

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Taxi and Limousine Commission is considering changing its rules. The change would align TLC's rules with recently enacted provisions of local law.

When and where is the Hearing? The Commission will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on June 23, 2016. The hearing will be in the hearing room at 33 Beaver Street – 19th Floor, New York, NY 10004.

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

- **Mail.** You can mail written comments to the Taxi and Limousine Commission, Office of Legal Affairs, 33 Beaver Street – 22nd Floor, New York, New York 10004.
- **Fax.** You can fax written comments to the Taxi and Limousine Commission, Office of Legal Affairs, at 212-676-1102.
- **Email.** You can email written comments to tlcrules@tlc.nyc.gov.
- **Website.** You can submit comments to the Taxi and Limousine Commission through the NYC rules Web site at www.nyc.gov/nycrules.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-676-1135. You can also sign up in the hearing room before the hearing begins. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by June 23, 2016.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-676-1135. You must tell us by Friday, June 17, 2016.

Can I review the comments made on the proposed rules? A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes the Commission to make this rule? Sections 1043 and 2303 of the City Charter and section 19-503 of the City Administrative Code authorize the Commission to make this proposed rule. This proposed rule was not included in the Commission's regulatory agenda

for this Fiscal Year because it was not contemplated when the Commission published the agenda.

Where can I find the Commission's rules? The Commission's rules are in title 35 of the Rules of the City of New York.

What rules govern the rulemaking process? The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

On April 21, 2016, New York City Mayor Bill De Blasio signed four bills which were enacted into law as Local Laws numbers 43, 49, 50 and 52 of 2016. These local laws amended provisions of the Administrative Code of the City of New York governing the New York City Taxi and Limousine Commission (“TLC”). The rule amendments proposed here bring TLC’s Rules into alignment with the changes made by these local laws. Specifically, these proposed rules:

- Eliminate the vehicle retirement requirement for Black Cars
- Increase penalties for illegal pickups made by for-hire vehicles within the Hail Exclusionary Zone
- Require all Black Car and Luxury Limousine Bases to provide a fare estimate on request
- Prohibit Black Car and Luxury Limousine Bases from charging more than 120 percent of any fare estimate they give to a passenger
- Require all TLC licensees and authorized service or equipment providers that collect a passenger’s personal information or geolocation information, including FHV bases, TPEP and LPEP Providers, E-Hail Providers, and Dispatch Service Providers, to file with the TLC an Information Security and Use of Personal Information Policy and comply with that policy.

The Commission’s authority for these rules is found in section 2303 of the New York City Charter and sections 19-507, 19-544, 19-545, and 19-546 of the Administrative Code. These proposed rules are exempt for the Law Department and Mayor’s Office of Operations review and certification process pursuant to section 1043(d)(4)(iv) of the New York City Charter.

New material is underlined.
 [Deleted material is in brackets.]

Section 1. Subdivision (a) of section 55-19 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (a) *Limitations on Driver Solicitation of Passengers.*
- (1) A Driver, other than a Driver of a Street Hail Livery as defined in subdivision (c) of section 82-03 of these Rules, must not solicit or pick up Passengers other than by prearrangement through a licensed Base of the class that can dispatch the Driver’s For-Hire Vehicle or Dispatch Service Provider, or by dispatch of an Accessible Vehicle.

§55-19(a)(1)	Fine: First Violation: \$500 Second Violation in 24 months: \$1500 Third Violation in 36 months: Revocation	Appearance REQUIRED
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- (2) *Hail Exclusionary Zone.* If a Driver other than a Driver of a Street Hail Livery as defined in subdivision (c) of section 82-03 of these Rules solicits or picks up

Passengers other than by prearrangement through a licensed Base of the class that can dispatch the Driver’s For-Hire Vehicle or Dispatch Service Provider, or by dispatch of an Accessible Vehicle in Manhattan south of East 96th Street and West 110th Street or at the New York City Airports, the Driver will be subject to the below enhanced penalties.

<u>§55-19(a)(2)</u>	<u>Fine: \$2,000 for the first violation; \$4,000 for the second violation in 24 months; \$10,000 and revocation for third violation in 120 months</u>	<u>Appearance REQUIRED</u>
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Section 2. Subdivision (b) of section 59A-25 of Title 35 of the Rules of the City of New York, relating to compliance by black car owners with black car retirement requirements, is REPEALED.

Section 3. Subdivision (d) of section 59A-28 of Title 35 of the Rules of the City of New York, relating to required black car retirement, is REPEALED.

Section 4. Subdivision (g) of section 59B-21 of Title 35 of the Rules of the City of New York is amended, subdivision (h) is relettered as subdivision (i) and amended, and a new subdivision (h) is added, to read as follows:

(g) [Privacy and Security Policies] Information Security and Use of Personal Information Policy. If the Base collects [and] or maintains passenger “[Private] Personal Information,” as defined by New York General Business Law §899-aa(1)([b]a), [of] or if the Base collects [and] or maintains passenger geolocation data, the Base Owner must file with the Commission a current detailed [privacy and security policies meeting industry best practices] information security and use of personal information policy. Such policy must include, a minimum:

- (1) a statement of internal access policies relating to passenger and driver personal information for employees, contractors, and third party access, if applicable;
- (2) a statement that, except to the extent necessary to provide credit, debit, and prepaid card services and services for any application that provides for electronic payment, personal information will only be collected and used with such passenger’s affirmative express consent and that such personal information will not be used, shared, or disclosed, except for lawful purposes;
- (3) procedures for notifying the Commission and affected parties of any breach of the security of the system, pursuant to section 899-aa of the General Business Law;
- (4) a statement that any credit, debit, or prepaid card information collected by the Base or a credit, debit, or prepaid card services provider is processed by the Base

or such provider in compliance with applicable payment card industry standards, and;

(5) a statement of the Base’s policies regarding the use of passenger geolocation information, which must include, at a minimum, a prohibition on the use, monitoring, or disclosure of trip information, including the date, time, pick-up location, drop-off location, and real-time vehicle location and any retained vehicle location records, without such passenger's affirmative express consent.

(h) Compliance with Information Security and Use of Personal Information Policy. Any Base that files with the TLC an information security and use of personal information policy must comply with the terms of such policy.

(i) Security Breach: If the Base is required to make disclosures under New York State or Federal law regarding security breaches, including the New York State Information Security Breach and Notification Act (General Business Law §899-aa), the Base Owner must inform the Commission immediately following such disclosure(s).

<u>§59B-21(h) and (i)</u>	Penalty: \$1,000 [fine per day and suspension until compliance]	Appearance REQUIRED
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Section 5. Section 59B-23 of Title 35 of the Rules of the City of New York is amended to add a new subdivision (g) to read as follows:

(g) For Black Car and Luxury Limousine Bases: Fare Estimates. Each time a prospective Passenger contacts a Base for transportation, regardless of the means by which the Passenger contacts the Base, the Base must provide, upon request, an estimate of the total fare in dollars and cents, inclusive of all fees and any price multiplier, for the specific trip requested, prior to dispatching the trip, subject to the following requirements:

- (1) Each Passenger requesting service must be notified of the passenger’s right to receive a fare estimate.
- (2) A Base must ask any Passenger requesting a fare estimate to specify a destination.
- (3) The fare estimate may be expressed in a range in dollar and cents, provided that the higher price in such range shall not be more than 150 percent of the lower price in such range.
- (4) A Base may not charge a Passenger a fare that is more than 120 percent of the fare estimate unless the Passenger takes any action to alter the estimated route, including, but not limited to, changing the location of the pick-up, destination, number of stops, or the vehicle type requested, or requests a route change requiring the payment of a toll.

- (5) If the fare estimate is expressed in a range, a Base may not charge the Passenger more than 120 percent of the highest price included in that range.
- (6) The provisions of this subdivision shall not apply to Black Car Bases while providing line work, as that term is defined in section 19-545 of the Administrative Code.
- (7) Affirmative Defense. A Base can offer an affirmative defense to a summons issued under paragraphs (3) or (4) of this subdivision if the Base can demonstrate that the Base reimbursed the Passenger the portion of the fare charged that exceeded 120 percent of the given fare estimate within 10 business days of receiving a request for reimbursement from the Passenger.

§59B-23(g)	Fine: \$500	<u>Appearance NOT REQUIRED</u>
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Section 6. Subdivision of (i) of section 59B-25 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (i) *For Black Car and Luxury Limousine Bases: Price Multipliers.* If a price multiplier or variable pricing policy is in effect at the time at which a customer requests Black Car service or Luxury Limousine service, [the following requirements apply:
 - (1) A Base must provide, upon request, an estimate of the total fare in dollars and cents for the specific trip requested, inclusive of all fees and any price multiplier.
 - (2) A] a Base must require the customer to affirmatively acknowledge and accept the price multiplier or variable pricing policy prior to dispatching a Vehicle to the customer.

Section 7. Subparagraph (i) of paragraph (2) of subdivision (b) of section 75-05 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (2) Security Testing Documentation
 - (i) [A security test plan that uses information technology industry testing tools, techniques, and methodologies designed to comprehensively test whether the TPEP and related services comply with all of the requirements set forth in §75-25(f) and §76-03 of these Rules, or as such requirements may be waived or modified by the Commission pursuant to subdivision (g) of this section] An information security and use of personal information policy that includes, at a minimum, the following information:

- (A) a statement of internal access policies relating to passenger and driver Personal Information for employees, contractors, and third party access, if applicable;
- (B) a statement that, except to the extent necessary to provide credit, debit, and prepaid card services and services for any application that provides for electronic payment, personal information will only be collected and used with such passenger's affirmative express consent and that such personal information will not be used, shared, or disclosed, except for lawful purposes;
- (C) procedures for notifying the Commission and affected parties of any breach of the security of the system, pursuant to section 899-aa of the General Business Law;
- (D) a statement that any credit, debit, or prepaid card information collected by the TPEP Provider or a credit, debit, or prepaid card services provider is processed by the TPEP Provider or such provider in compliance with applicable payment card industry standards, and
- (E) a statement of the TPEP Provider's policies regarding the use of passenger geolocation information, which must include, at a minimum, a prohibition on the use, monitoring, or disclosure of trip information, including the date, time, pick-up location, drop-off location, and real-time vehicle location and any retained vehicle location records, without such passenger's affirmative express consent.

Section 8. Subdivision (a) of section 75-23 of Title 35 of the Rules of the City of New York is amended to read as follows:

[(a)]The TPEP Provider must collect, use, and process Personal Information [provided to it or to which it has access in connection with the activities authorized under this Chapter solely for the purposes of performing such authorized activities and in compliance with all applicable privacy and data protection laws] in accordance with the information security and use of personal information policy it has on file with the TLC pursuant to §75-05(b)(2)(i). [

- (b) Except to the extent necessary to provide Credit, Debit, and Prepaid Card Services and services for any E-Hail App that provides for E-Payment, and any Digital Wallet Application, the TPEP Provider must not collect any Personal Information on any Passenger without such Passenger's express, informed and documented consent. Such

prohibition includes but is not limited to collecting Personal Information through any cookie, applet, web bug, beacon or similar technology.

- (c) The TPEP Provider must ensure that Personal Information collected by a credit/debit/prepaid card services provider engaged by the TPEP Provider is stored in database management systems maintained and administered by the credit/debit/prepaid card services provider or its processing agent in compliance with the applicable PCI Standards.
- (d) Except as may be permitted in the contract between a Medallion Owner and the TPEP Provider or as otherwise required by law, a TPEP Provider must not disseminate, and must not permit its agents to disseminate, to any other person or entity any Taxicab location-based information regarding a Taxicab while it is off-duty.]

Section 9. Subdivision (f) of section 75-25 of Title 35 of the Rules of the City of New York is amended to read as follows:

(f) *Security.*

[(1)]All features of the TPEP, including the collection, transmission and maintenance of data by the TPEP Provider, required by this section must conform to the following security standards:

[(i)] (1) Applicable PCI Standards;

[(ii)] (2) Department of Information Technology and Telecommunications Citywide Information Security Policy for Service Providers and Encryption Standards (“DOITT Standards”), currently located on the web at <http://www.nyc.gov/html/doitt/html/business/security.shtml>; and

[(iii)] (3) The information security and use of personal information policy the TPEP Provider has on file with the TLC pursuant to §75-05(b)(2)(i) [All security standards contained in Chapter 76 of the TLC Rules.

- (2) Access to all data required to be collected, transmitted and maintained by this section must be by log-in identification and password controls or other equivalent security measures, all of which must be approved by the Commission].

Section 10. Paragraph (1) of subdivision (p) of section 75-25 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (1) Firmware updates and security patches must be regression tested against the existing TPEP functionality to ensure no disruption in service[, as required in Chapter 76 of these Rules];

Section 11. Chapter 76 of Title 35 of the Rules of the City of New York, relating to information security rules for taxicab technology service providers, is REPEALED.

Section 12. Subdivision (l) of section 77-03 of Title 35 of the Rules of the City of New York is relettered subdivision (m), and a new subdivision (l) is added, to read as follows:

- (l) *Personal Information* has the same meaning as the term as it is defined in New York General Business Law §899-aa(1)(a) and includes such information pertaining to passengers and drivers.

Section 13. Subdivision (d) of section 77-05 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (d) [Privacy] Information Security and Use of Personal Information Policy. The Applicant must submit with its License application [a current detailed privacy policy meeting industry best practices] an information security and use of personal information policy that includes, at a minimum, the following information:
- (1) a statement of internal access policies relating to passenger and driver Personal Information for employees, contractors, and third party access, if applicable;
 - (2) a statement that, except to the extent necessary to provide credit, debit, and prepaid card services and services for any application that provides for electronic payment, personal information will only be collected and used with such passenger's affirmative express consent and that such personal information will not be used, shared, or disclosed, except for lawful purposes;
 - (3) procedures for notifying the Commission and affected parties of any breach of the security of the system, pursuant to section 899-aa of the General Business Law;
 - (4) a statement that any credit, debit, or prepaid card information collected by the Applicant or a credit, debit, or prepaid card services provider is processed by the Applicant or such provider in compliance with applicable payment card industry standards, and
 - (5) a statement of the Applicant's policies regarding the use of passenger geolocation information, which must include, at a minimum, a prohibition on the use, monitoring, or disclosure of trip information, including the date, time, pick-up location, drop-off location, and real-time vehicle location and any retained vehicle location records, without such passenger's affirmative express consent.

Section 14. Subdivision (e) of section 77-05 of Title 35 of the Rules of the City of New York, relating to the security policy of an applicant for a dispatch service provider license, is REPEALED, and subdivisions (f) through (j) are relettered subdivisions (e) through (i).

Section 15. The introductory paragraph of section 77-20 of Title 35 of the Rules of the City of New York is amended to read as follows:

No Dispatch Service Provider will be approved by the Commission pursuant to this Chapter unless the manner in which it provides Dispatch Service complies with the all of the requirements set forth in this section or as such requirements may be waived or modified by the Commission pursuant to §77-05([j]i) of these Rules.

Section 16. Subdivision (f) of section 77-20 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (f) *Security.*

- (1) If the Dispatch Service Provider accepts credit card, debit card, or pre-paid card payment, the Dispatch Service Provider must conform to applicable PCI Standards.
- (2) The Dispatch Service Provider must comply with the [security standards outlined in the Security Policy] Information Security and Use of Personal Information Policy filed with the TLC pursuant to §77-05([e]d) of these Rules.

§77-20(f)	Penalty: \$[500] <u>1,000</u> fine and/or suspension up to 60 days or revocation	Appearance REQUIRED
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Section 17. Subdivisions (q) through (s) of section 78-03 of Title 35 of the Rules of the City of New York are relettered subdivisions (r) through (t), and a new subdivision (q) is added, to read as follows:

- (q) Personal Information has the same meaning as the term as it is defined in New York General Business Law §899-aa(1)(a) and includes such information pertaining to passengers and drivers.

Section 18. Subdivisions (b) and (c) of section 78-05 of Title 35 of the Rules of the City of New York are amended to read as follows:

- (b) *Documentation for E-Hail Application Approval.* The Applicant must submit with its License application a detailed description of its E-Hail Application’s functionality and its compliance with the requirements set forth in §78-21 [and §78-22] of these Rules, as well as a list of all third-party designees the E-Hail Provider will use in offering E-Hail or E-Payment services. If the Application includes E-Payment, the Applicant must submit with its License application the documentation described in paragraphs (1) through ([4]3) of this subdivision. All documentation pertaining to an independent third party must be accompanied by a signed authorization from the Applicant authorizing the Commission to contact the independent third party directly and authorizing the independent third party to respond to inquiries from the Commission.
 - (1) An acceptance test plan that uses information technology industry testing tools, techniques and methodologies designed to comprehensively test whether the E-Hail Application and related services comply with all of the requirements set forth in §78-21 of these Rules, or as such requirements may be waived or modified by the Commission pursuant to subdivision (f) of this section;
 - (2) Documentation demonstrating that an independent third party that is accredited by the American National Standards Institute-American Society of Quality National Accreditation Board (“ANAB”) to perform International Organization for Standardization (“ISO”) 9001 certifications has performed acceptance

testing consistent with the acceptance test plan, and the successful results of the acceptance testing; and

- (3) Documentation, to be renewed and resubmitted to the TLC every twelve (12) months, demonstrating that an independent third party that is a Qualified Security Assessor (“QSA”) company has performed security testing of the E-Hail Application and related services to determine compliance with the security standards set forth in §78-21(f) of these Rules, or as such standards may be waived or modified by the Commission pursuant to subdivision (f) of this section, and the successful results of the security testing; and
- (4) Documentation, to be renewed and resubmitted to the TLC every twelve (12) months, demonstrating that an independent third party that is either a QSA company or a company accredited by ANAB to certify ISO 27001 has performed security testing of the E-Hail Application and related services to determine compliance with the security standards set forth in §78-22 of these Rules, or as such standards may be waived or modified by the Commission pursuant to subdivision (f) of this section, and the successful results of the security testing;]

(c) [*Privacy*] *Information Security and Use of Personal Information Policy*. The Applicant must submit with its License application [a detailed privacy policy meeting industry best practices that describes the specific privacy risks associated with the Applicant’s E-Hail Application and mitigations the Applicant has developed to address those risks.] an information security and use of personal information policy that includes, at a minimum, the following information:

- (1) a statement of internal access policies relating to passenger and driver Personal Information for employees, contractors, and third party access, if applicable;
- (2) a statement that, except to the extent necessary to provide credit, debit, and prepaid card services and services for any application that provides for electronic payment, Personal Information will only be collected and used with such passenger’s affirmative express consent and that such personal information will not be used, shared, or disclosed, except for lawful purposes;
- (3) procedures for notifying the Commission and affected parties of any breach of the security of the system, pursuant to section 899-aa of the General Business Law;
- (4) a statement that any credit, debit, or prepaid card information collected by the Applicant or a credit, debit, or prepaid card services provider is processed by the Applicant or such provider in compliance with applicable payment card industry standards, and
- (5) a statement of the Applicant’s policies regarding the use of passenger geolocation information, which must include, at a minimum, a prohibition on

the use, monitoring, or disclosure of trip information, including the date, time, pick-up location, drop-off location, and real-time vehicle location and any retained vehicle location records, without such passenger's affirmative express consent.

Section 19. Section 78-22 of Title 35 of the Rules of the City of New York, relating to information security requirements for e-hail app providers, is REPEALED.

Section 20. Section 83-05 of Title 35 of the Rules of the City of New York is amended to add a new subdivision (h) to read as follows:

(h) *Information Security and Use of Personal Information Policy.* The Applicant must submit with its License application an information security and use of personal information policy that includes, at a minimum, the following information:

- (1) a statement of internal access policies relating to passenger and driver Personal Information for employees, contractors, and third party access, if applicable;
- (2) a statement that, except to the extent necessary to provide credit, debit, and prepaid card services and services for any application that provides for electronic payment, Personal Information will only be collected and used with such passenger's affirmative express consent and that such personal information will not be used, shared, or disclosed, except for lawful purposes;
- (3) procedures for notifying the Commission and affected parties of any breach of the security of the system, pursuant to section 899-aa of the General Business Law;
- (4) a statement that any credit, debit, or prepaid card information collected by the Applicant or a credit, debit, or prepaid card services provider is processed by the Applicant or such provider in compliance with applicable payment card industry standards, and
- (5) a statement of the Applicant's policies regarding the use of passenger geolocation information, which must include, at a minimum, a prohibition on the use, monitoring, or disclosure of trip information, including the date, time, pick-up location, drop-off location, and real-time vehicle location and any retained vehicle location records, without such passenger's affirmative express consent.

Section 21. Section 83-16 of 35 of the Rules of the City of New York is amended to add a new subdivision (c) to read as follows:

(c) *Security Breach:* The Applicant must inform the Commission if they are required to make disclosures under State or Federal law regarding security breaches including the

New York State Information Security Breach and Notification Act (General Business Law §899-aa).

§83-16(c)	Penalty: \$1,000	Appearance REQUIRED
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Section 22. Subdivision (a) of section 83-26 of Title 35 of the Rules of the City of New York is amended to read as follows:

- [(a)] The LPEP Provider must collect, use, and process Personal Information [provided to it or to which it has access in connection with the activities authorized under this Chapter solely for the purposes of performing such authorized activities and in compliance with all applicable privacy and data protection laws] in accordance with the information security and use of personal information policy it has on file with the TLC pursuant to §83-05(h). [
- (b) Except to the extent necessary to provide Credit, Debit, and Prepaid Card Services, the LPEP Provider must not collect any Personal Information on any Passenger without such Passenger’s express, informed and documented consent. Such prohibition includes but is not limited to collecting Personal Information through any cookie, applet, web bug, beacon or similar technology.
- (c) The LPEP Provider must ensure that Personal Information collected by a credit/debit/prepaid card services provider engaged by the LPEP Provider is stored in database management systems maintained and administered by the credit/debit/prepaid card services provider or its processing agent in compliance with the applicable PCI Standards.
- (d) Except as may be permitted in the contract between a Street Hail Livery Licensee and the LPEP Provider or as otherwise required by law, an LPEP Provider must not disseminate, and must not permit its agents to disseminate, to any other person or entity any Street Hail Livery location-based information regarding a Street Hail Livery while it is off-duty.]

§83-26[(a)-(d)]	Penalty: \$500-\$1,000 fine and suspension for each subdivision violated	Appearance REQUIRED
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Section 23. Subdivision (f) of section 83-31 of Title 35 of the Rules of the City of New York is amended to read as follows:

- (f) *Security.*

[(1)] All features of the LPEP, including the collection, transmission and maintenance of data by the LPEP Provider, required by this section must conform to the following security standards:

- [(i)] (1) Applicable PCI Standards;
 - [(ii)] (2) Department of Information Technology and Telecommunications Citywide Information Security Policy for Service Providers and Encryption Standards (“DOITT Standards”) at <http://www.nyc.gov/html/doitt/html/business/security.shtml>; and
 - [(iii)] (3) The information security and use of personal information policy the TPEP Provider has on file with the TLC pursuant to §83-05(h). [All security standards contained in Chapter 84 of these Rules.
- (2) Access to all data required to be collected, transmitted and maintained by this section must be by log-in identification and password controls or other equivalent security measures.]

Section 26. Chapter 84 of Title 35 of the Rules of the City of New York, relating to information security rules for street hail livery technology system providers, is REPEALED.