RULES AND REGULATIONS

Title 10—BANKING AND SECURITIES

DEPARTMENT OF BANKING AND SECURITIES

[10 PA. CODE CH. 5]

Assessments

The Department of Banking and Securities (Department) adds Chapter 5 (relating to assessments) under the authority of 17 Pa.C.S. § 503(a) (relating to regulation by department) and sections 202(C) and 204(A) of the Department of Banking and Securities Code (71 P.S. §§ 733-202(C) and 733-204(A)).

Purpose

The purpose of this final-form rulemaking is to implement an assessment schedule for State-chartered institutions which provides adequate and sustainable funding for the Department and streamlines reporting and billing requirements on State-chartered institutions through the elimination of examination-based billing for State-chartered credit unions and State-chartered trust companies.

Comments and Responses

Notice of proposed rulemaking was published at 43 Pa.B. 5455 (September 14, 2013) with a 30-day public comment period. The Department received comments from the Pennsylvania Bankers Association (PBA), the Pennsylvania Association of Community Bankers (PACB), the Pennsylvania Credit Union Association (PCUA) and Vanguard Fiduciary Trust Company (VFTC).

Comments from trade associations

The Department received comments from three trade associations representing the interests of State-chartered banking institutions and State-chartered credit unions. Currently, there is not a trade association that solely represents the interests of State-chartered trust companies.

Comments from PBA

PBA represents banking institutions of all sizes within this Commonwealth, including Federally-chartered and State-chartered banks, bank and trust companies, trust companies, savings institutions and their subsidiaries and affiliates. PBA appreciated that the Department discussed the rulemaking with them during the developmental stages. PBA expressed the desire that the General Assembly allow the Banking Fund to remain in place for the Department's use only so that the Department maintains adequate funds to regulate its State-chartered institutions.

During the developmental stages, PBA requested that the Department send written explanatory materials to each State-chartered banking institution affected by the final-form rulemaking. PBA commented that the Department appropriately communicated to those State-chartered banking institutions the cost-reducing steps already taken by the Department since 2011. PBA concluded that although it is unable to comment on the impact of the final-form rulemaking on individual State-chartered banking institution members, it believes that the final-form rulemaking provides the Department with adequate funding for the future.

Comments from PACB

PACB represents community banking institutions within this Commonwealth, including State-chartered and Federally-chartered banking institutions. PACB appreciated the opportunity to comment on the rulemaking. Like the PBA, PACB expressed the desire that the General Assembly allow the Banking Fund to remain in place for the Department's use only so that the Department maintains adequate funds to regulate its State-chartered institutions.

PACB explained its concerns regarding the financial impact of the final-form rulemaking on some smaller State-chartered banking institutions because those institutions already face additional Federal mandates and regulatory burden. However, PACB commented that it appreciated the Department's incorporation of a 3 fiscal year phase-in for State-chartered banking institutions. The 3 fiscal year phase-in makes the possible financial strain on PACB members much more manageable than immediate full implementation. PACB also expressed support for the complete elimination of examination-based billing for State-chartered credit unions and State-chartered trust companies included in the final-form rulemaking.

Response: PACB explained its concerns to the Department during the drafting process. The Department determined that the assessments must increase and the increase does create some fiscal impact. The Department, as the regulator of the State-chartered banking institutions, is aware of the financial condition of its regulated community and took every measure to ensure that the final-form rulemaking will not create a financial impact which cannot be borne by the regulated community. Because of the feedback from PACB and others, the Department attempted to implement the increases in the least burdensome manner to the regulated community by including the 3 fiscal year phase-in and using already-existing Federal reporting requirements.

Comments from PCUA

PCUA represents a majority of the approximately 500 credit unions within this Commonwealth, including State-chartered and Federally-chartered credit unions. PCUA stated its appreciation for the complete elimination of examination-based billing for State-chartered credit unions. PCUA also commented that it understands that the Department needs to obtain sustainable funding to prevent regulatory uncertainty.

PCUA commented that the assessment and factors in the final-form rulemaking are more desirable than the current formula for assessment. However, PCUA expressed concern that some of the larger asset sized State-chartered credit unions might realize an increase from the final-form rulemaking. PCUA suggested that to better accommodate those larger asset sized State-chartered credit unions, the Department consider implementing a 3 fiscal year phase-in for State-chartered credit unions instead of immediate full implementation.

Response: The Department considered the concerns and financial status of its State-chartered financial institutions in drafting the final-form rulemaking. The Department acknowledges that, in adopting the assessment schedule best suited for credit unions, an increase will occur for some State-chartered credit unions, including

larger-asset ones. However, due to this assessment schedule approach, the Department is unable to provide a phase-in for credit unions.

The Department last changed the assessment rates for State-chartered credit unions over 23 years ago. Even though State-chartered credit unions did not experience change in assessment rates over the last 23 years, the Department still attempted to mitigate the fiscal impact of this final-form rulemaking. To the extent possible from a revenue standpoint, and to maintain the competitiveness of the Pennsylvania State-charter, the Department kept the assessment rates at roughly 95% of the National Credit Union Administration's (NCUA) assessment rates for Federally-chartered credit unions. In addition, the Department completely eliminated examination-based billing to avoid unpredictable costs for the State-chartered credit unions, despite the fact that the elimination of this billing method coupled with the new assessment schedules results initially in a moderate loss of revenue to the Department from credit unions. For example, in Fiscal Year (FY) 2012-2013, the Department received $1,880,788 in revenue from the current assessments and examination-based billing of State-chartered credit unions. In comparison, if the Department applied the assessment rates to be implemented by this final-form rulemaking to the most recent call reports of the State-chartered credit unions, the Department would receive $1.733 million in revenue. Thus, the switch from examination-based billing to the proposed assessment-only approach initially represents a loss of $147,000 in revenue to the Department from credit unions.

Regardless of the size of the credit union, as previously shown, even if the final-form rulemaking took full effect in 2013, the final-form rulemaking actually results in a decrease in revenue to the Department from this institution type overall. At full implementation, the Department expects the revenue for the State-chartered credit unions to increase at least to the level that the assessment rates will result in a revenue-neutral outcome from State-chartered credit unions. Therefore, incremental implementation of the assessment schedule for any size of credit union is impractical because it would cause a further loss of revenue to the Department, since the Department designed the assessment schedules for credit unions to result in a revenue-neutral outcome to maintain assessment competitiveness with the NCUA.

Comments from the regulated community

The Department received one comment from VFTC, which is part of the regulated community. VFTC is a State-chartered trust company that is a wholly owned subsidiary of The Vanguard Group, Inc. VFTC expressed its appreciation for the Department's discussion of the proposed rulemaking during the drafting process. VFTC also stated that without endorsing the content of the rulemaking, it understands that the Department undertook cost-reducing measures. Despite those measures, the outstanding financial need remains the reason for the rulemaking.

VFTC commented that without supporting the assessment rates, it agreed that the complete elimination of examination-based billing and the establishment of assessment rates at a level substantially below the Federal assessment structure are beneficial. VFTC stated it preferred a longer phase-in period, but understood that the 3 fiscal year time period is an acceptable compromise to enable the Department to achieve sustainable funding while attempting to lessen the immediate impact on the budgets of the regulated community. VFTC stated that it acknowledges that the Department needed to increase the assessment rates and agrees with § 5.5(a) and (b) (relating to adjustments to assessments; invoicing). VFTC agreed that the Department should tie its discretion to increase assessment rates to the United States Department of Labor, Bureau of Labor Statistics (USDOL) as an independent benchmark.

Comments from the Independent Regulatory Review Commission

The Department received four comments from the Independent Regulatory Review Commission (IRRC).

Comment: IRRC questioned how the Department determined that the surpluses resulting from the implementation of the final-form rulemaking are appropriate.

Response: The ending balances reflected in Table 3 on the Regulatory Analysis Form (RAF) do appear to show a surplus to the Department. However, those ending balances do not reflect surpluses; rather, the ending balances are a necessary reserve that supports three different needs of the Department.

First, the Conference of State Bank Supervisors (CSBS), which provides National accreditation of the Department's Banking Fund programs, recommends as a best practice maintaining a minimum of 3 months of operating expenses in a regulator's budgetary accounts at all times. CSBS recommends this because, like with any business, it is impossible for the Department to exactly time the receipt and expenditure of funds. Using the criteria set by CSBS and the projected Departmental expenses, the Department should maintain an operating reserve of approximately $6.3 million in the Banking Fund.

Second, the Department must maintain an operational balance higher than the approximately $6.3 million CSBS recommends in case of the loss of one or more of the larger State-chartered financial institutions to a charter conversion or a merger. As explained in the RAF, the assessment schedule uses the assets of each regulated State-chartered financial institution to calculate the amount due to the Department. Therefore, the larger asset State-chartered financial institutions provide a larger portion of the assessments. Although the Department strives to maintain favorable conditions for its State-chartered financial institutions, conversions and mergers still occur. The loss of a larger State-chartered financial institution through conversion to a Federal charter or merger could drastically reduce the Department's revenue and the balance of the Banking Fund.

Third, the Department needs to adequately fund the legislatively-created Institution Resolution Account (IRA). The IRA is a restricted account within the Banking Fund created in 2012 under section 1113-A(g) of the Department of Banking and Securities Code (71 P. S. § 733-1113-A(g)) for use primarily in resolving a failed State-chartered trust company. The failure of a State-chartered trust company impacts the Department in a different manner than the failure of a State-chartered banking institution or a State-chartered credit union because the Department actually bears the financial burden of a trust company failure.

If a State-chartered banking institution or a State-chartered credit union fails, Federal regulators act as receivers for these failed financial institutions and Federal deposit insurance funds resolve the accounts. The Office of the Comptroller of the Currency (OCC) decides whether a Federally-chartered banking institution must be closed. NCUA decides whether a Federally-chartered

credit union must be closed. The Department decides whether a State-chartered banking institution or State-chartered credit union must be closed. For banking institutions, either the OCC or the Department appoints the Federal Deposit Insurance Corporation (FDIC) as the receiver of these financial institutions. For credit unions, NCUA and the Department appoint NCUA as the receiver of these financial institutions. The FDIC and NCUA insure depositors in all banks and credit unions, including State-chartered banking institutions and State-chartered credit unions, for up to $250,000 per depositor when a failure occurs.

However, if a State-chartered trust company fails, a Federal regulator does not exist to be appointed receiver of failed State-chartered trust companies and Federal deposit insurance funds do not exist to resolve the fiduciary accounts because the FDIC and NCUA do not regulate trust companies or insure fiduciary accounts. In the event that a State-chartered trust company fails, the Department is the receiver and must resolve the trust company with Department funds generated from the regulated industries. Otherwise, the Department would need to seek an appropriation from General Fund taxpayer moneys to resolve a trust company. The costs to resolve trust companies varies greatly based on the sizes and types of fiduciary accounts, but recent resolutions by other state regulators demonstrate that resolutions take several years with costs consistently reaching above $20 million.

As the receiver of a State-chartered trust company, the Department must run the trust company until a resolution is reached. While running the trust company, the Department must pay ongoing operational and overhead expenses, such as the salaries and benefits of employees, the real estate and utility costs for the offices of the trust company, the data processing/information technology fees and business-related professional expenditures. In addition to the normal costs of running the trust company, the Department will need to hire and pay outside consultants. These outside consultants may include forensic accountants, outside bankruptcy counsel, executive management to replace previous management and investment bankers to market all or portions of the trust company's assets. The resolution of failed State-chartered trust companies creates a significant financial burden on the Department not only because of these costs, but because of the countless hours of personnel resources the Department must commit to the resolution during the years it takes to resolve a failed State-chartered trust company.

To prevent the depletion of the Department's funds through a State-chartered trust company failure, the Department must maintain the IRA to cover the costs associated with the resolution of a trust company and its fiduciary accounts. Prior to the establishment of the IRA, the Department was building an adequate reserve in the Banking Fund to prepare for these costs. However, these funds could be appropriated by the General Assembly for other uses. In FY 2008-2009, the General Assembly appropriated $15 million from the Banking Fund for other uses. As a result of that appropriation, the Department must gradually recoup the funds lost to that appropriation and adequately fund the IRA.

Comment: IRRC requested that the Department explain how it currently collects fees from institutions and how it plans to transition to the assessment schedule in the final-form rulemaking. Included in that question, IRRC asked whether the Department will discontinue its current assessment system and assuming that the rulemaking is adopted, how and when the Department will notify the regulated community of the change in the Department's assessment method.

Response: Currently, the Department assesses State-chartered banking institutions, State-chartered credit unions and State-chartered trust companies according to a similar assessment system based upon assessment schedules set in the 1990s by a series of Secretary's Letters. While the Department bills State-chartered banking institutions on this assessment basis only, it assesses State-chartered credit unions and State-chartered trust companies and additionally separately bills for examination costs. The examination-based billing could vary widely due to the length and complexity of the examination.

The Department collects assessments from State-chartered financial institutions according to these assessment schedules through a billing system based upon the amount of assets reported in the institution's Federal quarterly Report of Condition and Income (Call Report). For State-chartered banking institutions and State-chartered credit unions, the Department issues invoices on December 31 and June 30. The Department calculates the December 31 invoice amount based on the asset information in the September Call Report for each State-chartered financial institution and the June 30 invoice amount based on the asset information in the March Call Report for each State-chartered financial institution. The invoice reflects the amount due to the Department with a payment term of 30 days. For State-chartered trust companies, the Department issues invoices on December 31 based upon the September Call Reports.

The Department will implement the assessment schedule in the final-form rulemaking in the same manner, with one exception. In keeping with the billing format of the State-chartered banking institutions and State-chartered credit unions, the Department will also bill the State-chartered trust companies on December 31 based upon the asset information in the September Call Reports and June 30 based on the asset information in the March Call Reports. The assessment schedule invoices will be the only invoices issued to a State-chartered financial institution because the final-form rulemaking eliminates the examination-based billing for State-chartered credit unions and State-chartered trust companies.

The adoption of this final-form rulemaking will automatically replace the current assessment schedules and eliminate separate examination-based billing for State-chartered credit unions and State-chartered trust companies. Upon adoption of this final-form rulemaking, the Department will send a letter from the Secretary of Banking and Securities (Secretary) to each affected State-chartered financial institution explaining the final-form rulemaking and how it will be implemented. The letter will also reference the estimated assessment calculator located on the Department's web site, which was established prior to the public comment period to allow institutions to generate their estimated assessment as a result of the final-form rulemaking. The estimated assessment calculator will remain on the Department's web site following the promulgation of the final-form rulemaking and will allow each State-chartered financial institution to obtain assessment information specific to that institution prior to receiving the Department's invoice. The Department does not anticipate confusion regarding the implementation of the assessment schedule in the final-form rulemaking because the Secretary and the Department communicated extensively with the regulated community on this topic.

Comment: IRRC posed questions to the Department regarding § 5.5(a) and (b). Regarding subsection (a), IRRC asked five groups of questions regarding the inflation index and asked that the Department respond to the questions and adjust the final-form rulemaking as it deems appropriate.

(1) What safeguards are in place to ensure that the need for additional funding is based on inflation? Do the General Assembly and the budgetary process have any input or oversight on whether an adjustment is needed?

Response: The safeguards that exist to ensure the Department will only use § 5.5 to adjust the assessment based upon inflation are the budget review processes of the Governor's Budget Office and the General Assembly. The Governor's Budget Office and the General Assembly have input and oversight into whether an adjustment is needed because both approve the Department's budget each fiscal year. Therefore, the normal budget process ensures that the Governor's Budget Office and the General Assembly are able to review the appropriateness of the Department's revenue streams and expenditures overall, including whether an adjustment is needed.

As reflected in the public comments, the Department strives to oversee its State-chartered financial institutions in a cooperative manner. If the Department attempted to use this provision without a true need, the regulated community would, and should, bring the Department's actions to the attention of the General Assembly. In addition, the regulated community is familiar with optional inflation adjustments based upon changes in pricing because the Federal regulator of National banks and National trust companies, the OCC, also includes one in its assessment schedules. See, for example, 12 CFR 8.2(a)(4) (relating to semiannual assessment), regarding the use of "Gross Domestic Product Implicit Price Deflator" as index for optional inflation adjustment.

(2) Will the Department notify the regulated community in advance about the imposition of the inflation adjustment? How and when would the regulated community be notified of the inflation adjustment?

Response: The Department will notify the regulated community in advance about the imposition of the inflation adjustment. If the Department determines during the budget review process that an inflation adjustment is necessary, the Department will send a general letter in July after the budget process is complete to the regulated community notifying them that the Department will be instituting an inflation adjustment in the upcoming fiscal year assessments (that is, the December 31 and June 30 invoices). The Department will note the actual amount of adjustment on the invoices issued to each State-chartered financial institution.

(3) How often are the cited inflation indices updated? Do the inflation indices correlate to the semiannual assessment notices of this final-form rulemaking?

Response: The USDOL adjusts the Consumer Price Index (CPI) each month. The Department will use the inflation rate announced in June during the budgetary process to correlate the adjustment to the semiannual assessment fiscal year schedule. If needed, the Department will then apply the June inflation rate to the December 31 and June 30 invoices.

(4) How did the Department determine that the cited inflation indices are most appropriate for Pennsylvania State-chartered institutions?

Response: The Department determined that the inflation index cited in § 5.5 is the most appropriate because the Department uses the CPI in conjunction with other statutes it oversees. For example, the CPI is already used by the Department to annually calculate the inflation adjustment to the "base figure" under the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. §§ 101—605), known as the Loan Interest and Protection Law (LIPL). The LIPL applies to every entity that engages in mortgage lending in this Commonwealth, including the State-chartered banking institutions and State-chartered credit unions subject to this final-form rulemaking. State-chartered trust companies are not authorized to engage in mortgage lending. The Department has been using the CPI in conjunction with the LIPL since 2009 and determined that the CPI is a reliable basis for inflation adjustment.

(5) What criteria will the Department use when deciding which inflation index to use?

Response: The Department intends to only use the CPI. Although the Department does not anticipate using a different index than the CPI, the final-form rulemaking includes the option to use an additional USDOL index should the CPI be discontinued by the USDOL for any reason. If the CPI is discontinued, the Department will likely use the USDOL index that the OCC uses, the "Gross Domestic Product Implicit Price Deflator" in 12 CFR 8.2(a)(4).

IRRC posed several questions regarding the optional adjustment that the Department intends to apply to specific institutions based upon their Uniform Financial Institutions Rating System or Uniform Interagency Rating System composite rating in subsection (b). IRRC asked five groups of questions regarding optional adjustment.

(1) What is the need for the optional adjustment?

Response: The Department needs the optional adjustment to enable the Department to cover the increased costs of heightened supervision that arise when a State-chartered financial institution is in less-than-satisfactory condition. An institution such as this requires: more frequent examinations, which occur every 6 months instead of every 12 to 18 months; thorough reviews of the paperwork associated with increased reporting requirements; close monitoring of compliance with the requirements of enforcement actions; and other Departmental efforts to assist problem institutions which result in increased costs. In conjunction with this increased supervision, the Department may also need to hire outside specialists, such as forensic accountants.

(2) Why does the Department believe the surcharge is the most reasonable approach to assessing certain institutions?

Response: The Department determined that using an assessment surcharge, rather than billing for unpredictable special examination costs, provides a more transparent way for State-chartered financial institutions to calculate the regulatory costs of being in less-than-satisfactory condition.

(3) How did the Department determine that a 30% surcharge is appropriate for an institution with a composite rating of 4 and that a 50% surcharge is appropriate for an institution with a composite rating of 5?

Response: The Department determined that the surcharges were appropriate by using the OCC surcharge rates as a starting point and then reviewing the regulatory costs the Department incurred in the past related to State-chartered institutions in less-than-satisfactory condition. For example, the OCC assesses a 50% surcharge to an institution with a composite rating of three and a 100% surcharge to an institution with a composite rating of either a 4 or a 5. See 12 CFR 8.2(d). However, based on

the Department's review of its regulatory costs, the Department ruled out the need for a surcharge on an institution with a composite rating of three. The Department also determined that a 30% surcharge on an institution with a composite rating of 4 and a 50% surcharge on an institution with a composite rating of 5 sufficiently covered the increased supervision costs to the Department.

(4) What criteria will guide the Department in its determination that this surcharge is appropriate?

Response: The initial criteria to guide the Department are set forth clearly within the composite rating. If a State-chartered financial institution has a composite rating of 4 or 5, the Department will monitor the cost of the resources it expends to supervise that institution. The Department will assess the surcharge once the cost begins to draw on the resources that would otherwise be devoted to the normal supervision of other State-chartered financial institutions or if the Department expends funds to hire outside specialists.

(5) Will the surcharge be imposed to close a budgetary gap or will it be imposed to encourage institutions to improve their composite ratings?

Response: The Department will not use an assessment surcharge to close a budgetary gap because funds received through the surcharge will be extremely minor in relation to all other assessments combined. Instead, the reserve in the Banking Fund, previously addressed in the response to IRRC's first comment, is intended to cover budgetary gaps.

The Department does intend that if a State-chartered financial institution is subject to the surcharge, that the surcharge would provide more encouragement to the institution to work its way out of the less-than-satisfactory condition.

Comment: IRRC requested that the Department consider the public comment that it received wherein the commentator requested that the Department include a phase-in of the implementation of the assessment schedule for not only the State-chartered banking institutions and State-chartered trust companies, but also for the larger State-chartered credit unions affected by the final-form rulemaking to lessen the immediate fiscal impact on those larger State-chartered credit unions.

Response: As previously addressed in response to PCUA's public comment, the Department considered the concerns and financial status of State-chartered financial institutions in drafting the final-form rulemaking. The Department acknowledges that, in adopting the assessment schedule best suited for credit unions, an increase will occur for some State-chartered credit unions, including larger-asset ones. However, due to this assessment schedule approach, the Department is unable to provide a phase-in for credit unions.

The Department last changed the assessment rates for State-chartered credit unions over 23 years ago. Even though State-chartered credit unions did not experience change in assessment rates over the last 23 years, the Department still attempted to mitigate the fiscal impact of this final-form rulemaking. To the extent possible from a revenue standpoint, and to maintain the competitiveness of the Pennsylvania State-charter, the Department kept the assessment rates at roughly 95% of the NCUA's assessment rates for Federally-chartered credit unions. In addition, the Department completely eliminated examination-based billing to avoid unpredictable costs for the State-chartered credit unions, despite the fact that the elimination of this billing method coupled with the new assessment schedules results initially in a moderate loss of revenue to the Department from credit unions. For example, in FY 2012-2013, the Department received $1,880,788 in revenue from the current assessments and examination-based billing of State-chartered credit unions. In comparison, if the Department applied the assessment rates to be implemented by this final-form rulemaking to the most recent call reports of the State-chartered credit unions, the Department would receive $1.733 million in revenue. Thus, the switch from examination-based billing to the proposed assessment-only approach initially represents a loss of $147,000 in revenue to the Department from credit unions.

Regardless of the size of the credit union, as previously shown, even if the final-form rulemaking took full effect in 2013, the final-form rulemaking actually results in a decrease in revenue to the Department from this institution type overall. At full implementation, the Department expects the revenue for the State-chartered credit unions to increase at least to the level that the assessment rates will result in a revenue-neutral outcome from State-chartered credit unions. Therefore, incremental implementation of the assessment schedule for any size of credit union is impractical because it would cause a further loss of revenue to the Department, since the Department designed the assessment schedules for credit unions to result in a revenue-neutral outcome to maintain assessment competitiveness with NCUA.

Fiscal Impact

State government

The final-form rulemaking provides appropriate and sustainable funding for the Department.

Regulated community

The final-form rulemaking increases the assessments paid by the regulated community to the Department for the first time since the 1990s. Upon full implementation, the assessments paid by nearly all State-chartered institutions will still be significantly lower than current assessments paid by similar Federally-chartered institutions operating in this Commonwealth.

Paperwork

The final-form rulemaking eliminates the paperwork associated with examination-based billing for the Department, State-chartered credit unions and State-chartered trust companies. The final-form rulemaking does not impose additional paperwork on the Department, State-chartered banking institutions, credit unions or trust companies.

Effectiveness Date and Sunset Date

Chapter 5 will be effective upon final-form publication in the *Pennsylvania Bulletin*. The first payments due under the final-form rulemaking will be billed in December 2014, based upon the September 30, 2014 Call Reports. The final-form rulemaking does not have a sunset date because the Department will periodically review the effectiveness of the regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 22, 2013, the Department submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 5455, to IRRC and the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance 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 February 26, 2014, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 27, 2014, and disapproved the final-form rulemaking.

As directed by section 5.1(j.4) of the Regulatory Review Act, IRRC, the House and Senate Committees and the Department proceeded in accordance with section 6 of the Regulatory Review Act (71 P. S. § 745.6) following disapproval. Under section 6(a) of the Regulatory Review Act, the Department reviewed IRRC's order, responded to IRRC's concerns and submitted the final-form rulemaking with revisions consistent with section 7(a)(2) of the Regulatory Review Act (71 P. S. § 745.7(a)(2)). On March 21, 2014, the Department submitted a revised final-form rulemaking and the required report to IRRC and to the Chairpersons of the House and Senate Committees in accordance with section 7(c) of the Regulatory Review Act.

Under section 5.1(j.2) of the Regulatory Review Act on April 24, 2014, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 10, 2014, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of the proposed rulemaking was given under section 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received during the public comment period were considered.

(3) The final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 5455.

(4) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 17 Pa.C.S. (relating to Credit Union Code) and the Department of Banking and Securities Code.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 10 Pa. Code, are amended by adding §§ 5.1—5.6 to read as set forth in Annex A.

(b) The Secretary of Banking and Securities shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of Banking and Securities shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GLENN E. MOYER,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 2592 (April 26, 2014).)

Fiscal Note: 3-51. Revenue lost by eliminating examination-based billings will be offset by the updated assessment schedule. The final-form rulemaking is necessary in providing adequate and sustainable funding to the Department. (8) recommends adoption.

Annex A

TITLE 10. BANKING AND SECURITIES

PART I. GENERAL PROVISIONS

CHAPTER 5. ASSESSMENTS

Sec.
5.1. Definitions.
5.2. Semiannual assessment for banks, bank and trust companies, savings banks and savings associations.
5.3. Semiannual assessment for trust companies.
5.4. Semiannual assessment for credit unions.
5.5. Adjustments to assessments; invoicing.
5.6. Implementation schedule.

§ 5.1. Definitions.

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

Bank—The term as defined in section 102(f) of the Banking Code (7 P. S. § 102(f)).

Bank and trust company—The term as defined in section 102(g) of the Banking Code.

Consolidated total assets—The total assets as reflected in the FFIEC Call Report's "Schedule RC—Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only—FFIEC 041" or "Schedule RC—Balance Sheet of the Consolidated Report of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031," as applicable.

Credit union—The term as defined in 17 Pa.C.S. § 102 (relating to application of title).

FFIEC Call Report—A report promulgated by the Federal Financial Institutions Examinations Council that sets forth consolidated total assets and fiduciary assets.

Fiduciary assets—The sum of the total fiduciary assets in the FFIEC Call Report's "Schedule RC—T Fiduciary and Related Services of the Consolidated Report of Condition and Income for a Bank with Domestic Offices Only—FFIEC 041."

Fiscal year—The term as defined in section 617(a) of The Administrative Code of 1929 (71 P. S. § 237(a)).

NCUA Call Report—A report promulgated by the National Credit Union Administration that sets forth total assets.

Savings association—The term as defined in section 102(3) of the Savings Association Code of 1967 (7 P. S. § 6020-2(3)) (repealed).

Savings bank—The term as defined in section 102(x) of the Banking Code.

Total assets—The total assets as reflected on the "Statement of Financial Condition" in the NCUA Call Report.

Trust company—The term as defined in section 102(dd) of the Banking Code.

UFIRS—The Uniform Financial Institutions Rating System.

UITRS—The Uniform Interagency Trust Rating System.

§ 5.2. Semiannual assessment for banks, bank and trust companies, savings banks and savings associations.

(a) Banks, bank and trust companies, savings banks and savings associations shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on banks, bank and trust companies, savings banks and savings associations will be calculated as follows:

If the amount of the consolidated total assets is:		*The semiannual assessment will be:*			
Over:	*But not over:*	*Base amount:*		*The excess over:*	*Times (x):*
0	$20,000,000	$6,070	+	0	0
$20,000,000	$100,000,000	$6,070	+	$20,000,000	0.000112059
$100,000,000	$200,000,000	$15,035	+	$100,000,000	0.000072836
$200,000,000	$1,000,000,000	$22,319	+	$200,000,000	0.000061631
$1,000,000,000	$2,000,000,000	$71,623	+	$1,000,000,000	0.000050425
$2,000,000,000	$6,000,000,000	$122,048	+	$2,000,000,000	0.000044822
$6,000,000,000	$20,000,000,000	$301,338	+	$6,000,000,000	0.000038139
$20,000,000,000		$835,284	+	$20,000,000,000	0.000019409

(c) Banks, bank and trust companies, savings banks and savings associations will be billed semiannually in December and June based upon the consolidated total assets reported in the immediately preceding FFIEC Call Report.

§ 5.3. Semiannual assessment for trust companies.

(a) Trust companies shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on trust companies will be calculated on consolidated total assets plus fiduciary assets as follows:

If the amount of the consolidated total assets is:		*The semiannual assessment will be:*			
Over:	*But not over:*	*Base amount:*		*The excess over:*	*Times (x):*
0	$20,000,000	$6,070	+	0	0
$20,000,000	$100,000,000	$6,070	+	$20,000,000	0.000112059
$100,000,000	$200,000,000	$15,035	+	$100,000,000	0.000072836
$200,000,000	$1,000,000,000	$22,319	+	$200,000,000	0.000061631
$1,000,000,000	$2,000,000,000	$71,623	+	$1,000,000,000	0.000050425
$2,000,000,000	$6,000,000,000	$122,048	+	$2,000,000,000	0.000044822
$6,000,000,000	$20,000,000,000	$301,338	+	$6,000,000,000	0.000038139
$20,000,000,000		$835,284	+	$20,000,000,000	0.000019409

plus

If the amount of the fiduciary assets is:		*The semiannual assessment will be:*			
Over:	*But not over:*	*Base amount:*		*The excess over:*	*Times (x):*
0	$500,000,000	$6,746	+	$0	0
$500,000,000	$1,000,000,000	$13,492	+	$500,000,000	0
$1,000,000,000	$10,000,000,000	$13,492	+	$1,000,000,000	0.000002689
$10,000,000,000	$100,000,000,000	$37,689	+	$10,000,000,000	0.000000449
$100,000,000,000		$78,081	+	$100,000,000,000	0.0000001425

(c) Trust companies will be billed in December and June based upon the consolidated total assets and fiduciary assets reported in the immediately preceding FFIEC Call Report.

§ 5.4. Semiannual assessment for credit unions.

(a) Credit unions shall pay a semiannual assessment to the Department.

(b) The semiannual assessment on credit unions will be calculated as follows:

If the amount of the total assets is:		*The semiannual assessment will be:*			
Over:	*But not over:*	*This amount:*		*The excess over:*	*Times (x):*
0	$24,503,168	$2,500	+	$0	0
$24,503,168	$1,115,871,488	$2,500	+	$24,503,168	0.00010739750
$1,115,871,488	$3,376,610,357	$119,842	+	$1,115,871,488	0.00003130250
$3,376,610,357		$190,609	+	$3,376,610,357	0.00001045000

(c) Credit unions will be billed in December and June based upon the total assets reported in the immediately preceding NCUA Call Report.

§ 5.5. Adjustments to assessments; invoicing.

(a) *Adjustments.*

(1) *Adjustment to assessments.* The Department may increase the amount of assessments generated by the calculations in §§ 5.2—5.4 (relating to semiannual assessment for banks, bank and trust companies, savings banks and savings associations; semiannual assessment for trust companies; and semiannual assessment for credit unions) if the projected assessments are insufficient to provide for the Department's budget due to increased costs of operation.

(2) *Amount of adjustment.* The increase permitted by paragraph (1) may not exceed the percentage increase in the Consumer Price Index over the fiscal year immediately preceding the fiscal year in which the Department submits its proposed budget to the General Assembly, as indicated by the "Consumer Price Index—All Urban Consumers: U.S. All Items 1982-84=100"published by the United States Department of Labor, Bureau of Labor Statistics, or other similar index published by the United States Department of Labor, Bureau of Labor Statistics.

(b) *Surcharge based on condition.* The Department may increase the amount of a specific assessment generated by the calculations in §§ 5.2—5.4 by:

(1) Thirty percent for a bank, bank and trust company, savings bank, savings association, trust company or credit union with a UFIRS or UITRS composite rating of 4.

(2) Fifty percent for a bank, bank and trust company, savings bank, savings association, trust company or credit union with a UFIRS or UITRS composite rating of 5.

(c) *Notice of adjustment or surcharge.* The Department will provide notice to institutions of an increase in assessments according to subsections (a) and (b) by:

(1) A general notice within 30 days of the enactment of the Department's budget by the General Assembly if an increase is generated by subsection (a).

(2) A note on each semiannual assessment invoice issued to an institution subject to an increase generated by subsection (b).

(d) *Assessment invoicing.* The Department will round the assessments calculated under this chapter to the nearest dollar on the semiannual assessment invoice issued to each assessed entity.

§ 5.6. Implementation schedule.

(a) *General rule.* The Department will provide an implementation schedule for banks, bank and trust companies, savings banks, savings associations and trust companies to adjust to the assessments generated by this chapter.

(b) *Implementation schedule.* Banks, bank and trust companies, savings banks, savings associations and trust companies shall pay assessments according to the following implementation schedule:

(1) Seventy percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 (relating to semiannual assessment for banks, bank and trust companies, savings banks and savings associations; semiannual assessment for trust companies; and adjustments to assessments; invoicing) for the first 12 months after July 1, 2014.

(2) Eighty-five percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 for the second 12 months after July 1, 2015.

(3) One hundred percent of the total assessment calculated by §§ 5.2, 5.3 and 5.5 for the third 12 months after July 1, 2016.

[Pa.B. Doc. No. 14-1564. Filed for public inspection July 25, 2014, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CH. 1013]

Taxicab Medallion Sales by the Authority

The Philadelphia Parking Authority (Authority), on April 29, 2014, adopted a final-form rulemaking order which established regulations for the sale of taxicab medallions by the Authority.

Final-Form Rulemaking Order; Philadelphia Taxicab and Limousine Regulations; Doc. No. 126-6

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 September 25, 2013. The initial public comment period for this rulemaking proceeding concluded on December 9, 2013, the Independent Regulatory Review Commission ("IRRC") submitted its comments on January 8, 2014. The Authority has completed its review of the comments and now issues the final-form regulation.

Purpose of the Final-Form Regulation and Statutory Authority

The Authority assumed regulatory control of all taxicab and limousine operations in Philadelphia on April 10,

[1] See Sections 13 and 17 of the Act.

2005 through the implementation of Act 94. Prior to that time, the Pennsylvania Public Utility Commission ("PUC") regulated that service and sold taxicab medallions as part of its regulatory duties.

Only those medallions authorized by the Legislature may be sold by the Authority. For most of the Authority's tenure as regulator of taxicab service providers in Philadelphia number of medallion that had already been sold by the PUC prior to April 10, 2005 equaled the statutory cap. To date the Authority has not sold a medallion. However, an existing medallion numbered 1601 will be available for sale in fiscal year 2015 and the act of July 5, 2012, (P. L. 1022, No. 119) ("Act 119") has provided for a measured annual increase in the number of statutorily authorized medallions. Pursuant to Act 119, on June 1 of each year, the statutory cap on the number of medallions will be lifted by 15 until the ceiling reaches 1,750.[2] While the Authority is authorized to sell medallions pursuant to procedures established by order, we believe it is prudent to create regulations to provide notice of the standardized method that will be employed to complete these sales.[3]

Act 119 requires that each of the first 15 medallions made available over the prior cap of 1,600 be used to provide taxicab service through a wheelchair accessible vehicle ("WAV"). The proposed rulemaking made clear that this regulation is intended to fill a void in the Authority's regulations created by the lack of any established procedures for medallion sales by the Authority. The proposed rulemaking, as well as the final-form regulation do not establish procedures, goals or requirements related to the provision of WAV taxicab service. This is simply a regulation to create procedures for the sale of medallions by the Authority, with whatever restriction the medallions may carry, or none.

Several commentators used the comment period to suggest regulatory changes related to WAV taxicab service. Neither the proposed regulation, nor the final-form regulation address WAV taxicab service. This is not a WAV taxicab service regulation.

In addition to the standard regulatory promulgation process, including this comment and response component, the Authority conducted a public comment hearing regarding the proposed regulation on February 12, 2014.

The Honorable Lawrence M. Farnese, Jr., Senator, (1st District) submitted comments to the regulation, to which the Independent Regulatory Review Commission ("IRRC") specifically requested we reply. Senator Farnese correctly notes that of the 150 medallions authorized by Act 119 over the next ten years, only 15 are required by statute to be restricted to use on WAV taxicabs, and further that the Authority has discretion as to the issuance and use of the remaining 135 once such medallions are authorized. Senator Farnese comments that the Authority should identify the number of medallions to be issued with WAV restrictions and then suggests that the sale of medallions could potentially constitute a "windfall for the PPA" as opposed to helping the disabled community.

Again, this regulation does not address wheelchair taxicab service at all. There are no substantive requirements or procedures related to WAV taxicabs in this regulation. This is a regulation dedicated to establishing a process through which medallions will be sold by the Authority. We do not believe that the context or language of the final-form regulation can support directives of the nature suggested by the Senator. We believe that the Legislature did not mandate a specific number of medallion as WAV medallions for a reason. The Authority will assess the data produced through the operation of WAV taxicabs and determine applicable limitations, if any, to authorized medallions prior to each sale. The proposed regulation embraces the statutorily enabled discretion to set service restrictions on medallions as they are offered for sale and in consideration of the needs in Philadelphia at that time. These medallions are authorized by statute on a piecemeal basis through 2021. The Authority has no statutory power to accelerate the authorization of new medallions.

The revenue derived from the sale of medallions must be placed into the Medallion Fund, which is held for the Authority by the Pennsylvania Treasurer. See 53 Pa.C.S. § 5701. The Authority may only use money in that fund in furtherance of its taxicab regulatory program and only when authorized by the Legislature and the Governor to do so. See 53 Pa.C.S. § 5708(a.1). Revenue from the sale of medallions will never constitute a windfall to the Authority.

We agree with Senator Farnese that one of the reasons Act 119 was enacted was to address the need for WAV taxicab service in Philadelphia. We noted this point when promulgating our regulation 126-5, which does establish WAV taxicab standards. Unfortunately, based on the history of taxicab service in Philadelphia, we know that the existing medallion owners will not adequately address this public need without a legal mandate. But again, that is not an issue in this regulation.

Senator Farnese commented that the Authority's plan to sell medallions through a public competitive sealed bid process represented a lack of openness and creates the potential for investigations, fraud and impropriety. Act 119 specifically provides for the sale of medallions through a public bidding process. 53 Pa.C.S. § 5711(b). The Commonwealth of Pennsylvania has directed that the preferred manner in which its government, including authorities, is to obtain products and services is through competitive sealed bids. 62 Pa.C.S. § 511. We do not understand how the Legislature could believe that the competitive sealed bid process is the most effective and open manner in which to acquire products and services, specifically provide for the sale of medallions through a public bid in Act 119, and then object to the sale of medallions through an open competitive sealed bid process. We believe that this public process is completely transparent and will provide for a safe and beneficial medallion sale process.

Senator Farnese also commented that the proposed regulation was too restrictive in terms of who it permitted to bid on a medallion. The regulation sets no restriction upon who may bid on a medallion expect that the bidder must be an existing medallion taxicab certificate holder or a person that has already submitted an application to be a medallion taxicab certificate holder. The regulations already prohibit the transfer of ownership of a medallion to a person that does not have a certificate of public convenience. See 52 Pa. Code § 1027.4.

The Senator commented that the purpose of Act 119 was to get WAV taxicabs into service in Philadelphia, at least as to the first 15 authorized medallions. If these medallions are sold to persons that are not authorized to provide taxicab service in the City and have not even

[2] See 53 Pa.C.S. § 5711(c)(2).
[3] The Authority may sell medallions by bid or public auction. 53 Pa.C.S. § 5717(b)(1).

initiated the process necessary to acquire that authorization, the operation of these medallions will be delayed by at least several additional months.

Under that scenario, the successful bidder would submit an application for a medallion certificate of public convenience after the bid process. The successful bidder could then be determined to be ineligible to be a certificate holder, which will prevent the operation of the WAV taxicab while the medallion is either submitted to a new sale process or subject to litigation to determine its disposition.

The final-form regulation opens the medallion sale process to anyone who is serious about owning and operating a medallion taxicab. We believe that requiring the bidders to be existing medallion certificate holders or persons who have already filed an application to be medallion certificate holders will hasten the review process, increase the likelihood that the successful bidder will be qualified to own a medallion and result in the more rapid deployment of these medallions into public service.

Anyone can file the required application. The application must be filed 30 days before the proposed sale date. See 52 Pa. Code § 1013.32(b). This advance time will give the Authority the opportunity to conduct a basic review of each application for the most glaring of disqualifying issues, such as criminal conviction prohibitions. See 53 Pa.C.S. § 5718(c). Therefore, we believe this requirement is logical, consistent with the intent of Act 119 and existing Authority regulations and is not burdensome for a person seeking to spend hundreds of thousands of dollars to acquire a medallion.

IRRC noted the concerns of commentators regarding WAV taxicabs. Commentators expressed an interest in knowing how many medallions would be sold and when, as well what restrictions would be placed upon them. As we noted above, the statutory cap on medallions increases gradually over a ten year period. The only special restriction mandated by law goes to the first 15 medallions, which must be WAVs. See 53 Pa.C.S. § 5711(c)(2)(1). But again, this is not a WAV regulation, this regulation merely establishes procedures for the sale of medallions, whenever those medallions may be sold.

IRRC noted the questions of commentators regarding the restrictions that will be placed upon medallions and requesting a specific number, of the 150 medallions to be authorized by Act 119, will be sold as WAVs. Also, why all of the Act 119 medallions will not be sold at one time. IRRC and other commentators requested details as to the Authority's plan to sell the medallions authorized by Act 119 and what restrictions, if any, would be employed.

While medallions authorized by Act 119 will be sold pursuant to the final-form regulation, so will other medallions. This is not a WAV taxicab regulation, nor is it a regulation that establishes a medallion sale schedule. We believe that these questions and comments are not related to this rulemaking. These comments would have been better suited for our final-form regulation at Docket No. 126-5. We will attempt to address these issues because they are clearly of public concern, but the approval of this final-form regulation should not hinge on the issues that are not in the final-form regulation and not need to be.

Act 119 increases the ceiling on statutorily authorized medallions as follows:

Authorization Date	*Medallion Ceiling*
July 5, 2012:	1,615
June 1, 2013:	1,630
June 1, 2014:	1,645
June 1, 2015:	1,660
June 1, 2016:	1,675
June 1, 2017:	1,690
June 1, 2018:	1,705
June 1, 2019:	1,720
June 1, 2020:	1,735
June 1, 2021:	1,750

53 Pa.C.S. § 5711(c)(1) and (2).

Upon approval of the Authority's final-form regulation at Docket No. 126-5 and this final-form regulation, the Authority will initiate the medallion sale procedure provided for in this regulation. If those regulations are approved on the schedule identified in the Regulatory Analysis Forms, the Authority anticipates selling 46 medallions in fiscal year 2015. Those medallions will be the 45 authorized through Act 119 as of June 1, 2014 and existing Medallion No. 1601. The Act 119 medallions will all be WAV medallions.

The Authority has not developed plans for the sale of medallions in future years and it is not required to. The Legislature could have required the sale of all authorized medallions; it did not. The Legislature could have required that all of the medallions be restricted to WAVs; it did not. IRRC noted the suggestion of a commentator that the Authority was exceeding its statutory authority by failing to declare every medallion authorized by Act 119 as a WAV medallion.

We find no basis in the law for such a suggestion. As noted above, Senator Farnese is correct when he writes that Act 119 "gives the Authority discretion on how to allocate the remaining 135 medallions." That is, after the first 15 WAV medallions are issued. We believe the Section 5711(c) of the act is crystal clear and supports Senator Farnese's position, as follows:

(2) The authority is authorized to issue the following:

(i) Subject to the provisions of subparagraph (ii), a maximum of 1,600 certificates of public convenience and corresponding medallions for citywide call or demand service and an additional *15 certificates of public convenience and corresponding medallions restricted to wheelchair-accessible taxicab service* as provided in this chapter.

(ii) Beginning June 1, 2013, and each June 1 thereafter until there is a total of 1,750 certificates of public convenience and corresponding medallions, the maximum number of certificates of public convenience and corresponding medallions for citywide call or demand service shall be *increased by 15*. The authority, *in its discretion, may* issue the certificates and medallions authorized by this subparagraph with *special rights, privileges and limitations* applicable to issuance and use *as it determines necessary* to advance the purposes of this chapter and may issue the certificates and medallions authorized by this subparagraph in stages. (Emphasis added.) 53 Pa.C.S. § 5711(c)(2)(ii).

Also, Section 5717(a) of the act provides as follows:

Subject to the limits established in section 5711(c) (relating to power of authority to issue certificates of public convenience), the authority *may* increase the

number of certificates and medallions. In no case shall the number of citywide call or demand service taxicab certificates and medallions issued by the authority exceed the maximum amount provided for in section 5711(c). (Emphasis added.)

Therefore, the act does not require the Authority to issue any medallions and does not dictate any mandatory restrictions to be applied to the 135 medallions authorized by Section 5711(c)(2)(ii). IRRC and other commentators requested information about what other type of restrictions may be applied to medallions. The answer is that we do not know. The Legislature intentionally authorized new medallions over a protracted period of time and then permitted the Authority to place restrictions on the use of those medallions when issued. We do not know what challenges may confront the taxicab industry in 2019. To commit ourselves to a particular use of medallions now would vitiate the entire purpose of the discretion permitted through the act.

IRRC asked the Authority to explain how the regulation's language properly implements the statute. We are not sure that this question is clear. Based on the realities of the act and the fact that this regulation is only intended to establish a generic medallion sale procedure, we believe that that the final-form regulation properly implements the statute to the extent that the statute envisions the Authority selling medallions.

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.

§ 1013.31. Purpose and definitions.

This section identifies the purpose of the medallion sale regulation and provides certain definitions.

§ 1013.32. Bidder qualifications.

This section identifies qualifications for those who wish to bid on a medallion sold by the Authority. We identified above in response to the comments of Senator Farnese and IRRC the reasons that we believe the requirements this section are reasonable. Pennsylvania Taxi Assoc., Inc. ("PTA") commented that the qualifications for a person who seeks to buy a medallion from the Authority should not exceed those applicable to those who wish to acquire a medallion from an existing medallion owner. The qualification standard seeks buyers who can otherwise qualify for a certificate of public convenience under the existing regulations, are not simply speculating, and who have good and current records of service (if they are currently active taxicab service providers). These are reasonable and straight forward standards.

(a)(3). IRRC noted the requirement in the regulation that a qualified bidder be a person that has not sold a medallion within 365 days. Upon consideration of the other anti-speculation protections in the regulation we believe this paragraph is unnecessary and it has been deleted.

IRRC also questioned the reasonableness of requiring a person that is not an existing medallion owner to file an application 45 days before a scheduled medallion sale, when the notice of the medallion sale is only required to be given 60 days before the sale date. We agree and have changed this requirement to 30 days. This will give any potential bidder in this category one month from the date of notice of a medallion sale date to submit the required medallion CPC application. We believe this is a reasonable accommodation for potential bidder, but will also permit the Authority sufficient time to review the applications for major flaws, as referenced above, prior to the sale date.

IRRC also noted that the requirement for non-medallion owners to complete the SA-1 form "relating to application for sale of transferable rights" was unclear because this is a multi-part form and not all sections seem to apply to this bidder qualification requirement. We agree. The SA-1 has been modified to address this concern.

We note that medallions currently sell for over $500,000. The taxicab business is heavily regulated and requires a significant investment of capital to get off of the ground. Bidders must be persons who are capable of understanding these issues and operating a challenging public service business in Philadelphia. In short, medallion owners should be able to complete an application. We do not think that this requirement will be unclear to such a person. Indeed, most medallion buyers are represented by counsel in these transactions, largely due to the amount of money at issue. We have noted above the public interest associated with conducting this prequalification process. The best way to quickly place these medallions into service without post-sale challenges or litigation is to assure that those who seek to buy medallions are already qualified to own them. Commentator Black Point Taxi, LLC., et al. ("BPT") commented that additional requirements should be made part of the bidding package to assure that each bidder fully understands and is capable of the duties and obligations of a medallion owner. We have addressed this issue below in response to comments to § 1013.35.

§ 1013.33. General provisions.

This section provides certain guidelines as to how the Authority will sell medallions, including the specification of the sealed bid process.

IRRC noted the comments of other commentators who are concerned about the integrity of the sealed bid process. We addressed this issue in response to Senator Farnese's comments above. We disagree with the assertion that a sealed bid process is not "open and honest" or that it is not "transparent". Indeed, it is the method preferred by the Commonwealth to securing the best price for high quality products and services. 62 Pa.C.S. § 511.

We have taken steps to address potential fraud issues, but fraud is a possibility no matter what method of sale we opt to employ. Sales under the regulation will relate to one medallion at a time. A person who is a bidder or who has a controlling interest in a bidder can only submit one bid. The Authority may limit the number of medallions that a person, including those with a controlling influence over that person (nearly all medallion owners are small corporation), may acquire. 53 Pa.C.S. § 5717(b)(5). The bids will be opened in public. All bidders or a representative of the bidder must appear at the bid opening. This means all bidders will instantly know how much each medallion has sold for and to whom. This is not a closed process at all.

Commentator PTA has noted the New York City investigation into purported medallion sale discrepancies in a sealed bid scenario several years ago. Since the conclusion of that investigation the New York City Taxicab and Limousine Commission has amended its regulations to address issues raised in that investigation report. Those changes were taken into consideration when the Author-

ity considered the final-form regulation and were adopted in many cases. However, New York continues to sell medallions through sealed public bid. See New York Taxicab Regulations, § 65-04.

In some circles verbal auctions are viewed as a way to keep prices low. Why bid $10 if the current bid is $.12? In a sealed bid scenario, each bidder will have to put its best foot forward on the first attempt, which may be unpalatable to the bidder hoping to buy a medallion for a low price, but will be beneficial to the public good. We have decades of experience buying and selling products and services through the competitive sealed bid process. We believe that it is the most incorruptible, efficient and beneficial process to sell medallions. It is a process specifically provided for in the enabling legislation. See 53 Pa.C.S. § 5711(b).

§ 1013.34. Notice of medallion sale by the Authority.

This section provides for the manner in which notice of a medallion sale will be provided, including restrictions that may apply to the sale process and the use of the medallion. IRRC noted the comments of other commentators when it questioned the propriety of providing 60 days' notice of a medallion sale considering some non-medallion owners may need to qualify to participate in the process. IRRC correctly notes that this minimum 60 day notice period is required by statute. See § 53 Pa.C.S. § 57147(b)(1). Both the regulation and the statute require this minimum period. The Authority has the discretion to provide more notice. However, as we noted in regard to the deadline for filing an SA-1 application above, the mere filing of the SA-1 for a party intent upon acquiring an expensive and important public asset should present no major hurdle. Such a party would have 30 days to complete that process. This concern only applies to persons who are not already medallion owners. Therefore, we believe that it is proper to mirror the statutory minimum number of days' notice of a medallion sale, but will evaluate the results of this procedure when issuing such notices.

IRRC also commented that paragraph (8) of the proposed regulation was vague and recommended amending the sentence or deleting it entirely. We agree and have deleted that paragraph.

§ 1013.35. Procedures for bidding.

This section provides procedures related to the medallion sale process. IRRC noted that the form "MA-2," which has been re-identified in the regulation as "MA-1" because there was no pre-existing MA-1, was not available on the Authority's website; however it is now. The form requires only basic information that is consistent with the balance of the regulation and necessary to properly complete the sale process. We believe that this information is absolutely necessary to establish the identity of each bidder, including their contact information.

IRRC noted the comment of BPT referenced above. BPT would have the minimum deposit amount raised from $5,000 to $20,000, which is the deposit amount in Chicago. IRRC asked for an explanation of how the $5,000 deposit was sufficient in the face of medallion prices that exceed $500,000. IRRC also noted the problems associated with sealed bidding in New York City that developed when the high bidders withdrew their bids, allegedly, to benefit lower bidding associates. The loss of the small $2,000 deposit was insufficient to dissuade the high bidder from withdrawing.

We agree with these concerns. While the presence of a meaningful deposit will buttress the Authority's assurance that the bidder has the funds necessary to complete the transaction, the deposit also creates a personal stake in the success of the sale process in the bidder. That is certainly the case here. We believe that material deposits can also dissuade nefarious conduct.

We believe bidders will be more likely to properly participate in the post-bid sale process if they not only stands to lose the ability to buy a medallion, but also some meaningful personal asset. The forfeited funds will also help to defray costs of the Authority related to the failed sale process. BPT also suggested that the purchasers of such expensive and important public assets should demonstrate the ability to financially support those assets.

We further believe it would be a mistake to establish a flat deposit amount by regulation. Such a deposit amount will not automatically adjust to fluctuations in medallion sale prices and would require a new rulemaking to modify. We believe it is more appropriate to advance all of these goals by requiring a deposit in an amount equal to 10% of the price submitted by the bidder. Bidders who wish to bid very low for a medallion would be permitted to submit deposits less than $5,000, while the amount of deposits will always be tailored to the individual bidder's proposed price. As the sale price of medallions rises or falls in the future, so too will the amount of the required deposit, thereby maintaining a level of sufficiency relative to the actual bid price (and sale price for successful bidders). We believe that 10% is a sufficient amount and is not overly burdensome because the regulations only require a letter of commitment from a lending institution for 80% of the bid amount. The bidders for these expensive public assets should have resources sufficient to support their use. There is no rule prohibiting the use of borrowed funds as part of the bid package.

IRRC also noted that subparagraph (a)(4)(i) does not identify what happens to the deposit of unsuccessful bidders. We agree and have amended that language to clarify that the deposits of unsuccessful bidders are to be returned. Also, § 1013.36(b)(3) has been amended to clarify that in the event a bid award is made available to the next highest bidder, that potential high bidder must re-submit its deposit to the Authority.

We have amended § 1013.35(c)(4) by adding the position of "officer" to the list of positions that a bidder may not hold with a competing bidder. A person who bids on a medallion individually or through an entity in which it holds a controlling interest should not be able to bid against itself as the president or secretary of another bidding entity. The regulation seeks to eliminate price fixing and collusion between bidders. The balance of the language in paragraph (4) has been moved to a new paragraph (5) simply to make the regulation more readable.

§ 1013.36. Bid opening.

This section addresses bid opening procedures. We have added a paragraph (7) subsection (a) to clarify that the failure to acknowledge a winning bid as provided in paragraph (6) with be deemed a withdrawal of that bid. The Director may then move on to the next bidder or request that the Board re-advertise the sale of the medallion.

IRRC questioned the clarity of subsection (b)(4) and (5), which deal with the decision to award a medallion to the next highest bidder or to re-bid the medallion after a successful bidder is unable to complete the medallion sale. IRRC noted that the language in the proposed

regulation seemed to create the potential for the Director to simultaneously select the next highest bidder and request that the Board re-advertise the medallion for sale.

We agree with IRRC's concern and have amended paragraph (5) of the regulation to provide that the re-advertising option may be invoked when the Director declines to make a selection from the list of unsuccessful bidders. We have also amended this section to address the situation in which the sale process unsuccessfully concludes prior to the closing date.

Paragraph (b)(2) has also been amended to address this issue. If a successful bidder withdraws from the sale process before the Board declines to approve the sale, the process to award the medallion to the next highest bidder or re-advertise the medallion for a new bid should be able to begin immediately. This amendment will permit that process to advance more quickly. IRRC also noted that the term "as provided in this subchapter" used in this paragraph lacked clarity. We agree and have deleted that phrase from the regulation. The medallion sale process is the subject of the entire regulation and its completion is addressed in § 1013.37.

§ 1013.37. Medallion bid approval process and closing on sale.

This section provides for the manner in which the TLD and the Authority's Board will review and approve a medallion sale after the bid process. IRRC questioned the purpose of subsection (g), which seeks to discourage speculation in the medallion market by assigning higher transfer fees in the years immediately following the medallion sale.

While we anticipate that the purchasers of new taxicab medallions, now and in the future, will do so purely for purposes of properly operating a public convenience, we believe it is prudent to guard against speculation and the rapid and unjustified escalation of medallion prices through immediate post-bid award resale. We note that the commentators who currently operate taxicabs expressed no concern with this provision.

As we identified above, the purpose of Act 119 was to get WAV taxicabs into service in Philadelphia to address a critical need and to compile data to help establish future policies and procedures. Senator Farnese also noted this point in his comments. This objective is certainly consistent with the legislative intent of Act 94, which is to provide for a clean, safe, reliable and well regulated fleet of taxicabs in Philadelphia. These objectives will be imperiled if the successful purchasers of new medallions participate in the bidding process simply to re-market the medallions for a profit. We believe this minor anti-speculation prophylactic is need to discourage such speculation and is reasonable. It is narrowly-tailored to address this specific problem and only applies for a short three-year period. The heightened transfer fees employed in this section decrease every year until they are eliminated in the fourth year and are waived in cases of death or incapacity of an owner or shareholder.

This section references section 5710(a) of the act in regard to the fee schedule. IRRC questioned this reference in light of the more specific reference to medallion transfer fees in section 5710(b)(8). We agree that subsection (b)(8) specifies the transfer fee; however, that fee is only in place for fiscal year 2014. Subsection (a) is referenced because it generally empowers the Authority to use a fee schedule. The Authority must propose a fee schedule as part of its annual budget approval process. See 53 Pa.C.S. 5707(a)(1).

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, although we anticipate the development of data that will evidence a positive fiscal impact upon the disabled community in Philadelphia.

Paperwork Requirements

This final-form rulemaking will not affect the paperwork generated by the Authority. Some additional entries as to service to disabled persons will be required on the monthly form that all dispatchers already complete and file with the Authority on a monthly basis.

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 October 29, 2013, the Authority submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 6674 (November 9, 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 June 18, 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 June 19, 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)(17), (23) and (24) 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 Chapter 1013, are amended by adding §§ 1013.31—1013.37 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 the Independent Regulatory Review Commission.

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 final-form rulemaking.

7. The regulations 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. 4263 (July 5, 2014).)

Fiscal Note: Fiscal Note 126-6 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart B. TAXICABS

CHAPTER 1013. MEDALLION TAXICABS

Subchapter C. MEDALLION SALES BY THE AUTHORITY

Sec.
1013.31. Purpose and definitions.
1013.32. Bidder qualifications.
1013.33. General provisions.
1013.34. Notice of medallion sale by the Authority.
1013.35. Procedures for bidding.
1013.36. Bid opening.
1013.37. Medallion bid approval process and closing on sale.

§ 1013.31. Purpose and definitions.

(a) This subchapter establishes the public bidding process through which the Authority will sell taxicab medallions as authorized by the act.

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

Bidder—

(i) A person qualified under § 1013.32 (relating to bidder qualifications) to submit a sealed bid for a taxicab medallion sold by the Authority.

(ii) The term includes a person with a controlling interest in an entity that submits a bid for one or more medallions.

Closing deadline—The date by which a successful bidder shall complete the approval process and the closing on the sale of a medallion.

Special restriction—Limitations placed upon a medallion by the Authority in addition to restrictions provided for in the act, this part or an order of the Authority. For example, a medallion sold by the Authority may include a restriction that the medallion only be attached to a wheelchair accessible vehicle.

Upset price—The dollar amount below which a medallion will not be sold.

§ 1013.32. Bidder qualifications.

(a) To participate as a bidder, a person shall be a medallion taxicab certificate holder or person authorized as provided in subsection (b) and a person in good standing with the Authority. A person in good standing with the Authority:

(1) Is qualified to buy transferable rights as provided in Chapter 1027 (relating to sale of rights).

(2) Is qualified to renew a transferable right as provided in § 1011.3 (relating to annual rights renewal process).

(3) Does not currently own and is not a person having a controlling interest in an entity that owns a medallion that is in a suspended status as provided in § 1011.14 (relating to voluntary suspension of certificate).

(b) A person that is not a medallion taxicab certificate holder may submit a bid for a medallion if the person has requested a new medallion taxicab certificate through the filing of an SA-1 application as provided in § 1027.6 (relating to application for sale of transferable rights) and the request has not been denied by the Authority prior to the date bids are due. To qualify to bid as a pending medallion taxicab certificate holder, the SA-1 shall be filed 30 days or more before the date bids are due. Participation in the bidding process does not guarantee the issuance of the medallion taxicab certificate by the Authority.

(c) Bids submitted in violation of this section will be considered nonresponsive.

§ 1013.33. General provisions.

(a) *Sale by sealed bid.* The Authority will sell taxicab medallions by sealed bid.

(b) *Restriction of medallion rights.* A medallion offered for sale by the Authority may have restrictions attached to it that will run with the medallion in perpetuity or for a shorter expressed period. The Authority will issue restrictions by order and identify a medallion to which a restriction will apply in the notice of the sale as provided in section 5717(b)(1) of the act (relating to additional certificates and medallions).

(c) *Separate public sales.* Separate sales may be conducted for each medallion to be sold by the Authority.

§ 1013.34. Notice of medallion sale by the Authority.

Notice of a proposed sale of a medallion by the Authority will be published in the *Pennsylvania Bulletin* 60 days or more before the sealed bids are due from bidders. The notice will include:

(1) The date and time on which bids are due.

(2) The location where bids are due.

(3) The number of medallions to be sold.

(4) Special restrictions that have been attached to a medallion. Restrictions will be identified and linked to the medallion number identified in the public notice.

(5) The upset price for each medallion.

(6) The maximum number of medallions a bidder may purchase at each public bidding session.

(7) The mandatory closing date.

§ 1013.35. Procedures for bidding.

(a) *Bid submissions.* Each bidder shall:

(1) Submit the bid in a 9″ x 12″ sealed envelope. The exterior of the sealed envelope must identify, in the English language and Arabic numerals, the medallion number for which the bid is intended and additional information identified in the notice provided under § 1013.34 (relating to notice of medallion sale by the Authority). Information required under this paragraph must be in black ink with characters no smaller than 1 inch high and 1/2 inch wide. For example, a sealed bid for medallion 9999 must display the following on the outside of the sealed envelope: "Bid for medallion 9999."

(2) Submit only one bid, rounded to the nearest dollar increment, for one medallion per envelope.

(3) Submit the bid amount on a completed Form No. MA-1 "Bid Cover" in the sealed and marked envelope. Form No. MA-1 is available at www.philapark.org/tld.

(4) Include the following with each bid inside the sealed envelope:

(i) A deposit of 10% of the bid amount in a certified check, bank check or money order drawn on a Federally- or State-insured bank payable to the "Philadelphia Parking Authority." The deposit will be nonrefundable as to the highest conforming bidder and credited toward the sale price if the sale is approved. The deposit will be returned to unsuccessful bidders.

(ii) A bank statement in the name of the bidder evidencing sufficient funds to purchase the medallion or a letter of commitment for no less than 80% of the bid amount, issued by a bank, credit union or other lender licensed to do business in this Commonwealth.

(5) Submit each sealed bid by hand delivery at the time and place designated in the sale notice as provided in § 1013.34.

(b) *Late bids.* A bid presented to the Authority after the time designated or to a location other than that designated in the sale notice as provided in § 1013.34 will not be accepted.

(c) *Required certifications.* Form No. MA-1 will include provisions through which each bidder shall provide the following information with an accompanying verification:

(1) The bidder has not relied on statements or representations from the Authority in determining the amount of the bid.

(2) The bidder has not colluded, consulted, communicated or agreed in any way with another bidder or prospective bidder for the purpose of restricting competition or of inducing another prospective bidder to submit or not to submit a bid for the purpose of restricting competition.

(3) The bidder has not disclosed a bid price, directly or indirectly, to another bidder for the purpose of restricting competition or of inducing another prospective bidder to submit or not to submit a bid for the purpose of restricting competition.

(4) The bidder is not an owner, partner, member, officer, shareholder or key employee of another bidder.

(5) The bidder is not a person with a controlling influence over another bidder.

(d) *Nonresponsive bids.* The following will be considered nonresponsive bids and rejected:

(1) Bids that do not comply with the requirements of this section.

(2) Bid packages containing bids for more than one medallion.

(3) Bids that are nonresponsive or nonconforming in any other respect.

(4) Bids below the upset price.

(e) *Bids final.* All bids are considered final and a bidder will not be allowed to correct a bid after submission.

§ 1013.36. Bid opening.

(a) *Opening of bids.* The sealed bids will be opened in public and not before the time designated in the notice of a proposed sale provided under this subchapter.

(1) Each bidder, or an individual authorized as the bidder's representative as provided in § 1001.28 (relating to power of attorney), shall be present at the bid opening to address issues that may arise during the bidding process, including the event of a tie bid.

(2) The winning bid for each medallion will be the highest bid for that medallion that is complete and responsive.

(3) Tie bids will be decided through subsequent sealed bids between only the tied bidders. The sealed bids to break the tie shall be submitted on the same day as the bid opening pursuant to the instructions of the Director. This process will also be used to determine tie bids for placement on the list as provided in subsection (b).

(4) The winning bids will be announced at the public sale, posted in the lobby of the TLD Headquarters and listed on the Authority's web site at www.philapark.org/tld.

(5) The winning bidder will be notified by the Authority of its winning bidder status as provided in § 1001.51(b)(3) (relating to service by the Authority).

(6) The winning bidder shall appear before the Director or a designee at TLD Headquarters within 5 business days of notice of the winning bid to acknowledge acceptance of the medallion and to confirm that all sale documentation has been properly completed and filed as provided in Chapter 1027 (relating to sale of rights).

(7) Winning bids that are not acknowledged as required under paragraph (6) will be deemed withdrawn.

(b) *Nonsuccessful bid review.*

(1) A list of the responsive, nonsuccessful bids in the order from the highest bid amount will be produced and maintained by the Authority for each medallion subject to sale by the Authority.

(2) If the sale of the medallion to the original successful bidder is withdrawn or terminated for any reason or the successful bidder is not approved by the Authority or

fails to close on the sale of the medallion by the date designated in § 1013.34 (relating to notice of medallion sale by the Authority), the Director may notify the highest nonsuccessful bidder as provided in § 1001.51(b)(3) and allow the bidder the opportunity to be a successful bidder and complete the sale process.

(3) The highest nonsuccessful bidder shall notify the Director of his decision to become a successful bidder within 5 business days of notice and redeposit the required deposit amount with the Authority in the form provided in § 1013.35(a)(4)(i) (relating to procedures for bidding). In the event the noticed nonsuccessful bidder elects not to become a successful bidder, the Director may proceed to notify nonsuccessful bidders in order of highest to lowest bid until a successful bidder is obtained.

(4) The Director may amend the mandatory closing date by a period no greater than the time between the bid date and the date the next highest ranking bidder accepts the Director's invitation to become a successful bidder.

(5) The Director may decline to make a selection from the list in paragraph (1) and request authorization from the Board to readvertise the bid process for a medallion after the sale of the medallion to the original successful bidder is withdrawn or terminated for any reason or fails to close by the date designated in § 1013.34.

(c) *Assignment of the winning bid.* A winning bidder may not assign his rights to the winning bid status. An assignment such as this is void.

§ 1013.37. Medallion bid approval process and closing on sale.

(a) The sale of a medallion to a successful bidder is prohibited if that bidder is not qualified to be a medallion certificate holder under the act and this part.

(b) For purposes of reviewing the potential sale of a medallion, the Authority will consider the successful bidder to be the proposed buyer as provided in this part.

(c) If the Director determines that the successful bidder is qualified as provided in the act, this part or an order of the Authority, a recommendation to approve the sale will be presented to the Board for approval at its next regularly scheduled meeting.

(d) Upon approval of the sale by the Authority, the Director will schedule the parties to meet at a time and location where an Authority staff member will witness the closing of the transaction.

(e) An Authority staff member will witness the execution of each document by the proposed buyer or his designated agent. A closing not witnessed by Authority staff is void as provided in sections 5711(c)(5) and 5718 of the act (relating to power of authority to issue certificates of public convenience; and restrictions).

(f) The Authority will issue a new medallion taxicab certificate to the new medallion owner after the closing process if requested by the proposed buyer as provided in § 1013.32(b) (relating to bidder qualifications).

(g) Except as provided in subsection (h), a medallion subject to a completed closing after sale by the Authority may not be transferred or sold for 3 years from the date of closing, except as follows:

(1) A medallion sold within 1 year of closing will be subject to a transfer fee 15 times greater than that provided in the Authority's fee schedule as provided in section 5710(a) of the act (relating to fees).

(2) A medallion sold within 2 years of closing will be subject to a transfer fee 12 times greater than that provided in the Authority's fee schedule as provided in section 5710(a) of the act.

(3) A medallion sold within 3 years of closing will be subject to a transfer fee 10 times greater than that provided in the Authority's fee schedule as provided in section 5710(a) of the act.

(h) Subsection (g) does not apply to the sale of a medallion in the following circumstances:

(1) When each person that owns securities of the corporation, partnership, limited liability company or other form of legal entity that owns a medallion sold under this subchapter has died or is declared incapacitated.

(2) When a person that owns securities of the corporation, partnership, limited liability company or other form of legal entity that owns a medallion sold under this subchapter has died or is declared incapacitated and that person's securities are transferred to the medallion owning entity or another owner of securities in the entity that owns the medallion.

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