiscal impact on local governments and property taxpayers, please proceed to items 2 – 3.

2. Is the mandate required by federal law or regulation or state law?

Yes

No

- a. If yes, please cite the specific provision in the statute or federal regulation.
- b. If yes, please describe any elements of the regulation not specifically mandated by the statute or regulation.

3. If any portion of the mandate is not required by federal or state law, please attach to this Checklist an Accounting for such portion containing:*

- a. A description of the mandate in the regulation;
- b. An accounting of the impacts of such mandate that includes:
- (i) A fiscal impact statement;
 - (ii) A cost-benefit analysis, which includes:
 - (x) a specific delineation of the costs and benefits to local governments and property taxpayers; and
 - (y) a quantification of the impact on local government revenue and expenditures, where such impact is quantifiable based on available information (please consult with the Governor’s Office of Regulatory Reform if further guidance is needed);
- c. A description of input sought and received from affected local governments;
- d. A description of the proposed revenue sources to fund such mandate; and
- e. An explanation as to why this regulation should be advanced with a mandate.

*Note: The “Regulatory and Flexibility Analysis for Small Businesses and Local Governments” may be attached so long as the items set forth in 3 above are fully accounted for in the Analysis.