

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FOURTH EMERGENCY RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(2), (3), (4), (5), (7), (19) and (20), 14, 20 and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2), (3), (4), (5), (7), (19) and (20) (2012 Repl. & 2013 Supp.); D.C. Official Code § 50-313 (2012 Repl. & 2013 Supp.); D.C. Official Code § 50-319 (2012 Repl. & 2013 Supp.); and D.C. Official Code § 50-320 (2012 Repl. & 2013 Supp.); D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Repl. & 2013 Supp.) hereby gives notice of its intent to create a new Chapter 16 (Dispatch Services) of Title 31 (Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules creating a new Chapter 16 were originally approved by the Commission for publication on February 13, 2013, and published in the *D.C. Register* on March 15, 2013, at 60 DCR 3774. The Commission held a public hearing on the proposed rules on March 29, 2013, to receive oral comments on the proposed rules. A Second Notice of Proposed Rulemaking was published in the *D.C. Register* on May 10, 2013, at 60 DCR 6723. A Notice of Emergency and Proposed Rulemaking was adopted by the Commission on May 24, 2013, took effect on May 31, 2013, and was published on June 7, 2013 in the *D.C. Register* at 60 DCR 8714. A Second Notice of Emergency and Proposed Rulemaking was adopted by the Commission on July 17, 2013, and was published on July 26, 2013 in the *D.C. Register* at 60 DCR 11007. A Third Emergency and Proposed Rulemaking was adopted on September 11, 2013, and was published on September 27, 2013, in the *D.C. Register* at 60 DCR 13431.

The rules and regulations proposed in this notice regulate digital dispatch services only in the manner and to the extent authorized by law, including: (1) by the Taxicab Service Improvement Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-184; 59 DCR 9431) (“Improvement Act”), insofar as it allows the Commission to “[establish procedures] for the implementation [of a passenger surcharge]” and “[for the] administration of a passenger surcharge amount” and “[e]stablish any rule relating to the regulation and supervision of the public vehicle-for-hire industry not specifically delineated in this act, so long as the rule is consistent with this act and related to the furtherance and protection of the public interest in public vehicle-for-hire transportation”; and (2) by the Public Vehicle for Hire Innovation Amendment Act of 2013, effective April 23, 2013 (D.C. Law 19-270; 60 DCR 1717) (“Innovation Act”), insofar as it allows the Commission to promulgate “rules and regulations [respecting digital dispatch services] that are necessary for the safety of customers and drivers or consumer protection,” which “protect personal privacy rights of customers and drivers,” which “[will] not result in the disclosure of confidential business information,” and which “[will] allow providers to limit the geographic location of trip data to individual census tracts” and to “[c]harge and collect reasonable fees for services it is authorized to provide under this act and D.C. Official Code § 47-2829(e)(2)”.

The Commission has not made any changes to this rulemaking in response to the comments received during the most recent comment period, during the fifth publication of these rules as

proposed rulemaking. The comments largely reiterate earlier assertions that these rules exceed the Commission's legal authority; the Commission finds that the comments lack merit. The Commission has concluded that it retains authority under the Establishment Act, as amended by the Improvement and Innovation Acts, to impose on digital dispatch services the minimal requirements created by this chapter, which make registration by each digital dispatch service indispensable for enforcement of the operating requirements imposed on digital dispatch services, and on the owners, operators, and vehicles with which they associate, including collection of the passenger surcharge and reporting of trip data. *See* preamble to the Third Emergency and Proposed Rulemaking, adopted on September 11, 2013, and published on September 27, 2013 in the *D.C. Register* at 60 DCR 13431.

This fourth emergency rulemaking was adopted by the Commission on March 12, 2014 and will take effect immediately. The emergency rules shall remain in effect for one hundred twenty (120) days after the date of adoption (expiring July 9, 2014), unless earlier superseded by an amendment or repeal by the Commission, or the publication of a final rulemaking, whichever occurs first. The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 16, DISPATCH SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is added to read as follows:

CHAPTER 16 DISPATCH SERVICES

1600 APPLICATION AND SCOPE

1600.1 This chapter establishes substantive rules governing dispatch services for public vehicles-for-hire limited to rules intended to ensure the safety of passengers and operators, to protect consumers, and to collect a passenger surcharge, provided, however, that nothing in this chapter shall be construed to limit the Commission's authority to regulate a telephone dispatch service under any chapter of this title.

1600.2 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by the Improvement Act, and by the Innovation Act.

1600.3 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control.

1601 GENERAL REQUIREMENTS

1601.1 No person shall provide telephone or digital dispatch, or digital payment, for public vehicles-for-hire in the District, except in compliance with this chapter, all applicable provisions of this title then in effect, and other applicable laws.

1601.2 Nothing in this chapter shall be construed to solicit or create a contractual relationship between the District of Columbia and any person.

1601.3 Implementation of regulations applicable to dispatch services and associated owners and operators. Each dispatch service shall:

- (a) Operate in compliance with § 1603; and
- (b) Maintain compliance with the provisions of § 1604 for all services it provides in the District;

1601.4 No person regulated by this title shall associate with, integrate with, or conduct a transaction in cooperation with, a dispatch service that is not in compliance with § 1604.

1602 RELATED SERVICES

1602.1 A person may operate a dispatch service and one or more affiliated businesses, provided each affiliated business is operated in compliance with all applicable provisions of this title and other applicable laws.

1602.2 All provisions of this title applicable to digital dispatch services (DDS) shall apply equally to each DDS regardless of whether such DDS receives payment from the passenger or the operator in connection with dispatch services.

1603 OPERATING REQUIREMENTS FOR ALL DISPATCH SERVICES

1603.1 Each dispatch service shall be licensed to do business in the District of Columbia.

1603.2 Each dispatch service that provides digital services for sedans shall operate in compliance with this chapter and Chapters 12 and 14 of this title.

1603.3 Each dispatch service that participates in providing taxicab service shall operate in compliance with this chapter and Chapters 4, 6, and 8 of this title.

1603.4 Each dispatch provided by a dispatch service shall comply with the definitions of “dispatch”.

1603.5 Each gratuity charged by a dispatch service shall comply with the definition of “gratuity”.

1603.6 Each digital dispatch service that processes digital payments shall:

- (a) Comply with the requirements for passenger rates and charges set forth in § 801 for taxicab service and § 1402 for sedan service;

- (b) If the payments are processed for taxicab service, comply with the integration, payment, and passenger surcharge requirements of § 408;
- (c) Provide receipts as required by § 803 for taxicab service and § 1404 for sedan service;
- (d) Use technology that meets Open Web Application Security Project (“OWASP”) security guidelines, complies with current standards of the PCI Security Standards Council (“Council”) for payment card data security, if such standards exist, and, if not, then with current guidelines of the Council for payment card data security, and, for direct debit transactions, complies with the rules and guidelines of the National Automated Clearing House Association; and
- (e) Promptly inform the Office of a security breach requiring a report under the Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237, D.C. Official Code §§ 28-3851, *et seq.*), or other applicable law.

1603.7 Each dispatch shall clearly provide the person seeking service with the option to request an available wheelchair-accessible vehicle.

1603.8 Each dispatch service shall maintain a bona fide administrative office or a registered agent authorized to accept service of process, provided, however, a dispatch service operated by a taxicab company required to maintain such an office pursuant to Chapter 5 of this title shall operate its dispatch service at that location or another bona fide administrative office.

1603.9 Each dispatch service shall maintain a customer service telephone number for passengers with a “202” prefix or a toll-free area code, or an email address posted on its website that is answered or replied to during normal business hours.

1603.10 Each dispatch service shall maintain a website with current information that includes:

- (a) The name of the dispatch service;
- (b) Contact information for its bona fide administrative office or registered agent authorized to accept service of process;
- (c) Its customer service telephone number or email address, and;
- (d) The following statement prominently displayed:

Public vehicle-for-hire services in Washington, DC
are regulated by the DC Taxicab Commission
2041 Martin Luther King Jr., Ave., SE, Suite 204
Washington, DC. 20020
www.dctaxi.dc.gov
dctc3@dc.gov 1-855-484-4966 TTY: 711

and;

- (e) A statement of how the fare is calculated for each class of service it offers, which shall include a statement of the rates and charges allowed by § 1402, and, for sedan service, shall indicate whether the dispatch service uses demand pricing and, if so, how such pricing affects its rates.

1603.11 Each dispatch service shall comply with §§ 508 through 513, to the same extent as if it were a taxicab company.

1603.12 Each dispatch service shall provide its service throughout the entire District.

1603.13 Each dispatch service shall perform the service agreed to with a passenger in a dispatch, including picking up the passenger at the agreed time and location, except for a bona fide reason not prohibited by § 819.5 or other applicable provision of this title.

1603.14 Protection of certain information relating to passenger privacy and safety.

- (a) A dispatch service shall not:

- (1) Release information to any person that would result in a violation of the personal privacy of the passenger or the person requesting service, or that would threaten the safety of a passenger or an operator; or

- (2) Permit access to real-time information about the location, apparent gender, or number of passengers awaiting pick up by a person not authorized by the dispatch service to receive such information.

- (b) This subsection shall not limit access to information by the Office or a District enforcement official.

1603.15 A dispatch service shall not transmit to the operator any information about the destination of a trip, except for the jurisdiction of the destination, until the trip has been booked.

1603.16 Each dispatch service shall store its business records in compliance with industry best practices and all applicable laws, make its business records related to compliance with its legal obligations under this title available for inspection and

copying as directed by the Office, and retain its business records for five (5) years.

1603.17 Each dispatch service shall comply with all applicable provisions of this title and other laws regulating origins and destinations of trips, including all reciprocal agreements between governmental bodies in the Washington Metropolitan Area governing public vehicle-for-hire service such as those in § 828.

1603.18 Each DDS that provides digital services for sedans shall:

- (a) Maintain with the Office an accurate and current inventory of the vehicles and operators associated with the DDS to use its system in the manner required by § 1403; and
- (b) Collect from the passenger and pay to the District the sedan passenger surcharge in the manner required by § 1403.

1604 REGISTRATION

1604.1 No dispatch service shall participate in providing a public vehicle-for-hire service in the District unless it is registered with the Office pursuant to this section, except for a taxicab company with existing operating authority under Chapter 5 of this title, which, as of the effective date of this rulemaking, is operating a telephone dispatch service.

1604.2 An applicant seeking to register with the Office shall provide the following information:

- (a) Its name and contact information;
- (b) The name of and contact information for each public vehicle-for-hire business or service associated with, or operated by an owner of, the dispatch service, including any payment service provider (PSP), and any business or service operated or offered outside the District,
- (c) A technical description of the dispatch or payment solution, digital payment system, or both, offered by the DDS, including the trade names and software applications, platforms, and operating systems used;
- (d) A blank sample of each agreement or policy, including any user agreement or privacy policy, applicable to the DDS's association with vehicle owners and operators, and with passengers, or a URL web address where such information may be found;

- (e) An indication by the applicant of whether the dispatch service intends to offer dispatch of sedans, and whether it intends to offer dispatch services or digital payments for taxicabs, or both;
- (f) If it will be dispatching sedans, its initial operator and vehicle inventory pursuant to § 1403;
- (g) A certification by the applicant that the DDS owns the right to, or holds licenses to, all the intellectual property used by the dispatch service for all technology used for the dispatch or payment solution or the digital payment system it provides;
- (h) Proof that it is licensed to do business in the District of Columbia; and
- (i) Such other information and documentation as the Office may determine is reasonably necessary in order to verify that the DDS will comply with all applicable provisions of this title and other applicable laws.

1604.3 Each application under § 1604.2 shall be:

- (a) Provided under penalty of perjury;
- (b) Accompanied by the surcharge bond required by § 403.3 (if the dispatch service is a DDS is required to collect a passenger surcharge for taxicab service), or by § 1403, if the dispatch service is a DDS that will be dispatching sedans, provided, however, that a DDS shall not be required to deposit a more than one (1) surcharge bond if the DDS collects and pays passenger surcharges for both taxicabs and for sedans; and
- (c) Accompanied by a fee of five hundred dollars (\$500), except that the fee for an application to amend an existing registration under § 1604.5, regardless of the number of services proposed to be added to the existing registration, shall be three hundred dollars (\$300).

1604.4 Each registration shall continue in force and effect for twenty four (24) months, during which time no substantial change may be made to a DDS's dispatch or payment solution for taxicabs, or to a DDS's digital payment system for sedans, unless the DDS informs the Office of the proposed substantial change at least fifteen (15) days prior to its implementation, during which time the DDS shall cooperate with the Office as necessary so the Office is fully informed of the nature of the proposed change and is able to verify whether the proposed change is in compliance with relevant laws and regulations. In addition, each registered DDS shall notify the Office of any other change in the information contained in its registration or its supporting documentation, such as contact information, within seven (7) days after the change.

- 1604.5 Each DDS registered under this section may at any time file an application to amend its registration to include additional services it wishes to market to public vehicle-for-hire owners and operators for which registration is required under this chapter.
- 1604.6 Each DDS registered under this section shall file to renew its registration at least sixty (60) days prior to the expiration thereof, by providing such information for renewal as determined by the Office. Registration shall continue in force and effect beyond its expiration period during such time as an application to renew is pending acceptance in proper form.
- 1604.7 A DDS registered under this section shall annually provide to the Office, beginning on the first (1st) day of the thirteenth (13th) month after its certificate of registration was issued:
- (a) Proof that it is licensed to do business in the District;
 - (b) Proof that it maintains a bona fide administrative office or registered agent authorized to accept service of process, as required by § 1603.1;
 - (c) Proof that it maintains a website, as required by § 1603.10;
 - (d) A report on the wait times and fares charged to passengers seeking wheelchair-accessible service in the prior twelve (12) months; and
 - (e) A list of incidents in the prior twelve (12) months that involved an allegation or dispute concerning the following matters, which shall include an indication of whether the allegation or dispute has been resolved:
 - (1) A payment, where the dispute involved fifty dollars (\$50) or more;
 - (2) Fraud or criminal activity; or
 - (3) Violations of the anti-discrimination rules of Chapter 5 of this title.
- 1604.8 The Office may arrange one (1) demonstration for each of the DDS's dispatch or payment solutions for taxicabs, or its digital payment system for sedans, where the Office's technical staff may examine and test the equipment to ensure compliance with all applicable provisions of this title and other applicable laws. The Office's staff may ask questions of the DDS's technical staff, who shall attend the demonstration.
- 1604.9 The Office shall determine whether to grant or deny registration within ten (10) days after an application is filed, provided however, that such period may be extended by the Office for no more than seven (7) days with notice to the DDS.

The Office shall deny registration only if it determines that the DDS is not or will not be in compliance with the provisions of this title or other applicable laws.

- 1604.10 If the Office grants an application, it shall provide notice to the DDS in writing.
- 1604.11 If the Office denies an application, it shall state the reasons for its decision in writing, including the specific facts upon which the Office has determined that the DDS is not or will not be in compliance with the provisions of this title or other applicable laws. A decision to deny may be appealed to the Chief of the Office within fifteen (15) business days. If the decision to deny is not appealed within the fifteen (15) business day period, it shall constitute a final decision of the Office. If the decision to deny is appealed within the fifteen (15) business day period, the Chief shall issue a decision within thirty (30) days. A timely appeal of a denial shall extend an existing certificate or registration pending the Chief's decision. A decision of the Chief to affirm or reverse a denial shall constitute a final decision of the Office. A decision of the Chief to remand to the Office for further review of the filing shall extend an existing certificate pending the final decision of the Office.
- 1604.12 The name of each registered DDS, and the name of its dispatch or payment solution for taxicabs, and/or digital payment system for sedans, shall be listed on the Commission's website.
- 1604.13 A DDS's registration may be suspended or revoked, or not renewed, by the Office with reasonable notice and an opportunity to be heard if the Office learns that the DDS is not in substantial compliance with this title, or other applicable law, or that a DDS's digital payment system, or dispatch or payment solution, is being used in a manner that poses a significant threat to passenger or operator safety, or to consumer protection, or is failing to collect the passenger surcharge.

1605 PROHIBITIONS

- 1605.1 No person shall dispatch a public vehicle-for hire or process a digital payment for a public vehicle-for-hire in the District except as provided in this chapter.
- 1605.2 No person shall operate a dispatch service that is not registered with the Office under § 1604 for all the services it provides in the District.
- 1605.3 No dispatch service shall dispatch or process digital payments except as provided in this chapter and in Chapters 4, 6, and 8 (for taxicabs), and in this chapter and in Chapters 12 and 14 (for sedans).
- 1605.4 No dispatch service may alter or attempt to alter its legal obligations under this title or to impose an obligation on any person or limit the rights of any person in a manner that is contrary to public policy or that threatens passenger or operator safety or consumer protection.

- 1605.5 A DDS shall not provide digital dispatches to a taxicab operator who provides service with a vehicle that displays on its exterior the name, color scheme, or other unique branding of a taxicab fleet or association, if such fleet or association does not agree to the operator's association with the DDS, and:
- (a) For thirty (30) days following the effective date of this rulemaking, such fleet or association is operating a dispatch service limited to its associated vehicles; or
 - (b) After thirty (30) days following the effective date of this rulemaking, such fleet or association has filed for or received registration for a DDS limited to its associated vehicles.
- 1605.6 No DDS shall provide digital payment for taxicabs which allows the operator to manually enter fare information into any device except as permitted by § 801, or by the integration rules of Chapter 4.
- 1605.7 No fee charged by a DDS in addition to a taximeter fare shall be processed by a payment service provider, or displayed on or paid using any component of an MTS unit, provided, however, that such a fee may be processed by a payment service provider or displayed on or paid using a component of an MTS unit pursuant to an integration agreement between the DDS and the PSP that has been approved by the Office pursuant to Chapter 4, this chapter, and all other applicable provisions of this title, and incorporates reasonable measures to avoid passenger confusion between regulated and non-regulated rates and charges.
- 1605.8 This section shall not apply to sedan services until November 1, 2013.

1606 ENFORCEMENT

- 1606.1 The enforcement of any provision of this chapter shall be governed by the procedures set forth in Chapter 7 of this title. If, at the time of violation, the procedures in Chapter 7 do not extend in their terms to DDSs, violations of this chapter shall be enforced as if such DDS were a taxicab owner or operator.

1607 PENALTIES

- 1607.1 A dispatch service that violates this chapter shall be subject to:
- (a) A civil fine of five hundred dollars (\$500) for the first violation of a provision, one-thousand dollars (\$1,000) for the second violation of the same provision, and one-thousand five-hundred dollars (\$1,500) for each subsequent violation of the same provision;
 - (b) Suspension, revocation, or non-renewal of its registration;

- (c) Any penalty available under Chapter 4 in connection with the dispatch of taxicabs or under Chapter 14 in connection with the dispatch of sedans;
- (d) Any combination of the sanctions listed in this subsection; or
- (e) Any penalty authorized by a provision of this title other than in this chapter or by other applicable law.

1699 DEFINITIONS

1699.1 The terms “cashless payment,” “modern taximeter system,” “MTS,” “MTS unit”, “payment service provider”, “PSP”, and “taximeter fare” shall have the meanings ascribed in Chapter 4 of this title.

1699.2 The term “sedan” shall have the meaning ascribed to it in Chapter 12 of this title.

1699.3 The terms “digital payment system,” and “DPS” shall have the meanings ascribed to them in Chapter 14 of this title.

1699.4 The term “person” and “license” shall have the meanings ascribed to them in Section 3 of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502).

1699.5 The following words and phrases shall have the meanings ascribed:

“Affiliated” - common ownership.

“Associated” - a voluntary relationship of employment, contract, joint venture, or agency. For purposes of this chapter, an association not in writing shall be ineffective for compliance purposes.

“Booked” - agreed and accepted by the customer.

“Customer” - a person that requests public vehicle-for-hire service, including a passenger, or any other person that requests service on behalf of a passenger.

“Dispatch” - booking public vehicle-for-hire service through an advance reservation consisting of a request for service from a person seeking service, an offer of service by the dispatch service, an acceptance of service by the person seeking service, and an acknowledgement by the dispatch service that includes an estimated time of arrival of a booked vehicle.

“Dispatch or payment solution” - any reasonable technology solution that allows a DDS to provide taxicabs with digital dispatch service, digital payment service, or both.

“Digital dispatch” - dispatch via computer, mobile phone application, text, email, or Web-based reservation.

“Digital dispatch service” or “DDS” - a business that provides digital dispatch of taxicabs, sedans, or both.

“Digital payment” - a non-cash payment processed by a digital dispatch service and not by the vehicle operator, such as a payment by a payment card (a credit or debit card), processed through a mobile- or Web-based application. A digital payment does not mean a “cashless payment” as such term is defined in Chapter 6 of this title.

“Digital services” - digital dispatch or digital payment for a public vehicle-for-hire.

“Dispatch service” - a business that offers telephone or digital dispatch.

“District enforcement official” - a public vehicle enforcement inspector or other authorized official, employee, or general counsel of the Office, or a law enforcement official authorized to enforce a provision of this title.

“Passenger surcharge” - the passenger surcharge required to be collected from passengers and remitted to the District for each trip in a taxicab or sedan, as required by Chapters 4, 6, and 8, for taxicabs, and by this chapter and Chapter 14 for sedans.

“Substantial change” - (1) a replacement of an existing DDS dispatch or payment solution for taxicabs, or digital payment system for sedans, or (2) a material change in the DDS’s manner of compliance with § 1603.6 (a)-(d) (other than a change in non-regulated rates and charges established by the DDS) or with § 1603.7. A substantial change does not include an update to an application or to an operating system, a service update, or other routine modification or incremental improvement of an existing DDS dispatch or payment solution for taxicabs, or digital payment system for sedans.

“Surcharge bond” - a security bond of fifty-thousand dollars (\$50,000) payable to the D.C. Treasurer that is effective throughout the period when the dispatch service has operating authority and for one (1) year thereafter.

“Telephone dispatch” - dispatch via telephone.

“Telephone dispatch service” - a business that provides telephone dispatch for taxicabs.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, DC 20020, Attn: Jacques P. Lerner, General Counsel and Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C Register*.