

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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**For Office
Use Only:**

Effective Date _____ Code Number _____

Name of Agency Arkansas Public Service Commission

Department Legal Division, State Agency #126.04

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Statutory Authority for Promulgating Rules A.C.A. §§ 23-2-305 & 23-13-701 et seq.

Rule Title: APSC - Transportation Network Company Services Rules

Intended Effective Date
(Check One)

Date

Emergency (ACA 25-15-204)

Legal Notice Published

07/20/15 & 07/27/15

10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

12/09/2015

Other 02/19/2016
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

02/19/2016

Adopted by State Agency

02/19/2016

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Michael Sappington

msappington@psc.state.ar.us

02/24/2016

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501.682.5782

msappington@psc.state.ar.us

Phone Number

E-mail Address

Secretary of the Commission

Title

02/24/2016

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Public Service Commission
DIVISION Utilities Division
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **FAX NO.** 501-682-5864 **EMAIL:** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Transportation Network Company Services Regulations

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
n/a
- (b) The reason for adoption of the more costly rule;
n/a
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
n/a
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
n/a

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total n/a Total n/a

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total n/a

Total n/a

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

ARKANSAS PUBLIC SERVICE COMMISSION



TRANSPORTATION NETWORK COMPANY SERVICES RULES

Adopted: December 09, 2015
Order No. 3
Docket No. 15-052-R
Effective: 02/19/2016

TRANSPORTATION NETWORK COMPANY SERVICES RULES

ADMINISTRATIVE HISTORY

<u>Docket</u>	<u>Date</u>	<u>Order No.</u>	<u>Subject Matter of Docket/Order</u>
15-052-R	12/09/2015	3	Adoption of Transportation Network Company Services Rules

**Arkansas Public Service Commission
Transportation Network Company Services Rules
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SECTION 1. GENERAL PROVISIONS

Rule 1.01 Definitions

The following definitions shall apply throughout these Rules except as otherwise required by context and any references to the Rules shall include these definitions:

- (a) “Commission.” Commissioners of the Arkansas Public Service Commission as defined in Ark. Code Ann. § 23-2-101 or a Presiding Officer designated to act on behalf of the Commission.
- (b) “Digital Network.” As defined by Ark. Code Ann. § 23-13-702(1).
- (c) “For-Hire Vehicle.” A chauffeured vehicle that provides, on a commercial basis and by a method other than a Digital Network, transportation service to one or more passengers between locations of the passengers’ choice for a fee paid to the driver of the vehicle.
- (d) “Limousine.” A large sedan or other luxury vehicle made or modified to carry a large number of passengers and used for the transportation of persons for hire by a method other than a Digital Network, and which does not include any vehicle employed in transporting persons over regular routes having fixed termini or upon regular schedules of operation.
- (e) “Personal Vehicle.” As defined by Ark. Code Ann. § 23-13-702(2).
- (f) “Prearranged Ride.” As defined by Ark. Code Ann. § 23-13-702(3).
- (g) “RPPs.” The Commission’s Rules of Practice and Procedure.
- (h) “Rules.” The Commission’s Transportation Network Company Services Rules.
- (i) “Staff.” Commission employees who may collectively participate in and appear as a Party in investigations at, and Dockets before, the Commission. Staff includes the Executive Director and the Tax Division Director of the Commission and employees who report to those directors. Staff does not include employees of the Commission who provide technical and legal support to the Commissioners.
- (j) “Street Hails.” For a passenger, a method whereby a person wishing transportation who has not pre-arranged the service signals to an available Driver by a physical gesture or vocally, or both, from the street or area near the street, that the person wishes to engage that Driver’s services. For a Driver, a method whereby a Driver signals to a potential passenger, who has not pre-arranged the service, by a physical gesture or vocally, or both, that the Driver is available for transportation services. For a Driver, a Street Hail includes staging at a designated taxi stand.

- (k) “Taxi Cab.” As defined by Ark. Code Ann. § 14-57-301(1).
- (l) “Transportation Network Company” or “TNC.” As defined by Ark. Code Ann. § 23-13-702(4).
- (m) “Transportation Network Company Driver” or “Driver.” As defined by Ark. Code Ann. § 23-13-702(5).
- (n) “Transportation Network Company Rider” or “Rider.” As defined by Ark. Code Ann. § 23-13-702(6).
- (o) “Transportation Network Services” or “TNS.” See Pre-Arranged Ride.

Rule 1.02 Authority

These Rules are promulgated pursuant to, and in accordance with, the Transportation Network Company Services Act, as amended and codified in Ark. Code Ann. §§ 23-13-701 *et seq.*

Rule 1.03 Purpose and Scope

Consistent with the Transportation Network Company Service Act, these Rules are adopted to ensure the safety, reliability, and cost-effectiveness of TNS and to preserve and enhance access to transportation options for the state’s residents and visitors.

Rule 1.04 Applicability

These Rules apply to TNCs and TNS. These Rules do not apply to taxicab services governed by Ark. Code Ann. §§ 14-57-301 *et seq.*, motor carrier services pursuant to Ark. Code Ann. §§ 23-13-201 *et seq.*, or Street Hails as prohibited by Ark. Code Ann. § 23-13-715.

Rule 1.05 Procedures

Unless otherwise specified, the RPPs shall govern procedural matters initiated under these Rules.

Rule 1.06 Confidential Information Pursuant to Statute

- (a) Pursuant to Ark. Code Ann. § 23-13-718(d), records regarding TNS, TNC Drivers, or Personal Vehicles are not subject to disclosure to a third party by the Commission and are exempt from the Freedom of Information Act of 1967, Ark. Code Ann. § 25-19-101 *et seq.*
- (b) Regarding records that are protected pursuant to Ark. Code Ann. § 23-14-718(d), if it becomes necessary to file records with the Commission, provide records to Staff, or provide records to a Party to a Commission proceeding pursuant to these Rules, any such records shall be filed or provided in the

same manner as information submitted pursuant to a Protective Order issued by the Commission pursuant to the RPPs.

- (c) Any Party may contest a claim of confidentiality of the records submitted by written motion within 5 days of the filing of the records or may contest continuing entitlement to protection in accordance with the RPPs.
- (d) Challenge of the status of any record claimed as protected shall be pursuant to RPP Rule 4.04.
- (e) Disclosure of records provided as confidential pursuant to this sub-section will be limited to those Persons who sign an Affidavit of Non-Disclosure in the form prescribed by the Commission.
- (f) Affidavits of Non-Disclosure signed pursuant to this sub-section shall comply with the requirements contained in the RPPs.
- (g) Any Commission employee or agent participating in any inspection of TNC records that are protected pursuant to statute or Commission order shall execute an Affidavit of Non-Disclosure pursuant to RPP Rule 4.04(f) in the form prescribed by the Commission.
- (h) Any Commission employee or agent investigating any informal (non-docketed) complaint that involves TNC records that are protected pursuant to statute or Commission order shall execute an Affidavit of Non-Disclosure pursuant to RPP Rule 4.04(f) in the form prescribed by the Commission.
- (i) Affidavits of Non-Disclosure executed regarding an inspection or informal (non-docketed) complaint shall be filed in the docket that granted the TNC its permit to operate.
- (j) A Party may request a Protective Order of Non-Disclosure pursuant to the RPPs for confidential information not covered by this sub-section.

SECTION 2. PERMIT APPLICATION

Rule 2.01 Permit Required

An individual or entity shall not operate a TNC in the State of Arkansas without first having obtained a permit to operate a TNC from the Commission.

Rule 2.02 Permit Application and Requirements

- (a) A permit application shall be submitted in accordance with these Rules and the RPPs, including Rule 4.08(c) of the RPPs.
- (b) Each permit application shall include:
 - (1) The applicant's exact name as registered with the Arkansas Secretary of State; physical and mailing addresses; phone number; email address; and company website address;
 - (2) A copy of the articles of partnership or a certified copy of the Articles of Incorporation or other articles of organization. A copy of the Certificate of Authority of a Foreign Corporation shall be included unless incorporated under Arkansas law;
 - (3) The TNC's agent for service of process in compliance with Ark. Code Ann. §23-13-705;
 - (4) Information demonstrating that the insurance requirements of Ark. Code Ann. § 23-13-709 have been met;
 - (5) Copies of the policy and procedures implemented pursuant to Ark. Code Ann. § 23-13-712, including information on how notice of the policy and procedures is provided;
 - (6) A copy of the policy adopted pursuant to Ark. Code Ann. § 23-13-716; and
 - (7) A copy of the policy adopted pursuant to Ark. Code Ann. § 23-13-717.
- (c) Each permit application shall, at a minimum, demonstrate that procedures and methods have been implemented which will ensure that:
 - (1) The TNC will disclose to TNC Riders the fare information in compliance with Ark. Code Ann. § 23-13-706(b);
 - (2) The TNC will provide to the Rider prior to the Rider entering the Driver's vehicle the information required by Ark. Code Ann. § 23-13-707;

- (3) The TNC will transmit an electronic receipt to the Rider in compliance with Ark. Code Ann. § 23-13-708;
 - (4) The TNC Drivers will carry proof of insurance coverage in compliance with Ark. Code Ann. § 23-13-709(a)(6);
 - (5) The TNC will disclose, in writing, to the Drivers the information required by Ark. Code Ann. §§ 23-13-709(b) and 23-13-710 before they are allowed to accept a request for a Prearranged Ride on the TNC's Digital Network;
 - (6) The TNC and its insurer will comply with Ark. Code Ann. § 23-13-711(d);
 - (7) The TNC will require the applications, conduct the background checks, and limit drivers in compliance with Ark. Code Ann. § 23-13-713;
 - (8) The TNC will comply with motor vehicle safety and emissions requirements of Ark. Code Ann. § 23-13-714;
 - (9) The TNC will provide a Rider the opportunity required by Ark. Code Ann. § 23-13-717;
 - (10) The TNC will make Drivers aware of their independent contractor status in accordance with Ark. Code Ann. § 23-13-719;
 - (11) The TNC will receive and investigate customer complaints and make good faith efforts to resolve the issues raised by the complaint; and
 - (12) The TNC will comply with the recordkeeping and reporting requirements of Ark. Code § 23-13-718, these Rules, and all other applicable statutory and regulatory requirements governing TNCs.
- (d) Each permit application shall be accompanied by proof of service of a copy of the application on:
- (1) The Director of the Arkansas State Highway and Transportation Department;
 - (2) The Director of the Arkansas State Police; and
 - (3) The Arkansas Attorney General.
- (e) Each permit application shall be accompanied by payment of an annual permit fee of \$15,000.

Rule 2.03 **Notice**

- (a) Notice of the permit application shall be given by the applicant in the following manner, unless the Commission otherwise provides:
 - (1) By publication in a newspaper of general circulation in each market within which the applicant intends to operate, once per week for two (2) consecutive weeks within the thirty (30) days before filing the application; and
 - (2) By publication on the applicant's website or any other form of electronic application controlled by the applicant, or both.
- (b) Notice shall include at a minimum a brief description of the permit application and the ability to intervene or comment on the application in accordance with the RPPs.

Rule 2.04 **Basis for Denial**

The application for a permit may be denied by the Commission if the applicant fails to demonstrate to the Commission's satisfaction that the information, procedures, and methods provided by the applicant in response to Rule 2.02 will ensure statutory compliance, or for any other just cause as determined pursuant to the Commission's authority.

SECTION 3. PENALTIES AND REVOCATION

Rule 3.01 Penalties and Revocation

The Commission may assess a penalty in accordance with Ark. Code Ann. § 23-13-721 and these Rules or revoke or suspend the permit of the TNC, or any combination of the preceding, if:

- (a) The TNC fails to timely pay a fee, fine, or penalty or file its annual report in accordance with these Rules;
- (b) The report submitted with the TNC's annual fee pursuant to Rule 2.04 indicates that the change of information, procedures, or methods would disqualify the TNC from receiving a permit as an initial application or under current law; or
- (c) The TNC commits a violation of the provisions of the Transportation Network Company Services Act or these Rules as determined by the Commission.

SECTION 4. COMPLIANCE PROCEDURES

Rule 4.01 Verification

After the grant of a permit to operate by the Commission, a TNC shall file in the docket in which it received its permit to operate on or before March 31; June 30; September 30; and December 31 of each year, a written affidavit, signed by an officer of the TNC, confirming that the TNC is:

- (a) Providing to the Rider prior to the Rider entering the Driver's Personal Vehicle the picture of the Driver and the license plate number of the Personal Vehicle;
- (b) Transmitting an electronic receipt to the Rider after the end of the TNS which indicates:
 - (1) The origin and destination of the trip;
 - (2) The total time and distance of the trip; and
 - (3) An itemization of the total fare paid, if any.
- (c) Verifying that the TNC and its Drivers have complied with the motor vehicle liability insurance coverage requirements of Ark. Code Ann. § 23-13-709; and
- (d) Maintaining a list of Drivers and a description of their Personal Vehicles, indicating whether each is covered by the motor vehicle liability insurance as required by Ark. Code Ann. § 23-13-709 and whether the background checks for each Driver and motor vehicle safety and emissions checks required by Ark. Code Ann. §§ 23-13-713 and 23-13-714, respectively, have been completed.

Rule 4.02 Annual Fee and Reporting Requirements

- (a) In accordance with Ark. Code Ann. § 23-13-704, on or before October 1 annually, a TNC shall pay to the Secretary of the Commission an annual fee of \$15,000.
- (b) With payment of the annual fee, the TNC shall file in the docket in which it received its permit to operate a report, verified under oath by an officer of the TNC, that:
 - (1) Certifies that the information, procedures, and methods required by the TNC's permit application are being maintained and followed;
 - (2) Outlines any changes in the TNC's information, procedures, or methods currently on file with the Commission; and

- (3) Provides a copy of any changed information, procedures, or methods.

SECTION 5. RECORDKEEPING AND REPORTING REQUIREMENTS

Rule 5.01 Records

Individual trip records and Driver records shall be maintained in accordance with Ark. Code Ann. § 23-14-718(a).

Rule 5.02 Inspections

- (a) In accordance with Ark. Code Ann. § 23-13-718(b), Staff may inspect records held by a TNC that are needed to investigate or resolve an informal or formal complaint.
- (b) Staff may inspect records and conduct audits pursuant to Ark. Code Ann. § 23-14-718(c).

Rule 5.03 Responsibility for Record Maintenance

The TNC is responsible for maintaining and providing for inspection the records requested by the Commission in accordance with this section regardless of whether the records are maintained or held by a third party.