

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CHS. 1017 AND 1055]

Impoundment of Vehicles and Equipment

The Philadelphia Parking Authority (Authority), on January 28, 2013, adopted a proposed rulemaking order which modifies regulations related to the impoundment of taxicab, limousines and related property in Philadelphia, in furtherance of the Authority's regulatory functions. The regulation identified impoundable offenses and provides for prompt post-impoundment due process.

Philadelphia Taxicab and Limousine Regulations Impoundment Procedures; Doc. No. 126-3

Final Rulemaking Order

By the Authority:

The Authority is required to carry out the provisions of the act of July 16, 2004, (P. L. 758, No. 94), 53 Pa.C.S. §§ 5701 et seq., as amended, (the "act") relating to the regulation of taxicab and limousine service providers in the City of Philadelphia.¹ Pursuant to this obligation, the Authority issued a proposed regulation at this docket number on January 28, 2013. The initial public comment period for this rulemaking proceeding concluded on April 29, 2013, the Independent Regulatory Review Commission ("IRRC") submitted its comments on May 29, 2013. The Authority has completed its review of the comments and now issues the final-form regulation.

Purpose of the Final-Form Regulation

The Authority is authorized by statute to impound, store and dispose of taxicabs and limousines and equipment used in furtherance of those public conveniences, such as meters and medallions (collectively "impoundments") for violations of the act and the Authority's regulations.² As with many powers authorized by the Legislature, the actual function of conducting these impoundments requires well tailored regulations to realize appropriate implementation. The changes to our regulations at 52 Pa. Code §§ 1017.51, 1017.52, 1055.31 and 1055.32 are intended to provide guidance to the regulated community as to how impoundments may occur and what actions must be taken to reclaim impounded property. The regulations also place specific subject matter limitations and timing requirements upon the Authority's Taxicab and Limousine Division to limit impoundments to the most serious of circumstances and provide the rapid due process necessary in these circumstances.

Discussion

The Authority has reviewed the comments filed at each stage of this proceeding. Responses to those comments, explanations of the purpose and alterations of each amended subsection of the final-form regulation are set forth below.

Statutory Authority.

The Authority is the only entity authorized to certify carriers to provide taxicab service within Philadelphia ("intra-Philadelphia").³ There are only two types of

taxicab services that may provide intra-Philadelphia service: medallion taxicabs and partial-rights taxicabs.

A) *Medallion Taxicabs.*

Only a medallion taxicab may provide city-wide intra-Philadelphia taxicab service. 53 Pa.C.S. § 5714(a). One medallion authorizes one taxicab. 53 Pa.C.S. § 5712(b). In order to provide medallion taxicab service the owner must first purchase a taxicab medallion.

The number of medallions is currently statutorily capped at 1,630. See 53 Pa.C.S. § 5711(c). Medallions are property rights. 53 Pa.C.S. § 5713(a). Medallions may be sold by their owners to third parties on the open market, pursuant to Authority oversight. 53 Pa.C.S. § 5718. The current value of a medallion is approximately \$525,000.

B) *Partial-rights Taxicabs.*

The Authority fully reviewed the history of "partial-rights"⁴ taxicabs in its final rulemaking order entering its regulation 126-1. Most of the comments submitted by Germantown Cab Company to this rulemaking were also submitted in regard to the Authority's rulemaking in 2011. See 41 Pa.B. 6499, 6523—6525 (December 11, 2011). We incorporate our responses here.

Partial-rights taxicab service originated under the PUC's jurisdiction and was transferred to the Authority's sole jurisdiction through the act.⁵ See *Germantown Cab Co. v. Phila. Parking Auth.*, Commonwealth Court of Pennsylvania Docket No. 461 CD 2012. ("*Germantown Cab*"). The Pennsylvania Supreme Court recently denied Germantown's petition for appeal of the *Germantown Cab* decision. *Germantown Cab Co. v. Phila. Parking Auth.*, 79 A.3d 1100 (Pa. 2013) ("*Germantown Cab*").⁶

C) *Impoundments of Partial-rights Taxicabs.*

IRRC questioned the power of the Authority to impound vehicles of partial-rights carriers in consideration of recent changes to the act and the Commonwealth Court of Pennsylvania's decision in *Sawink, Inc. et al., v. Philadelphia Parking Authority*, 34 A.3d 926 (Pa. Cmwlth. 2012), affirmed, 57 A.3d 644 (Pa. 2012). IRRC requested specific reference to the statutory authority for this rulemaking. The only public comments to this regulation were submitted by Germantown Cab Company ("*Germantown*")⁷ and its attorney, both averred that the Authority lacks jurisdiction over partial-rights taxicab companies.

Germantown operates approximately 175 partial-rights taxicabs in Philadelphia, by far the largest fleet of any type of taxicab in Philadelphia. The other 5 partial-rights taxicab companies operate less than 10 taxicabs in Philadelphia combined.

The question of the Authority's jurisdiction over partial-rights taxicabs has been resolved, repeatedly. This issue has now been reviewed by the Authority, the Pennsylvania Public Utility Commission ("PUC"),⁸ the Pennsylvania

⁴ This term is defined at 52 Pa. Code § 1011.2.

⁵ *Id.*

⁶ We believe that the Act of July 5, 2012, P. L. 1022, No. 119 ("Act 119") has resolved any question that may have existed as to the Authority's jurisdiction over partial-rights taxicabs in Philadelphia. Act 119 modifies the definition of "taxicab" in section 5701 to specifically apply to both medallion taxicabs and partial-rights taxicabs. Also section 5711(c)(2.1) and 5714(d)(2) were amended to provide that the Authority has sole jurisdiction over partial-rights taxicabs in Philadelphia.

⁷ Germantown's comments to this proposed rulemaking were mixed with comments to another of the Authority's proposed rulemakings and were further interspersed with comments that did not appear linked to any proposed rulemaking and were not provided in order. We have made our best efforts to differentiate the various writings and respond to comments made to this proposed rulemaking.

⁸ See Jurisdictional Agreement (between the Authority and the PUC) Pursuant to the act, 35 Pa.B. 1649 (March 25, 2005); *Rosemont Taxi Co. v. Philadelphia Parking*

¹ See Sections 13 and 17 of the Act.

² See 53 Pa.C.S. §§ 5714(g) and 5741(f).

³ See 53 Pa.C.S. §§ 5711(c)(2.1), 5714(a) and 5714(d)(2).

Commonwealth Court,⁹ the Pennsylvania Supreme Court,¹⁰ the General Assembly¹¹ and IRRC.¹² Every time Germantown raises this issue, in every forum, it is rejected. We must move on.

The comments of Germantown and its attorney seem to aver two things as to jurisdiction. First, that the Authority is without jurisdiction to regulate partial-rights taxicab service provided entirely within the City of Philadelphia; second, that the Authority may not impound a non-medallion taxicab in Philadelphia when it provides service reserved only to medallion taxicabs. Germantown has accrued a significant number of citations and experienced impoundments and out of service designations for these exact violations. The Authority's regulatory jurisdiction over partial-rights taxicabs in Philadelphia, including Germantown, is a settled issue.

Germantown and its attorney cite the *Sawink* decision to support its assertion that the Authority may not impound its vehicles for violations in Philadelphia. IRRC requested the Authority to provide specific sections of the revised act that provide the Authority with the power to conduct impoundments of partial-rights taxicabs in light of *Sawink*. The *Sawink* decision focused entirely on the power of the Authority to impound a PUC certificated taxicab for a territorial violation. The final-form regulation identifies impoundable offenses, "territorial violations" is not specifically among them.¹³

We believe that some background on the *Sawink* decision will be helpful,

1. *The Sawink decision.*

In *Sawink*, Germantown and 2 other companies owned by Germantown's principal, Sawink, Inc. and Rosemont Taxicab, Co., Inc., (collectively the "Germantown Group") challenged the impoundment of their vehicles by the Authority. All of the vehicles at issue were non-medallion taxicabs that provided illegal medallion taxicab service in Philadelphia.

The *Sawink* decision involved a detailed analysis of section 5714 of the act as it existed prior to the Act 119¹⁴. Section 5714 was comprised of 6 subsections; the first 3 sections establish operational requirements for taxicabs and the last three sections provide for certain penalties related to violations of the act and the Authority's regulations.

The court in *Sawink* determined that the first sentence of subsection (a) of section 5714 created the standard that the Germantown Group was alleged to have violated. The Court cited that sentence as follows:

A vehicle may not be operated as a taxicab with citywide call or demand rights in cities of the first class unless a certificate [*12] of public convenience is issued by an authority authorizing the operation of the taxicab and a medallion is attached to the hood of the vehicle. (Emphasis in the Court's opinion.)

34 A.2d at 930. The Authority argued that this sentence restricted city-wide taxicab service to medallion taxicabs. Only the Authority may certificate a medallion taxicab and attach a medallion "to the hood" of a taxicab.¹⁵

Therefore, when a vehicle provides city-wide taxicab service it does so in violation of the restriction in subsection (a).

The act defines "authority" as "a parking authority in a city of the first class." The City of Philadelphia is the only city of the first class in the commonwealth and the Authority is the only parking authority in Philadelphia. See *Philadelphia Ent. & Dev. v. City of Philadelphia*, 595 Pa. 538, 939 A.2d 290, 292 (Pa. 2007); see also *City of Philadelphia v. Rendell*, 888 A.2d 922 (Pa. Cmwlth 2005). Because there is no other medallion system in the commonwealth, the Authority argued that this sentence could only apply to taxicabs certificated by the Authority.

However, the Commonwealth Court seemed to have determined that there is a general certification of taxicabs by "an authority" and then a separate requirement that a medallion be attached to medallion taxicabs. The court determined that because the Germantown Group was certificated by the PUC, which fell into the category of "an authority", it was "certificated" within the meaning of section 5714. Therefore, the Germantown Group's territorial violations could only be penalized as provided for in subsection (e) of section 5714 of the act. Subsection (e) provides as follows:

Penalties involving certificated taxicabs.—Operating a certificated taxicab in violation of subsections (a) and (b) or authorizing or permitting such operation is a nontraffic summary offense. Offenders of subsections (a) and (b) may also be subject to civil penalties pursuant to section 5725 (relating to civil penalties).

The Authority argued that because none of the members of the Germantown Group had received a certificate of public convenience and a medallion from the Authority, the Germantown Group could not be "certificated" within the meaning of subsection (a). The Authority continued that the proper penalty to apply to the Germantown Group for providing service reserved to medallion taxicabs was found in subsection (f), which provides as follows:

Unauthorized vehicles.—Operating an unauthorized vehicle as a taxicab, or giving the appearance of offering call or demand service with an unauthorized vehicle, without first having received a certificate of public convenience and a medallion is a nontraffic summary offense in the first instance and a misdemeanor of the third degree for each offense thereafter. The owner and the driver of a vehicle being operated as or appearing as a taxicab without a certificate of public convenience and a medallion are also subject to civil penalties pursuant to section 5725. Civil penalties which have been assessed and collected shall be deposited in the fund. (Emphasis added.)

This was an important point because the Authority's impoundment power is found in subsection (g), which prior to Act 119 provided, in part:

Confiscation and impoundment of vehicles. (1) In addition to penalties provided for in subsection (f), the authority is empowered to confiscate and impound vehicles, medallions and equipment which are utilized to provide call or demand service without a proper certificate of public convenience in cities of the first class or which are in violation of regulations of the authority. Upon satisfaction of all penalties imposed and all outstanding fines assessed against the owner or operator of the confiscated vehicle and payment of the costs of the authority associated with

Authority, 68 A.3d 29, 33 (Cmwlth. 2013) (finding that the Authority had jurisdiction to approve a partial-rights taxicab certificate of public convenience transfer).

⁹ *Germantown Cab*, supra.

¹⁰ *Germantown Cab Co. v. Phila. Parking Auth.*, 79 A.3d 1100 (Pa. 2013).

¹¹ The act, Act 119, and the Act of July 9, 2013, P. L. 455, No. 64 ("Act 64").

¹² Approval Order, 41 Pa.B. 5724 (October 22, 2011).

¹³ Although the Authority believes that the Act 119 amendments have made clear that the Authority can make impoundments for territorial violations.

¹⁴ The act was also recently amended by Act 64, without change to the Authority's impoundment power.

¹⁵ See 52 Pa. Code § 1013.2.

confiscation and impoundment, the vehicle, medallion and equipment shall be returned to its registered owner or registered lienholder. (Emphasis added.)

The court in *Sawink* determined that the Authority's impoundment power originates in subsection (g) and that that subsection was linked to the penalties of subsection (f) and that the penalties of subsection (f) only applied to "a vehicle that does not have a valid certificate of public convenience from any source." 34 A.2d at 931. The court determined that the phrase "without a proper certificate of public convenience" in subsection (g) excluded impoundments of the Germantown Group because they had certificates to provide taxicab service from the PUC, even though those certificates did not authorize medallion taxicab service. The court noted that "[i]f the legislature had wanted to make *any* vehicle that violates any part of Section 5714 subject to impoundment, it easily could have said so, but it did not." (Emphasis in original.) Id.

2. Act 119 changed key provisions of Section 5714.

Through Act 119 the Legislature made specific amendments to section 5714 that render the *Sawink* decision untenable. Preliminarily, the first sentence of subsection (a) was amended to delete the phrase "an authority" and replace it with "the authority". As noted above, the act defines "authority" as the Philadelphia Parking Authority.

This was a tremendously specific amendment, which can only be read as an expression of a legislative intent inapposite to that suggested in *Sawink*. This amendment eliminates any confusion about who "certificates" a taxicab to provide service pursuant to subsection (a). Only the Authority can provide that certification. The definition of "taxicab" in Section 5701 was also amended by Act 119 to specify that the term when used in the act specifically includes partial-rights taxicabs (taxicabs certificated to provide "non-citywide" taxicab service).¹⁶

Therefore, when subsection (e) of the amended section 5714 references a "certificated taxicab" it can only mean an Authority certificated taxicab. PUC certificated taxicabs are not mentioned anywhere in subsections (a) or (b) and the penalties of subsection (e) only apply to violations of those discrete subsections. Therefore, vehicles that provide medallion taxicab service without certification from the Authority to do so are "unauthorized" vehicles subject to the penalties of subsection (f). Germantown's attorney suggests that this amendment is irrelevant and was not intended to alter the opinion expressed in *Sawink*, but there is no reasonable way to interpret these amendments. Carriers certificated by the PUC, but not the Authority, are not authorized to provide service within Philadelphia. If such a PUC certificated carrier were to provide such intra-Philadelphia service it would do so "without a proper certificate of public convenience issued by the authority" and be subject to impoundment as provided in amended subsection (g).

Act 119 amended subsection (g) of section 5714 by deleting the opening sentence "In addition to penalties provided for in subsection (f). . ." Subsection (g) was also amended to clarify that vehicles providing medallion taxicab service without a proper certificate of public convenience "issued by the authority" were subject to impoundment.¹⁷ The court in *Sawink* relied almost exclusively on provisions of the act that have been deleted by Act 119. Those provisions have been replaced with language clarifying the Authority's power to impound any

vehicle that commits "a territorial violation proscribed by subsection (a)." 34 A.2d at 931. Therefore, taxicabs owned by the Germantown Group, or anyone else, that provide medallion taxicab service without a certificate and medallion authorizing that service do so illegally and are subject to regulatory impoundment. Id.¹⁸

Germantown and its attorney comment that the changes to subsection (g) were not intended to alter the determination of the court in *Sawink* and that any problems that the Authority may have with PUC carriers should only be brought before the PUC. However, as provided above, there is no reasonable way to view the very specific changes made to section 5714 by Act 119 other than the Legislature's intent to reverse the impact of the *Sawink* decision. There is no reason that the Legislature would have amended subsection (g) at all if it agreed with the determination in *Sawink* and the reasoning of Germantown and its attorney. The Authority is the entity charged with regulating taxicab service in Philadelphia. There is no reason to yield administrative discretion in this venue to another administrative agency.

Germantown specifically comments that the Authority is powerless to stop PUC carriers from providing illegal taxicab service in Philadelphia, except to request help from the PUC. There is no legal or logical foundation for this comment. Why would the Legislature place the Authority in charge of a regulatory system in Philadelphia without the power to protect those within the system from illegal service providers?

§ 1017.51. General.

Two additional definitions were added in the proposed regulation to this existing subsection. The definition of "impoundable offense" has been amended in the final-form regulation to address comments raised by IRRC. The title of the subsection remains unchanged from the proposed regulation.

IRRC noted that both this section and section 1055.31 included substantive language that was inappropriate in a definition. We agree. We have amended each of these sections to eliminate the substantive language which seems to authorize the act of an impoundment. The amended sections now merely identify the offenses that may lead to impoundment. The statutory references previously found in these definition sections have been moved to sections 1017.52(a) and 1055.32(a) respectively.

Germantown submitted comments to this section which seem to contest the validity of the Authority's jurisdiction over partial-rights taxicabs. We believe that we have addressed that issue above. Germantown also seems to suggest that it is unreasonable to require a partial-rights taxicab company to comply with the regulations of the Authority and the PUC. This issue has also been fully addressed, repeatedly. See 41 Pa.B. 6499, 6523—6525 (December 3, 2011).

The act created a dual regulatory system for all taxicab and limousine companies in the Commonwealth that seek to provide service both within the City of Philadelphia ("City" or "Philadelphia") and within other parts of the Commonwealth. Every classification of taxicab and limousine certificate holder regulated by the Authority is also subject to PUC regulations, inspections, fees and assessments while providing service within the PUC's jurisdiction. The act continued the rights held by each taxicab and limousine company in Philadelphia, but changed the

¹⁶ Subsections 5711(c) and 5714(d)(2) were also amended by Act 119 to clarify that partial-rights taxicabs are "subject to the exclusive jurisdiction of the [A]uthority."

¹⁷ A certificate to provide partial-rights taxicab service is not "proper" for use as in medallion taxicab service.

¹⁸ Apart from this "certificated" v. "unauthorized" analysis, subsection (g) also permits the Authority to impound vehicles "which are in violation of regulations of the authority." The court in *Sawink* did not consider this issue.

regulator from the PUC to the Authority alone. The provision of all taxicab and limousine service in the City falls under the exclusive jurisdiction of the Authority pursuant to Chapter 55 of Title 53, 53 Pa.C.S. §§ 5505(d)(23) and (24), Chapter 57 of Title 53, 53 Pa.C.S. §§ 5701 to 5745 (relating to taxicabs and limousines in Philadelphia) and the uncodified portions of the act.¹⁹

Germantown also disputed the Authority's explanation of paragraph (i) in the definition of "unauthorized taxicab." Germantown avers that the presentment on each taxicab of a valid TLD inspection sticker²⁰ is not a bright line in terms of determining a type of vehicle that is unauthorized to provide intra-Philadelphia taxicab service. Germantown seeks to further support its position by noting that none of its partial-rights taxicabs display a TLD inspection sticker. Germantown ignores the fact that it once did display those stickers, when it was in compliance with the law and the Authority's regulations. Litigation between Germantown and the Authority had temporarily provided Germantown with a method to continue in this course of violation, but that was an ephemeral disposition. Every taxicab owned by Germantown and operated as a partial-rights taxicab must have a TLD inspection sticker.

Germantown asks why it is necessary to impound a vehicle found operating with a meter that has been manipulated to charge an illegal fair constitutes an impoundable offense under the proposed and final-form regulation. Germantown seems to question the need for the impoundment in lieu of simply issuing a citation and placing an out of service sticker on the taxicabs. We believe that meter rigging is one of the most serious offenses that a taxicab driver and owner can commit. Also, not all meters used in taxicabs can be remotely inactivated by the Authority, contrary to Germantown's comment, particularly those that have been illegally manipulated in the first place.

The public anticipates that a fair and uniform rate will be charged for taxicab service. Meter rigging directly and seriously undermines public confidence in the overall taxicab industry. Unlike the reasonably anticipated harm derived from the presence of bald tires, illegally manipulated meters actually immediately and unquestionably harm each passenger. We believe these illegally operated vehicles must be immediately removed from potential circulation to protect the public good. The owner or driver, or both, have already evidenced intent to defraud the public and can not be reasonably trusted to simply go on their way with a promise to stop the illegal conduct.

Germantown questions the need to impound a vehicle acting as a taxicab when its condition creates an immediate threat to public safety. Germantown also questions the need to impound a vehicle acting as a taxicab when its driver presents a condition that creates an immediate threat to public safety and the certificate holder is unable to appear and secure the vehicle themselves. We can think of few more compelling reasons to conduct impoundments. The TLD's Inspectors will need to make the determination upon review of the vehicle and driver and rely on their training and common sense when making this determination, as any law enforcement officer is required to do in the course of patrol.

¹⁹ The PUC has recognized that it does not have jurisdiction over the provision of taxicab service in Philadelphia. See Application of Rosemont Taxicab Co., Inc., PUC Docket No. A-2008-2053668, Order entered November 10, 2008.

²⁰ 52 Pa. Code § 1017.1.

§ 1017.52. *Impoundment of vehicles and equipment.*

Consistent with the proposed regulation, section 1017.52 will delete the language previously provided in this section and replace that language with the revised impoundment, notice and due process procedures applicable to regulatory impoundments conducted pursuant to section 5714(g) of the act.

(b)(4). IRRC questioned the need for subsection (b)(4) of the proposed regulation in light of the fact that the statute did not require additional information to be included in the notice of impoundment and that this catchall provision was unnecessary. We agree and have deleted this section from the final-form regulation, as well as section 1005.32(b)(4) for the same reason.

(c)(1) and (2). Subsection (c) provides the process through which an impoundment hearing may be requested. IRRC questioned the fiscal impact associated with an impoundment that may span a period greater than the two days referenced in the regulation solely based on the fact that the Authority's offices are closed for the weekend or a holiday.²¹

It is common practice for impoundments by the Authority of this nature to have hearings scheduled on the same day as the impoundment, if the owner seeks a hearing. Unfortunately, many taxicabs that have been impounded by the Authority over the past 8 years were in such poor condition that the owners never sought their return. The vehicles were in such poor condition and of such little value that the owners simply permitted them to be auctioned.

However, we agree that the owner of a taxicab that is impounded on a Friday evening is not guaranteed an impoundment hearing until the following Wednesday under the regulation, although one is likely to be scheduled on the following Monday upon request. This is also true of all impoundments of this nature. For example, a vehicle is subject to immediate impoundment in this commonwealth if operated on a highway without registration or by an unlicensed driver. 75 Pa.C.S. § 6309.2 (relating to immobilization, towing and storage of vehicle for driving without operating privileges or registration). While rapid hearings are made available under that statute as well, some impoundments are extended simply by the fact that they occur on a weekend.

There is no reasonable way to adjust for the fact that the TLD does not operate an administrative courtroom 24-hours, 7-days-a-week. We believe that the rapid timelines for hearings required by the final-form regulation are consistent with the requirements of the law and are tailored to protect the due process rights and fiscal interests of the regulated community.

It is worth noting that the courts consider "the government's interest in efficiency and reducing costs" when reviewing post-deprivation impoundment hearing procedures. *Fuentes v. Shevin*, 407 U.S. 67, 80, (1972). The Authority's hours of operation are limited by our budget and staffing requirements. We simply must close on certain days and hours of the week. We are already placing maximum stress upon our adjudication and enforcement departments by requiring hearings within 48 hours of a request. Any further acceleration of this timeline will inevitably result in missed deadlines, which would be a technical violation of the regulation by the

²¹ IRRC also applied its comment to this subsection to section 1005.32(c)(2), which deals with limousine impoundments. Our response here applies equally to limousines.

Authority. That hyper-sensitive technicality may then result in the termination of an impoundment that is in the public interest.

In similar circumstances, the courts have upheld the constitutional propriety of post-deprivation impoundment hearings 30 days after the date of the impoundment. See *Niemeyer v. Williams*, 910 F.Supp.2d. 1116, 1121 (C.D. Ill. 2012).²² The impoundment procedures reviewed in *Niemeyer* were nearly identical to those employed in the final-form regulation, although this final-form regulation provides for a much more rapid post-deprivation hearing. Therefore, we believe we have provided the most responsible and fiscally efficient impoundment review process possible in the final-form regulation. Finally, we note that the violations upon which an impoundment may occur have been intentionally constricted to the most serious of offenses in order to make this remedy one of both infrequent and vital use.

(c)(3). Paragraph (3) directs the immediate return of impounded property in the event that the hearing officer determines that the impoundment was improper. IRRC noted that the prior regulation specified that impoundment and storage fees would be returned to the vehicle's owner. IRRC suggested that language of that nature be included in the final-form regulation to address potential fiscal impact issues.

We agree with IRRC's comments generally, although we believe that they do not apply to this paragraph. Paragraph (3) addresses situations where the hearing officer determines that the impoundment was not proper, as a preliminary matter. In these cases the impounded property must be returned to the respondent without payment of any fee or costs. In this scenario, the respondent has not yet paid anything, so there is no money to return.

The scenario referenced by IRRC would apply following a final determination as provided for in subsection (g)(1). That section already provides that if the respondent is found not liable for the underlying citations, the impounded property may be reclaimed without the need to pay any fee or cost. However, the proposed regulation did not expressly contemplate the scenario in which the impounded property had already been reclaimed by the respondent as provided in subsection (c)(4). Therefore, we have amended subsections (g)(1) in this section and in section 1055.32 to provide for the return of towing and storage fees and costs in these situations.

(c)(4). There will be cases in which properly impounded property can be safely released due to the abatement of the regulatory problem or public safety concern. Paragraph (4) provides for the release of impounded property in these circumstances and permits the presiding officer to attach terms for the release of the vehicle. IRRC asked if the terms for release were founded in existing regulations or statutes and requested that be identified. Otherwise, IRRC requested that the final-form regulation provide direction to the presiding officer as to the terms for release.

The proposed regulation was drafted to provide the presiding officer with the latitude to permit the impounded property to be returned to the industry member, despite the legitimacy of the impoundment. There are myriad of facts that may impact a presiding officer's

decision in these cases. For example, a taxicab that is impounded because it has failing breaks may be reclaimed and towed from an impoundment lot, repaired and then returned to safe service. In such cases, a pre-service inspection by the Authority to assure that the repair has been made is a reasonable term of release to protect public safety. Likewise, a regulated party with a history of non-compliance may be able to safely reclaim its vehicle conditioned upon the posting of some collateral to secure their attendance at subsequent hearings.

In order to address IRRC's concerns, we have substantially revised paragraph (4) of this section and section 1055.32(c)(4). The revised regulations identify the terms that a presiding officer may impose as part of an order to release the impounded property. In addition to payment of towing and storage costs, the respondent may be required to have the impounded vehicle inspected to assure that it is safe for public use, if the presiding officer determines that an inspection is necessary. We believe that this is a reasonable condition specifically designed to protect the reoccurrence of the violation that caused the impoundment in the first place and that the Authority's power to conduct scheduled or unscheduled inspections is clear in the act. See 53 Pa.C.S. § 5714(a).

Also, the presiding officer may require some collateral to be posted with the Authority to secure the return of the respondent for the subsequent hearing on the merits of the underlying violations. However, the payment of collateral may represent a middle ground that permits the impounded property to be returned and placed back into service, while addressing concerns related to the respondent's likelihood of appearing at the subsequent hearing. Therefore, we have identified this option as a term that a presiding officer may employ.

(e). Subsection (e) provides that the scheduled auction of impounded property will be stayed if the respondent requests a hearing within 15 days of issuance of a citation complaint. Two typographical errors were corrected in paragraph (2) by adding the word "by" before the word "filing" and the letter "f" to convert the word "or" to "for." The word "by" was similarly added to subsection 1055.32(e)(2).

(g). Subsection (g) provides for the handling of impounded property once the underlying administrative complaints are adjudicated by the presiding officer. Paragraph (1) addresses the scenario in which the respondent is found not liable for the violation(s). We have amended this section to address the return of towing and storage fees, in the event they have been paid prior to the date of the presiding officer's determination of the underlying complaints. As to this section and section 1055.32(g), IRRC questioned the rights of respondent to appeal such adjudications and suggested that appeal rights, if they exist, be specific to all parties. There is no right to appeal a contested complaint of this nature within the Authority. See 53 Pa.C.S. § 5705(a). However, the Adjudication department provides notice with every order issued by a presiding officer in these situations which includes reference to the fact that the adjudication is subject to discretionary review by the Authority's Board and specifically references 52 Pa. Code § 1005.213, which addresses this issue.

Paragraph (2) provides for the scenario in which the Authority remains in possession of the impounded property through the date of the adjudication of the underlying formal complaint if the presiding officer finds the respondent to be liable. In this case, the vehicle will be scheduled for auction and notice of the auction will be

²² The Court in *Niemeyer* also provides a more updated analysis of the dated cases cited by Germantown's attorney in his comments regarding the constitutionality of the post-deprivation due process. The Court in *Niemeyer* noted the continuously uninterrupted standards for proper post post-deprivation due process, finding that prompt notice and access to due process satisfy constitutional requirements. We have drafted these regulations to comply with those requirements and each of the standards referenced in the cases cited by Germantown's attorney.

provided to the respondent. The vehicle may be reclaimed as provided for in subsection (h). IRRC questioned the need for language related to a respondent found not liable in this section, including refund options. However, this paragraph was not drafted to address that situation, paragraph (1) addresses that situation as referenced above. We provide the same response as to IRRC's question about § 1055.32(g).

(h). Section (h) provides for the manner in which a respondent may reclaim its impounded property, through full payment of penalties, fees and costs. This would include scenarios in which the respondent pleads liable to an enforcement complaint by simply paying the penalty. IRRC commented that some provision should be made to ensure that a vehicle impounded for safety reasons is not released while in a condition that presents a continuing threat to public safety. We agree.

This section has been amended in the final-form regulation to include three paragraphs. Paragraph (1) provides that if a respondent is found liable for any of the underlying violations as provided in subsection (d)(2), the release of the impounded property is subject to the payment of all penalties, fees and costs noted in the presiding officer's order, but also the potential for inspection to assure public safety. The inspection may not be needed in all cases and will be a condition that the presiding officer may impose sua sponte or upon request of the TLD.

Paragraph (2) provides for situations in which the registered owner pleads liable to the enforcement complaint and seeks to recover the impounded property. In this case, because a hearing on the merits of the underlying violation will have been averted by the plea (along with the opportunity for the TLD to request the inspection referenced by IRRC) an inspection will be mandatory to ensure public safety. Paragraph (3) provides that impounded property may not be reclaimed pursuant to paragraph (2) while a pending challenge as to ownership or a question as to the proper party to reclaim the impounded property remains unresolved through a motion to intervene as provided in subsection (f).

§§ 1055.31 and 1055.32.

The changes to sections 1055.31 and 1055.32 in the final-form regulation, relating to limousines, mirror those applicable to taxicabs in sections 1017.51 and 1017.52, except where specifically noted.

Affected Parties.

The regulation is not targeted at a specific class of regulated parties; therefore, the number of individuals or entities impacted is impossible to predict. However, an unlimited number of individuals will directly benefit from the increased safety inherent in the removal of vehicles for impoundable offenses. Also, the owners and lienholders of impounded property will benefit from the clear and rapid post-deprivation due process procedures.

Fiscal Impact.

The final-form regulation does not create the power to conduct impoundments, it merely defines the process. Indeed, the final-form regulation places clear limits on impoundable offenses and brightline procedures related to post-deprivation due process. We discern no direct fiscal impact imposed by the final-form regulation.

Commonwealth.

The Authority does not anticipate any increase in regulatory demands associated with this regulation.

Political subdivisions.

This final-form rulemaking will not have a direct fiscal impact on political subdivisions of this Commonwealth.

Private sector.

This final-form rulemaking will not have a fiscal impact on certificate holders or other regulated parties.

General Public.

This final-form rulemaking will not have a fiscal impact on the general public.

Paperwork Requirements.

This final-form rulemaking will not affect the paperwork generated by the Authority or the regulated communities.

Effective Date.

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 15, 2013, the Authority submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1720 (March 30, 2013), to IRRC and the Chairpersons of the House Urban Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 30, 2014, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 1, 2014, and approved the final-form rulemaking.

Conclusion

Accordingly, under sections 13 and 17 of the act (53 Pa.C.S. §§ 5722 and 5742); section 5505(d) of the Parking Authorities Act, act of June 19, 2001 (P. L. 287, No. 22), as amended (53 Pa.C.S. § 5505(d)(17), (23) and (24)); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated at 4 Pa. Code §§ 7.231—7.234, the Authority adopts the final regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Authority, 52 Pa. Code Chapters 1017 and 1055, are amended by amending §§ 1017.51, 1017.52, 1055.31 and 1055.32 to read as set forth in Annex A.
2. The Executive Director shall cause this order and Annex A to be submitted to the Office of Attorney General for approval as to legality.
3. The Executive Director shall cause this order and Annex A to be submitted for review by the designated

standing committees of both Houses of the General Assembly, and for formal review by IRRC.

4. The Executive Director shall cause this order and Annex A to be submitted for review by the Governor's Budget Office for review of fiscal impact.

5. The Executive Director shall cause this order and Annex A to be deposited with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The Executive Director shall serve copies of this order and Annex A upon each of the commentators and take all other actions necessary to successfully complete the promulgation of this regulation.

7. The regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact person for this rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

VINCENT J. FENERTY, Jr.,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 2965 (May 17, 2014).)

Fiscal Note: 126-3. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart B. TAXICABS

CHAPTER 1017. VEHICLE AND EQUIPMENT REQUIREMENTS

Subchapter E. IMPOUNDMENT OF VEHICLES AND EQUIPMENT

§ 1017.51. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Impoundable offense—The occurrence of any of the following circumstances is an impoundable offense:

(i) An unauthorized taxicab provides, or attempts to provide, call or demand service in Philadelphia.

(ii) A taxicab provides, or attempts to provide, call or demand service in Philadelphia through the use of a meter not approved by the Authority as provided in § 1017.23 (relating to approved meters) or a meter that has been manipulated to charge a fare not authorized by the Authority as provided in section 5703 or 5720 of the act (relating to rates; and wages), or both.

(iii) The condition of a taxicab creates an immediate threat to public safety if permitted to continue operation.

(iv) The continued operation of a taxicab by the driver creates an immediate threat to public safety except when the certificate holder is able to promptly provide an alternate adult individual with a valid driver's license to assume control of the vehicle.

(v) A vehicle provides, or attempts to provide, call or demand service in Philadelphia with a counterfeit medallion.

Registered lienholder—A person having a vehicle lien interest that is registered with the Department of Transportation or the similarly authorized registering agency of

the jurisdiction identified on the license plate of the vehicle, if any, on the date the vehicle was impounded.

Registered owner—The owner of the vehicle as registered with the Department of Transportation, or the similarly authorized registering agency of the jurisdiction identified on the license plate of the vehicle, if any, on the date the vehicle was impounded.

Unauthorized taxicab—

(i) A vehicle without a current and valid TLD inspection sticker affixed as provided in § 1017.32 (relating to TLD inspection sticker required).

(ii) A taxicab that has been placed out of service as provided in § 1003.32 (relating to out of service designation).

(iii) A taxicab that is operated under a certificate of public convenience that has been placed out of service as provided in § 1003.32.

(iv) The term does not apply to a vehicle that provides call or demand service as provided in section 5714(d)(1) of the act (relating to certificate and medallion required) under current authorization from the PUC.

Vehicle—The term includes the vehicle and equipment used or capable of being used to provide taxicab service.

§ 1017.52. Impoundment of vehicles and equipment.

(a) *Impoundment*. Upon observation of an impoundable offense, the Enforcement Department may direct the immediate impoundment of a vehicle, equipment or medallion under section 5714(g) of the act (relating to certificate and medallion required) and have the impounded property removed to a place of safe storage under the control of the Authority.

(b) *Notice of impoundment*. The Authority will serve immediate notice of impoundment on the registered owner and registered lienholder, if any, by first class mail as provided in section 5714(g)(2) of the act. The notice of impoundment will include the following information:

(1) The location of the impounded property.

(2) The manner in which the impounded property may be reclaimed.

(3) The date the impounded property will be sold at public auction if action is not taken to reclaim the impounded property or stay the auction as provided in this section.

(c) *Impoundment hearing*.

(1) The registered owner may file a hearing request with the Clerk at any time after impoundment solely to regain possession of impounded property by contesting the compliance of the impoundment with this section or the act, or both.

(2) Upon request as provided in paragraph (1), the Clerk will immediately schedule an impoundment hearing to be conducted within 2 days before a presiding officer.

(3) If the presiding officer determines, by order, that the impoundment was not proper, the impounded property may be immediately reclaimed by the registered owner without need to pay a penalty or cost associated with the impoundment.

(4) If the presiding officer determines that the impoundment was proper, the impounded property may be returned to the respondent, by order, upon payment of

towing and storage fees and costs, and either of the following conditions, or both, if ordered by the presiding officer:

(i) The impounded property will be inspected by the Enforcement Department to ensure that it no longer represents a threat to public safety.

(ii) Payment of the collateral the presiding officer finds necessary to secure the attendance of the respondent at a subsequent hearing regarding the impoundment.

(5) An order of the presiding officer entered as provided in this subsection is subject to the interlocutory appeal procedure in § 1005.131 (relating to interlocutory review generally).

(d) *Formal complaint.* The Enforcement Department will file a formal complaint with the Clerk against the registered owner averring a violation forming the basis of the impoundment within 5 days of the impoundment.

(e) *Stay of auction.* The public auctioning of impounded property will be stayed if the respondent contests the Enforcement Department's formal complaint by doing one of the following:

(1) Filing an answer to the complaint with the Clerk within 20 days as provided in § 1005.41 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(2) If a citation complaint is filed by the Enforcement Department, by filing a request for a hearing within 15 days as provided in § 1005.13(b)(2) (relating to citation complaints by the Authority).

(f) *Intervention.* A registered lienholder or medallion lienholder may request the impounded property be released into its possession only through a motion to intervene as permitted under § 1005.31 (relating to initiation of intervention).

(g) *Final disposition of impounded property.*

(1) If the respondent is found not liable for each violation averred in the Enforcement Department complaint, the impounded property may be reclaimed by the registered owner within 30 days of the adjudication without payment of a penalty, fee or cost, and any fees, costs or collateral paid by the respondent as provided in subsection (c)(4) will be refunded.

(2) If the respondent is found liable for any violation averred in the Enforcement Department complaint, the impounded property will be scheduled for public auction in not less than 30 days. A notice of the time, date and location of the auction will be provided to the registered owner and registered lienholder by first class mail.

(h) *Immediate repossession.*

(1) If the respondent is found liable as provided in subsection (g)(2), the impounded property may be reclaimed upon payment of the penalties, fees and costs imposed by order. The presiding officer may order the Enforcement Department to inspect the impounded property as a condition of release to ensure that it no longer represents a threat to public safety.

(2) Except as provided in paragraph (3), the registered owner may reclaim the impounded property at any time prior to a final determination as provided in subsection (g)(2) upon payment of the penalties requested in the Enforcement Department complaint and the fees and costs associated with the impoundment. The Enforcement Department will inspect the impounded property subject

to release by this paragraph to ensure that it no longer represents a threat to public safety.

(3) Impounded property may not be released as provided in paragraph (2) prior to a determination of a motion to intervene, as provided in subsection (f).

Subpart C. LIMOUSINES

CHAPTER 1055. VEHICLES AND EQUIPMENT REQUIREMENTS

Subchapter C. IMPOUNDMENT OF VEHICLES AND EQUIPMENT

§ 1055.31. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Impoundable offense—The occurrence of any of the following circumstances is an impoundable offense:

(i) An unauthorized limousine operates as a limousine or offers to operate as a limousine in Philadelphia.

(ii) The condition of a limousine creates an immediate threat to public safety if permitted to continue operation.

(iii) The continued operation of a limousine by the driver creates an immediate threat to public safety, except when the certificate holder is able to promptly provide an alternate adult individual with a valid driver's license to assume control of the vehicle.

Registered lienholder—A person having a vehicle lien interest that is registered with the Department of Transportation, or the similarly authorized registering agency of the jurisdiction identified on the license plate of the vehicle, if any, on the date the vehicle was impounded.

Registered owner—The owner of the vehicle as registered with the Department of Transportation, or the similarly authorized registering agency of the jurisdiction identified on the license plate of the vehicle, if any, on the date the vehicle was impounded.

Unauthorized limousine—

(i) A vehicle without a current, valid and properly affixed remote carrier sticker issued by the Authority as provided in § 1053.43(f) (relating to certain limousine requirements) or limousine rights sticker issued by the Authority as provided in § 1055.2 (relating to limousine rights sticker).

(ii) A limousine that has been placed out of service as provided in § 1003.32 (relating to out of service designation).

(iii) A limousine that is operated under a certificate of public convenience that has been placed out of service as provided in § 1003.32.

(iv) The term does not apply to a vehicle that provides common carrier service as provided in section 5741(a.3) of the act (relating to certificate of public convenience required) under current authorization from the PUC.

Vehicle—The vehicle and equipment used or capable of being used to provide limousine service.

§ 1055.32. Impoundment of vehicles and equipment.

(a) *Impoundment.* Upon observation of an impoundable offense, the Enforcement Department may direct the immediate impoundment of a vehicle or equipment under section 5741(f) of the act (relating to certificate of public convenience required) and have the impounded property removed to a place of safe storage under the control of the Authority.

(b) *Notice of impoundment.* The Authority will serve immediate notice of impoundment on the registered owner and registered lienholder, if any, by first class mail as provided in section 5714(g)(2) of the act (relating to certificate and medallion required). The notice of impoundment will include the following information:

- (1) The location of the impounded property.
- (2) The manner in which the impounded property may be reclaimed.
- (3) The date the impounded property will be sold at public auction if action is not taken to reclaim the impounded property or stay the auction as provided in this section.

(c) *Impoundment hearing.*

(1) The registered owner may file a hearing request with the Clerk at any time after impoundment solely to regain possession of impounded property by contesting the compliance of the impoundment with this section or the act, or both.

(2) Upon request as provided in paragraph (1), the Clerk will immediately schedule an impoundment hearing to be conducted within 2 days before a presiding officer.

(3) If the presiding officer determines, by order, that the impoundment was not proper, the impounded property may be immediately reclaimed by the registered owner without need to pay a penalty or cost associated with the impoundment.

(4) When the impoundment is determined to have been appropriate, the presiding officer may, by order, establish terms for the release of the impounded property including the posting of collateral and inspections by the Enforcement Department. If the presiding officer determines that the impoundment was proper, the impounded property may be returned to the respondent, by order, upon payment of towing and storage fees and costs, and either of the following conditions, or both, if ordered by the presiding officer:

(i) The impounded property will be inspected by the Enforcement Department to ensure that it no longer represents a threat to public safety.

(ii) Payment of the collateral the presiding officer finds necessary to secure the attendance of the respondent at a subsequent hearing regarding the impoundment.

(5) An order of the presiding officer entered as provided in this subsection is subject to the interlocutory appeal procedure in § 1005.131 (relating to interlocutory review generally).

(d) *Formal complaint.* The Enforcement Department will file a formal complaint with the Clerk against the registered owner averring a violation forming the basis of the impoundment within 5 days of the impoundment.

(e) *Stay of auction.* The public auctioning of impounded property will be stayed if the respondent contests the Enforcement Department's formal complaint by doing one of the following:

(1) Filing an answer to the complaint with the Clerk within 20 days as provided in § 1005.41 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(2) If a citation complaint is filed by the Enforcement Department, by filing a request for a hearing within 15 days as provided in § 1005.13(b)(2) (relating to citation complaints by the Authority).

(f) *Intervention.* A registered lienholder may request the impounded property be released into its possession only through a motion to intervene as permitted under § 1005.31 (relating to initiation of intervention).

(g) *Final disposition of impounded property.*

(1) If the respondent is found not liable for each violation averred in the Enforcement Department complaint, the impounded property may be reclaimed by the registered owner within 30 days of the adjudication without payment of a penalty, fee or cost, and any fee or cost paid by the respondent as provided in subsection (c)(4) will be refunded.

(2) If the respondent is found liable for a violation averred in the Enforcement Department complaint, the impounded property will be scheduled for public auction in not less than 30 days. A notice of the time, date and location of the auction will be provided to the registered owner and registered lienholder by first class mail.

(h) *Immediate repossession.*

(1) If the respondent is found liable as provided in subsection (g)(2), the impounded property may be reclaimed upon payment of the penalties, fees and costs imposed by order. The presiding officer may order the Enforcement Department to inspect the impounded property as a condition of release to ensure that it no longer represents a threat to public safety.

(2) Except as provided in paragraph (3), the registered owner may reclaim the impounded property at any time prior to a final determination as provided in subsection (g)(2) upon payment of the penalties requested in the Enforcement Department complaint and the fees and costs associated with the impoundment. The Enforcement Department will inspect the impounded property subject to release by this paragraph to ensure that it no longer represents a threat to public safety.

(3) Impounded property may not be released as provided in paragraph (2) prior to a determination of a motion to intervene, as provided in subsection (f).

[Pa.B. Doc. No. 14-1304. Filed for public inspection June 20, 2014, 9:00 a.m.]