THE PHILADELPHIA PARKING AUTHORITY

In Re: Proposed Rulemaking Order	:	
Philadelphia Taxicab and	:	
Limousine Regulations	:	Docket No. PRM-10-001 (126-1)
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	:	

FINAL RULEMAKING ORDER

The Authority is required to carry out the provisions of the act of July 16, 2004, (P.L. 758, No. 94), *as amended*, 53 Pa.C.S. §§5701 *et seq.*, (the "act") relating to the regulation of taxicab and limousine service providers in the City of Philadelphia. Pursuant to this obligation, the Authority issued proposed regulations at this docket number on November 23, 2010.[1] The initial public comment period for this rulemaking proceeding concluded on February 14, 2011. The Authority has completed its review of the comments and now issues final-form regulations. These final-form regulations will be effective upon publication in the *Pennsylvania Bulletin*.

Background

Pursuant to Section 23 of the Act, the Authority initiated regulatory oversight of taxicab and limousine service providers in Philadelphia in April 2005. That regulatory oversight was guided by regulations promulgated by the Authority and made effective in April 2005. Because the Authority was a local agency its taxicab and limousine regulations were implemented without publication or review in the form required by the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act, and Sections 201 through 208 of the act of July 31, 1968 (P.L. 769, No 240), referred to as the Commonwealth Documents Law, although the regulations were subject to public comment and Sunshine Act[2] review.

In 2007, the Pennsylvania Commonwealth Court determined that the Authority was a local agency for purposes of regulating taxicab and limousine services in Philadelphia. However, in February of 2009, the Pennsylvania Supreme Court reversed the Commonwealth

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[1] *See* Sections 13 and 17 of the Act.
[2] *See* 65 Pa.C.S.A. §701 *et seq.*

Court and determined that the Authority was a Commonwealth agency for purposes of regulating taxicab and limousine services in Philadelphia.[3] In April 2010, the Commonwealth Court determined that the Authority's local taxicab and limousine regulations of April 2005 were invalid because they were not promulgated in accordance with the Commonwealth Documents Law.[4] The Commonwealth Court's decision is being reviewed by the Pennsylvania Supreme Court,[5] while the current locally promulgated regulations of April 2005 remain in effect.[6]

The Authority moves to promulgate the final-form regulations found at Annex A[7] now because the act does not permit the Authority to implement regulations through a piecemeal "temporary" regulation process. The Authority is constrained to have complying regulations in place in the event the Pennsylvania Supreme Court determines that the Authority was required to adhere to the requirements of the Commonwealth Documents Law in 2005. Rules and regulations are needed to fully implement provisions of the act[8] and to provide certainty to the general public and the regulated industries. The lack of rules and regulations would create a tremendous amount of uncertainty as to what rules, rates and procedures would apply to taxicab and limousine service in Philadelphia.

Indeed, because of pending appeals, several taxicab and limousine companies have already refused to submit their vehicles for inspection by the Authority, have begun to provide service with drivers that have not been certified by the Authority, and have refused to pay annual fees to the Authority as required by our Fee Schedule, which is adopted each year only after review by the Legislature.[9] The enforcement actions associated with these violations unnecessarily tax the Authority's resources. More importantly, the public health, safety and welfare are endangered through the use of uninspected vehicles and uncertified drivers.

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[3] *Blount, et al. v. Philadelphia Parking Authority*, 920 A.2d 215 (Pa. Commw. Ct. 2007) (en banc), reversed, 965 A.2d 226 (Pa. 2009).
[4] *Germantown Cab Co. v. Philadelphia Parking Authority*, 993 A.2d 933 (Pa.Commw. Ct. 2010), *appeal granted*, 14 A.3d 821 (Pa. 2011).
[5] *See, e.g.,* Pennsylvania Supreme Court Docket Nos. 10 EAP 2011, 11 EAP 2011, 12 EAP 2011 and 13 EAP 2011.
[6] *See Germantown Cab Co. v. Philadelphia Parking Authority*, 15 A.3d. 44 (Pa. 2011) (*per curiam* order reinstating automatic *supersedeas*).
[7] The Authority issued a Final Rulemaking Order and submitted final-form regulations to IRRC and the standing committees on July 21, 2011. On August 12, 2011, the Authority withdrew those regulations from consideration in order to address preliminary issues raised by IRRC and certain commentators. On August 23, 2011 this Board approved, adopted and ratified the decision to withdraw the July 21, 2011, Final Rulemaking Order and final-form regulations from consideration by IRRC and the standing committees.
[8] *See, e.g.*, 53 Pa.C.S. §§ 5703(b), 5704, 5705(a), 5706, 5718, 5721, 5722, 5741.
[9] *See* 53 Pa. C.S. § 5707 (b) (relating to budget and fees).

Consistent with the Authority's proposed regulations, the final-form regulations found at Annex A have been drafted to be placed in Part II of Title 52 of the Pennsylvania Code. Part I of that title relates to rules and regulations of the Pennsylvania Public Utility Commission (the "PUC"). The final-form regulations are drawn primarily from the Authority's locally promulgated regulations, which have been in place in Philadelphia since 2005.[10] That foundation will further enable the regulated industries to continue to operate their businesses and serve their customers in the same way on the day after the final-form rulemaking becomes effective as they have for the past 8 fiscal years. We have also based many of the provisions of the final-form rulemaking on long standing regulations of the PUC, as we specifically address below.

Like the proposed regulations, the Authority's final-form regulations are organized as follows:

Subpart A. General Provisions.

Subpart B. Taxicabs.

Subpart C. Limousines.

The Authority has divided its final-form regulations as provided above in order to assist regulated parties with their search for sections applicable to their specific area of service. In choosing this format we have attempted to make our regulations user-friendly. Subpart A contains regulations related to practice and procedure before the Authority. Several of those provisions adopt the procedures of the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II, ("GRAPP"), which is applicable to Commonwealth agencies.

Subpart A will present in a very similar fashion to the PUC's Subpart A "General Provisions",[11] which also contains three subparts with titles identical to those used in this final-form regulation. Indeed, many of the sections of the Authority's Subpart A are identical to those of the PUC and when different will generally appear in the same order, which will make it easier for readers to compare and contrast the regulations when necessary. While the Philadelphia taxicab and limousine industry has not adhered to the PUC's regulations for 8 fiscal years, the similarities between the final-form regulations will be familiar to those who did provide service in

[10] One commentator assumed that the rules related to taxicabs in New York City formed the basis of the Authority's regulations. The commentator commented extensively on the differing markets in New York and Philadelphia and cost issues related to those differences. However, the taxicab regulations used in New York City were not consulted at all during the drafting of either the proposed form rulemaking or the final-form rulemaking.

[11] 52 Pa. Code §§ 1.1 to 5.633.

Philadelphia under the PUC's jurisdiction, as well as those who are certificated by the PUC to provide service in other areas of the Commonwealth.

We developed our Subpart A in order to maintain the practices and procedures applicable to the taxicab and limousine industry in Philadelphia since 2005. The final-form regulations are intended to support the development of a clean, safe, reliable and well-regulated taxicab and limousine industry. They are also intended to be clear, feasible and reasonable. To this end, the final-form regulations have adopted the majority of the comments of the Independent Regulatory Review Commission ("IRRC") and certain members of the regulated community. In response to IRRC's Comment No. 8, we have specifically identified comments of lawmakers in the sections of the regulations that were the subject of comment. We have opted to defer more significant alterations to our current local practices and procedures until such time as all interested parties can focus on those specific issues, as opposed to this large final-form rulemaking. At this time, it is not desirable or feasible to drastically alter the regulatory status quo. Nor is it desirable or responsible to establish lesser standards of compliance for the taxicab and limousine industry, particularly in light of the significant gains made over the past several years. The riding public deserves world-class taxicab and limousine service.

Subparts B and C will divide most of the Authority's regulations between either taxicab or limousine operations. We believe this format will make it easier for regulated parties to find sections directly applicable to their specific operations, without need to read through those applicable to a completely different type of service. While our current local regulations interweave taxicab and limousine requirements in the same sections, this rulemaking will separate those subjects. We believe that separation of the rules and regulations for taxicabs and limousines will make the applicable regulations easier to find, saving regulated parties time and affording a better opportunity to remain in compliance.

The Authority commenced this rulemaking by adopting a proposed rulemaking order at its Public Meeting of November 22, 2010. It issued the proposed rulemaking order on November 23, 2010. The proposed regulations were published in the Pennsylvania Bulletin on January 15, 2011.[12] Comments to the proposed regulations were submitted on or before February 14, 2011, by 20 members of the regulated industries, four Members of the

[12] 41 Pa.B. 323, 435 (January 15, 2011).

Pennsylvania House of Representatives and IRRC. IRRC submitted its comments on March 16, 2011.[13] All comments are available on IRRC's website.[14]

Upon the conclusion of the comment period, the Authority requested that every commentator attend a one-on-one meeting with the Director of the Authority's Taxicab and Limousine Division and his staff to review the comments and suggested changes to the proposed regulations. We are happy to report that most commentators accepted that invitation and we are very pleased with the results of that exchange of information. As referenced in footnote No. 7 above, the Authority withdrew the final-form regulations it adopted on July 21, 2011 from consideration by IRRC and the standing committees. In so doing, we treated the July 21, 2011 final-form regulations as a form of advanced notice of final rulemaking and requested that interested parties submit comments, concerns or questions; a process recommended by IRRC in its Comment No. 7 to the proposed regulations.

Several commentators submitted additional comments and questions to the Authority. We were also able to meet or consult with several parties who submitted comments to the regulations posted on July 21, 2011. Those comments and discussions were very helpful in addressing additional concerns of many members of the regulated community. Many of the comments we received did not express concern with the final-form regulations as much as with the Authority's proposed penalty schedule. We have advised those who have expressed concerns about the form or substance of that proposed penalty schedule that we anticipate significant changes to that document as public comment is received and public hearings are conducted. We believe these final-form regulations represent as close to a consensus as we can responsibly reach with the regulated community.

We will continue to maintain open lines of communication with the regulated industries, as we have since 2005. We look forward to their input in regard to future rulemakings, in which we will more specifically address the promulgation of some of the regulations removed from this final-form rulemaking in order to more narrowly tailor those regulations and address fiscal impact concerns.

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[13] IRRC's comments were published in the *Pennsylvania Bulletin* at 41 *Pa.B.* 1609, 1717 (March 26, 2011).
[14] http://www.irrc.state.pa.us/regulation_details.aspx?IRRCNo=2885.

Affected Parties.

Because this rulemaking will establish all of the regulations related to taxicab and limousine operations within Philadelphia, every party subject to or referenced in the Act will be affected. The current legal dispute referenced above regarding the manner in which the Authority must promulgate taxicab and limousines regulations has created a certain level of uncertainty among regulated parties in Philadelphia. The implementation of this final-form rulemaking will restore certainty and ensure that the regulatory status quo will continue in Philadelphia. That certainty will permit regulated parties to make plans with full knowledge as to what rules will apply to their respective service industry in the future. As a continuation of the regulatory status quo, we do not anticipate any adverse effects on prices of goods and services, productivity or competition. Likewise, the public will experience the positive economic impact referenced by the Legislature in section 5701.1 (2) of the act that will result from the continued improvement to the taxicab and limousine industries in Philadelphia.

Fiscal Impact.

The fiscal impact of the proposed regulations, particularly the potential for increased costs to the regulated industries, generated several comments from Members of the Legislature, including Representative W. Curtis Thomas, Democratic Chairperson of the House Urban Affairs Committee, from IRRC, in its Comment No. 4, and from several regulated parties. While neither fees nor a schedule of penalties were established in the proposed rulemaking (nor the final-form rulemaking), costs associated with changes to several requirements of taxicab operators, particularly the condition of vehicles and insurance levels, generated several negative comments and assertions of significant cost increases.

In IRRC its Comment No. 2, IRRC indicates that the Authority's reliance on its "invalidated" locally promulgated regulations for a baseline from which to determine the fiscal impact or cost of the proposed (and now final-form) regulations as required by the Regulatory Review Act, was misplaced. *See* 71 P.S. 745.5b. We respectfully disagree with IRRC. The Authority's locally promulgated taxicab and limousine regulations have been valid in Philadelphia since 2005. Those regulations were valid on the day that the proposed regulations were submitted to IRRC and are valid as of the day of this final-form rulemaking by virtue of the Authority's appeal of the Commonwealth Court decision in *Germantown Cab* as referenced

above.[15] We continue to assert in our appeal to the Supreme Court that our locally promulgated regulations should be deemed valid.[16]

However, even if those local regulations were deemed invalid, we can not ignore the fact that the taxicab and limousine industries in Philadelphia are actually following them, or defending enforcement actions filed by the Authority for violations of those regulations. Therefore, the real economic cost or fiscal impact upon the regulated industries will be the cost difference between adhering to the Authority's current local regulations and the final-form regulations. We know of no other reasonable way to determine economic impact except to compare those current actual costs with the projected costs of the final-form rulemaking.

Commonwealth. The Authority does not anticipate any increase in regulatory demands associated with these regulations because the regulatory framework created by this final-form rulemaking will be nearly identical to that in place in Philadelphia since 2005. Therefore, the Authority does not anticipate that it will incur cost increases as a result of this final-form rulemaking.

Political subdivisions. This final-form rulemaking will not increase costs to any local political subdivision, although, we believe the return of regulatory stability and continued improvement to taxicab and limousine service will produce the benefits for the City of Philadelphia and the surrounding region directed by section 5701.1 (2) of the act.

Private sector. The Authority's goal in advancing this final-form rulemaking is to implement regulations that maintain the regulatory status quo in Philadelphia, while complying with the form and content obligations of a Commonwealth agency. We seek to create as seamless a transition as possible between the current locally promulgated regulations and this final-form rulemaking for taxicab and limousine operators, drivers, customers and all other affected persons. While requirements for publication in the *Pennsylvania Code* and the need to adopt or supersede the many provisions of GRAPP necessitated a change to the arrangement and style of these final-form regulations, we have incorporated those procedures and the terminology applicable to "Commonwealth agencies" into the current regulatory status quo in a manner intended to eliminate any substantive impact in terms of the day-to-day operations of the Philadelphia taxicab and limousine industry.

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[15] *See* Pa.R.AP. 1736 (b); *see also, Per Curium Order issued by the Supreme Court on February 23, 2011 at Germantown Cab Co. v. Philadelphia Parking Authority, 103 EM (Pa. 2010).*
[16] *See* footnote 6, *supra*.

We have carefully reviewed the comments and have made numerous changes requested in those comments or in our meetings with regulated parties over the past several months. By targeting the proposed regulations that created an actual or perceived increase in costs to the regulated community as suggested by the commentators, we have eliminated those costs and any increase in the economic or fiscal impact of the final-form regulation. We are concerned that the focus on the cost of the sections of the proposed regulations that required service improvements may interfere with the prompt adoption of this basic framework of regulations needed presently in Philadelphia.

Therefore, upon review of the comments related to economic or fiscal impact, including IRRC's Comment No. 4, we have deleted or significantly modified the sections of the proposed rulemaking that produced those concerns. We do not necessarily agree with the comments related to fiscal impact and believe that the Legislative intent of the act would be advanced by pressing for the standards provided in the proposed regulations. However, we also recognize the regulatory review process must consider economic costs and fiscal impact in a very particular way and that changes to the status quo in Philadelphia will require a more enhanced review of those costs than can be reasonably addressed in this broad rulemaking.

The precise changes are noted in our responses below to each specific section of the final-form rulemaking; however, by way of example, the following requirements that were included in the proposed rulemaking have been deleted in this final-form rulemaking:

- The sunset provision applicable to existing waivers from current regulations in Philadelphia. (§ 1001.1 (c)).
- Prohibition of use of legal interns from participation in administrative proceedings (§ 1001.22 (c)).
- Restrictions on use of powers of attorney (§ 1001.28).
- The requirement to obtain a Philadelphia Business privilege license (§ 1011.7 (d)).
- Requirement to use a fire suppression systems in document storage rooms (§ 1011.11 (c)).
- The limitation of the number of taxicabs a partial-rights certificate holder may operate (§ 1015.3).

- New taxicabs must be less than 1 year old when first admitted to service (§ 1017.4).
- New taxicabs must have less than 15,000 miles on the odometer when first admitted to service (§ 1017.4).
- Taxicabs may not be older than 5 years (§ 1017.4).
- Taxicabs may not be operated with more than 200,000 miles on the odometer (§ 1017.4).
- Requirement that partial-rights taxicabs use a certified dispatcher (§ 1017.5 (b) (2)).
- Medallion owners must inspect their own taxicabs daily (§ 1017.5 (f)).
- Requirement that partial-rights taxicab companies use meters that comply with city-wide use standards (§ 1017.24 (e)).
- Capping of the aggregate number of taxicab drivers (§ 1021.3).
- Increases to taxicab automobile insurance levels (§ 1025.3).
- Increases to broker insurance levels (§ 1029.11).
- Increases to limousine automobile insurance levels (§ 1065.1 (b) (2)).

Averments that the proposed regulations would increase costs upon regulated parties were almost universally based on one or more of the above referenced regulations. And we have made many more concessions in order to reach consensus, as set forth below.

In its Comment No. 2, IRRC specifically cited one commentator who opined that compliance with the proposed rulemaking would cost taxicab drivers and owners approximately $22 million dollars. While we do not agree with several of those cost calculations, we note that the primary causes for most of the cost increases averred by the commentator related to the heightened taxicab age and mileage standards, the overall limitations on the number of certificated taxicab drivers, the increase to the minimum automobile insurance levels in place now in Philadelphia, and a concern that standing waivers from specific regulatory compliance issues would be lost. Each of those issues has been addressed in the final-form regulation in such a way as to eliminate the source of the alleged cost increases. IRRC also generally cited a commentator's references to impoundment procedures, attendance at vehicle inspections and "paperwork". While each of these issues is addressed in the relevant section of the final-form

regulations, none of them represents a change between current practices and prospective practices (or costs) under the final-form regulations. The impoundment procedures are provided for in sections 5714 (g) and 5741 (f) of the act. The final-form regulations that deal with impoundment procedures (§§ 1017.52 and 1055.31) create options through which a regulated party may reclaim possession of impounded vehicles prior to a final determination of the underlying violation. These procedures permit the early and prompt release of impounded property and have been used in Philadelphia since 2005; therefore, we believe an increase in costs to the regulated industries would result if we deleted those provisions.

General Public.

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

Paperwork Requirements.

This final-form rulemaking will not affect the paperwork generated by the Authority or the regulated communities. The final-form rulemaking will continue the status quo of filing requirements in Philadelphia with minor modifications that we do not believe will increase filing times or costs. In fact, significant improvements have been made in terms of developing universal applications and the posting of all forms on our website. The Authority's local application, renewal and waiver procedures have been developed through a combination of regulations, orders and internal procedures, which will now be clearly and reliably presented in these final-form regulations. We have also received comments requesting electronic filing capabilities, which will be pursued in the coming fiscal year as our budget permits. We agree that continued use of technology to reduce time and costs related to filing documents will inure to the benefit of both the regulated industries and the Authority.

Effective Date. The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. This timetable for implementation is reasonable because this final-form rulemaking is a continuation of the regulatory status quo.

DISCUSSION

The Authority has reviewed the comments filed at each stage of this proceeding. Responses to those comments are set forth below. Pursuant to IRRC's request in Comment No. 1 to the proposed regulations a description of the language used in each section even though not subject to comment is also set forth below.

Subpart A. GENERAL PROVISIONS

CHAPTER 1001. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter A. GENERAL PROVISIONS

§1001.1. Purpose.

Section 1001.1 notes the reason for the regulations, which seek to codify a new body of regulations for publication in the *Pennsylvania Code*. IRRC questioned the need for this section, generally. In reviewing the form of regulations promulgated by other agencies subject to IRRC's review, the Authority observed the language used in this section is very common and already exists in the Pennsylvania Code. *See* 58 Pa. Code § 401a.1. This section sets out the purpose of this rulemaking and the legislative basis for its promulgation.

While a commentator expressed concern that this subpart is challenging to read, it uses language identical or very similar to the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II, ("GRAPP") and the regulations of most other Commonwealth agencies promulgated to supplement or supersede individual sections of GRAPP. *See* 1 Pa. Code § 31.1. This subpart has been worded as clearly as possible and in a manner consistent with language used by other state agencies.

(b). Subsection (b) was drafted and placed in the opening provision of this rulemaking in order to provide assurance to those parties currently providing taxicab and limousine related service in Philadelphia through Authority issued rights that those rights will continue under the new regulations. Several commentators have questioned the continued viability of their current waivers from requirements of the Authority's current regulations. Those waivers will continue under these regulations.

We believe that waivers in place at the time these final-form regulations will become effective will remain necessary because the subjects of the waivers are replicated in these regulations. For example, one regulated party holds a waiver to provide limousine service while using a meter. Because the prohibition from the use of a meter while providing limousine service has been continued in these regulations in § 1063.2, the regulated party will continue to need that waiver to provide that metered limousine service. This section clarifies that these waivers will remain effective.

IRRC questioned the meaning of the term "rights" in this subsection and the basis for not including that term in the definition section of this subpart, although the term is defined in § 1011.2. The term "rights" has the same meaning throughout the regulations. The Authority agrees with IRRC's recommendation to include the definition of this term in this subpart and that addition has been made to § 1001.10. This subsection has also been edited to delete a reference to subsection (c), which has been deleted.

(c). Subsection (c) has been deleted. This subsection caused waivers granted by order of the Authority pursuant to the Authority's current locally promulgated regulations to expire at a certain point in time. IRRC and other commentators questioned the meaning of the term "waiver" and the potential impact of this provision on rights not granted through the petition for waiver process. We incorporate our response to comments to § 1005.23. While the Authority believes that this subsection was clear as to its intended purpose, we also believe that subsection (b) will adequately address the continuation of those waivers. And the deletion of this expiration requirement will eliminate any potential costs that may have been associated with the pursuit of a new waiver.

§1001.2. Scope of subpart and severability.

(a). Subsection (a) provides that Subpart A of this rulemaking governs practice and procedure before the Authority. This subsection also notes that it acts as a supplement to both 2 Pa.C.S. (relating to administrative law and procedure) and GRAPP. The language used by the Authority in this subsection is similar to the language used by the Pennsylvania Public Utility Commission (the "PUC") at 52 Pa. Code § 1.1 and is <u>identical</u> to the language used by the Pennsylvania Gaming Control Board at 58 Pa. Code § 491a.1.

The Authority's submission of the proposed regulations was its first act of participation in the rulemaking process applicable to Commonwealth agencies, including the Commonwealth Documents Law, 45 P.S. § 1102 et seq., the Commonwealth Attorneys Act, 71 P.S. § 732-204(b), and the Regulatory Review Act, 71 P.S. §§ 745.1-745.15. In regard to form and content of commonly employed regulatory language, such as that used in subsection (a), the Authority reviewed language that had already been subject to comment by the public, standing committees of the Legislature and IRRC. In several instances throughout Subpart A, language employed by the Authority is identical or very similar to language already published in the Pennsylvania Code and in use by other Commonwealth agencies subject to the GRAPP.

IRRC generally cited subsection (a) in reference to a general concern that certain provisions of this subpart seem inconsistent with the requirement of Commonwealth agencies to note a supersession or supplementation of GRAPP. We agree with IRRC's comment. In order to eliminate any confusion that may be created by subsection (a), a new subsection (c) has been added to note the supersession of subsection (a) as it may be interpreted to apply to 1 Pa. Code § 31.1.

Another commentator questioned the use of the term "supplement" in subsection (a) and commented that similar language used by the PUC at 52 Pa. Code § 1.1 uses the term "supersede" as to GRAPP. We have opted to adopt several provisions of GRAPP; therefore, this subpart does not supersede every section of GRAPP.

IRRC also noted several other provisions of Subpart A that should have noted that the Authority's language superseded GRAPP, but did not. We agree with IRRC's comment and the final form regulation for each of the suggested sections has been changed to specifically note supersession. Those sections are:

- § 1001.4 (b).
- § 1001.26 (b).
- § 1001.27 (c).
- § 1001.32 (c).
- § 1001.91 (b).
- § 1005.71 (f).
- § 1005.149 (c).
- § 1005.187 (b).

(b). Subsection (b) is a standard severability clause. IRRC commented that the subsection is long and requested clarification for its need. The language of subsection (b) is

taken entirely from 2 Pa.C.S. § 1925 (relating to Constitutional construction of statutes), but for the reference to regulations as opposed to statutes. Because this is a commonly employed term in statutes, the Authority believes that this provision will not create confusion among members of the public and will provide the Authority, as well as those subject to this rulemaking, with some assurance that this regulatory structure will not be disrupted due to the potential invalidation of a single regulation.

§ 1001.3. Liberal construction.

Section 1001.3 provides several general guidance provisions applicable to the implementation of this rule making. This section is substantially similar to the PUC's 52 Pa. Code § 1.2 (relating to liberal construction).

(a). IRRC specifically requested clarification of subsection (a) as it may relate to a party's request for a continuance of a filing deadline for efficiency purposes. In reviewing this language the Authority recognizes, as one commentator noted, that subsection (a) substituted the word "efficient" in place of the word "inexpensive" as used in the PUC's regulation. It was not the intent of the Authority to create confusion through the substitution of those terms. That inconsistency has been eliminated in the final-form regulation. The elimination of the term "efficient" also addressed the gravamen of IRRC's question about the "efficiency" of waiving filing deadlines. A commentator also seems to have expressed a concern that this provision will permit the Authority to deny "procedural" due process rights. Subsection (a) can not reasonably be read to reduce or eliminate a party's access to procedural due process. If a party believes that a decision of the Authority removed a procedural due process right, this rulemaking provides a right of recourse from a review of staff decisions through § 1005.24 and a review of decisions of presiding officers § 1005.211. Of course the courts also have jurisdiction to review issues of this nature.

§ 1001.4. Information and special instructions.

Section 1001.4 provides instructions for obtaining information on the procedures and instructions for special instances related to the Authority's regulations. There were no comments to this section, except as referenced above as to the supersession of this section.

§ 1001.5. Office of the Clerk.

Section 1001.5 provides information related to the duties and activities of the Clerk as well as the procedure for obtaining information related to practice and procedure for filing requests.

§ 1001.6. Filing generally.

Section 1001.6 provides basic guidelines related to the filing of documents with the Authority, including the use of identifying numbers, such as a docket number, the name of the document and the name of the filing party. Documents that fail to meet these standards may be rejected for filing by the Authority as long as an explanation of the rejection is provided.

(d). Subsection (d) permits the Authority to require the filing party to remove information from a filed document that is generally deemed to be inappropriate. IRRC commented that the use of the term "otherwise inappropriate comments" was vague. Another commentator questioned the propriety of this language generally. We agree with the comments and have deleted that language of subsection (d) and replaced it with the language used by the PUC to address the same subject at 52 Pa.C.S. § 1.4. Just as with the PUC or any other agency, we believe the Authority may appropriately direct the removal of the type of language or assertions referenced in this section.

§ 1001.7. Amendment to rules.

Section 1001.7 provides information on the procedure for requesting a general and permanent change to the General Provisions in this subpart.

§ 1001.8. Authority office hours and address.

Section 1001.8 provides general guidance on the office of the Authority, including office hours and website information. IRRC commented on the vagueness of the term "certain offices" used in the second sentence of this section. We agree with IRRC's comment and have deleted that sentence because it may easily cause confusion and is not necessary. One commentator suggested that the Authority closes its offices "in the middle of the day to the public for lunch." and requested clarification of the Authority's hours of operation. Barring staffing emergencies, the Authority will not close portions of its offices otherwise open to the public simply because staff has gone to lunch.

§ 1001.9. Sessions of the Authority.

Section 1001.9 provides general information about the Authority's Board meetings. IRRC and other commentators questioned the provision in this section directing interested parties to the Authority's General Counsel for information about Board meetings, how such requests could be made, if the Authority advertises the Board meeting on its website and if the Authority is subject to Pennsylvania's Sunshine Act, 65 Pa.C.S. § 701 *et seq.* ("Sunshine Act"). IRRC requested that clarifications be made in the final-form regulation. The Authority's Board meetings are subject to the Sunshine Act and meeting notices are advertised and posted as required by that law and the Authority will continue to adhere to those requirements in relation to the advertisement or meetings and the manner in which the meetings are conducted. The Authority's meeting schedule will also be published on its website. Therefore, this section has been amended by deleting reference to the General Counsel and by listing the Authority's website address.

§ 1001.10. Definitions.

This section provides several definitions important to the interpretation of the final-form regulations. IRRC commented that the definition sections of the regulation's three subparts should be reviewed for consistency; ease of reading and to make certain that the defined terms are actually used in the rulemaking. While some sections or chapters include specific definitions related precisely to that section or chapter, the definition sections of the three subparts of this rulemaking (§§ 1001.10, 1011.2 and 1051.2) were drafted to include definitions contained in the relevant subpart, even if defined in an earlier subpart. In order to address this comment, we have reviewed and amended each of those three definition sections in such a manner that every definition will be repeated if used in the relevant subpart.

We agree with IRRC's comment that most readers of the regulations will find it easier to search for and read definitions located in the same subpart, even if it is necessary to repeat definitions. Therefore, each of the definition sections (§§1001.10, 1011.2 and 1051.2) will contain several additions and changes. This constituted a significant amount of editing.

Terms defined in § 1001.10 that will now identically appear in §§ 1011.2 and 1051.2 in order to address IRRC's comment will be as follows:

- Act.

- Adjudication.
- Applicant.
- Approved, approval or approve.
- Authority.
- Authorized agent.
- Board.
- Certificate.
- Certificate holder.
- City of Philadelphia or Philadelphia.
- Clerk.
- Compensation.
- Director.
- Electronic mail or email.
- Executive Director.
- Ex parte communication.
- Fiscal year.
- Formal complaint.
- Individual.
- PUC.
- Party.
- Person.
- Petitioners.
- Staff.
- TLD.
- TLD Headquarters.
- Verification.

Terms defined in § 1001.10 that will now identically appear in § 1011.2 in order to address IRRC's comment will be as follows:

- Enforcement proceeding.

- Presiding officer.
- Recommended decision.
- Trial counsel.
- Verification.

Terms defined in §§ 1001.10 and 1011.2 that will now identically appear in § 1051.2 in order to address IRRC's comment will be as follows:

- Criminal history report.

Terms defined in § 1011.2 that will now identically appear in § 1001.10 in order to address IRRC's comment will be as follows:

- Arrest.
- Call or demand service.
- Common carrier.
- Dispatcher.
- Enforcement Department.
- Exclusive service.
- Manager of Administration.
- Manager of Enforcement.
- Regulated person.
- Rights.
- Taxicab.
- Taxicab certificate.
- Taxicab driver.
- Taxicab driver's certificate.
- Taxicab service.

The term "regulated person" now also includes the term "regulated party" in each definitional section to address the alternating use of those common terms in the final form

regulations. The term "regulated person" has also been amended in response to IRRC's comment to § 1011.2, as provided in our response to that section.

Terms defined in § 1051.2 that will now identically appear in §1001.10 in order to address IRRC's comment will be as follows:

- Limousine.
- Limousine driver.
- Limousine service.

IRRC requested clarification of the need for five terms defined in §1001.10 because it appeared as though the terms were not actually used in Subpart A. Those terms were:

1) Hearing officer. We agree with IRRC's comment. This term will be deleted. This term does not appear in Subpart A and the Authority's interest in addressing this term will be met through an amendment to the term "presiding officer" as referenced below.

2) Formal investigation. We agree with IRRC's comment and will delete this term.

3) Informal investigation. This term is used in §1003.42 (relating to Authority action on informal complaints).

4) Informal proceeding. This term is used in the title to Subchapter B of Chapter 1003 (relating to special provisions), but the language of that subchapter makes the definition of the term unnecessary in § 1001.10 because it is used in no other section of the regulations. Therefore, the term will be deleted.

5) Notarial officer. We agree with IRRC's comment and we will delete this term.

IRRC commented that the term "applicant" in § 1001.10 includes a sentence that seems to be substantive and is; therefore, misplaced in this section. We agree with IRRC and will delete that sentence from the definition as it appears in this section as it will appear in section 1001.10 and 1051.2. One commentator also suggested that the first sentence of this definition would permit a person to act on behalf of another person without first proving that the representative was acting with the approval of the principal. We also received comments critical of our attempts to require owners of rights to appear for certain appointments with the Authority and in regard to the submission of applications. We agree with this commentator's concern, which is one reason that the Authority has retained the language questioned by IRRC in §

1001.21 (c) (3) and why those permitted to represent others in proceedings before the Authority is so narrowly tailored. This concern also contributes to the need to thoroughly screen and train brokers as provided in § 1029.5, and to have agreements of sale for medallions and certificates of public convenience executed before a representative of the Authority and all closings on such sales occur at Authority offices. This additional oversight will discourage, and hopefully eliminate the fraud concern of the commentator. Due to the protections afforded by several other sections of the final form rulemaking, the Authority believes it is unnecessary to amend the first sentence of the defined term "applicant" as suggested by the commentator. As noted above, the first sentence will compromise the entire definition of applicant in the final rulemaking.

The commentator also questioned the definition of the terms "Approved, approval or approve". The commentator suggested that the definition may be viewed as an "attempt by the PPA to deprive a court of competent jurisdiction from issuing a stay order, issuing an injunction or otherwise preventing the implementation of any order of the PPA". We think the commentator's suggested interpretation is not reasonable. There is no language in this definition that seeks to block intervention of a court of competent jurisdiction, nor could this section reasonably be interpreted as being legally capable of doing so. Therefore, we decline to amend this term as suggested by the commentator.

We agree with IRRC's comment regarding the need to consistently define the term "broker". That definition has been made consistent throughout the final-form regulation. The chapter detailing the process to become a broker is found at 1029, which is technically within Subpart B. Because brokers will be cross trained to handle both taxicab and limousine matters, Subpart C, adopts the process in Chapter 1029 when referencing brokers in the limousine subpart. Nevertheless, the definition of "broker" in Subpart C will deviate from the definitions in Subparts A and B only in that reference will be made to Chapter 1061 as opposed to Chapter 1029. We believe that minor distinction will not create confusion and will be consistent with our attempt to simplify the reading of the regulations by providing a clear line of distinction between most taxicab and limousine matters. Brokers are integral to the application process associated with the sale of rights or request for rights. Individuals have acted as brokers in this regard in Philadelphia for many years and well before the Authority initiated regulatory control in 2005. We believe our mandate to develop a clean, safe, reliable, and well regulated taxicab and limousine industry in Philadelphia will be undermined without the involvement of well qualified

individuals to act as brokers. The term "transferable rights" has been added to the definition sections 1001.10, 1011.2 and 1051.2 because the definition of "broker" includes the term "transferable rights".

A commentator suggested that brokers will engage in the practice of law without a license. It should also be noted that this rulemaking does not require attorneys to register with the Authority, as suggested by this commentator. The act of finding buyers or sellers as to transferable rights is not a legal activity at all and the completion of applications and agreements of sale are a common function of brokers and agents in many settings and have been involved in the Philadelphia taxicab and limousine industry for many years. The court's view of this issue has been fairly static for some time and has provided that the acts of brokers as permitted by the final-form regulations is appropriate "so long as the papers involved pertain to and grow out of their business transactions and are intimately connected therewith. The drafting and execution of legal instruments is a necessary concomitant of many businesses and cannot be considered unlawful." *Childs v. Smeltzer*, 315 Pa. 9, 171 A. 883, 885-886 (1934).

The term "sale" was defined in §1027.2 (formerly relating to definitions) and will appear in § 1001.10 because it is used in the term "transferable rights", as will the definition of "securities" as referenced in our response to § 1011.2.

Commentators questioned the propriety and potential violation of due process associated with the definition of "presiding officer". Commentators suggested that the use of an Authority board member or other individual selected by the Authority would be inappropriate and would raise due process concerns. However, it is a common practice in administrative law throughout the United States of America for agencies to promulgate, enforce and adjudicate matters within the jurisdiction of the agency and for administrative law judges, hearing officers or other presiding officers to be hired and paid by the relevant government agency. Those agencies also generally pay those who act as presiding officers, as does the Authority, but for Board members who may only be paid $200 for each meeting. *See* 53 Pa.C.S. § 5508.1 (k). By way of example, the Public Utility Commission selects its administrative law judges and sets their rate of pay. *See* 66 Pa.C.S. § 304. As the commentator notes, these regulations contain language dictating the standards of behavior appropriate for presiding officers. We believe those provisions will address the commentator's concerns.

We have also amended the definition of "presiding officer" by adding a subparagraph to specifically include the term "hearing officer" as referenced in section 5705 of the act within the meaning of this term.

One commentator suggested that the term "adjudication" was confusing and that the definition should not include the word "adjudication". The Authority believes this term is properly defined and is set forth in a manner intended to address the several different circumstances in which an adjudication can occur. It is also noted that this definition has been directly imported from the PUC's regulations at 52 Pa. Code § 1.8 and should be familiar to most regulated parties.

The term "State Police" has been added to this section and sections 1011.2 and 1051.2 in order to clarify that the term identifies the Pennsylvania State Police.

Subchapter B. TIME

§1001.11. Date of filing.

Section 1001.11 provides guidance as to the filing of documents with the Authority and specifically addresses the manner in which the date of filing will be determined. Commentators suggested that the date of filing with the Authority should be the post mark date on a mailing as opposed to the date the document was received by the Authority. However, we have adopted the filed upon receipt standard provided in GRAPP. *See* 1 Pa. Code § 31.11. We believe that that long established process will help maintain a more efficient and accurate docketing system.

§1001.12. Computation of time.

Section 1001.12 describes the way in which time will be computed for purposes of the Authority's regulations.

§ 1001.13. Issuance of Authority orders.

Section 1001.13 identifies the process through which an order of the Authority or a presiding officer will be issued, entered and adopted. In the proposed regulation this section was substantially similar to the PUC's regulation on this subject. *See* 52 Pa. Code § 1.13.

(a). One commentator noted in reference to subsection (a):

> Considering that the regulated, (the industry), is a public utility, and the Regulator of a Public Utility's number one objective and purpose is the general welfare and protection of that utility being regulated, then all Orders shall be made public prior to the day of issuance, and not left to the PPA's discretion. Additionally, no Order and/or Regulation should be effective immediately, and should have to meet all of the requirements of the Commonwealth Document Act as prescribed by law.

We believe that the substantive language of subsection (a), which is a direct copy of the PUC's § 1.13, adequately addresses the regulated industries' need to know of an Authority order. This language merely provides notice of the mechanism through which the orders will be entered upon the docket, as well as the standard difference between an entered order and an adopted order. A commentator questioned the method by which the Authority's Board will enter orders at Sunshine Act meetings. In such cases the Authority will continue to follow standard Sunshine Act procedures as to the deliberation, voting and discussion of issues related to those orders, including the availability of public comment. Further, this section will have no impact upon the Authority's obligation to adhere to any statutory requirements, including the Commonwealth Documents Law.

(b). In order to simplify the process associated with calculating the date that a decision of a presiding officer will become effective, the Authority has amended subsection (b) to require that each order of a presiding officer contain the date the decision will become an order of the Authority, as provided in section 1005.213. For example, decisions of a presiding officer rendered pursuant to section 5705 (a) of the act, do not become a final order of the Authority until a period of 15 days has elapsed after issuance. Instead of placing the burden of calculating that period upon the regulated community, that calculation will now be made by the Authority and listed on the order. Therefore, language in subsection (b) requiring notice subsequent to issuance of the order and the date it is deemed an order of the Authority has been deleted as unnecessary. The elimination of the second superfluous notice will also reduce internal Authority costs associated with that process.

§ 1001.14. Effective dates of Authority orders.

Section 1001.14 provides guidance as to the dates that Authority orders will become effective. Subsection (a) deals with orders related to regulations and subsection (b) deals with all

other orders. A commentator referenced that his comments made in relation to § 1001.13 were applicable to this section. Our response to §1001.13 is incorporated here. This section is identical to the PUC's regulation found at 52 Pa.C.S. § 1.14.

§ 1001.15. Extensions of time and continuances.

Section 1001.15 provides the rules and procedures related to requests for the extension of time as it pertains to the Authority's regulations.

§ 1001.16. Issuance of decisions by presiding officers.

This section identifies the date upon which the decision of a presiding officer is considered issued. This section has been deleted as unnecessary in consideration of the changes made to § 1001.13 as noted above.

Subchapter C. REPRESENTATION BEFORE THE AUTHORITY

§ 1001.21. Appearance.

Section 1001.21 provides the right of persons appearing before the Authority to represent themselves or to use a representative pursuant to certain terms and conditions. One commentator commented on this section and another commented on this section in tandem with proposed §§ 1001.22 and 1001.23, by noting the lack of a provisions permitting certain legal representation by a legal intern. The Democratic Chairperson of the House Urban Affairs Committee and Representative Mark B. Cohen also commented that law students or inactive lawyers should be able to appear on behalf of taxicab drivers in Authority proceedings. We agree with the main point of these comments. This section and §§ 1001.22 and 1001.23 have been amended in the final-form regulations to permit additional non-attorney representation through the use of language substantially similar to that used by the PUC in 52 Pa. Code §§ 1.21 and 1.22. The amendment is made at new subsection (b), which required the reidentification of the subsequent subsections.

This change will permit legal interns to represent regulated persons in proceedings before the Authority. We believe this cost effective form of representation is sufficient to address the

concerns of the commentators, while simultaneously maintaining a standard requiring legal training and professional legal supervision of these representatives. This safeguard will maintain participation in these adjudications by attorneys currently approved by the Pennsylvania Supreme Court, if only in a supervisory capacity. We believe that the administrative hearing process needs to be flexible, but also understand that knowledge of the rules of administrative procedure promotes the development of full records and helps to advance hearings in a judicially economic fashion. Therefore, we decline to accept the suggestion that inactive attorneys or a non-attorney, outside of the supervised law student context, should be able to provide representation at Authority proceedings.

IRRC also questioned the language used in paragraph (c) (3) (now (d) (3)) related to the denial of the request of a non-attorney individual to provide representation to a respondent at an Authority proceeding even after the information required by this section has been presented. This situation arises most when an employee of one of the owners or officers of an entity that is a respondent seeks to represent the entity. We agree with IRRC that the language of this paragraph was unclear. We have amended this paragraph of the final form regulations to specify that the Authority or the presiding officer may deny the requested information if the information presented is found to be inauthentic. The practice of permitting this form of representation has been in place in Philadelphia since 2005 through the Authority's current locally promulgated regulations. In that time we have experienced several instances in which the information proffered to obtain a representative status was found to be unreliable or even forged. A presiding officer must have the flexibility to reject a potential representative in such situations.

IRRC commented that a typographical error appeared in paragraph (c) (3). We agree with IRRC's comment and have corrected the word "the" to "then" in that paragraph.

§ 1001.22. Appearance by attorney or certified legal intern.

Section 1001.22 of the proposed regulations required representation by an attorney at all Authority proceedings except those authorized by § 1001.21. Consistent with the Authority's response to comments on 1001.21 above, this section has been amended to permit legal interns to provide representation under the restrictions provided in Pa.B.A.R. Nos. 321 and 322.

§ 1001.23. Other representation prohibited at hearings.

Section 1001.23 of the proposed rulemaking restricted those permitted to represent persons at Authority proceedings to attorneys or those authorized by §§ 1001.21 and 1001.22 (relating to appearance; and appearance by attorney or certified legal intern). This section has been amended to be consistent with the changes made to §§ 1001.21 and 1001.22 as referenced above. The only change to this section relates to the amendment of the title of § 1001.22, which now includes certified legal interns.

§ 1001.24. Notice of appearance or withdrawal.

Section 1001.24 provides the rules and procedures related to the notice of appearance for individuals and attorneys and the notice of withdrawal for attorneys. Subsection (b) (2) (ii) (B) has been amended in the final-form regulation to require attorneys to update all information provided in a notice of appearance that changes during the course of a proceeding, such as telephone numbers, email addresses, etc. The Proposed regulation only required that the attorney's address be updated in such cases.

§ 1001.25. Form of notice of appearance.

Section 1001.25 provides rules related to the form notice of appearance must take. It also provides a resource for and an example of a form of notice of appearance and information that must be provided by non-represented parties upon filing a pleading. A minor change has been made to the form of notice of appearance to clarify that either a P.O. Box address or standard address is required. The proposed form was unclear as to the requirement to provide one or the other.

§ 1001.26. Contemptuous conduct.

Section 1001.26 permits the Authority or a presiding officer to exclude a party from further participation in a proceeding based on contemptuous conduct. IRRC commented that this section was identified in the proposed rulemaking as "identical" to the corresponding GRAPP section at 1 Pa. Code § 31.27 (relating to contemptuous conduct) and requested that this section be corrected to disclose that it was not identical. This section is identical to § 31.27, but for the reference to the Authority or the presiding officer, as opposed to the generic "agency head or

presiding officer". However, we accept IRRC's recommendation and have amended this section to note that it supersedes §31.27.

§ 1001.27. Suspension and disbarment.

Section 1001.27 provides that the Authority may deny a person the privilege of appearing or practicing before it and the standards that will apply to such suspension or disbarment. IRRC commented that this section was identified in the proposed rulemaking as "identical" to the corresponding GRAPP section at § 31.28 (relating to suspension and disbarment), although it was not, and requested that this section be corrected to disclose that it was not identical. We agree with IRRC's comment and have amended this section to note that it supersedes §31.28.

§1001.28. Power of attorney.

This Section provided for the limited use of powers of attorney by regulated persons and applicants. This section has been deleted from the final-form regulations in response to comments of IRRC and other commentators as to the application of the requirements of this section and the ability of the Authority to implement such requirements, except for subsection (a), which will clarify that a power of attorney may be used as later referenced in the regulations.

Subchapter D. DOCUMENTARY FILINGS

§ 1001.31. Requirements for documentary filings.

Section 1001.31 identifies certain information that must be included in pleadings submitted to the Authority, including the form of caption. A typographical error involving the duplicated use of subsection "(d)" necessitated the re-identification of the subsections after the first subsection "(d)" and reference to the appropriate subsection range in the re-identified subsection (i) "Supersession". Also, a paragraph (4) has been added to subsection (f) "Identifying information" to require the inclusion of certificate of public convenience identification and other rights identification numbers in pleadings filed with the Authority. The failure to include this basic requirement in the proposed rulemaking was an oversight and its inclusion here is not anticipated to cause any burden upon regulated persons, in fact it will assist

all parties to proceedings to understand the precise issues to be addressed. This requirement will also assist responding parties with their preparation of a response.

§ 1001.32. Filing specifications.

Section 1001.32 provides specific requirements related to the appropriate form of pleadings submitted to the Authority and is based on a substantially similar provision of GRAPP at 1 Pa. Code § 33.2 and the PUC's regulations at 52 Pa. Code § 1.32 (a). A typographical error has been corrected by reidentifying subsection (c) as "(b)". IRRC commented that the language this section was not identical to 1 Pa. Code § 33.2; therefore, subsection (b) has been amended to note that this section supersedes that provision of GRAPP.

§ 1001.33. Incorporation by reference.

Section 1001.33 provides rules and procedures related to the incorporation of a document on file with the Authority into a subsequent document.

§ 1001.34. Single pleading or submittal covering more than one matter.

Section 1001.34 provides rules and procedures related to the use of a single pleading or submittal covering for more than one matter.

§ 1001.35. Execution.

Section 1001.35 provides rules and procedures related to appearance of signatures, who must sign, and the effect of signatures.

§ 1001.36. Verification and affidavit.

Section 1001.36 provides guidance on when documents filed with the Authority require either verification or an affidavit. IRRC commented that the use of the phrase "should comply substantially with" in subsection (b) and (c) was vague and lacked sufficient information to provide guidance to the regulated community. The Authority agrees with IRRC's comment and has deleted that phrase. This section will now require the use of the provided form of affidavit and verification. In the event these forms are insufficient to suit a party's needs, a request may be made for a waiver from this specific filing requirement pursuant to § 1001.101.

§ 1001.37. Number of copies to be filed.

Section 1001.37 provides rules and procedures related to the number of copies of documents that must be included when a filing is made with the Clerk or other Authority office. Two typographical errors were corrected in subsection (b) regarding the supersession of subsection (a).

§ 1001.38. Rejection of filings.

Section 1001.38 provides the rules governing the Authority's ability to reject a filing.

Subchapter E. FEES

§ 1001.41. Filing fees.

Section 1001.41 provides the rules and procedures related to the fees associated with filing certain documents and the effect fees have on the filing status of a document.

§ 1001.42. Mode of payment to the Authority.

Section 1001.42 provides the rules and procedures related to the acceptable forms of payments made to the Authority and how payments should be delivered. This section has been amended to correct a typographical error by inserting the word "the" before "act". A commentator submitted comments under this section that all related to the fee schedule in § 1001.43. Our responses to those comments may be found in that section.

§ 1001.43. Authority fee schedule.

Section 1001.43 provides notice of the manner in which the Authority will issue its annual fee schedule as required by section 5707 (b) of the act. IRRC, and other commentators, commented that this section incorrectly noted that the Authority's fee schedule was subject to the approval of the Legislature each year, when in fact the fee schedule is effective unless disapproved by the Legislature pursuant to § 5707(b). We agree and have made the suggested change to this section. A commentator suggested that the annual fee schedule be placed in these final-form regulations. Because our fee schedule must be submitted each year to the

Appropriations Committees of the Senate and House of Representatives for review and potential disapproval, we believe that it would be inconsistent with section 5707 (b) to include a schedule of fees in the final rulemaking. The process of annually amending a regulation to incorporate modifications to the fee schedule already approved by the Legislature could easily encompass a significant portion of the fiscal year in which the schedule is supposed to be effective. We believe that this could not have been the intent of the Legislature and will not include a fee schedule here as suggested by commentators.

Commentators suggested that a statutory requirement to provide notice of the "proposed fee schedule" has not been met by this section. However, the act does not include language related to how the Authority must develop a budget and fee schedule, and does not require any notice of the "proposed fee schedule". *See* 53 Pa. C.S § 5707 (b). The Authority is subject to the Sunshine Act and the supervision of the Appropriations Committees, as referenced above. The Authority must provide in these final-form regulations for a procedure to provide notice to "certificate holders of the fee schedule." 53 Pa. C.S § 5707 (b). This regulation identifies that procedure.

A commentator suggested that this was the wrong subchapter to locate this section. We also believe that the placement of this section, which deals with notice of the fee schedule, in a chapter of this rulemaking which deals with a variety of notice procedures and requirements, is appropriate.

IRRC also commented that while section 5707 (b) of the act requires that the Authority's regulations provide for a form of notification to certificate holders of the fee schedule it does not require notice by email. IRRC questioned why email was selected. The Authority selected email notification because it is efficient, economical, and effective. It eliminates postage fees, paper costs and waste; it is at least as reliable as regular mail service and is much faster. The Authority has employed this process in furtherance of the notice requirements of section 5707 (b) of the act since 2005 and we have found it to be very effective. In addition to the direct email communication, the Authority's website will also provide notice of the new fee schedule. We believe this regulation is consistent with the intent of the Legislature as to this notice requirement, which is placed immediately after the deemed approved language of section 5707 (b).

IRRC also requested that the final-form rulemaking identify when the notice of the fee schedule would be emailed to certificate holders. We agree with IRRC's comment and this section has been amended in the final form rulemaking to require notice of each fiscal year's fee schedule within 5 days of its effective date. This means that if the Legislature does not act to disapprove the fee schedule by April 15th of a given year, the Authority must send notice of the new fee schedule by April 20th. This section will also now require that the fee schedule be published in the *Pennsylvania Bulletin* each year. We believe this open process, which involves at least one Sunshine Act meeting and annual review by the Legislature is sufficient for the development and implementation of a budget and fee schedule.

The fee schedule is not the same as a penalty schedule, which will be developed in a manner similar to that used by the PUC, as noted in our response to § 1001.61 below.

Subchapter F. SERVICE OF DOCUMENTS

§ 1001.51. Service by the Authority.

Section 1001.51 provides the various ways in which the Authority may provide notice to regulated parties, parties to proceedings and their representatives.

IRRC noted the language of subsection (d) that requires regulated parties to update their contact information on file with the Authority within 48 hours of any change. IRRC asked what would happen if the party did not file notice within that time frame. There is no specific penalty provided for in the regulation; however, a party with inaccurate contact information will not receive notices required by the act or these regulations. That person will not be able to avail themselves of a defense for failing to receive notice based on a change in contact information that occurred more than 48 hours before the notice was sent. The 48 hour notice requirement is reasonable and easy to understand. We believe this requirement is more reasonable than requiring "immediate" notice of contact information changes. We have amended subsection (d) by identifying the parties required to provide updated contact information and specifying that notice must be provided to the Clerk as opposed to the "Authority", which we believe will further clarify the purpose and affect of this subsection.

The Authority has opted to employ reliable, economical and modern communication mechanisms through this section, including email, for the reasons identified in our response to § 1001.43 (relating to Authority fee schedule). The regulated categories of service providers

identified as being subject to email notification are listed in subsection (b) (3). These parties are required to provide an accurate email address and to maintain that email address pursuant to subsection (d). Through subsection (c), regulated persons not otherwise required to maintain an email address with the Authority, such as drivers, may voluntarily participate in the email notification process.

Subsection (e) addresses situations in which the Authority is unable to serve a person through the mechanisms provided elsewhere in this section, and permits service of notice through publication in a newspaper of general circulation or the *Pennsylvania Bulletin*. This subparagraph is substantially similar to the PUC's § 1.53 (e) and the service by "publication" concept of Pa.R.C.P. No. 430. IRRC and other commentators have questioned the meaning of "newspaper of general circulation" specifically because the Authority has used the *Philadelphia Tribune* to provide this type of notice in the past. The term "newspaper of general circulation" is defined specifically as to legal notices in 45 Pa.C.S. § 101 (relating to definitions) as follows:

> A newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class.

The Authority will adhere to this definition as used in Title 45 (relating to legal notices) and believes that the *Philadelphia Tribune* meets this definition, although it is our intention to use the *Pennsylvania Bulletin* whenever practicable in order to reduce costs. It is important to remember that the "notice" addressed in this subsection is generally going to be directed toward a single person and does not deal with issues such as notice of Authority Board meetings, which is a subject addressed in the Sunshine Act.

§ 1001.52. Service by party.

Section 1001.52 provides for service by parties in certain situations and provides guidance on how such service may be conducted.

(a). Subsection (a) requires a party to an Authority proceeding to serve all pleadings and other documents upon the other parties and the presiding officer, if one has been assigned. IRRC and another commentator questioned the need for inclusion of alternative service language in this section. We agree with those comments and have amended this subsection in the final form

rulemaking to simply require service of pleadings or documents filed in a proceeding before the Authority to be served upon all parties to the proceeding and the presiding officer, if one has been assigned.

(b)(2). Subsection (b) permits service to be completed by hand delivery. This section contains limitations on who may provide this service. We agree with a commentator who questioned the prohibition of an individual "who is neither a party to the proceeding nor an employee or relative of a party" from providing service. The quoted language has been deleted from the final-form regulation.

(c). Subsection (c) permits a presiding officer to limit the parties in a proceeding and who must be served to those who have requested service. IRRC and one other commentator question the need and implications of this provision. We agree that this provision may lead to unnecessary confusion and we have deleted it from the final form regulation. That deletion will require proposed subsection (d) to become subsection (c) in the final form regulation and the supersession range in subsection (c) to be reduced to "(a) and (b)".

§ 1001.53. Service on attorneys.

Section 1001.53 explains how service to attorneys should be directed; the purpose behind requiring attorneys to supply an email address in their entries of appearance, and the effect service upon a client's attorney has on the client.

§ 1001.54. Date of service.

Section 1001.54 explains how the date of service of documents is determined.

§ 1001.55. Proof of service.

Section 1001.55 provides the procedure for proving that service of documents was made and that such proof must be included in the original and all copies of documents filed with the Authority when service is required to be made by the parties.

§ 1001.56. Form of certificate of service.

Section 1001.56 provides the form a certificate of service must appear in through an illustration of the form.

§ 1001.57. Number of copies to be served.

Section 1001.57 provides guidance on the number of copies of documents to be served upon other parties to a proceeding, including the presiding officer, if one has been designated. One commentator referenced language in this section limiting the number or expanding the number of copies to be served based upon uncertain standards and questioned the need to deviate from the PUC's language that appears at 52 Pa. Code § 1.37. We agree with the commentator and have deleted the questioned language and replaced that language with the clearer language of the PUC's regulation.

Subchapter G. PENALTY

§ 1001.61. Penalties.

Section 1001.61 provides for a range of penalties applicable to violations of the act, the regulations or an order of the Authority. We have amended this section to lower the bottom range of the penalty schedule from $50 to $25. That flexibility will permit the Authority to continue the use of a $25 penalty for certain violations that are remedied within a rapid period of time. This type of penalty is called "correctable" and has been in place in Philadelphia since 2005.

The Democratic Chairperson of the House Urban Affairs Committee, as well as Representative Mark B. Cohen, IRRC and other commentators suggested that a specific penalty schedule be drafted into the final rulemaking and questioned the process through which the Authority would ensure a measure of consistency in terms of the application of administrative penalties. This section is not silent as to penalties, but provides a penalty range. We note that the PUC opted to employ a penalty range in its taxicab regulations and responded to similar comments as follows:

> Finally, we note that the Democratic Chairperson and the Majority Chairperson of the House Consumer Affairs Committee encourage the inclusion of a fine schedule in this rulemaking. We have considered this

> comment and will incorporate a fine schedule. The fine schedule presents a range of allowable fines for particular violations. This flexibility is essential to effective enforcement of the Medallion Act and Commission regulations. Repeat offenders may be more severely punished than first-time offenders. We believe that providing the fine-range satisfies the industry's need to know the consequences of various violations as well as the Commission's need to have some flexibility in its enforcement endeavors.

26 *Pa.B* 5819. We adopt the rationale of the PUC and will employ the use of a penalty range, which includes a cap, in the final form rulemaking and develop a penalty schedule guidance document similar to that employed by the PUC. It is important to note that the Authority currently uses a penalty schedule in relation to the enforcement of its locally promulgated regulations and will continue that practice. We will make the schedule available to the public, including publication on the Authority's website at www.philapark.org/tld. A penalty schedule is currently listed on the Authority's website for use upon publication of this final form rulemaking in the *Pennsylvania Bulletin*.

Representative Cohen also commented that penalties collected from regulated parties as a result of violations of the act or the regulations should go to a designated location. While the regulations are silent on this issue, section 5707 (d) (1) of the act specifically provides that revenue exclusively related to taxicabs shall be deposited into the Taxicab Account. We have adhered to this statutory requirement since 2005 and will continue to do so upon implementation of these regulations.

(b)(5). IRRC also questioned the meaning of subsection (b) (5), which permitted the application of "other penalties deemed necessary to protect the public." We agree with IRRC's comment and have deleted subsection (b) (5) in the final rulemaking for vagueness.

Other commentators have questioned the ability of the Authority to suspend rights, or modify rights as provided in this subsection. While each potential penalty may not be applicable to every regulated party, each potential penalty is applicable to at least certain regulated parties. We incorporate our response to § 1011.3 regarding this issue.

§ 1001.62. Continuing offenses.

Section 1001.62 provides that a regulated party may be subject to an administrative penalty for each day's "continuance in the violation of the act, this part or an order of the Authority." Commentators questioned the meaning and application of this section in light of the presence of substantially similar language in §§ 5725 (b) and 5745 (b) (relating to civil penalties). We agree with the commentators and we will delete this section in the final-form regulation as superfluous in light of the presence of the more expansive language of the act.

Subchapter H. MATTERS BEFORE OTHER TRIBUNALS

§ 1001.71. Notice and filing of copies of pleadings before other tribunals.

Section 1001.71 requires regulated parties to file notice with the Authority when matters over which the Authority may have jurisdiction under the act are raised in proceedings filed with a court or other regulatory body by a person subject to the act. This section is substantially similar to the PUC regulation at 52 Pa. Code § 1.61. The Authority has modified this section to correct the name of Authority Form No. SA-1. The form has been modified for multiple purpose applications; therefore, the form's name has been amended from "Sale Application" to "Application". A commentator suggested that notice to the Authority was a prerequisite to filing a bankruptcy claim; we disagree that this language can be interpreted in that fashion. Also, a commentator questioned the requirement of this section to file the subject documents with the Director as opposed to the Clerk. We agree with the commentator and the final-form regulation will reflect that the documents be filed with the Clerk because that office is charged with maintaining a docket of all matters related to the Authority under the act.

Subchapter I. AMENDMENTS OR WITHDRAWALS OF SUBMITTALS

§ 1001.81. Amendments.

Section 1001.81 provides guidance on when amendments to a submittal or pleading may be made and the manner in which they should be filed. IRRC and one commentator commented that the proposed form of this section contained vague language limiting the ability to file amendments to unidentified sections "of this part". We agree with IRRC and have deleted that phrase from the first sentence. The first sentence of this section has been further modified to convert this section into a substantially similar version of the language of the PUC's 52 Pa. Code § 1.81, which should be familiar to most members of the regulated industries. IRRC and one

commentator also commented that the last sentence of this section was vague in its reference to the "interests of justice". We agree and have deleted the last sentence of this section. The Authority or the presiding officer may limit the ability of a party to file an amendment to a submittal or pleading, which at a minimum is important to the advancement of judicial economy. If parties to a dispute were able to indefinitely amend pleadings, the scope of proceedings may be impossible to define and ultimately rule upon.

§ 1001.82. Withdrawal or termination of uncontested matter or proceeding.

Section 1001.82 provides a procedure through which a party to an uncontested proceeding before the Authority may withdraw from the proceeding. IRRC and another commentator questioned the inclusion of language in subsection (b) making the withdrawal "with prejudice" and assigning a 15 day review period to the request for withdrawal. IRRC and the commentator also questioned the use of the term "unless otherwise provided by statute" in terms of the discretion of the presiding officer to permit the withdrawal and the use of a vague reference to "interests of the public" as to the withdrawal of the matter in that subsection. We agree with IRRC's concerns and have deleted subsection (a) and (b) from this section and replaced those sections with a new subsection (a), which has been copied directly from GRAPP at 1 Pa. Code § 33.42, except for the specific reference to the "Authority or presiding officer" (as opposed to the generic "agency") and the requirement to file the withdrawal documents with the Clerk. Also, consistent with IRRC's comment, the phrase "Unless otherwise provided by statute," as a limitation upon the discretion of the Authority or the presiding officer to grant the withdrawal has not been incorporated from the GRAPP language. The section numbers have been appropriately adjusted, as has the required supersession language.

Subchapter J. DOCKET

§ 1001.91. Docket.

Section 1001.91 establishes that a docket will be maintained, how the docket will be maintained, and provides information as to the docket's accessibility to the public. Subsection (b) has been amended to note that subsection (a) supersedes GRAPP, as opposed to mirroring the cited section.

Subchapter K. WAIVER OF RULES

§ 1001.101. Applications for waiver of formal requirements.

Section 1001.101 provides that a party may request a waiver from the application of a specific requirement related to the document created by Chapters 1, 3 or 5, or all of them. One commentator seems to have commented on the content of this section, although a different section was cited (a section which does not exist), and construed this section as applicable to the waiver of substantive requirements created in other chapters of this part, specifically citing the use of a waiver to permit limousines to operate with taxicab meters. This section does not deal with waivers of that nature, those types of waivers are provided for in § 1005.23.

Subchapter L. UNOFFICIAL STATEMENTS, OPINIONS AND NOTICE

§ 1001.111. Unofficial statements and opinions by Authority personnel.

Section 1001.111 provides that comments in opinions of the Authority that are not necessary to reach the decision should not have the full force and effect of law or precedential value otherwise accorded to the decision. This section is substantially similar to the PUC's regulation at 52 Pa. Code § 1.96. IRRC and one other commentator questioned the reason for this section and suggested that it may interfere with the discretion of a reviewing court. This section can not supplant the jurisdiction of the courts; however, when a reviewing court examines a decision of the Authority and seeks to determine the Authority's interpretation of the impact of statements in a decision, or the relevance of those statements, which were not necessary to resolve the case, this section will provide guidance to the court as to the Authority's intent.

§ 1001.112. Notice of rulemaking proceedings.

Section 1001.112 provides for the manner in which notices related to rulemaking proceedings will be provided and persons with interest in the proposed rulemaking may request hearings on the rulemaking. A commentator questioned the location of this section and noted

that the Authority does not contemplate holding a hearing each time a rulemaking is considered. This section is an exact copy of the PUC's 52 Pa. Code § 5.211, which should be familiar to most of the regulated industries. While hearings will often be helpful, particularly as to fact intensive issues, the regulations of both the PUC and the Authority do not require one. A commentator questioned the difference between a regulation and a rulemaking. A rulemaking is the process through which a regulation is promulgated and the rulemaking incorporates the regulation.

One commentator suggested that the *Pennsylvania Bulletin* is an insufficient form of notice for rulemaking actions and that additional means of notice should be incorporated into this section. While the Authority will often employ the use of mass email communication and website posting, we decline to formally include those means of communication into this section because all regulated persons do not have equal access to those mediums and we will rely on the cost effective form of notice represented by the *Pennsylvania Bulletin*, which is already understood by regulated persons as the primary source of these forms of notice.

CHAPTER 1003. SPECIAL PROVISIONS

Subchapter A. TEMPORARY EMERGENCY ORDERS

EMERGENCY RELIEF

§1003.1. Definitions.

Section 1003.1 provides definitions related to the implementation of temporary emergency orders. The definition of "Adjudication Department" has been added to clarify the definition of "emergency order" which uses the term. A commentator noted the distinction between the definition of "emergency" in this rulemaking and as opposed to that used by the PUC in 52 Pa. Code § 3.11. The commentator expressed what we believed to be a concern about its clarity. We agree with that comment and will revise the definition to mimic that used by the PUC by deleting the phrase "and is not subject to a pending proceeding". The deletion of that term will not have a material impact on the determination of what is or is not an emergency because the balance of the definition does not require the existence of a pending proceeding in

order for a situation to be deemed an emergency. One commentator expressed a concern that the number of people capable of issuing emergency orders be expanded and another commented that the number should be reduced by deleting the Authority's Executive Director. We believe the persons and positions empowered to issue an "emergency order" are sufficient to address all contingencies and we decline to broaden or constrict the list of those capable of issuing such orders.

EX PARTE EMERGENCY ORDERS

§ 1003.11. Petitions for issuance of emergency orders.

Section 1003.11 establishes the form, contents, and service required for petitions for issuance of emergency orders.

§ 1003.12. Disposition of ex parte emergency orders.

Section 1003.12 provides for the manner in which an *ex parte* emergency order may be issued by the Authority and the manner in which it may be issued. One commentator noted concerns about the need to increase those capable of issuing these orders, we incorporate here our response to § 1003.1 above.

(c). Ratification. A commentator also questioned language of subsection (c) which dispenses with the need for a ratification vote by the Board as to emergency orders when a case or controversy no longer exists. In the event a dispute related to an emergency order no longer exists and the emergency has ceased to exist, the basis for the emergency order will be eliminated and a Board ratification vote on the emergency order will not be necessary nor scheduled. If the emergency has ended the Board could not ratify the order pursuant to the standards of this section. To the extent a Board ratification vote occurs it will be at a Sunshine Act meeting.

(d). Service. A commentator noted that this subsection does not include the phrase "as expeditiously as practicable" in relation to the Clerk's service of the emergency order or order denying the request for an emergency order, while that term is used in a substantially similar context by the PUC in 52 Pa. Code § 3.3. Based on other comments to the proposed rulemaking, we believe the non-specific term suggested by the commentator would raise more questions as to vagueness, instead we have relied upon the several specified means of notice permitted by §

1001.51, which provides for multiple efficient means of notice by the Authority, including email notification in many cases.

§ 1003.13. Hearings following issuance of emergency orders.

Section 1003.13 provides for procedures to contest the issuance of an emergency order. The proceeding will occur before a presiding officer in the Adjudication Department and be initiated by the person against whom the order is issued. A typographical error in subsection (b) was corrected by adding the letter "r" to the end of the "office". The term was originally intended to be presiding officer.

(e). A commentator suggested that a Board level review of every decision issued in response to a request for review of an emergency order occur, regardless of whether the parties request the review. We will decline that alteration and continue to provide that the decisions of the presiding officer will be considered a recommended decision to the Board, subject to consideration by the Board upon the request of a party to the relevant proceeding.

INTERIM EMERGENCY RELIEF

§ 1003.21. Petitions for interim emergency orders.

Section 1003.21 establishes the form, contents, and service required for interim emergency orders issued during the course of an existing proceeding.

§ 1003.22. Hearing on petitions for interim emergency orders.

Section 1003.22 provides that a hearing to consider a petition for an interim emergency order be conducted within 20 days of filing.

IRRC questioned the basis for selecting a 20 day window and another commentator noted that a substantially similar provision of the PUC's regulations at 52 Pa.Code § 3.6a provides for a window of only 10 days. The purpose of stating a mandatory deadline for the hearing is to make certain that it occurs quickly. Because the PUC's version of this section has been functioning for some time and has been referenced by at least one commentator we will adopt that 10 day period in the final-form regulation. In order to comport with drafting guidelines of the Legislative Reference Bureau the terms "must" has been changed to "will" in the final-form regulation.

§ 1003.23. Issuance of interim emergency orders.

Section 1003.23 provides the manner in which an order will be issued by a presiding officer as to a petition for an interim emergency order, including a deadline and a requirement for service. A commentator suggested reducing the time period within which a presiding officer may issue a decision from 25 days to 15 days. We will decline to make this adjustment. The presiding officer is required to conduct a hearing within 10 days of the filing of the petition. While we believe it is necessary to have a defined period during which a decision should be issued, the presiding officer will maintain the discretion to issue the decision within the described period in consideration of the unique circumstances of each case. Again, orders of this nature relate to cases already pending before the Authority. The commentator also commented on subsection (c) and requested the insertion of a vague term referencing service of a presiding officer's decision "as expeditiously as possible". We decline to include that language for the same reasons noted in our response to § 1003.12 (d).

§ 1003.24. Form of interim emergency orders.

Section 1003.24 explains what must be included in interim emergency orders and what may be included.

§ 1003.25. Authority review of interim emergency orders.

Section 1003.25 provides for the manner in which an interim emergency order of a presiding officer may be reviewed by the Authority.

A commentator suggested that a hearing be scheduled to review the presiding officer's decision even if the parties do not request the review. We decline to adopt that practice and believe that the standard process for requesting Authority review will be efficient and adequate for all parties without need of scheduling hearings and further review that has not been requested by a party. We agree with the commentator that a deadline for Authority action upon filing these exceptions is appropriate, and will provide that deadline through the same mechanism employed by the PUC. Therefore, we have amended subsection (b) and adopted the 30 day review period used by the PUC in 52 Pa.Code § 3.10. This designated review period will provide the petitioner

with a determination that may then be appealed beyond the Authority, in the petitioner's discretion.

OUT OF SERVICE

§ 1003.31. Definitions.

Section 1003.31 provides definitions applicable to the process through which the Authority may place rights out of service.

One commentator suggested the placement of the out of service procedure in this section of the rulemaking was unusual. We disagree and believe that the special circumstances and procedures related to placing any right out of service, not just vehicles, are proper in this "Special Provisions" chapter. Other commentators seemed to have misinterpreted this section as applicable to the impoundment of vehicles, which it is not. In the out of service scenario, a vehicle subject to an out of service designation will be prohibited from providing service to the public (through notice to the owner and driver, or both) and in the case of vehicles, by affixing conspicuous stickers on the vehicle's windows warning the public as to the out of service status, pending remedial action by the owner of the vehicle.

§ 1003.32. Out of service designation.

Section 1003.32 provides the procedure through which the Authority may place rights in an immediate out of service status for conditions found to involve a threat to public safety, as that term is defined in §1003.31 (relating to definition). Upon being designated out of service the offending condition could be remedied and the rights restored or a party may pursue the expedited hearing process provided in this section. We believe that the rapid hearing process associated with such designations will provide a safeguard against an injudicious application of this section and will monitor the use of this section to make certain that it is employed only when necessary.

(b) Drivers. This subsection provides that the Authority may place a driver's certificate out of service for reasons which include the driver's failure to report to TLD Headquarters.

IRRC and other commentators questioned the fairness of this provision because it does not include language excusing the driver's failure to report to TLD Headquarters for legitimate reasons, such as hospitalization. We agree with IRRC and the other commentators and have added language to permit a driver to assert a just cause basis for a failure to report.

(d). Notice to the Clerk. Subsection (d) requires the Authority's Taxicab and Limousine Enforcement Department to provide notice of the out of service designation to the Clerk so that a hearing on the propriety of that designation may be held within three days as required by subsection (e).

IRRC commented that the language in this subsection requiring "prompt" notice from the Enforcement Department to the Clerk was vague. The Authority agrees with IRRC's comment and has amended this section to require notice "by 4:30 p.m. on the next day during which the Authority maintains office hours as provided in § 1001.8 (relating to Authority office hours and address)."

(f)(3). Formal complaint. Subsection (f) (3) deals with the formal complaint component of the out of service designation. The term "complaint" has been inserted in place of "compliant" to correct a typographical error.

(h). Orders. Subsection (h) requires a presiding officer to enter an order after a hearing on the validity of the out of service designation. The order must include a prompt date for a hearing related to the underlying offense. One commentator suggested that the merits hearing and the emergency hearing be held simultaneously. While this section does not prohibit the parties from agreeing to resolve the entire controversy at the first hearing (or even without a hearing), we believe this suggestion is not practical. The rapid scheduling of a hearing to determine the out of service status is necessary to assure that these designations are used properly by the Enforcement Department. Parties generally require time to assemble witnesses and evidence necessary to conduct a hearing on the merits and we believe that requiring parties to conduct that preparation at an accelerated rate will present a difficult hurdle to a fair hearing.

We incorporate the responses to similar questions about the propriety of the out of service designation provided by the PUC at 26 Pa.B. 5816-5817.

Subchapter B. INFORMAL PROCEEDINGS GENERALLY

§ 1003.41. Form and content of informal complaints.

Section 1003.41 provides the rules and procedures associated with the form, content, and filing procedures associated with informal complaints.

§ 1003.42. Authority action on informal complaints.

Section 1003.42 explains what the Clerk will do with informal complaints, the purpose of having a staff review of the informal complaint, the circumstances and purpose for an informal investigation, what the staff will do when an informal investigation is completed, and the fact that submitting an informal complaint does not guarantee that a formal hearing will take place.

§ 1003.43. Other initiation of formal complaints.

Section 1003.43 explains how an informal complainant can file and prosecute a formal complaint within 30 days of service of an informal complaint termination letter by the Enforcement Department following staff review and informal investigation of the informal complaint by the Authority.

Subchapter C. APPLICATIONS AND PROTESTS

§ 1003.51. Applications generally.

Section 1003.51 provides general procedures and guidelines associated with the filing of applications for authorization or permission from the Authority. A commentator referenced this section when questioning the inclusion of drivers within the meaning of regulated persons, presumably as that term may relate to applications. The definition of regulated persons specifically includes drivers.

§ 1003.52. Contents of applications.

Section 1003.52 provides general requirements for the form and content of applications submitted to the Authority. Subsection (a) (1) has been amended to clarify that applications must be typed or printed and may not be handwritten. This is a continuation of an existing Authority practice, which is employed to prevent mistakes in translation or other confusion likely to slow the pace of administrative review. This section has also been amended to permit the Manager of Administration to accept handwritten driver applications, if the writing is legible. We have made

this allowance because we understand that many drivers do not have access to a computer of typewriter.

§ 1003.53. Applications requiring notice.

Section 1003.53 establishes that notice of applications to the Authority for rights under the act must be published in the *Pennsylvania Bulletin* or other resources required by the Authority. Subsection (a) has been amended to confirm that applications for a taxicab or limousine driver's certificate will not require publication in the *Pennsylvania Bulletin*. Neither the Authority nor the PUC has applied publication to these applications in the past. We find no reason to deviate from the status quo in Philadelphia and expand the scope of applications subject to publication to individuals seeking a driver's certificate.

§ 1003.54. Protests.

Section 1003.54 establishes a process through which certain parties may protest the application of a person seeking Authority rights. Regulations for pursuing these types of actions are common and can be found in GRAPP at 1 Pa. Code § 35.23 and in the PUC's regulations at 52 Pa. Code §§ 5.51, 5.52, and 5.53.

IRRC and other commentators questioned the amount of the filing fee for protest actions. The filing fee for a protest of an application is not provided for in this section, nor is it included in the final form rulemaking for the reasons expressed in response to comments on § 1001.43. The filing fee for the protest of an application is subject to change each fiscal year and has been set at level that we believe is appropriate to discourage frivolous challenges to the granting of Authority rights. The process of assembling a new public utility business in compliance with the laws of the Commonwealth and the regulations of administrative agencies established to regulate those utilities is time consuming and costly. That process should not be further delayed and made even more costly through the filing of frivolous protests, regardless of whether the protest is withdrawn midway through a formal proceeding.

Several years ago, the Authority agreed to forward notice of any new limousine certificate of public convenience applications to at least one limousine owners' organization to permit that organization to submit whatever information it wished in regard to the review process. Anyone can submit any information to the Authority that they believe should be

considered in reviewing any application for rights, without a fee. The Authority is then free to raise the issue with the applicant for clarification. Of course, with the recent designation of the Authority as a Commonwealth Agency for purposes of regulating taxicab and limousine service providers, notice of applications will now be provided through the *Pennsylvania Bulletin* as well.

IRRC and other commentators noted that the Authority's fee schedule (not the proposed rulemaking) currently identifies the protest fee as applicable to limousine applications. We agree with IRRC's concern and note that the final form rulemaking does not make that distinction, because applications for "rights" are subject to protest, not simply limousine rights. The Authority's fee schedule will be revised as permitted through section 5707 (b) of that act to more specifically apply to the various forms a protest may take.

§ 1003.55. Applications for temporary certificate of public convenience.

Section 1003.55 provides a process through which an applicant for rights may obtain use of those rights on a temporary basis during the pendency of the Authority's review of the application and upon showing that an emergency exists. A commentator cited the potential that Philadelphia may be selected as the location for a Super Bowl and that limousine companies may seek to provide temporary service to fill the needs associated with such an event. The commentator seemed to be concerned that new limousine companies would be created for an event and either displace existing companies during the event or continue as limousine service providers after the event and increase competition among limousine service providers in place before the event, or both. The commentator also suggested that temporary rights only last for 7 days. We believe that the investment that will be made in preparing for and filing an application for a limousine certificate of public convenience (or any other similar rights) will prevent reasonable persons from attempting to obtain temporary rights to serve a particular targeted event and then terminate operations through this section and decline to make the alterations suggested. These applications will be published in the *Pennsylvania Bulletin* and will be subject to protest. A typographical error in subsection (c) has been corrected by adding the word "a" before the word "temporary".

§ 1003.56. Registration of intrastate operating authority issued by the Interstate Commerce Authority.

Section 1003.56 requires those in receipt of intrastate operating authority in Pennsylvania, and specifically Philadelphia, to file a copy of Interstate Commerce Authority authorization with the Director of the TLD. IRRC commented that the citation in this section to a federal statute appeared to be a typographical error. Commentators expressed confusion with the import of this section. Because we believe that changes made in Chapter 1053.41 adequately address issues related to intrastate and interstate licensing, this section is now unnecessary and will be deleted in the final-form rulemaking.

Subchapter D. FORMS AND GUIDANCE DOCUMENTS

§ 1003.61. Official forms and guidance documents.

Section 1003.61 provides the web address where forms for certain official forms and guidance documents can be obtained.

Subchapter E. TAXICAB AND LIMOUSINE DIVISION

§ 1003.71. Definitions.

Section 1003.71 provides the meanings for words and terms as utilized in Subchapter E. A commentator suggested that the term "TLD" should be defined earlier in the final-form regulations. We note that the term is now defined as early as § 1001.10.

§ 1003.72. TLD staffing generally.

Section 1003.72 identifies certain staffing positions within the TLD and the general duties associated with those positions.

A commentator suggested that drivers have a designated point of contact at the Authority for communication purposes. We believe that our staff is very open to interaction with all of those who make up the regulated industries. The TLD employs less than 40 people and the appropriate person to whom specific issues should be addressed are already known to most regulated parties, including drivers. In the event the appropriate contact is not known to a driver, TLD staff is capable of assisting the driver with that determination.

§ 1003.73. Adjudication Department.

Section 1003.73 provides for the TLD's Adjudication Department which will be comprised of standing presiding officers and certain staff. One commentator suggested that the standing presiding officers will report to the Director of the TLD, although the subsection (b) clearly provides that the Authority will make those appointments, while the Executive Director may provide for the creation of staff positions. Standing presiding officers will be independent and will not report to the TLD Director or the Authority's Executive Director.

§ 1003.74. Enforcement Department.

Section 1003.74 explains the composition of and purpose for having the Enforcement Department as well as the procedure for appointing the department's manager and a brief description of the manager's role.

§ 1003.75. Office of Trial Counsel.

Section 1003.75 describes the composition of and appointment process for the Office of Trial Counsel, explains the departments that the Office shall counsel and represent, describes the duties and powers of the Office, and explains who shall supervise the Office and how the Office shall be supervised. A typographical error in subsection (b) (3) has been corrected by deleting the word "a".

§ 1003.76. Conduct.

Section 1003.76 provides certain rules and guidelines related to the interaction between Trial Counsel, presiding officers and other Authority employees designed to emphasize the need for independence of the presiding officers and separation of the administrative and prosecutorial functions of the Authority. One commentator opined that the regulations do not designate who should appoint presiding officers, although that is provided in §1003.73, as noted in our response above. A commentator noted that a term is not created for each presiding officer, which is true. Although we note that the Legislature did not create a term of office when it provided for presiding officers (hearing officer) in section 5705 of the act. The commentator also suggested that because the presiding officers will often see the same enforcement staff in various cases that the presiding officer will not be able to be objective. We disagree with the commentator's belief

and note that many judges and justices in this Commonwealth see the same law enforcement officers, witnesses and attorneys repeatedly throughout their careers and are able to act objectively. We are confident that presiding officers will as well.

Other commentators have suggested that presiding officers be appointed by persons outside the Authority. The appointment of administrative law judges, hearing officers, presiding officers, referees or other individuals assigned to adjudicate matters is commonly exercised in the administrative law context. We believe the process provided in this chapter adequately addressed the concerns of the commentators as to independence and the separation of administrative, adjudicatory and enforcement functions. In fact this section is taken almost identically from the recently approved Gaming Control Board regulations at 58 Pa. Code § 405a.4, which was promulgated to address this exact issue. We believe these standards are appropriate for these final-form regulations as well. A commentator also suggested that this section permitted in appropriate *ex parte* communication with a presiding officer. We disagree that the language of this section creates such authorization, either at before Gaming or the Authority. We believe § 1005.185 deals more specifically with this issue and reference the commentator to that section and our response to changes made to the proposed regulation, which we incorporate here.

CHAPTER 1005. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS

GENERAL PROVISIONS

§ 1005.1. Pleadings allowed.

Section 1005.1 establishes the form of pleadings permitted before the Authority. Paragraph (4) has been edited to correct a typographical error which indicated the pleading of a motion and answer in the plural. The terms have been edited to be in the singular form, which is consistent with the balance of the section. The language of this section in the proposed form regulation, along with the edit noted above, has been classified as paragraph (a) in order to address the new subsection (b), which clarifies that pleadings may not be handwritten and to provide guidance as to the size and type of print to be used.

FORMAL COMPLAINTS

§ 1005.11. Formal complaints generally.

Section 1005.11 provides for the filing of formal complaints before the Authority, the manner in which they should be filed and those who may file such complaints. IRRC commented that a typographical error existed in this section represented by the use of the designation of paragraph "(2)" twice. That typographical error has been corrected in the final form rulemaking and resulted in the renumbering of the subsequent three paragraphs.

Commentators question the jurisdictional power of the Authority to permit the PUC and Philadelphia law enforcement or licensing officials to have access to the Authority's formal complaint process and suggested limiting language identifying when those entities may initiate such actions. Section 5705(b) of the act specifically permits these other entities to raise these claims before the Authority. Section 1005.11 focuses on the formal complaint process and does not deal with discovery issues as suggested by one commentator.

§ 1005.12. Content of formal complaints.

This section identifies the minimum requirements for the content of a formal complaint. We have amended the supersession language of subsection (d) to include reference to 1 Pa. Code § 35.9 (relating to formal complaints generally).

§ 1005.13. Citation complaints by the Authority.

Section 1005.13 provides for the issuance of formal complaints by the Authority in the form of citations.

(a). Subsection (a) requires that the citation complaint be filed with the Clerk and specifies that information that must be included in the citation in order to permit the respondent the opportunity to prepare a defense. IRRC and another commentator questioned the qualifying term "unless the circumstances of the violation render the information impracticable to obtain at the time of filing:" used in this subsection in relation to the information that will be provided on a citation complaint. Citation complaints have been used by the Authority in the regulation of taxicabs and limousines service providers in Philadelphia since 2005 and are similar in content to moving violations.

We believe that citation complaints will include all of the information necessary for the Authority to successfully assert the existence of a violation and, more importantly, for respondents to prepare a proper defense. In most cases these citations will relate to straight forward enforcement actions related to the condition of a vehicle or the actions of a driver or owner. The language questioned by IRRC and other commentators was included in section (a) to clarify that a citation complaint may be issued even if the citation fails to provide every piece of information identified in this subsection. This language is important because most citations are written by Inspectors while patrolling the streets of Philadelphia. In the event a vehicle flees the scene before the Authority obtains the Vehicle Identification Number or the meter number, a citation may nevertheless be issued, although the enforcement action may be weakened by the lack of information.

The Authority will always bear the burden of proof of advancing complaints, the failure to include information complained of will generally do harm to the Authority's ability to meet its burden. We believe we have also addressed the root of IRRC's concern about this language through an amendment made to subsection (b).

(b). Subsection (b) provides that a respondent to a citation complaint need do nothing further than request a hearing in order to deny the averments of the complaint; no answer is required. The citation complaint process is intended to be straight forward and efficient for all parties, leading to the Authority's decision to eliminate the time and costs associated with providing formal answers, although a respondent could certainly file an answer if they wished. However, IRRC and another commentator questioned the wisdom of the limitation of preliminary objections found in this section as well. We agree with these comments and have deleted the prohibition of preliminary objections to citation complaints from this section and § 1005.71 (e)(1). We have added a subsection (e) to this part to mirror the supersession language provided for in § 1005.12 regarding formal complaints.

We believe that the information contained in a citation, as provided in this section, will exceed the requirements as to content of an administrative complaint as provided for in GRAPP. *See* 1 Pa. Code § 35.10, which has been superseded by this section. We further believe that the service options provided for in § 1001.51 will provide due notice to all respondents without need to publish each citation or other complaint in the *Pennsylvania Bulletin*. While there is a provision of GRAPP that creates a deemed given scenario for notice of complaints published in

the *Pennsylvania Bulletin*, such publication is not required and is unwieldy and slow. *See* 1 Pa. Code §5.6. A commentator averred that the PUC initiates all of its formal complaints through publication in the *Pennsylvania Bulletin*, which is simply not the case.

§ 1005.14. Joinder of formal complaints.

Section 1005.14 describes the circumstances under which multiple complaints may be joined.

§ 1005.15. Satisfaction of formal complaints.

Section 1005.15 explains the procedure that a respondent must follow if the respondent satisfies a complaint.

PETITIONS

§ 1005.21. Petitions generally.

Section 1005.21explains what a petition is and provides an overview of information relating to the filing, format, substance, and service of petitions. A commentator cited this section in regard to general concerns about the ability of taxicab drivers to navigate the procedures of GRAPP and this subpart without assistance. While we have attempted make provide these procedures in as clear a manner as possible, we note that changes to § 1001.22 will also make the involvement of legal interns possible to assist drivers.

§ 1005.22. Petitions for declaratory orders.

Section 1005.22 explains the necessary components of petitions for declaratory orders and the service requirements associated with such petitions.

§ 1005.23. Petitions for issuance, amendment, repeal, or waiver of Authority regulations.

Section 1005.23 provides a process through which a regulation may begin to be issued, amended, repealed or waived. A commentator questioned the implications of this section in terms of further IRRC review of the Authority's taxicab and limousine regulations. The language of this section deals with the procedures related to initiating the regulatory change or addition that will require IRRC's review. The case-by-case waiver of certain regulations is a

well established administrative mechanism. A commentator questioned the accessibility of a petitioner to hearing on the record regarding a waiver petition. Subsection (f) notes that just as with any other action of staff, a negative initial review of a waiver petition is subject to a hearing on the record before a Presiding Officer. The Presiding Officer will then issue a recommended decision as provided in §§ 1005.201—1005.204. Similar language is present in GRAPP at 1 Pa. Code § 35.18 and in the PUC's regulations at 52 Pa. Code § 5.43.

§ 1005.24. Appeals from actions of the staff.

Section 1005.24 provides the process through which actions of the Authority's staff may be appealed. Through this process one may obtain a hearing before a presiding officer as to decisions of staff members. A commentator noted that subsection (d) of the proposed regulation only required assertion of material factual disputes, but that legal disputes may also exist. We agree with the commentator and have an obligation to include legal averments in the petition for appeal.

INTERVENTION

§ 1005.31. Initiation of intervention.

Section 1005.31 provides a procedure through which a party not directly engaged in a proceeding before the Authority may intervene in that action and identifies under what circumstances such an intervention may occur. A commentator suggested that this section be simplified, apparently to provide a means of intervention on behalf of taxicab drivers in enforcement matters. We have relaxed the manner in which persons may be represented in matters before the Authority in order to address the exact concern of this commentator, as referenced in our response to § 1001.22 (relating to appearance by attorney or certified legal intern), and do not believe an amendment of the nature suggested will be constructive or advance the purpose of the act.

§ 1005.32. Eligibility to intervene.

Section 1005.32 indentifies those parties eligible to intervene in a proceeding before the Authority. Subsection (a) (2) has been amended to correct a typographical error by deleting the word "Commission" and inserting "Authority".

§ 1005.33. Form and content of petitions to intervene.

Section 1005.33 identifies the required content of petitions to intervene filed on behalf of one person and the special requirements that may be associated with petitions to intervene filed on behalf of more than one person.

§ 1005.34. Filing of petitions to intervene.

Section 1005.34 describes the filing procedures for petitions to intervene. The term "agency" has been replaced with the more specific "Authority" in subsection (a).

§ 1005.35. Notice, service and action on petitions to intervene.

Section 1005.35 provides for the manner in which notice and service of petitions to intervene must be perfected and guidelines on the way such petitions will be reviewed upon filing. Subsection (d) has been amended to replace the term "agency" with the more specific "Authority". A commentator questioned the ability of the Authority to supersede GRAPP as provided in subsection (e) of this section, that authority is provided for in 1 Pa. Code § 31.1. A typographical error in the first sentence of subsection (d) has also been corrected by deleting the words "will be", which were without meaning in the sentence.

§ 1005.36. Limitation of participation in hearings.

Section 1005.36 provides that a presiding officer may limit the number of attorneys permitted to cross-examine witness and make arguments when representing two or more petitioners with substantially the same intervening interests.

ANSWERS

§1005.41. Answers to complaints, petitions, motions and other filings requiring a response.

Section 1005.41 provides guidelines for the time within which answers must be filed with the Clerk and the general form of answers. Subsection (b) has been amended to replace the term

"agency" with the more specific "Authority". A commentator suggested that the Authority only use certified mail when forwarding notices to taxicab drivers because some of those notices have allegedly been forwarded to an incorrect address in the past. We will decline this suggestion and maintain the forms of notice provided for in §1001.51. We note the continuing obligation of a regulated party to maintain a current address with the Authority to avoid the exact concern expressed by the commentator, as provided for in §1001.51 (d). Another commentator suggested that any default for failing to file an answer be prefaced by another notice of the potential default. We decline this additional notice provision and believe that the initial notice should suffice to advise the responding party of the need to participate in the proceeding. We note the PUC's regulations contain this same language at 52 Pa. Code § 5.61 (c).

§ 1005.42. Answers seeking affirmative relief or raising new matter.

Section 1005.42 permits a respondent to a complaint to seek affirmative relief or raise a matter within the jurisdiction of the Authority for consideration in the proceeding. This section provides guidance on the required content of such pleadings. A commentator suggested that this process is duplicative "of what is already being done by the state" without further reference. We are unable to discern a meaning to this comment.

§ 1005.43. Replies to answers seeking affirmative relief or new matter.

Section 1005.43 provides the procedure for replying to answers seeking affirmative relief or new matter. A commentator suggested that some taxicab drivers may not understand this procedure. While we recognize that all regulated persons will not possess the ability to navigate the rules and procedures applicable to legal practice before the Authority, we believe this section is worded in a simple and straight forward manner and decline to make alteration.

§ 1005.44. Answers to amendments of pleadings.

Section 1005.44 describes the filing procedure for answers to amendments of pleadings.

§ 1005.45. Answers to petitions to intervene.

Section 1005.45 describes the filing procedure and the service requirements for answers to petitions to intervene and explains when objections may be deemed to have been waived.

CONSOLIDATION

§ 1005.51. Consolidation.

Section 1005.51 describes the process through which a presiding officer may consolidation multiple matter involving the same subject matter into a single proceeding.

AMENDMENT AND WITHDRAWAL OF PLEADINGS

§ 1005.61. Amendments of pleadings generally.

Section 1005.61 establishes that amendments must comply with the requirements of this chapter and places a time limit on a party's ability to file an amendment.

§ 1005.62. Amendments to conform to the evidence.

Section 1005.62 describes the manner in which issues not raised in the pleadings should be treated under circumstances in which the issues are either objected to or not objected to and the circumstances under which a continuance may be allowed.

§ 1005.63. Directed amendments.

Section 1005.63 describes the circumstances under which parties may be directed to provide an amendment and the requirements placed upon such an amendment.

§ 1005.64. Withdrawal of pleadings in a contested proceeding.

Section 1005.64 describes the circumstances under which a withdrawal of pleadings in a contested proceeding may occur and the procedures associated with such a withdrawal.

MOTIONS

§ 1005.71. Motions.

Section 1005.71 addresses motion practice issues before the Authority and presiding officers. Consistent with our response to § 1005.13, subsection (e) (1) (i) has been deleted in order to permit preliminary objections to citation complaints. Subparagraphs (ii) and (iii) have been renumbered to account for that deletion.

Subchapter B. HEARINGS

GENERAL

§ 1005.81. Notice of proceeding; hearing; waiver of hearing.

Section 1005.81 provides for certain notice requirements related to hearings or proceedings before the Authority or a presiding officer. The term "presiding officer" was inadvertently not included in subsection (b) which permits a hearing to be concluded in the event that a party fails to file a required pleading or waives the right to a hearing upon the basis of the pleadings or submittals and the studies and recommendations of the staff. That term has been included in this section of the final-form regulation.

§ 1005.82. Scheduling of hearing.

Section 1005.82 provides for the manner in which hearings before the Authority will be scheduled and for certain procedures related to hearings, including the inapplicability of the formal rules of evidence. A typographical error in the second sentence of subsection (a) has been corrected by deleting the word "in" which was the sixth word in that sentence. This section represents an adoption by the Authority of a Gaming Control Board regulation found at 52 Pa. Code § 494a.1.

(c). Subsection (c) provides general guidance on procedures related to a hearing; including the fact that technical rules of evidence will not apply. IRRC submitted three questions in relation to this subsection, first, why this language dealing with evidentiary review issues is in the scheduling section. Another commentator believed this subsection was confusing and suggested that it be deleted. We agree and have deleted this subsection. The removal of this subsection addresses IRRC's second question related to the subsection's supersession of 1 Pa. Code § 35.102. IRRC and one other commentator also questioned the legal propriety of the

requirement of this subsection that a party to a proceeding must testify if called, even if not of the party's own volition. While we believe this language represents standard practice in administrative settings and does not conflict with any Fourth Amendment protection issue, we have deleted that language as referenced above. Corresponding changes have been made to the suppression language of subsection (c).

§ 1005.83. Notice of nonrulemaking proceedings.

Section 1005.83 explains that the Authority may schedule prehearing conferences and hearings, describes the notice requirements associated with the scheduling of such a hearing, and lays out the consequences associated with a protestant's failure to appear at such a non-rulemaking proceeding.

HEARING CONFERENCES

§ 1005.91. Conferences generally.

Section 1005.91 adopts the procedures employed in GRAPP for prehearing conferences.

STIPULATIONS

§ 1005.101. Presentation and effect of stipulations.

Section 1005.101 provides stipulation procedures for parties to a proceeding before the Authority or a presiding officer. IRRC commented that the supplementation or suppression of GRAPP represented by this section was confusing, presumably because subsection (c) is referenced as a supplementation of GRAPP, while subsections (a) and (b) are referenced as superseding GRAPP. While this section is an almost word for word reproduction of the PUC's regulation at 52 Pa. Code § 5.234, we will address IRRC's comment by noting that the section supersedes the applicable section of GRAPP.

§ 1005.102. Restrictive amendments to applications for rights issued by the Authority.

Section 1005.102 describes the procedures under which parties may stipulate and under what circumstances restrictive amendments will be binding.

HEARINGS

§ 1005.111. Order of procedure.

Section 1005.111 describes the order in which parties will open, close or present evidence under various circumstances.

§ 1005.112. Presentation by parties.

Section 1005.122 provides for the manner in which parties to a proceeding may present evidence and the ability of the presiding officer to limit the taking of evidence upon objection and otherwise.

§ 1005.113. Failure to appear, proceed or maintain order in proceedings.

Section 1005.113 provides procedures applicable in the event that a party to a proceeding fails to appear at a conference or hearing. A typographical error in subsection (a) (3) has been corrected in the final-form regulation by replacing the word "for" with "from".

TRANSCRIPT

§ 1005.121. Transcripts generally.

Section 1005.121 identifies when transcripts of hearings must be taken, what the transcripts must include and that the transcripts are part of the record of the hearing. We have corrected a typographical error in subsection (a) by replacing the word "reported" with "recorded". In relation to subsection (a), IRRC questioned when the stenographic reporting would be legally required as noted in the opening of this subsection. We do not believe that IRRC's question is altered by the fact that we have substituted the term "reported" for "recorded". In response, we note that 2 Pa.C.S. § 504 (relating to hearing on the record) requires the stenographic recording of all such testimony at adjudicatory hearings.

§ 1005.122. Review of testimony.

Section 1005.122 describes the procedures that must be followed for a party to review testimony that was previously electronically recorded or transcribed.

§ 1005.123. Transcript corrections.

Section 1005.123 describes the circumstances under which corrections may be made to transcripts and the procedures that must be followed in making such corrections.

§ 1005.124. Copies of transcripts.

Section 1005.124 describes the procedures that parties must follow in order to obtain copies of transcripts from the official reporter.

Subchapter C. INTERLOCUTORY REVIEW

§ 1005.131. Interlocutory review generally.

Section 1005.131 provides guidance regarding the Authority's policy toward interlocutory review of decisions of presiding officers. Upon review of this language we have determined that the language of GRAPP found at 2 Pa. Code § 35.190 is more in line with our preferred method of addressing this form of review and that section of GRAPP will be adopted here in its entirety. Therefore, the language of the proposed regulation that appeared in subsection (a) has been deleted and replaced with language that adopts § 35.190. An additional sentence has been added to clarify that the Authority's "agency head" as used in § 35.190 is the Authority's Board.

One commentator cited this section in reference to a comment related to evidentiary issues and enforcement proceedings involving taxicab drivers. Because this section does not address that issue and because this section has been deleted in favor of the adoption of the parallel provision of GRAPP we believe our answer as provided above is sufficient.

§ 1005.132. Relating to petition for interlocutory Authority review and answer to a material question.

Section 1005.132 in the proposed regulations provided additional guidance and procedures related to the Authority's proposed method of addressing interlocutory appeals of presiding officers decisions. As provided in the explanation of the changes made to §1005.131, this section is no longer necessary and has need deleted.

§ 1005.133. Relating to Authority action on petition for interlocutory review and answer.

Section 1005.133 in the proposed regulations provided additional guidance and procedure related to the Authority's proposed method of addressing interlocutory appeals of presiding officers. As provided in the explanation of the changes made to §1005.131, this section is no longer necessary and has been deleted.

Subchapter D. EVIDENCE AND WITNESSES

§ 1005.141. Admissibility of evidence.

Section 1005.141 provides that the Authority or the presiding officer may rule on the admissibility of evidence. A commentator suggested in a single comment to this section as well as § § 1005.142 and 1005.143, that it would be inappropriate for the Authority to rule on the admissibility of evidence during hearings and that only a presiding officer may do so. In the context of a hearing, the use of the term Authority or presiding officer applies because a hearing may occur before the Authority as a body or a single presiding officer. It is important to remember that not all hearings relate to enforcement matters. The commentator seems to suggest that the language of these sections may permit the Enforcement Department or another party to a proceeding to rule on the admissibility of evidence, which they clearly may not.

§ 1005.142. Admission of evidence.

Section 1005.142 provides that the Authority or presiding officer will rule upon the admission of evidence into the record of a proceeding.

§ 1005.143. Control of receipt of evidence.

Section 1005.143 permits the person or body presiding over a hearing to control the receipt of evidence. A commentator suggested that this section will violate the due process rights of taxicab drivers without elaboration. We note that this section is almost identical to the PUC's 52 Pa. Code §5.403, which has been in place for some time. Because we are unable to discern any due process issue associated with this section we decline the commentator's suggestion to delete it.

§ 1005.144. Additional evidence.

Section 1005.144 provides that during a hearing or upon the conclusion of a hearing before the Authority or a presiding officer, the Authority or presiding officer may direct the parties to provide more evidence in the event such evidence is necessary to reach a proper conclusion of the matter. This section is a copy of the PUC's 52 Pa. Code § 5.404, which has been in place for some time.

There will inevitably be times when the Authority or the presiding officer requires additional evidence not available in the existing record during a hearing or after a hearing has concluded. Presiding officers typically intercede on their own behalf and ask additional questions or request additional documentation to assist in understanding the issues presented during a proceeding. This section does not authorize or even mention *ex parte* communications or efforts to gather information outside of a hearing; therefore, in order to request additional evidence the parties would have to reconvene for an additional hearing, or agree at a hearing to submit such additional information requested. Provisions relating to the limited scope of presiding officer *ex parte* communications are addressed in § 1005.185.

IRRC and other commentators questioned whether all parties would be able to respond to the additional evidence. Because the evidence is gathered at a hearing in which the parties are participating, the standard rules of procedure will apply and parties will be able to object or provide evidence in support of their respective positions. In order to address IRRC's question as to how this process will work after a hearing has be adjourned, subsection (a) has been amended to clarify that the additional evidence will be gathered at a hearing upon notice to all parties pursuant to § 1001.51. Another commentator suggested placing a time limit on when additional evidence may be submitted, because we believe that such a limitation may work against the process of developing a full and complete record we decline to incorporate that suggestion and note that it is nowhere to be found in the PUC's above referenced regulation.

§ 1005.145. Effect of pleadings.

Section 1005.145 describes the manner in which pleadings may become part of the record of a proceeding.

§ 1005.146. Public documents.

Section 1005.146 provides a means of entering public documents into the record of an Authority proceeding without producing the document or marking it for identification and requires a party that incorporates a document into a pleading to provide that document to an opposing party upon request. A commentator questioned the meaning of the term "reasonably available to the public" in subsection (a) (2). This language provides some guidance to the presiding officer as to what documents are truly "public" when deciding whether or not to admit them as permitted by this section or not. The language has no relation to Pennsylvania's Right to Know Law.

§ 1005.147. Records of other proceedings.

Section 1005.147 describes the procedures that must be followed if a party wants to have portions of records from other Authority proceedings admitted into evidence.

§ 1005.148. Official and judicial notice of fact.

Section 1005.148 describes the procedures that must be followed when the Authority or presiding officer makes a decision on the basis of an official notice or judicial notice of a material fact not appearing in the evidence in the record.

§ 1005.149. Copies and form of documentary evidence.

Section 1005.149 explains that where documentary evidence is provided, copies are required and lays out the procedures that must be followed in providing such copies.

WITNESSES

§ 1005.151. Oral examination.

Section 1005.151 provides for oral examination of witnesses at hearings and makes provisions for testimony submitted through deposition or expert report. A commentator noted that all parties should have the ability to depose witnesses. This section gives any party the ability to seek authorization from the Authority or the presiding officer to conduct a deposition.

§ 1005.152. Written testimony.

Section 1005.152 provides for procedures to submit non-oral (written) testimony at proceedings. Subsection (f) has been corrected to identify the Clerk as the appropriate office for filing of the required certificate of service.

§ 1005.153. Offers of proof.

Section 1005.153 describes the circumstances under which offers of proof may be made at Authority proceedings and how such proof must be provided.

SUBPOENAS

§ 1005.161. Subpoenas.

Section 1005.161 adopts the procedures of GRAPP at 1 Pa. Code § 35.142 related to subpoenas.

§ 1005.162. Depositions.

Section 1005.162 adopts the procedures of GRAPP at 1 Pa. Code §§ 35.145—35.152 in matters related to depositions.

CLOSE OF THE RECORD

§ 1005.171. Close of the record.

Section 1005.171 provides that the record of a proceeding will close upon the conclusion of the proceeding unless good cause is shown to open the record.

Subchapter E. PRESIDING OFFICERS

§ 1005.181. Designation of presiding officer.

Section 1005.181 provides for the designation of a person, or persons, to serve in the capacity of a presiding officer at an Authority proceeding. This language is substantially similar to that used in GRAPP as follows:

> When evidence is to be taken in a proceeding, either the agency head or, when designated for that purpose, one or more of its members, examiners or other representative appointed according to law, may preside at the hearing.

1 Pa.Code § 35.185.

A commentator suggested that a regulation that permits the Authority or an Authority designated person to act as a presiding officer would be a conflict of interest. However, the designation permitted in this section and GRAPP is the standard method of appointing presiding officers in administrative matters in the Commonwealth. By way of example, both the PUC through 52 Pa. Code § 5.481, and the Gaming Control Board through 58 Pa. Code § 491a.7 have promulgated regulations providing for the same process. The commentator also seems to have raised the same issue as to § 1005.182, although without specific comment. We believe this response applies to each reference by the commentator.

§ 1005.182. Qualifications.

Section 1005.182 identifies the mandatory qualifications an individual must possess in order to act as a presiding officer. Commentators raised concerns about the selection process and potential limitations of due process related to the Authority's use of presiding officers and their qualifications. We incorporate our response to comments to §§ 1001.10 and 1005.181.

§ 1005.183. Disqualification of a presiding officer.

Section 1005.183 provides procedures related to the presiding officer disqualification process. Subsection (e) has been amended to reflect the editing of former § 1005.132 (relating to petition for interlocutory Authority review and answer to a material question) and note the replacement of that section with § 1005.131 (relating to interlocutory review generally).

§ 1005.184. Authority of presiding officer.

Section 1005.184 provides for the general powers of hearing officers related to proceedings. A new subsection (b) has been added to clarify that the presiding officer is authorized to adjudicate each proceeding and each decision of a presiding officer will be considered a recommended decision as provided in § 1005.201, for purposes of further review, except as provided in section 5705 (a) of the act. Former subsection (b) has been re-identified as subsection (c) solely to accommodate the addition of the new subsection (b).

§ 1005.185. Restrictions on duties and activities.

Section 1005.185 requires a presiding officer to conduct themselves in a manner consistent with their position and prohibits unauthorized *ex parte* communications. The language of subsection (b) used in the proposed regulation was based on the PUC regulation 52 Pa. Code § 5.484, but was not identical. In order to address confusion expressed by some commentators regarding the ability of a presiding officer to engage in *ex parte* communication, we have decided to incorporate the exact language used by the PUC. We believe this will address concerns that the Authority was attempting to create new avenues for such *ex parte* communication, which was not our intent. It was necessary to change subsection (c) to note that subsections (a) and (b) supersede GRAPP.

§ 1005.186. Manner of conduct of hearings.

Section 1005.186 describes how hearings are to be conducted and explains how a presiding officer may deal with a party's disregard for applicable rules.

§ 1005.187. Unavailability of presiding officer.

Section 1005.187 provides for substitution in the event a presiding officer becomes unavailable.

Subchapter F. BRIEFS

§ 1005.191. Content and form of briefs.

Section 1005.191 describes what must be included in a brief, how briefs should be written, and how exhibits should be reproduced.

§ 1005.192. Filing and service of briefs.

Section 1005.192 provides a reference to the section that explains how service of briefs should be made, describes the number of copies of briefs that must be filed, explains what types of briefs may be filed by various parties, provides the deadline for various briefs, and explains how late-filed briefs will be handled.

Subchapter G. RECOMMENDED DECISIONS AND APPEALS

RECOMMENDED DECISIONS

§ 1005.201. Recommended decisions generally.

Section 1005.201 describes when recommended decisions will be utilized and explains that this subchapter applies only to proceedings dealing with recommended proceedings.

§ 1005.202. Certification of record without decision.

Section 1005.202 explains when a record can be certified without a decision.

§ 1005.203. Appeal hearings.

Section 1005.203 provides that in the event a matter is before a presiding officer, either upon assignment by the Authority or upon appeal by a party, any hearing conducted in order to develop evidence will be conducted as provided in Subchapter B of Subpart A, which is the standard hearing process. These appeal hearings will be conducted in furtherance of a person's request for review of actions by the staff or upon assignment of the Authority. *See* § 1005.24. This section does not deal with exceptions filed to decisions of a presiding officer, which is addressed in § 1005.211. A commentator appears to have questioned the propriety of the Authority's further review of actions made by other Authority staff and appears to suggest that a non-Authority office or position should hear these matters. We incorporate our response to § 1005.181 (relating to designation of presiding officer) and note again that the use of agency officials to adjudicate agency matters is a standard administrative practice in the Commonwealth.

§ 1005.204. Briefs and oral argument before presiding officer.

Section 1005.204 provides circumstances in which the disposition of a proceeding does not require a hearing to develop an evidentiary record and when briefs may, instead be used.

EXCEPTIONS TO RECOMMENDED DECISIONS

§ 1005.211. Exceptions to recommended decisions.

Section 1005.211 provides for the filing of exceptions to recommended decisions of presiding officers and the procedure associated with such filings.

(c). Subsection (c) provides guidance on the form and content of exceptions and prohibits the filing of briefs, either in support of or opposing the exceptions. A commentator suggested that the prohibition of the filing of briefs in this context is inconsistent with the authorization for the filing of replies to exceptions found in § 1005.212 (a) (relating to replies). A response to a concise exceptions pleading is not the same as a brief in support of the response; therefore, there is no inconsistency.

§ 1005.212. Replies.

Section 1005.212 explains when a party has a right to file a reply to an exception, how long the party has to file it, what form the reply should take, what may be contained in the reply, and how the reply should be written.

§ 1005.213. Final orders and effect of failure to file exceptions.

Section 1005.213 explains how a decision becomes a final order of the Authority.

§ 1005.214. Oral argument before the Authority.

Section 1005.214 explains how a request for oral argument shall be made in different situations. A typographical error in subsection (b) by adding the word "the" before the term "recommended decision".

§ 1005.215. Withdrawal of appeals.

Section 1005.215 explains that the filing of exceptions to recommended decisions will be deemed to be an appeal, that appeals may be withdrawn, and how a decision is affected by a withdrawal.

Subchapter H. REOPENING, RECONSIDERATION AND REHEARING

§ 1005.221. Reopening prior to a final decision.

Section 1005.221 explains when a party may file a petition to reopen a proceeding, what must be contained in such a petition, how other parties may react to such a petition, and the circumstances under which such a petition will be granted.

§ 1005.222. Petitions for relief.

Section 1005.222 explains how petitions for relief should be formatted and what should be included in such petitions, who must receive copies, the amount of time parties have to file, the amount of time parties have to file answers to such petitions, and how such petitions affect the period for appeal. The word "agency" was deleted and replaced with the more specific "Authority" in subsection (e) of the final-form regulation.

Subchapter I. REPORTS OF COMPLIANCE

§ 1005.231. Reports of compliance.

Section 1005.231 explains that regulated persons required to perform an pursuant to an order of the Authority or a certificate of public convenience or other right must file notice that they have or have not complied and the amount of time parties have to do this.

§ 1005.232. Compliance with orders prescribing rates.

Section 1005.232 explains how regulated persons must comply with orders prescribing rates. A commentator suggested that taxicab drivers should be able to file tariffs. There is no provision in the act for such a filing and we believe that to try and develop such a process may be inconsistent with the act. However, we note that section 5720 (c) does permit drivers to petition the Authority to conduct rate investigations in a manner consistent with that section.

Subchapter J. APPEALS TO COURT

§ 1005.241. Notice of taking appeal.

Section 1005.241 explains to whom parties must give notice of appeal of an Authority order.

§ 1005.242. Preparation and certification of records.

Section 1005.242 explains when a record will be certified as complete. A commentator suggested that this language was confusing and might result in the rendering of a decision and order without a closed record. We see no connection between the language of this section and the interpretation of the commentator. This section has been in use by the PUC under the same title for some time and has not caused the concerns suggested by the commentator. *See* 52 Pa. Code § 5.632.

§ 1005.243. Certification of interlocutory orders.

Section 1005.243 explains that in a party may motion for immediate appeal to the Commonwealth Court, the amount of times parties have to make this motion, when the motion is deemed denied, and cites to the section that governs the procedure for this motion.

Subpart B. TAXICABS

CHAPTER 1011. GENERAL PROVISIONS

§ 1011.1. Purpose.

Section 1011.1 explains that the purpose of this subpart is to establish and prescribe Authority regulations and procedures for taxicab service in Philadelphia.

§ 1011.2. Definitions.

Section 1011.2 provides definitions primarily applicable to the taxicab subpart of this rulemaking. IRRC commented that each subpart of the final rulemaking should contain a definition section identifying terms used in that section and that the terms should be consistent throughout the rulemaking. We agree with IRRC and have attempted to reduce, as much as practical, the use of definitional language outside of the definition sections. Several terms in this section have been amended and others have been added, including those referenced in our response to § 1027.2 (relating to transferable rights). Other additions or changes to this section are set forth below.

Several terms have been added to this provision in response to a comment by IRRC and as more fully addressed in our response to § 1001.10 (relating to definitions).

"Call or demand service." This term has been amended to delete the word "either" and the phrase "or a nonexclusive". This correction was necessary in order to make this definition consistent with both the revisions to § 1011.19. (relating to exclusive service) as referenced later in this response and current taxicab service practices in Philadelphia, which permits only exclusive taxicab service. This regulation will maintain the status quo in Philadelphia.

"*Common carrier."* IRRC commented that this term, as defined in this section, is vague and appears unnecessary in light of definitions provided in sections 5701 and 5703 (g) of the act. IRRC has indicated that this term inappropriately includes the transportation by rail, water and air and notes that such transportation is outside of the Authority's jurisdiction. We have edited this term to address IRRC's comment and to reference the act instead of the PUC's enabling act.

"Limousine certificate." We have added this term to this section to be consistent with our response to comments provided in § 1051.2, which we incorporate here.

"Broker." The Authority agrees with IRRC's comment regarding the need to consistently define the term "broker". That definition has been made consistent throughout the final form regulations. The process to become a broker is found at Chapter 1029, which is in this taxicab subpart. Because brokers will be cross trained to handle both taxicab and limousine matters, Subpart C, which deals primarily with limousines, adopts the process in Chapter 1029 when referencing brokers in the limousine subpart. Nevertheless, the definition of "broker" in Subpart C will deviate from the definitions in Subparts A and B only in that reference will be made to Chapter 1061 as opposed to Chapter 1029. We believe that minor distinction will not create confusion and will be consistent with the Authority's attempt to simplify the reading of the regulations by providing a clear line of distinction between most taxicab and limousine matters. Because the term broker employs the use of the term "transferable rights" that term has been added to definition sections 1001.10, 1011.2 and 1051.2.

"Sale." The term "sale" was defined in § 1027.2 of the proposed regulations and will appear in this section of the final-form regulations because it is used in the term "transferable rights". In a comment to § 1027.2, IRRC questioned the meaning of "securities" and "other ownership interests". In order to clarify this definition we have adopted the definition of "securities" used in the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-101—1-703), as the

Gaming Control Board recently did at 58 Pa. Code §401a.3. To add further clarity, we have deleted the phrase "other ownership interests" from the definition as previously provided in § 1027.2 because we believe the term "securities" is sufficient to identify the potential subjects of a sale.

"Transfer fee." The term "transfer fee" was defined in this section of the proposed rulemaking in a manner consistent with the definition in § 1051.2 (relating to definitions), but differently from the manner in which the term was more precisely defined in § 1027.2. Therefore, "transfer fee" has been amended in this section of the final regulation to reflect the definition provided in § 1027.2 of the proposed regulation. That term is now defined consistently throughout the final form rulemaking.

"Key employee." IRRC commented as to the term "key employee" and noted that the following language was unclear: "other entity identified by the Authority". We agree with IRRC and have deleted that phrase. This term has been amended to clarify that it applies to applicants and regulated persons. We believe this change should eliminate the potential confusion noted by IRRC.

IRRC commented as to the term "regulated person" and suggested that the phrase "this part, or an order of the Authority" be deleted because reference to the act is sufficient. We agree with IRRC's comment and have made the requested changes. We have also added the term "or regulated party" to the defined term to address the alternating use of those common terms in the final form regulations.

"Rights." IRRC also questioned the meaning of the phrase "other authorization" in the definition of "rights". We have amended this term by deleting that phrase and including the terms "waiver" to the identified list of "rights" regulated parties may hold. The term "broker" has been deleted because it unnecessarily narrowed the scope of the term "registration". For example, large vehicle's will be registered with the Authority as provided in § 1053.43. We believe these amendments will address IRRC's concern about the specificity of this term. This definition is consistent throughout the regulations.

"Taxicab" and "taxicab service." IRRC commented that the definitions of "taxicab" and "taxicab service" in this section were inconsistent because the definition of "taxicab" included the specific wheelchair accessible taxicab classification, but "taxicab service" did not. We agree with IRRC's comment and have modified the language in each definition to include

medallion taxicab, partial rights taxicabs and "any other vehicle authorized by the Authority to provide call or demand service". This broadened definition will encompass all of the classes of taxicab service authorized in the final rulemaking and will be sufficient to address any new classification of taxicab or taxicab service that may be created through legislation in the future.

"Partial-rights taxicab." The partial-rights taxicab concept in Philadelphia is both long established and counterintuitive; therefore, we will provide some background information about this uniquely benefited segment of the Philadelphia taxicab industry. The term "partial-rights taxicab" has evolved over the decades and is the term employed within the Philadelphia taxicab community for service referenced by the act as "limited service"[17] or taxicabs "authorized to provide service to designated areas within cities of the first class on a non-citywide basis…"[18]. We will use the term "partial-rights taxicab" because that is the term used by the regulated community. The Authority has also used that term in its regulations and orders since 2005.

A partial-rights taxicab operates through a certificate of public convenience issued by the PUC for <u>suburban</u> Philadelphia taxicab service. For varying reasons over time, the PUC permitted a handful of suburban taxicab companies[19] to provide service within certain designated geographical boundaries of Philadelphia, in addition to their suburban areas. These taxicabs may provide unlimited service within their respective geographical area of the Philadelphia and may provide service <u>throughout</u> <u>Philadelphia</u>, provided one point of the trip begins or ends in the partial-rights area. Partial-rights taxicabs may be seen providing service everyday throughout all of Philadelphia. Therefore, these taxicabs unquestionably impact the public's perception of the Philadelphia taxicab industry.

By way of example, because of the overlapping nature of the jurisdictions of medallion and partial-rights taxicabs, an individual can walk out of the front door of their Philadelphia home in the morning and hail a taxicab for a ride to work in Philadelphia without knowing if the taxicab is a partial-rights taxicab or a medallion taxicab. It is certainly reasonable to presume that this scenario plays out everyday. If different regulatory agencies regulated these Philadelphia taxicabs based solely on the medallion/partial rights distinction, as some have suggested, passengers will not know which rules or rates will be followed by the taxicab that

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[17] 53 Pa.C.S. § 5711 (c) (2).
[18] 53 Pa.C.S. § 5714 (d) (2).
[19] The act authorizes the Authority to continue no more than five partial-rights taxicab certificates and prohibits the expansion of those existing certificates or the creation of new ones. 53 Pa.C.S. § 5711 (c) (2).

responds to the hail. Nor will passengers be certain as to which regulating agency to report complaints about taxicab service. A regulatory scheme of that nature would needlessly confuse the public and be patently inconsistent with the Authority's mandate to develop "a clean, safe, reliable, and well regulated taxicab and limousine industry" in Philadelphia. 53 Pa.C.S. § 5701.1 (2).

We also note that partial-rights taxicabs are operated in Philadelphia <u>without the need to purchase a medallion</u>, which creates a significant economic advantage. It is worth noting that the purchase of 1 medallion entitles the owner to operate one taxicab, whereas a partial-rights taxicab certificate holder may operate an unlimited number of taxicabs in Philadelphia. Indeed, one partial-rights taxicab company operates approximately 100 taxicabs in Philadelphia.

In its Comment No. 5 to the proposed regulations, IRRC requested clarification of the Authority's power to regulate partial-rights taxicabs in Philadelphia; other commentators have raised this same issue. Until 2005, the PUC regulated all taxicab service in Pennsylvania, including medallion and partial-rights taxicabs in Philadelphia, when regulatory oversight over all taxicab service in Philadelphia was transferred to the Authority from the PUC pursuant to the act. *Notice of Transfer of Regulatory Oversight*, 35 Pa. B. 2087, 2189 (April 9, 2005).

Pennsylvania legislative history and statutes clearly establish that the Authority's taxicab and limousine regulations apply to both medallion and non-medallion taxicab carriers in the City of Philadelphia.[20] In 2009, the Pennsylvania Supreme Court concluded the act was intended to be a comprehensive system of regulation for taxicabs and limousines operating in Philadelphia. *See Blount v. Philadelphia Parking Authority*, 965 A.2d 226, 232 (Pa. 2009) ("The Authority is responsible for the high volume Philadelphia area while the PUC is responsible for the remaining parts of the Commonwealth"). *See also*, 53 Pa. C.S. §§ 5505(d)(23) (the Authority is empowered "to act as an independent administrative commission for the regulation of taxicabs and limousine service" in Philadelphia), 5505(d)(24) (the Authority is empowered "to investigate and examine the condition and management of any entity providing taxicab and limousine service" in Philadelphia), 5701 through 5745.

Through the act, the Legislature took care to add a number of new phrases which demonstrate its intent that the Authority should regulate both medallion and non-medallion

[20] The City of Philadelphia ("Philadelphia" or "City") is the only city of the first class in the Commonwealth. *See Philadelphia Ent. & Dev. v. City of Philadelphia*, 939 A.2d 290, 292 (Pa. 2007).

(partial-rights) taxicabs. For instance, the Legislature changed section 5703 (a) of the act from, "Every rate made, demanded or received by a taxicab or limousine service shall be just and reasonable and in conformity with regulations or orders of the authority" to "Every rate made, for authority-certified taxicab, limousine or medallion taxicab service shall be just and reasonable and in conformity with regulations or orders of the authority." In subsequent subsections of section 5703, the Legislature did not repeat these modifying phrases. If the Legislature did not intend for the reader to read taxicab as including both authority-certified and medallion taxicabs, then it would not make sense for the Legislature to add this designation at the beginning of section 5703 and not distinguish elsewhere in the same section which type of service the subsection regulates.

Another change which reflects the Legislature's intent to include the Authority's regulation of partial-rights taxicab service and its ability is the addition of "and no more than five certificates of public convenience for limited service" to section 5711 (c)(2) which now states, "The authority is authorized to issue a maximum of 1,600 certificates of public convenience for taxicab service and no more than five certificates of public convenience for limited service in any city of the first class." Finally, the Authority's power to regulate partial-rights taxicabs was clearly established when the Legislature added the phrase "through the authority" to the end of the first sentence of section 5714 (d) (2) which originally read, "Carriers currently authorized to provide service to designated areas within cities of the first class on a non-citywide basis shall retain their authorization." These changes indicate the Legislature's intent to treat the term "taxicab" as if it applies to both partial-rights and medallion taxicabs.[21]

Section 5714 (a) of the act provides that taxicabs authorized to provide "citywide" service in Philadelphia must have a certificate of public convenience and medallion issued by the Authority.[22] This Authority certification requirement also clearly applies to non-medallion

[21] Indeed section 5701 of the act defines "taxicab" as follows: "[a] motor vehicle designed for carrying no more than eight passengers, exclusive of the driver, on a call or demand basis and used for the transportation of persons for compensation." This definition unequivocally encompasses both medallion taxicabs and partial-rights taxicabs.

[22] Section 5714(d)(1) of the act identifies what taxicab service may be provided in Philadelphia without a certificate of public convenience issued by the Authority. Under that subsection, a PUC-certificated taxicab may transport persons to Philadelphia. 53 Pa. C.S. § 5714 (d) (1) (i). Once in Philadelphia, such PUC-certificated taxicabs can only transport persons in Philadelphia to a destination outside of Philadelphia. 53 Pa. C.S. § 5714 (d) (1) (ii). And their ability to transport outside of Philadelphia is further limited to the situations where a request for such transportation is received by call to its radio dispatch service, as opposed to a street hail. *Id.*

taxicabs[23] which are authorized to provide call or demand service on a limited or non-citywide basis in Philadelphia. *See e.g.*, 53 Pa. C.S. §§ 5711(c) (issuance of "limited service" certificates of public convenience), 5714(d) (2) ("service to designated areas within cities of the first class on a non-citywide basis non-city service").

By its terms, Chapter 57 of Title 53 applies to both medallion and non-medallion taxicabs. Consistent with the definition of "taxicab" provided in section 5701, various sections of Chapter 57 refer to the operation of "taxicabs" in Philadelphia without restricting their effect to medallion taxicabs or to non-medallion taxicabs. *See e.g.*, 53 Pa. C.S. §§ 5701.1 (legislative findings), 5702 (advisory committee), 5703(b) to (h) (concerning rates and tariffs), 5704 (power to require insurance), 5705(b) (commencement of complaints), 5706 (driver certification program), 5705 (budget and fees), 5708 (fund), 5711(c)(1) (issuance of certificate of public convenience), 5711(c)(4) (temporary certificates of public convenience), 5711(c)(5) (transfers of certificates of public convenience), 5714(a) (vehicle age requirement), 5714(b) (protective barrier), 5714(c) (vehicles authorized to service Philadelphia), and 5714(g) (impoundment of vehicles). Thus, when read as a whole, Chapter 57 demonstrates that the term "taxicab" is intended to include *both* (a) medallion taxicabs *and* (b) non-medallion taxicabs.

Under Chapter 57, the Authority "may prescribe such rules and regulations as it deems necessary to govern the regulation of *taxicabs* within" Philadelphia. 53 Pa. C.S. § 5722 (emphasis added). Because they are "taxicabs" as defined by Chapter 57, both medallion taxicabs and partial-rights taxicabs are the proper subject of the Authority's regulations. In order to achieve our legislative mandate, the Authority's regulations clearly must include the inspection of vehicles and vehicle safety and appearance requirements. *See* 53 Pa. C.S. § 5701.1(2) (wherein the General Assembly directs the Authority to focus on the "development of a clean, safe, reliable and well-regulated taxicab and limousine industry" in Philadelphia).

It should also be recognized that the PUC has expressed its intention (consistent with the act) to transfer regulatory oversight of partial-rights taxicabs to the Authority. In 2005, the PUC and the Authority entered into an agreement to effectuate the transfer of regulatory oversight, as required by Section 22 of the act (which provides that the PUC and the Authority are empowered

[23] Non-medallion taxicabs are also known as "partial rights" or "partial authority" taxicabs. *See Germantown Cab Co., v. Philadelphia Parking Authority*, 993 A.2d 933, 936, at n. 6 (Pa. Commw. Ct. 2010), *appeal granted*, 14 A.3d 821, 2011 Pa. LEXIS 425 (Pa. 2011); *Jurisdictional Agreement Pursuant to act 94 of 2004*, 35 Pa. B. 1649, 1737 (March 12, 2005).

to resolve by mutual agreement any jurisdictional issues associated with the transfer). This Jurisdictional Agreement provides, in the relevant part, as follows:

> Currently, there are carriers authorized to provide taxicab service to designated areas within Philadelphia on a non-city wide basis. Section 11 of Act 94 provides that the PPA has jurisdiction over these carrier's operations within Philadelphia. These carriers also hold authority from the Commission to serve designated areas outside Philadelphia. The Commission and the PPA agree that service provided under dual authority to/from points within the PPA authorized area (in Philadelphia) to/from points within the Commission authorized area (outside Philadelphia), will be regulated by the PPA.

See Jurisdictional Agreement Pursuant to Act 94 of 2005, 35 Pa. B. 1649, 1737 at ¶ 2 (concerning partial authority taxicabs) (March 12, 2005). In the jurisdictional agreement "PPA" is identified as an acronym for Philadelphia Parking Authority.

In its Comment No. 5, IRRC also sought the Authority's response to the assertions of some partial-rights taxicab companies that they are "unfairly" subject to the dual regulation of both the Authority and the PUC.[24] The act requires dual regulation of taxicab and limousine certificate holders who wish to provide service both between points in Philadelphia and between point in the Commonwealth, but outside of Philadelphia. Section 5714 (d) (1) identifies the limited service rights in Philadelphia of taxicabs that are only certificated by the PUC. Section 5741 (a.3) identifies the limited service rights in Philadelphia of limousines that are only certificated by the PUC.[25] In the event those PUC certificate holders wish to provide service in Philadelphia, they need to obtain the Authority's approval. *See* 53 Pa.C.S. §§ 5714 (a) and 5741

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[24] This analysis also applies to dual regulation of certain PUC certificated limousines.

[25] Indeed, the Legislature intentionally eliminated the ability of limousines to pick up customers at Philadelphia airports, train stations and hotels even if the service destination point is outside Philadelphia. *See* 53 Pa.C.S. § 5741 (a.3). This is a significant departure from standard common carrier geographical service area limitations, which generally permit a certificated taxicab or limousine to provide service so long as either the point of origin or destination (or both) is within the carrier's approved service area. By prohibiting PUC limousine and airport shuttle service providers from accessing customers at Philadelphia's airports, train stations and hotels, the Legislature clearly anticipated that those service providers would obtain Authority authorization to continue to provide that service.

(a). In other words, they must submit to a level of dual regulation.[26] As referenced above, the Authority's mandate in the act is to develop "a clean, safe, reliable, and well regulated taxicab and limousine industry" in Philadelphia. 53 Pa.C.S. § 5701.1 (2). We are constrained by our statutory obligations to implement the regulations we believe will advance this mandate, regardless of the rules and regulations of other government agencies.

Partial-rights taxicab certificate holders are free to self-designate taxicabs as Authority or PUC only, in which case those taxicabs would not be subject to dual regulatory requirement. However, most partial-rights taxicab certificate holders opt to cross-designate their taxicabs to maximize the economic benefit of being able to operate inside and outside of Philadelphia. To the extent partial-rights taxicab companies choose to provide service within Philadelphia, they must adhere to the Authority's regulations and standards applicable to Philadelphia taxicab service. We do not believe this is an unfair requirement, nor is it inconsistent with the act.

In its Comment No. 5, IRRC also noted the assertion of a partial-rights taxicab certificate holder that the Authority is powerless to revoke or cancel partial-rights taxicab certificates. We disagree and incorporate here our response to this issue provided in § 1011.3 (b).

In its Comment No. 5, IRRC also noted the assertion of a partial-rights taxicab certificate holder that the Authority may not allocate expenses between medallion and partial-rights taxicab carriers. As we have noted above, the act defines the term "taxicab" in a manner that encompasses both medallion and partial-rights taxicabs. Section 5707 of the act establishes the procedures related to the creation of annual budgets and fee schedules by the Authority. Section 5707 is silent as to any distinction between medallion taxicabs and partial-rights taxicabs. More noteworthy is the complete lack of that distinction in section 5708 (a) of the act, which creates a "taxicab account" and a "limousine account" for purposes of maintaining funds delivered to or collected by the Authority in relation to those distinct service providers. As noted above, the Legislature evidenced an ability to distinguish between medallion taxicabs and partial-rights taxicab in the act. However, in terms of developing budgets, establishing fees, and allocating and spending revenue, the act does not make that distinction and instead uses the defined term "taxicabs".

[26]The act specifically exempts revenue generated through Philadelphia taxicab and limousine service from assessment by the PUC. *See* Section 22 (4.1) of the act.

The act clearly does not anticipate a need to allocate between medallion taxicab and partial-rights taxicab service, nor do we. In the eyes of the public these services are identical. Although the scope of service that they can provide in Philadelphia is different, the service itself is the same and is largely treated the same by the act. We believe that our ability to regulate all of the taxicab service in Philadelphia is crucial to obtaining the goals established by the Legislature and that any requirement to separate funds based on medallion or partial-rights service would needlessly complicate an already challenging regulatory landscape.

A commentator noted the definition of partial-rights taxicab and suggested that it is not expansive enough to cover the true meaning of those few service providers authorized to operate that type of service. We disagree. The definition of this term directly references sections 5711 (c) (2) and 5714 (d) (2) of the act, which specifically addresses the Authority's power to regulate partial rights taxicabs and which sets forth parameters of this "non-citywide" taxicab service.

A commentator also suggested that the Authority has limited the service area rights of any partial-rights taxicab company; however, that is not the case and we have not been directed to any provision of the proposed regulations that may have caused that result.

"Wheelchair accessible taxicab." This definition has been deleted in the final-form regulation because it is no longer used in the regulations. The original purpose of defining this type of vehicle had been to encourage the use of these vehicles through the relaxing of proposed taxicab age and mileage limitations. The Democratic Chairperson of the House Urban Affairs Committee and other commentators also noted the lack of an adequate incentive to taxicab owners to use wheelchair accessible taxicabs. However, as result of the changes requested by most commentators to §§ 1017.3 and 1017.4, there is no room under the statutory vehicle age cap for any type of age exemption incentive for wheelchair accessible taxicabs.

While we understand that a very proactive medallion owner is aggressively planning to address this very issue in regard to its substantial fleet of taxicabs, we are dissatisfied with the failure of most of the taxicab market in Philadelphia to address this need on its own, despite the very large gains in medallion values over the past several years. There is no evidence that medallion owners have applied any portion of that unprecedented gain in medallion equity to benefit taxicab service in Philadelphia or any other public need, including those of the disabled community.

In 1991 the average medallion price was $17,023.20; by 2004 that average price rose to only $60,342.10. Since the Authority assumed regulatory control of medallion taxicabs in 2005 the price of medallions has increased beyond the $300,000 mark. Many medallion owners have simply cashed in those profits through the sale of their medallions, while others permit that equity to sit unused. This, despite the fact that the medallion program was developed to provide medallion owners with the "opportunity to upgrade and improve the operations of taxicabs." 53 Pa.C.S. § 5712. Many of those medallion owners now look to the Authority and assert that our failure to provide an "adequate" incentive to them is the reason for the lack of wheelchair accessible taxicabs in Philadelphia.

This is a complex issue and the Authority will pursue a separate rulemaking process dedicated to this subject. We will also look to the Legislature for authorization to issue new medallions or other certificates of public convenience for dedicated wheelchair accessible taxicab use.

A typographical error was corrected in the definition of the term "Manager of Enforcement" by deleting the word "named" and correcting the contact email address by adding the letter "a". It was also necessary to correct a typographical error in the email address for the Manager of Administration by adding the same letter "a". These email address corrections were also made in § 1051.2.

§ 1011.3. Annual rights renewal process.

Section 1001.3 provides the process through which the Authority will annually review the status of specified rights, review the renewing person's continuing eligibility to hold the rights and process assessment and renewal fees in conjunction with § 1011.4 (relating to annual assessments and renewal fees). For example, if the state issued driver's license of a taxicab driver is in a suspended or revoked status or if a driver or owner has been convicted of a felony in the last year, the renewing party may be denied the requested renewal. Failure to timely participate in the renewal process may lead to enforcement actions.

IRRC noted the comment of one commentator suggesting that the Authority issue a notice to drivers 90 days before the driver's certificate is under review. We agree that a notice of this nature may be of assistance in certain situations and will consider including it in our standard operating procedures. We will consider adjustments to future budgets that will be necessary to

fund a process of tracking and mailing notices to thousands of drivers throughout the year. We do expect all regulated parties to remain aware of the status of their rights on their own, particularly when the expiration date is printed on the license and the license is carried and displayed for public review by the driver everyday. Similarly we note the comment of the Democratic Chairperson of the House Urban Affairs Committee suggesting the designation of an ombudsman to serve as a primary point of contact between the regulated industry and the Authority. While we do not have a position budgeted specifically for this purpose, one of the primary goals of the Director of the TLD is to maintain an open-door policy and continually meet with different segments of the regulated industries to address concerns. While we do believe that the Director has served that goal well since 2005, he will redouble his efforts to achieve that goal and make certain that all regulated persons understand that they have a voice in the Authority's regulatory process.

(a). Subsection (a) provides the dates that the Authority will consider rights expired for failing to complete the annual renewal process provided for in this section. Commentators questioned propriety of the term "expire" in this section. The Authority employs the term "expire" to identify rights that have failed to comply with annual renewal or assessment requirements of the act or the regulations by an appointed time. This term has been in use in this context in Philadelphia since 2005 and is understood by the regulated industries. This section does not declare a certificate invalid or forever lost to the certificate holder upon "expiration". Although, as noted above, failure to timely participate in the annual review process or to pay annual assessments and renewal fees as required by § 1011.4 may result in enforcement actions. Through the enforcement process a certificate could be subject to penalties, including, but not limited to, being placed out of service. We believe the use of the term expire is appropriate. We also note that the act requires the Pennsylvania Department of Transportation to confirm that a certificate of public convenience has not been "revoked or has not expired[.]" before registering any taxicab. 75 Pa.C.S. § 1305(b) (emphasis added). Clearly, the Legislature understands that certificates are capable of expiring.

We also believe the term "renewal" as used in this subsection is appropriate and easy to understand. The term does not implicitly or actually cause any substantive deprivation of rights. This annual process of filing documents, conducting reviews of the status of rights and paying annual fees in order to remain in compliance with the act and the Authority's regulations in

common throughout regulatory circles and can reasonably be referred to as a renewal. We decline to change this commonly understood term, which has also been in use in Philadelphia without issue for 8 fiscal years.

(a)(1). IRRC questioned why certificates expire on June 30 of each year and the reasonableness of this deadline. This requirement does not apply to drivers.

The Authority's fiscal year for its taxicab and limousine division begins on July 1 of each year. While a temporary increase in review activity among Authority staff will occur, we believe that the value of having all certificate holders recertified before the occurrence of a new fiscal year represents an orderly, efficient and easily anticipated regulatory process. This process has worked well in Philadelphia for the last six years. Certificates are spread among hundreds of persons; therefore, while any renewal process will require some effort by the parties affected, the Authority's staff bears the burden of this increased level of filings.

(a)(2). Subsection (a) (2) provides that a taxicab driver's certificate will expire 1 year from that date it is issued or renewed. We incorporate our response regarding the reason for this annual expiration provided in our response to comments to (c) (3) (iv) below. A typographical error has been corrected in this subsection by changing the word "expired" to expire".

(a)(4). Subsection (a) (4) sets a default expiration date for rights not specifically identified in this section, including rights issued through a waiver. The default expiration only applies if a specific expiration date is not set in the Authority order authorizing the rights. IRRC submitted several comments in relation to the need for this provision and manner in which it will be implemented. In order to address IRRC's concern we will delete this subsection and set forth expiration dates and renewal procedures in waiver orders, when deemed necessary.

(b). Subsection (b) provides that expired rights will be placed out of service by the Authority, through the enforcement mechanism provided for in § 1003.32 (relating to out of service designation). In order to be consistent with our comments in subsection (a) above we have removed the words "and cancelled" from paragraph (1).

In its Comment No. 5, IRRC noted that some commentators have questioned the power of the Authority to cancel or revoke certificates of public convenience issued to non-medallion taxicabs for violations of the act or the Authority's regulations. In this regard non-medallion taxicab certificate holders are no different than holders of other rights issued by the Authority. Non-medallion taxicabs are expressly required to obtain a certificate of public convenience

granted by the Authority as a prerequisite to operations in Philadelphia. *See* 53 Pa. C.S. §§ 5711 (c) (2), 5714 (d) (2). The certificates of public convenience issued by the Authority to non-medallion taxicabs are not permanent rights. They are a licensing right, like all other certificates of public convenience issued by the Authority. *See* 53 Pa. C.S. §§ 5706, 5713(b), 5741.1. *See, e.g., Paradise v. Pennsylvania Public Utility Commission*, 132 A.2d 754 (Pa. Super. 1957); *Highway Express Lines, Inc. v. Pa. P.U.C.*, 169 A.2d 798 (Pa. Super. 1961).

The Authority has broad authority to affect the legislative intent, and is empowered, not only to amend, but even to revoke or cancel certificates of public convenience to operate a taxicab previously granted by the Authority. *See, e.g*., 53 Pa. C.S. §§ 5505(17), 5505(23), 5505(24), 5706, 5711, 5741.1; *Insurance Federation of Pennsylvania, Inc. v. Department of Insurance*, 889 A.2d 550 (Pa. 2005); *Snyder v. Public Utility Commission*, 144 A.2d 468, 470 (Pa. Super. 1958). It follows that so long as an agency retains jurisdiction over a controversy, it may revise its adjudications. *See* Pa. R.A.P. 1701(b) (authority of a trial court or agency after appeal. Under Section 5711(c), a certificate of public convenience to provide taxicab service within Philadelphia shall be granted by order of the Authority - if the Authority finds or determines that the applicant is capable of providing dependable taxicab service to the public according to the rules and regulations of the Authority. 53 Pa. C.S. § 5711(c) (1). The Authority has the inherent power to amend, modify revoke or suspend its prior orders. *See, e.g., Day v. Public Service Commission, 167 A. 565 (Pa. 1933) (*a privilege to approve implies the power to revoke has been recognized in other jurisdictions); *Office of Disciplinary Counsel v. Czmus*, 889 A.2d 1197 (Pa. 2005) (inherent power to revoke a license granted in the first place). In other words, the Authority has full power to amend, revoke or cancel a certificate granted, as it has to grant it, upon due cause being shown.

The comments suggest that once a certificate of public convenience is granted by the Authority to a non-medallion taxicab certificate holder, such a right becomes a vested property interest of the taxicab company and therefore, inviolate. This is contrary to the nature of the certificate of public convenience which is regarded as a privilege held and not a right. It is axiomatic that a certificate of public convenience is not grounded in contract or property rights, but grounded in the privilege afforded to the enterprise pursuant to legislative delegation to this Authority. *See, e.g., Pennsylvania Public Utility Commission v. Zanella Transit, Inc*., 417 A.2d 860, 861 (Pa. Cmwlth. 1980) ("a certificate of public convenience is a privilege, not a contract or

a property interest under which the holder acquires vested rights.”). It is also contrary to the statutory provisions in Chapter 57 relative to the Authority’s broad discretion to conditionally grant certificates of public convenience. *See, e.g.*, 53 Pa. C.S. §§ 5706, 5711(c)(1), 5711(c)(6), 5741, 5741.1.

The General Assembly did not create a property interest in the certificate of public convenience issued by the Authority to non-medallion taxicabs certificates. Nor did the General Assembly confer a right upon non-medallion taxicab certificate holders not to have their certificate cancelled or revoked by the Authority for due cause. Therefore, it is reasonable to conclude that the General Assembly intended for non-medallion taxicab certificates to be treated the same as certificates issued to medallion taxicabs. That is, that they are a licensing right. Further, the position of the commentator does not consider that the same statutory authority which confers upon the Authority the power to grant a certificate of public convenience in the first instance, further confers power upon the Authority to rescind and/or amend certificates. The power to rescind or amend, unlike the power to grant a certificate, is not linked to the need for any affirmative act on the part of the certificate holder. *See, e.g., Day v. Public Service Commission,* 167 A. 565 (Pa. 1933) (a driver's taxicab certificate of convenience was properly revoked for violations by the driver because the certificate did not vest an indefeasible property right in the driver and could be revoked by administrative procedures). Also, a certificate of public convenience may be considered abandoned upon proper showing. 53 Pa. C.S. § 5711(c)(3); *See also, Borough of Media v. Pennsylvania Public Utility Commission*, 419 A.2d 215 (Pa. Cmwlth. 1980), *affirmed*, 456 A.2d 540 (Pa. 1983).

The Authority’s decision to revoke or cancel a certificate of public convenience would constitute an “adjudication” for purposes of the Administrative Agency Law because it would impact the “privileges” of the holder of the certificate. *See, e.g.*, 2 Pa. C.S. § 101 (definition of adjudication), 45 P.S. § 1102 (same). *See also Pennsylvania Game Commission v. Marich*, 666 A.2d 253, 257 (Pa. 1995) (requirements of due process are not limited to the revocation of professional licenses); *MEC Pennsylvania Racing v. Pennsylvania State Horse Racing Commission*, 827 A.2d 580 (Pa. Cmwlth. 2003) (a license is a valuable privilege and may not be suspended or revoked without due process).

(c)(1). Subsection (c) (1) requires rights renewal forms to be filed with The Director of the TLD. In order to be more specific, this subsection has been changed in the final form

regulation to direct that renewal forms be submitted to the Manager of Administration. A commentator suggested that the forms employed by the Authority be made part of the final form regulations. Because the inclusion of all forms in the final form regulations would require a rulemaking to make event the most modest of changes, we decline the commentator's suggestion and will retain the flexibility to adjust the forms as necessary and appropriate.

(c)(2). Subsection (c) (2) identifies certain renewal requirements and forms applicable to the different types of service providers subject to the act. IRRC questioned the implication of the phrase "order of the Authority". In order to remove any confusion we have deleted that phrase from the final-form regulation.

(c)(3)(iv). Subsection (c) (3) (iv) requires individuals holding taxicab driver's certificates to file the required renewal form 60 days before the driver's certificate is scheduled to expire. IRRC and other commentators commented that a window of time prior to the expiration should be provided for drivers to file the renewal form, as opposed to a certain day. We agree with IRRC and have adopted its recommended language, which now requires the filing of the driver's certificate renewal form between 90 and 60 days before the expiration date printed on the taxicab driver's certificate. The Democratic Chairperson of the House Urban Affairs Committee and other commentators suggested a taxicab driver's certificate should last for 2 years, instead of 1 year. This renewal period has been 1 year since 2005 in Philadelphia and is understood and anticipated by the regulated parties. We decline to extend the expiration period for driver's certificates to 2 years, or more, as suggested by some commentators because we have found that far too many serious violations applicable to drivers (such criminal convictions and state driver's license suspensions) occur during the course of 1 year, which would not have been discovered by the Authority were it not for the annual renewal requirement. Reasonable procedures such as this annual renewal requirement assist in ensuring that taxicabs and limousines are operated by individuals who are capable of providing safe transportation services to the public. The continuance of that procedure is crucial to achieving our legislative mandate as provided in section 5701.1 (2) of the act.

(d). Subsection (d) identifies reasons the Authority will consider a renewal of rights denied, in which case the rights would be considered "expired" and subject to enforcement actions and the regulated party would have full access to administrative hearings and appeals to contest this action of staff. In some cases, this renewal process will reveal that the holder of

rights may no longer legally do so, in which case a staff denial would be issued and the regulated party will have the right to a hearing on the record as provided in § 1005.24 (relating to appeals from actions of staff). A commentator suggested that the Authority does not have the power to "renew" certificates of public convenience. We incorporate our response to subsection (a) above and note that the annual renewal process for certificate holders is reasonable and proper.

(e). Subsection (e) requires those holding rights that have been suspended to complete the renewal process outlined in this section, despite the fact that the rights may be in a suspended status at the time they are scheduled to expire. This requirement is counterintuitive, but necessary. The suspension period for rights is generally established through Authority order following an enforcement action, for that reason the terms of suspensions all vary. This section will assure that on the date the suspension period ends the subject rights will be in a current status and be capable of immediate operation without need to submit to some irregular renewal date.

IRRC and commentators questioned the application of "good cause" such as medical problems to this subsection. Because this subsection does not direct suspension or even set criteria for suspension we do not believe language eliminating the basis for such an enforcement action is necessary. Other commentators suggested that rights will be immediately and forever lost merely by failing to file annual renewal documents on time. This is not so. In the event any regulated party fails to complete the annual renewal process an enforcement action may be initiated for the failure to do so. That enforcement action incorporates all of the due process rights associated with the administrative hearing process. We incorporate our response above to questions regarding the Authority's power to order a cancellation, revocation, or suspension of rights issued by the Authority through the act.

(f). Subsection (f) was added to address IRRC's questioned about the impact of the June 30 deadline upon a party who may have been issued a new certificate only a month before the renewal deadline. We agree with IRRC's concern and have added this subsection which provides that a certificate or broker registration will not be subject to the renewal requirements of this section during the calendar year in which it is first issued. The addition of this section has necessitated the inclusion of exception language in subsections (a) (1) and (a) (3) in the final-form regulations.

§ 1011.4. Annual assessments and renewal fees.

Section 1011.4 provides procedures related to the payment of annual fees, in some cases referenced as "assessments", which are included in the Authority's fee schedule. The fee schedule is developed to fund the Authority's estimated annual operational costs as required by section 5707 (b) of the act. Under that section the budget and fee schedule of the Authority are subject to annual review by the Appropriations Committees of the House of Representatives and the Senate.

IRRC noted that some commentators have questioned the difference in the way the Authority and the PUC collect fees from regulated parties in order to support the regulatory functions of their respective agencies. Based on those comments, IRRC requested that the Authority explain why there appears to be an increased fiscal impact between Authority and PUC regulations. Preliminarily, through section 5707 (b) the Legislature reserved to itself the power to disapprove the fees the Authority charges the regulated industries on an annual basis. This regulation does not establish fees. For those reasons the propriety of fees charged by the Authority is not an issue for this rulemaking.

For purposes of background, the act effectively transferred the regulation of the Philadelphia taxicab and limousine industry from the PUC to the Authority. In doing so, the General Assembly recognized that, at the time of passage, tourists and residents in Philadelphia were not receiving adequate service from the Philadelphia taxicab and limousine industry. Pennsylvania House Legislative Journal, June 15, 2004, at 1122. The General Assembly believed that the PUC, which is a large agency charged with the oversight of complex and diverse state-wide regulatory duties, did not adequately focus on overseeing the regulations dealing with taxicabs and limousines in Philadelphia to make sure that they were clean, safe, accessible and reliable. *Id* at 1122-1124; 53 Pa. C.S. § 5701.1. The Legislature found that local oversight, which occurs in most major cities, was the answer to improving taxicab and limousine service in the City of Philadelphia. *Id.* That local regulatory oversight was placed in the Authority. *Id.*

In passing the act, the General Assembly directed the Authority to upgrade and improve the operations of taxicabs and limousines in Philadelphia. The taxicab and limousine industry has always been heavily regulated. Regulations cover the number and condition of taxis, industry structure, service, quality and prices. Customers using taxicabs and limousines expect

fair rates and adequate service. Since 2005, the Authority has successfully worked to improve service through focused and efficient oversight and more specific and demanding regulations. The Authority has aggressively removed many illegal service providers, resulting in an increased customer base for certificated taxicabs and limousines. The Authority's enhanced regulations have improved the quality of taxicab and limousine service in Philadelphia, which will also drive more customers to use taxicabs and limousines in Philadelphia. The Authority continually strives to achieve the goal of the Legislature to contribute to the "promotion, attraction, stimulation, development and expansion of business, industry, commerce and tourism in this Commonwealth through the development of a clean, safe, reliable and well-regulated taxicab and limousine industry." *See* 53 Pa. C.S. § 5701.1(2).

To develop and maintain a well-regulated taxicab and limousine industry, the PPA's Taxicab and Limousine Division ("TLD") has a small full-time staff that focuses on the Philadelphia taxicab and limousine industry. This full time staff is reasonable and necessary to fulfill the PPA's statutory obligations under the act. In contrast, the PUC primarily enforced the provisions of Chapter 24 of the Public Utility Code (relating to medallion taxicabs in first class cities) in conjunction with the Philadelphia police department. 66 Pa. C.S. § 2413 (repealed). *See* Act of April 4, 1990, P.L. 93, No. 21, at § 2. In fact, the PUC was required to enter into contracts with the Philadelphia police department to provide for continuous enforcement of Chapter 24. *Id.* These contracts ended when the PUC was no longer authorized to enforce Chapter 24.

The method of charging fees outlined by this section is identical to that which has been in place since 2005. The fiscal year 2012 fee schedule will be the first fee schedule applicable to the final form regulations and it includes no fee increases over the fiscal year 2011 fee schedule. The effects of specific regulations cannot always be predicted with certainty. However, any reasonable cost calculation of this section, or the entire body of regulations, must to be contrasted with the current actual costs incurred by the regulated industry, which is what we have done. When it passed the act, the Legislature demanded a new and more focused form of taxicab and limousine regulation in Philadelphia, and over the past 8 fiscal years the Authority's regulations have achieved that goal, these final form regulations merely continue that same level of focus and demand for high quality service to the public.

A commentator suggested that the Authority may not impose assessments upon the regulated industries. The "assessment" referenced by this section, and every other section of the final form regulations, referenced the annual fee schedule item associated with certain rights. Simply put, the Authority's "assessment" is an annual fee, which is subject to annual review by the Appropriations Committees of the House of Representatives and the Senate. While the term "assessment" is a holdover from the PUC's regulations and one that the regulated industries are familiar with, the Authority's assessment is not derived from the same process as the PUC assessment. These differences are derived from the varying statutory structures of the Authority and the PUC. The Authority's costs can only be spread among the members of its regulated industries. Each year the Authority must estimate its total expenditures for the fiscal year beginning the following July 1 and submit this estimate to the General Assembly for approval. In preparing its estimate of total expenditures, the Authority is required to estimate the annual assessment or fee to be collected during the applicable fiscal year from each regulated party. Upon approval by the General Assembly the estimated expenditures and the fee schedule become the approved amounts for the Authority. Thus, the Authority's taxicab certificate assessment fee is an annual fee established along with every other fee the Authority seeks to collect in a fiscal year in furtherance of implementing the act as provided in section 5707 (b) of the act.

The commenter fails to recognize, however, that medallion taxicabs were never subject to the PUC assessment process. 66 Pa. C.S. § 510(b) (5) (repealed). *See* Act of April 4, 1990, P.L. 93, No. 21, at § 1. For medallion taxicabs, the PUC used a similar procedure to establish an annual fee schedule. 66 Pa. C.S. §§ 2413, 2414 (repealed); *See* Act of April 4, 1990, P.L. 93, No. 21, at § 2. The PUC required medallion taxicabs to pay an annual fee in lieu of the assessment set forth in section 510 of the Public Utility Code. 66 Pa. C.S. § 2406 (repealed); *See* Act of April 4, 1990, P.L. 93, No. 21, at § 2. In contrast, non-medallion taxicabs and limousines were subject to the PUC's assessment procedure. That procedure spread the PUC's costs for regulating these entities across the transportation companies in the other 66 counties. Under this process, the PUC submits a budget for the approval of the Governor and the General Assembly. But, this budget process does not include a fee schedule process. In a separate process, after the approval of the PUC's budget, every public utility is required to file with the PUC a statement showing its gross intrastate operating revenues for the preceding calendar year. Based upon the

assessment reports filed with the PUC (or PUC estimates in lieu thereof), and using a statutorily prescribed formula, the PUC prepares and sends each public utility, by certified mail, a notice of assessment setting forth the sum due. This assessment is done on the basis of the proportion the individual public utility's gross intrastate operating revenue for the preceding calendar year bears to the gross intrastate operating revenue for the same year of all the individual public utilities comprising its group of utilities furnishing the same kind of service. 66 Pa. C.S. § 510.

Thus, the PUC's annual assessment for non-medallion taxicabs and limousines is based on a company's gross intrastate operating revenues for the preceding calendar year, and is not approved by the General Assembly. In passing the act, the General Assembly determined that only the fee schedule method would be used by the Authority, and that revenues generated by taxicabs or limousines while operating under the jurisdiction of the Authority are exempt from assessment by the PUC. Act of July 16, 2004, P.L. 69, No. 94, § 22 (4.1).

(d). Assessment payment by appointment. Subsection (d) provides an optional procedure through which taxicab certificate holders may pay their annual assessment fee, as published in the fee schedule, through two installment payments, as opposed to a one-time payment. This subsection is intended to ease the financial impact of paying the taxicab certificate assessment fee in one lump sum payment. The assessment payment by appointment option has been in place in Philadelphia for 8 fiscal years.

IRRC and other commentators questioned why a meeting was necessary to make an installment assessment fee payment. IRRC also questioned the costs to the Authority and the regulated industries of this bi-annual process because it involves a scheduled meeting with TLD staff. There is no question that the Authority's costs associated with processing all of the renewal and payment documentation would be reduced if we required a single annual payment of the taxicab certificate assessment fee. However, from our experience over the past 8 fiscal years we believe an installment payment process is preferred by taxicab certificate holders. This section creates an option for the installment payment process. The lump sum payment option is always available.

This installment payment option benefits the public because it involves a quick up-to-date review of the legal status of the certificate holder at the time of each payment, as opposed to the single review that occurs at the time rights are renewed as provided in § 1011.3. For example, if the owner of a certificate is no longer able to hold the certificate due to a recent criminal

conviction, that status may be detected by the Authority more rapidly through this process. The face-to-face meeting permits the Authority to quickly review the certificate holder's records and status in terms of compliance with the act. Questions can be easily and quickly answered because the parties are all present. This is a very important component of this installment payment process because it assures that ensures payments are made on time and open issues related to the certificate are fully resolved. It is also important to know that many individuals own or operate several entities that own certificates; therefore, one meeting will often resolve many outstanding assessment fee issues.

IRRC questioned the costs associated with the assessment payment by appointment option. In terms of the fiscal impact of appearing at a meeting to pay an assessment fee, this subsection represents an easing of any burden upon the time and expense associated with the current process since only two installment meetings are required. On the other side of the equation, some commentators have suggested that there should be four appointments each year. However, we believe we have managed to strike a balance between limiting costs of both the Authority and regulated parties, while protecting the public interest through this optional biannual installment payment process.

IRRC questioned why one person may be required to attend a meeting with Authority staff pursuant to this subsection, while another may not. No taxicab certificate holder will be constrained to participate in this installment payment option, but when the option is selected by the certificate holder, a meeting with the Authority's staff is required in all cases for the reasons provided above.

A commentator noted that this subsection does not involve a mechanism for reaching a mutually agreeable time for the installment payment appointment. We agree and have added a notice requirement, including 10 days advanced notice and language permitting the Director to adjust appointments to mutually agreeable times. We have also amended this subsection to clarify that it applies only to the payment of annual assessments through the installment payment process option. This section does not provide that the Director will set appointments who seek to make the annual assessment payment on time in one lump sum. The last sentence of this subsection required the payment of a fee for failing to appear as scheduled for an installment assessment payment. That provision has been deleted. Either the fee schedule or an enforcement action, or both, are the appropriate places for advancing this issue.

(e) Eligibility. Subsection (e) establishes certain eligibility criteria for certificate holders seeking the optional assessment payment by appointment option. The assessment payment by appointment option has been in place in Philadelphia for 8 fiscal years and is used by every taxicab certificate holder. We anticipate that the payment by appointment option will be preferred by most certificate holders. However, in the past several certificate holders have abused the installment payment option by failing to appear at scheduled meetings and by repeatedly paying assessment fees late. Therefore, this subsection provides that if over the preceding five years a certificate holder has made a late assessment fee payment, failed to begin and complete the annual renewal process or been subject to suspension or cancellation of rights, the certificate holder will be ineligible to participate in the assessment fee payment by appointment option, we believe these low thresholds for eligibility are entirely appropriate and the best interest of the Authority and the regulated community. Wasted time spent pursuing regulated parties who do not submit a document or failed to make annual payments on time negatively affects all parties. Commentators have suggested that this subsection is onerous and punitive or unclear and inappropriate. We believe that this subsection is in fact straight forward and easy to understand and is fair and reasonable. However, we will compromise and reduce the period of ineligibility from five years to two years in the final-form regulation. In any event, the potential costs associated with the installment option will be completely eliminated for those determined to be ineligible for this voluntary process.

(g). Subsection (g) provides that brokers must pay the annual renewal fee established in the Authority's fee schedule at the time the broker registration is renewed as provided in § 1011.3 (c)(3)(v). A typographical error was corrected by adding the letter "d" to the word "provide".

(h). Late assessment or renewal fee payments. Subsection (h) of the proposed regulations identified when assessment payments by appointment or renewal fees are due and noted that the result of failing to pay the necessary fee identified in the fee schedule will be immediate initiation of the out of service designation as provided in § 1003.32. A commentator suggested that this suspension process is inappropriate and not in the public interest. The purpose of the out of service designation is to cause the late paying regulated party to come into compliance with the act and the regulations. The out of service process contains due process protections, while simultaneously permitting the Authority to address the failure of a regulated party to pay a fee

deemed approved by the Legislature when it is due. These fees are announced well in advance of their due date and every regulated party has clear notice of that due date, and § 1003.32 includes clear rights to hearings and places the burden of proof upon the Authority.

(h)(1). Subsection (h) (1) of the proposed regulation set a new requirement that payments of assessment or renewal fees be completed by 3 p.m. on the day they are due. This requirement is mirrored in § 1051.4 (d) (1) where it drew comments about its impact upon an individual who may be standing in line to make a payment at 3 p.m. Because this requirement has created some confusion, as expressed by some commentators and IRRC, it has been deleted in this section and in § 1051.4. We believe the guidance that this provision provides as to the due dates for payments of assessments and renewal fees is sufficient without reference to a precise hour. This deletion has necessitated the reidentification of the following paragraphs.

(h)(2). Subsection (h) (2), previously (h) (3) of the proposed regulation, has been amended to clarify its purpose. We have this subsection by removing the mandatory out of service designation. Instead, the discretion to initiate that process will be with the Enforcement Department. This provision clarifies that the Authority will immediately initiate proceedings to place any right out of service in the event the associated assessment or renewal fee payment is late, as we referenced in general response to comments to this section above. A typographical error was corrected in this subsection by deleting the word "in".

We incorporate our response to comments to § 1001.11 regarding filing deadlines. A comment by the United Taxi Workers Alliance suggested that there should be a window of time to make renewal payments, we incorporate our response to § 1011.3 (c) (3) (iv) above in which we note that a three month window of time for payment by taxicab drivers has been created in the final-form regulation.

§ 1011.5. Ineligibility due to conviction or arrest.

Section 1011.5 addresses the eligibility of a regulated party or applicant to hold rights issued by the Authority when that person has been convicted or is being prosecuted for committing certain crimes. Persons engaged in providing the services subject to the act will have very close contact and have access to private information about members of the public. Drivers will transport tourists, students and business people at all hours of the day and night. Dispatchers and certificate holders will be handling the personal information of people who use their

services, such as name, address, travel habits and credit card or other financial information (as will drivers). Brokers will occupy a position of trust and will often be called upon to safe guard large amounts of money; they must also maintain a fiduciary relationship with clients. Therefore, qualifications of the nature provided in this section are essential to assuring public safety and confidence in the taxicab and limousine industries in Philadelphia.

Several commentators suggested that the limitations of this section are too harsh in general and questioned the availability of due process. Regulated parties and applicants will be afforded due process in terms of the application of this section by TLD staff (§ 1005.24) or a presiding officer after a hearing. *See* § 1005.211.

(c). Subsection (c) requires a regulated person to notify the Director of an arrest or conviction, as defined in § 1011.2, within 72 hours of its occurrence. This subsection has been amended to impose this obligation upon applicants for rights as well.

(d). Subsection (d) provides that in the event a regulated person becomes the subject of a criminal prosecution for a crime that would render the person ineligible to be a regulated party, pursuant to this section, the Authority may initiate an enforcement action and seek an immediate suspension of rights. IRRC and other commentators questioned the implication of subsection (d), which permits the Authority to seek a suspension of the regulated party's rights based upon an alleged criminal violation.

We agree with IRRC's concern and have amended this section in the final-form regulations to grant discretion to the Enforcement Department or Trial Counsel to initiate an investigation of the circumstances related to the criminal prosecution to identify potential violations of the act, this part or an order of the Authority and place the applicable rights out of service pursuant to § 1003.32 (relating to out of service designation), if appropriate. The out of service process requires a determination that the public safety is at issue before that emergency process may be implemented. That process also requires the Enforcement Department to issue a formal complaint rapidly and the requires prompt access to a formal hearing on the record at which the Authority will bear the burden of proof that a violation of the act, this part or an order of the Authority has occurred. This process will dispense with any criminal law analysis during the period of prosecution. We believe this process addresses comments of IRRC and other commentators about enforcement actions based on the mere prosecution of a regulated party, while also permitting the Authority to protect the public interest. A commentator suggested that

this provision was unclear as to the status of the rights of a party associated with the person subject to conviction who is not subject to conviction, such as a limousine certificate owner who employs a driver subject to this section. We do not believe that this section can reasonably be interpreted to focus on regulated parties who are not subject to prosecution as referenced in this subsection.

(f). While any party may request a waiver from this section as provided for in § 1005.23, the final form regulation contains specific criteria to be considered while reviewing the waiver petition in the new subsection (f). We believe the addition of this language will give the Authority the ability to continue to provide a level of certainty to the public that the backgrounds of regulated parties have been adequately reviewed, while also creating flexibility to deviate from the specific prohibitions of this section if public safety can maintained.

We decline to specify chapters or sections of the crimes code, beyond that provided in the definition of "conviction" in section § 1011.2, which will make an individual ineligible to be a regulated party as provided in this section. A commentator made comparisons to similar provisions of the PUC's regulations. While it is true that this final-form regulation deviates from the provisions of the PUC, it is also true that the PUC's regulations are not necessarily consistent. *See* 52 Pa.Code § 29.505 (c) (providing no limitation on the prohibition from service for criminal convictions based on the passage of time); and 52 Pa.Code § 30.72 (c) and (d) (including misdemeanor violations for crimes of moral turpitude, but limiting the prohibition from service to periods while a "court or correctional institution maintains some form of supervision [over the regulated party]." The act specifically prohibits persons from holding medallions or certificate of public convenience if they have been convicted of a felony within the past five years, regardless of the crime's association with taxicab or limousine service.

We believe the inclusion of the new subsection (f) will permit the Authority to more narrowly tailor the application of this section on a case-by-case basis through the waiver process. Of course, waiver determinations are also subject to review pursuant to §§ 1005.24 and 1005.211.

Several commentators also suggested that it was inappropriate for the Authority to consider the period that an Accelerated Rehabilitative Disposition ("ARD") order is in effect as a criminal conviction. While this language is not specifically contained within this section, it is incorporated here through the definition of the term "conviction" in § 1011.2. Preliminarily, we

note that the final-form regulations do not require any period of time to elapse after the terms of an ARD order have been served, unlike criminal convictions. However, the re-initiation of criminal prosecution remains a possibility until a person successfully completes the terms of an ARD order; therefore, the Authority will not treat the matter as resolved until that time. *See* 234 Pa. Code §318 (c). We believe the amendments we have made to subsection (d) and the addition of subsection (f) will ensure the fair application of this section to ARD cases.

A commentator suggested that this section is illegal as provided in 18 Pa.C.S. § 9124; however, subsection (c) of that statute creates a clear authorization for the Authority to use information related to criminal convictions to determine eligibility as provided for in this section, particularly as amended in its final form as provided above.

§ 1011.6. Fleet program.

Section 1011.6 requires taxicab certificate holders to participate in the City of Philadelphia's fleet program. That program relates to the management of parking violations, particularly when issued to a vehicle while the vehicle was being operated by a lessee. The program is used by many commercial entities to direct the enforcement of parking violations toward the person who committed the violation as opposed to the vehicle's lessor. In 2005 taxicab certificate owners owed tens of thousands of dollars worth of parking violation fines to the City of Philadelphia and were under continual threat of impoundment or other on-street parking enforcement actions. Since 2005 taxicab certificate owners have enrolled in the fleet program and the threat to the service availability of those taxicabs has been abated by the resolution of that once nearly unmanageable problem.

A commentator suggested that once taxicab drivers are identified by the certificate holders as the driver of the vehicle on the date and time a parking violation was issued, the driver should have the ability to rebut that allegation. We agree with the commentator; however, the adjudication of parking violations is not within the Authority's jurisdiction. That function is completed by the City of Philadelphia through its Bureau of Administrative Adjudication, which does provide for standard administrative hearings. *See* 12 Phila. Code 2807.

A commentator suggested that this section may not be applied to partial-rights taxicabs certificate owners because those drivers are not subject to section 5706 of the act. This comment misconstrues the act and is a continuation of an argument addressed in our response to §§ 1011.2

and 1011.3, which we incorporate here. The act defines the term "taxicab" in section 5701 in a manner which clearly includes partial-rights taxicabs. Section 5706 (a) of the act applies to "drivers of taxicabs and limousines within cities of the first class." While it is certainly true that partial-rights taxicabs have the benefit of providing service both within Philadelphia and outside the city pursuant to a single certificate, it is also true that when those vehicles provide taxicab service within Philadelphia, the drivers must be certified by the Authority pursuant to section 5706 of the act. As provided in section 5714 (d) (2), partial-rights certificate holders may only provide service through authorization issued by the Authority. Both partial-rights taxicab certificate holders and drivers must comply with the act, this part and orders of the Authority, including the obligation to use drivers certificated by the Authority as provided in section 5706 of the act and Chapter 1021 of these regulations.

However, we have amended section (a) to remove reference to a taxicab driver only because it is possible that a parking violation could be issued to a taxicab although it is not in taxicab service. The purpose of eliminating situations in which taxicabs will be removed from service as a result of an impoundment or registration suspension associated with outstanding parking violations is not limited to the issuance of those violations while the vehicle is in active taxicab service.

§ 1011.7. Payment of outstanding fines, fees and [,] penalties[and taxes].

Section 1011.7 requires regulated parties and applicants for rights issued by the Authority to remain current on the payment of fines, fees and taxes payable to the Authority, the City of Philadelphia or the Commonwealth. IRRC and other commentators questioned the power of the Authority to require regulated persons to evidence that they are current on parking violations, moving violations, and state and local taxes. IRRC also questioned the reason for these requirements and the costs to the Authority and the regulated industries to comply with them.

(b). Subsection (b) requires confirmation that those subject to the act are current on the payment of all outstanding and unappealed moving and parking violations. The presence of outstanding or unpaid parking or moving violation balances undermines the stability of the supply of taxicabs and limousines in Philadelphia, as well as the individuals who drive them. We believe the presence of a predictable supply of service providers is crucial to our mandate to

develop and maintain “a clean, safe, reliable, and well regulated taxicab and limousine industry”. *See* 53 Pa.C.S. 5701.1 (2).

The presence of outstanding moving violations evidences both a negative driving history and a likelihood of a suspension of the regulated person’s driver’s license. *See* 75 Pa.C.S. § 1533. Outstanding moving violations may result in the impoundment of the regulated person’s motor vehicle, which may be a taxicab or limousine. *See* 75 Pa.C.S. § 6309.1. Regulated persons may also be subject to arrest as a result of outstanding moving violations. *See, e.g.,* 234 Pa. Code Rule 430. An arrest of this nature may render a regulated person ineligible to provide taxicab or limousine service as provided in §1011.5, and would certainly remove that person from the field of individuals capable of providing common carrier service in Philadelphia.

The presence of outstanding parking violations may result in the suspension of the state issued registration of a regulated person’s vehicle, potentially a taxicab or limousine. *See* 75 Pa.C.S. § 1379. The suspension of the state issued registration for a regulated person’s vehicle will subject that vehicle to impoundment if operated on a highway in the Commonwealth. *See* 75 Pa.C.S. § 6309.2. Outstanding parking violations may also subject the regulated person’s vehicle to impoundment, even if not operated on a highway in the Commonwealth. *See* 12 Phila. Code § 12-2405.

The presence of outstanding moving or parking violations, or both, directly threaten the legitimate operation and availability of clean, safe and reliable taxicabs and limousines in Philadelphia. We believe it is crucial that we continue to seek assurance that regulated parties, and their vehicles, are not subject to these penalties.

Because every regulated party in Philadelphia has complied with this requirement since 2005, the status quo in Philadelphia will be maintained through the continuation of this requirement. This requirement will result in no increased costs in terms of compliance. Because the Authority’s standard operating procedures have incorporated the review of the information required by this section for the past 8 fiscal years, this section is revenue neutral and will have no fiscal impact upon the Authority.

(c). Subsection (c) requires confirmation that those subject to the act are current on all taxes owed to the Commonwealth. We believe that persons seeking Commonwealth authorization to provide taxicab or limousine service should be able to evidence that they are current on taxes owed to the Commonwealth, as well as the Commonwealth’s political

subdivision within which they seek to operate. We believe this a reasonable exercise of our discretion. We further believe that delinquencies in terms of those taxes may reflect upon the likelihood of a regulated party to remain current on other penalties or fees owed and debts generally incurred in the course of providing taxicab or limousine service. The financial ability of regulated parties to properly fund their operations is an important component of the quality of service they will provide. However, in response to IRRC's comment we will delete this subsection from this final form regulation and consider promulgating a similar regulation through a future rulemaking.

(d). Subsection (d) required regulated parties to confirm that they have obtained a Philadelphia Business Privilege License, which is necessary to comply with Philadelphia's tax ordinances. The Democratic Chairperson of the House Urban Affairs Committee objected to the inclusion of this provision for taxicab drivers and IRRC expressed similar concerns. We will delete this section; however, we incorporate here our response to subsection (c) above.

(e). Subsection (e) provides guidance as to the persons subject to this section. This subsection has been re-identified as subsection (c) in order to accommodate the deletions of subsections (c) and (d). A commentator questioned the manner in which the provisions related to tax payments would be applied to key employees. We believe the deletion of those provisions and the deletion of "key employee" from this subsection in the final form regulation addresses that comment.

As a result of the above referenced changes, we have also amended the title of this section to remove the reference to "taxes".

§ 1011.8. Facility inspections.

Section 1011.8 provides that the Authority may inspect the facilities of certificate holders and brokers used to provide service pursuant to the act. IRRC commented that the terms "operating locations" and "facility inspections" were vague and required differentiation. We agree with IRRC's comment and have revised this section by deleting the general language used in the proposed form regulation and replacing it with language specific to each regulated service provider to which it is to apply. A commentator suggested that some limitation as to when these facility inspections may occur should be made a part of the final form regulation; we agree and have added such language.

(a). This new subsection (a) provides that Authority Inspectors may enter upon the premises of taxicab certificate holders to inspect vehicles and records related to service provided under the act during regular business hours.

(b). This new subsection (b) provides that Authority Inspectors may enter upon the premises of certificate holders used to provide dispatching services to inspect dispatching equipment and assure general compliance with Chapter 1019 of these regulations.

(c). This new subsection (c) provides that Authority Inspectors may enter upon the premises of brokers to review records related to either completed or pending transfers filed with the Authority as provided in § 1027 to assure compliance with the act and Chapter 1029 of this part.

This type of on the spot investigation is often critical to assuring general continued compliance with the act and to further investigations authorized by 53 Pa.C.S. § 5505 (d) (24).

A commentator suggested that a penalty schedule be placed in this section to identify potential penalties for violations. We decline to do so for the reasons provided in response to comments to § 1001.61, which we incorporate here.

§ 1011.9. Taxicab service limitations.

Section 1011.9 establishes certain limitations on who may provide taxicab services and requires certificate holders to supervise their taxicabs to make certain that only authorized individuals provide taxicab service.

A commentator suggested that this provision eliminates a type of taxicab often referred to as a driver owned vehicle or "DOV". In its Comment No. 6, IRRC commented that these issues required clarification. Representative Mark D. Cohen also suggested that this regulation will prohibit taxicab drivers from owning their own taxicabs.

The Authority has not permitted the use of DOV's in Philadelphia since 2005; therefore, this section does not represent a change from the current practice in Philadelphia. There is no cost associated with this regulation, nor is there a need to change any practice currently adhered to by the regulated community.

The DOV concept relates to the theoretical use of a medallion on a vehicle owned by a person other than the medallion owner. In that scenario the medallion owner <u>leases</u> the medallion to a taxicab driver who owns a vehicle. The vehicle only becomes a taxicab by virtue

of the attachment of the medallion, which the driver does not own. The vehicle, with the medallion owner's medallion attached, then proceeds to provide taxicab service, otherwise pursuant to the act. In the typical DOV scenario, the medallion owner divorces itself from any obligation to maintain the vehicle to which its medallion is attached and can repossess the medallion upon the termination of the lease or for a breach of the lease, such as a late lease payment.

Drivers rarely possess the resources to properly maintain taxicabs and certainly do not have access to the resources available to medallion owners who have assumed a significant duty by choosing to participate in the provision of a public utility service. Between 2005 and 2011 the average price of a taxicab medallion in Philadelphia has increased from $73,762.30 to over $300,000, creating a significant amount of equity in a medallion for most medallion owners.

Medallions were created by the Legislature to give the medallion owners the ability to "upgrade and improve the operations of taxicabs." *See* 53 Pa.C.S. § 5718. We believe the obligation to supervise and maintain taxicabs are properly placed with the owners of the respective medallions, as opposed to a driver. We further believe that the reintroduction of the DOV relationships in Philadelphia will result in a reduction to the quality of vehicles used to provide taxicab service and reverse many of the gains we have made in that regard since 2005. These regulations will improve the quality of vehicles chosen for entry into taxicab service and we will carefully inspect those vehicles at the time of scheduled inspections and during field inspections. However, we can not continuously monitor the mechanical or interior condition of every taxicab in Philadelphia. We anticipate that medallion owners, through their own regular inspections and upon notification from drivers, will promptly and properly make needed repairs to vehicles used to provide taxicab service. We believe that most taxicab drivers are not financially capable of making those rapid and thorough repairs.

Again, this regulation will not change the status quo in Philadelphia in place since 2005. We do not disclose the option of promulgating regulations in the future that will address the concerns of the Authority and the regulated industries in relation to the DOV concept, but the creation of such a new program will have to be the product of a more narrowly tailored rulemaking involving significant input from the industry and the general public.

§ 1011.10. Discrimination in service.

Section 1011.10 prohibits drivers from discriminating against members of the public based on race and several other factors. A commentator suggested that this language was not identical to language used by the PUC. However, we believe that this section is sufficiently short, clear and easily understood by drivers providing service in Philadelphia as originally proposed.

§ 1011.11. Record retention.

Section 1011.11 provides guidelines for the manner in which records related to service provided under the act or this part must be stored. The Authority's current local regulations contain numerous record retention requirements with varying durations that were not clearly identified and not located in one section. The final-form regulation contains fewer record retention requirements, standardizes the retention period and makes those requirements much easier to find and understand.

(a). IRRC and other commentators commented that the nature of records to be retained should be specified more precisely, including those related to taxicab leases. We agree with IRRC's comment, but note that the chapters of the final form regulations applicable to particular service providers identifies certain records to be retained, although many other records may be deemed necessary for retention by the regulated persons. This section was not intended to identify records that must be retained, but simply to identify the manner in which they must be kept so that they may be easily retrieved and examined when necessary. In order to prevent confusion and to eliminate the retention of unnecessary records, specific records are now identified for retention based on the type of right at issue. The review of the records identified in this subsection has proven necessary to important Authority investigations since 2005. We will consider making additions to this list through a subsequent rulemaking. We believe this change will address IRRC's concern about the specificity of guidance provided to the regulated industries.

The record retention period in the proposed form regulations was 5 years. Some commentators questioned the need for maintaining these records for that period of time and questioned the associated cost. From the Authority's experience complaints that lead to investigations are often not registered until some time after the matter complained of occurred or after the series of events complained of began. The records identified in this subsection will

contain information necessary for the Authority to adequately investigate the most common complaints and the most potentially harmful behavior with the regulated industries. Therefore, records must be maintained for a period of time sufficient to conduct such investigations.

A commentator suggested that the period remain at five years for the reasons identified by the Authority and even requested that the list of records to be maintained be expanded. However, we will compromise in order to address any issue related to costs of storing records we have reduced the record retention period in the final form regulations to 2 years, which is consistent with established retention periods currently in place in Philadelphia. Based on this reduction of the retention period and the elimination of other record retention requirements as provided below, we believe this section will not increase operating costs of regulated parties, but will actually make it much simpler to accurately maintain these common industry related documents.

(b). Subsection (b) requires that records be maintained pursuant to this section in chronological order by date and time of day. The requirement to maintain records in a logical order should not be necessary, but prior investigations have been delayed or even rendered impossible due to a refusal of regulated parties to maintain records in a manner capable of being logically reviewed. We have received reports of regulated parties who maintain records in trash bags so that they can not be accused of failing to maintain records, but simultaneously make investigations nearly impossible. Regulated parties must maintain business records in an ordinary and prudent manner, just as any other business; we believe we would be remiss not to set this low threshold. The comments also suggested some confusion as to whether regulated parties are required to keep paper and electronic records. There is no requirement to keep both electronic and paper records. This subsection has been amended to clarify that point.

(c). Subsection (c) requires that the locations where records of regulated persons are stored be protected by a fire suppression system. IRRC and other commentators questioned the need and costs associated with this requirement. We agree with IRRC's comment and have deleted this subsection.

(d). Subsection (d) requires that electronic records of regulated persons be routinely backed up and stored off site. IRRC and other commentators questioned the need and costs associated with this requirement. We agree with IRRC's comment and have deleted this subsection.

(e). Subsection (e) requires regulated parties to produce records retained pursuant to this part to the Authority upon request. IRRC questioned whether the request for documents by the Authority would be in writing. We agree with IRRC's comment and have amended this subsection to clarify that the requests for records will be in submitted in writing or upon inspection as provided in § 1011.8.

A specific penalty for a violation of this section is not provided, which is consistent with our response to § 1001.61 above.

§ 1011.12. Aiding or abetting violations.

Section 1011.12 prohibits persons for aiding or abetting regulated persons in the violation of the act, this part or an order of the Authority, and does not deal with other rights of regulated parties, for example the right to engage in collective bargaining as otherwise permitted by law. This section is identical to the PUC's regulations at 52 Pa.Code § 30.76 (f) (relating to violations) and is clear, easily understood and was applicable to most regulated parties through PUC regulation. This section does not preclude an undercover officer from soliciting a bribe or other bad behavior from a regulated party, nor an attorney from advising a client about the legality of provisions of the act, this part or an order of the Authority. Commentators suggested potential confusion over competing requirements of the PUC and the Authority; however; the PUC does not have jurisdiction over service provided under the act, so there is no conflict.

A specific penalty for a violation of this section is not provided, which is consistent with our response to § 1001.61 above. Another commentator noted correctly that this section does not prohibit regulated parties from petitioning the government, seeking to collectively bargain or otherwise follow the laws of the United Stated or this Commonwealth.

§ 1011.13. Interruptions of service.

Section 1011.13 requires taxicab certificate holders and dispatchers to report interruptions in service to the Authority within promptly defined periods of time. Taxicab certificate holders are required to report any discontinuance in the provision of taxicab service that lasts 5 or more days and dispatchers must report any discontinuation in service that lasts more than 2 hours. The proposed form regulations contained more restrictive reporting requirements and terms for cancellation of the certificates in violation of this section that we

believe are unnecessary and have removed them from the final-form regulation. IRRC and another commentated questioned the need for the narrower reporting timeline in the proposed form regulation, as well as the meaning of the terms "interruption" and "suspension" as previously used in that section.

The final-form regulation clarifies that any discontinuation in the provision of the identified service lasting beyond the permitted period must be reported to the TLD's Manager of Enforcement within 7 days of the beginning of the period of discontinued service for taxicab certificate holders and within 5 hours of the beginning of the period of discontinuance of service for dispatchers. Dispatchers will have a narrower reporting requirement because their inability to provide or decision to cease dispatching operations will have immediate negative impacts upon both the traveling public and the taxicabs that use the dispatcher's services. The report on the discontinuance by either type of certificate holder may be easily submitted through email and must identify the reason for the discontinuation and its projected duration. We need to maintain information of this nature in order to monitor the current supply of taxicabs as well as dispatcher activity in Philadelphia. Events which lead to the discontinuance of a large number of taxicab certificate holders may be indicative of problems that require regulatory attention by the Authority. Without the simple and easy reporting requirement created by this section, the Authority will be without important information that directly affects the taxicab industry in Philadelphia.

§ 1011.14. Voluntary suspension of certificate.

Section 1011.4 permits certificate holders to voluntarily place their rights in a suspended status to avoid cancellation as provided in § 1011.13. From time-to-time certificate owners, particularly smaller entities that may only own one taxicab will not be able to keep their taxicab(s) in service, most often due to illness or foreign travel. This designation will allow those certificate owners to place their certificate in a voluntarily suspended status until they are able to resume service, or the voluntary suspend status expires as provided in subsections (c) and (d).

IRRC noted that the "Act grants PPA the power to rescind certificates, revoke certificates and to grant temporary certificates, but not to suspend them[.]" IRRC asked for the Authority's statutory authority to suspend rights, we assume voluntarily or otherwise.

Preliminarily, section 5711 of the act also grants the Authority the power to issue certificate of public convenience by order and subsection 5711 (c) (5) grants the Authority the power to authorize the transfer of certificates. We also note that a suspension is a less severe form of penalty, if imposed as such, than a revocation.

Given the broad statutory purpose for the Authority's regulation of taxicab and limousine service providers in Philadelphia, we believe it would be inconsistent with the purposes of the act to presume that the Authority is unable to adjudicate a temporary suspension of certificates, yet is permitted to issue, cancel, revoke and otherwise penalize certificates, and their holders for violations of the act or the Authority's regulations.

The Authority's decision to suspend a certificate of public convenience would constitute an "adjudication" for purposes of the Administrative Agency Law because it would impact the "privileges" of the holder of the certificate. *See, e.g*., 2 Pa. C.S. § 101 (definition of adjudication), 45 P.S. § 1102 (same). *See also MEC Pennsylvania Racing v. Pennsylvania State Horse Racing Commission*, 827 A.2d 580 (Pa. Cmwlth. 2003) (a license is a valuable privilege and may not be suspended or revoked without due process.)

A certificate of public convenience is a licensing right. A certificate gives only entrance to, not success in, a given territory. *Yellow Cab Company of Pittsburgh v. Pennsylvania Public Utility Commission*, 54 A.2d 301, 305 (Pa. Super. 1947). A certificate does not guarantee the security of the common carrier's investment, and it does not grant the common carrier a monopoly. *Id*. Holders of certificates of public convenience accept them subject to the statutory provisions which permit the certificate to be modified or rescinded for legal cause. *Western Pennsylvania Water Company v. Pennsylvania Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth. 1973).

The Authority regulates the services of holders of certificates of public convenience. *See, e.g*., 53 Pa. C.S. §§ 5704, 5706, 5711(c)(1), 5711(c)(6), 5741(a).

The suspension of privileges under a certificate of public convenience may be necessary to protect the traveling public, or in the case of this section, the interests of the certificate holder in avoiding a cancellation due to an interruption in service. The position advanced by several commentators would preclude the Authority from taking action to protect the public from operations that are unreasonable or inadequate to protect the travelling public. If that position is sound, it is very obvious that the Authority's power would be limited to an extent never

contemplated by the law. *See, e.g.,* 53 Pa. C.S. § 5701.1 (Chapter 57 is intended to promote the development of a clean, safe, reliable and well-regulated taxicab and limousine industry).

Therefore, the Authority believes that it does have the right to suspend certificates of public convenience as appropriate through its adjudicatory powers. We also incorporate here our response to a question regarding the power of the Authority to revoke or cancel certificates provided in response to comments to § 1011.3 as it relates to the Authority's power to adjust an original adjudication granting a certificate of public convenience.

(a). Subsection (a) generally provides for the availability of a voluntary suspension upon the approval of the Director. IRRC commented that language related to the "sole and peculiar discretion" of the Director and the power of the Director to establish such conditions as the Director deems "necessary and proper" were vague and in need of clarification. We agree with IRRC and have deleted that language in the final form regulations. This subsection of the final form regulations now references the need to apply to the Director as provided in this section.

(b). Subsection (b) requires the submission of the report required by § 1011.14 related to the reason for the interruption of service and the anticipated duration. IRRC commented on the lack of clarity as to the form and content of the report, presumably in this planned voluntary scenario. We agree with IRRC's comment and have deleted this subsection as superfluous in consideration of the application form that must be completed in order to be granted a voluntary suspension. The deletion of this subsection required a re-identification of the subsequent subsections.

(c). Subsection (c), which is subsection (b) in the final form regulations, provided that a certificate could not be voluntarily suspended for a period beyond one year. A commentator noted a lack of clarity between this subsection and subsection (d) (now subsection (c)) in term of its application to a medallion taxicab certificate. This section has been amended to clarify that it applies to partial-rights taxicab certificates and dispatcher certificates.

(d). Subsection (d), which is subsection (c) in the final form regulations, originally limited the period of voluntary suspension for medallions to 90 days. However, current practice in Philadelphia permits a period of voluntary suspension to extend to 6 months; therefore, this section has been amended to clarify that the voluntary suspension of a medallion may be no longer than 6 months. For the same reasons referenced in response to comments to subsection

(c) above we have amended this subsection to clarify that it applies to medallion taxicab certificates and individual medallions.

(e). Subsection (e), which is subsection (d) in the final form regulations, provides that medallion certificates will not be placed in a voluntary suspend status if five percent of the medallion fleet is already in a suspend status. Both IRRC and a commentator questioned the reason for this particular cap level and the means to seek redress for situations in which the cap has already been met.

There are a limited number of medallion taxicabs in Philadelphia. The medallion taxicab industry is nearly unanimous in supporting the issuance of 100 new medallions for service in Philadelphia, in part because the Authority has already removed so many illegal service providers. The result has been that at times the public need for medallion taxicab service is already straining the current ability of the industry to meet demand. Given that level of demand for medallion taxicab service, we believe anything more than a five percent reduction in the available fleet of these vehicles (80 medallion taxicabs) will adversely affect the public good. In terms of comments related to the justification for this cap in the event of a serious problem that affects the entire medallion taxicab industry, a certificate holder may always seek a waiver from this limitation (or a rule change) as provided in § 1005.23, in which the unlikely conditions of the nature referenced may be taken into consideration.

(g). Subsection (g), which is subsection (f) in the final-form regulation, has been amended to note the revised title of § 1011.7.

§ 1011.15. Death or incapacitation of a certificate holder or certain persons with controlling interest.

Section 1011.15 provides for the continued operation of certificates in the event of the death or incapacitation of an individual certificate holder or the death, incapacitation or dissolution of persons that have a five percent or more ownership interest in an entity with ownership interests in a certificate.

IRRC noted the comment of a commentator who sought assurance that a medallion could be transferred through a last will and testament. Section 5713 of the act provides that medallions are property that may not be cancelled or revoked by the Authority. However, § 1011.15 does not deal with medallions, but the underlying certificates, which will include the certificates medallion owners need to operate a medallion taxicab. Because this section does not contradict the act or even deal with medallions at all, we do not believe it is necessary to note the ability of the medallion owners to transfer a medallion through a last will and testament.

The estate transfer process referenced by the commentator goes more toward the price (or lack thereof) of the medallion, not to the issue addressed by this section, being the administrative review of the new proposed owner of a certificate of public convenience. The transfer of a medallion or certificate by any means will be considered a sale as provided for in the final-form regulations and will require the prospective buyer to complete the sale process outlined in Chapter 1027. The fact that the proposed medallion owner inherited, as opposed to purchased, the medallion, is not relevant to the Authority's analysis or this section. For example, if a medallion is left through a last will and testament to a person who was convicted of a felony within the past five years, that person will not be permitted to own or operate the medallion, nor would that person be eligible for a certificate of public convenience. *See* 53 Pa.C.S. § 5718 (c) (providing that no person or corporation may purchase a medallion or apply for a certificate if the person or corporation or an officer or director of the corporation has been convicted or found guilty of a felony within the five-year period immediately preceding the transfer). However, the decedent's estate would certainly be permitted to sell the medallion and distribute the proceeds of the sale as approved through standard probate procedures.

(b). Subsection (b) provides for situations involving the death, incapacitation or dissolution of a person having a five percent or more ownership interest in an entity with ownership interests in a certificate. In such cases the five percent interest must be transferred as provided for in Chapter 1027, within a designated period of time. This subsection does not apply to persons with controlling interests unless that person owns at least five percent of the entity that owns the certificate.

A commentator suggested that a certificate (or medallion) would have to be sold if a person with a controlling influence in an entity became subject to this subsection, which is simply not the case. Because most, if not all, certificates are owned by corporations or

partnerships or some other form of legal entity other than an individual, provisions must be made for the continuation of certificates when persons with a five percent or higher interest in the certificate holder are no longer present or able to adhere to the requirements of the act or the Authority's regulations. In fact, most certificates are owned by entities with only one or two securities owners, be they shareholders, partners or otherwise. Therefore, the final-form regulation must take those circumstances into consideration.

The requirements of this subsection will permit the continued use of the rights while the new owners are reviewed by the Authority and will assure the public that each of the new owners of the certificate have been properly reviewed for eligibility. The entity itself or other owners of the entity individually, are certainly permitted to acquire those shares. There need be no interruption of service.

§ 1011.16. Power of successors by law.

Section 1011.16 explains how legal successors may utilize certificates including the time limits on filing petitions to extend their use.

§ 1011.17. Limitations.

Section 1011.17 places restrictions on the ability to carry out actions detailed in Sections 1011.15 and 1011.16.

§ 1011.18. Application review generally.

Section 1011.18 cites to the section that describes how applications for rights will be reviewed.

§ 1011.19. Exclusive and nonexclusive service.

Section 1011.19 provides for one of the basic parameters of taxicab service in Philadelphia, which is exclusivity or non-exclusivity of purpose. Through a drafting error this section expanded the right of taxicabs in Philadelphia to provide non-exclusive service, which would be a departure from the current practice in Philadelphia and be inconsistent with the improved level of service intended by both the act and these regulations. The Authority will retain the ability, through the waiver process, to permit non-exclusive service in times of intense

stress upon Philadelphia's transportation infrastructure. Examples of when non-exclusive taxicab service may be permitted include public transit work stoppages or special events in Philadelphia that result in unusually high numbers of citizens traveling to a section of the City, such as the Philadelphia Phillies' World Series parade.

§ 1011.20. Noninterference with scheduled service.

Section 1011.20 was intended to provide additional guidance on the manner in which non-exclusive taxicab service could operate. This section is not necessary because Philadelphia taxicabs may not provide non-exclusive taxicab service without special authorization.

§ 1011.21. Service in unauthorized territory.

Section 10011.21 prohibits service within areas otherwise unauthorized by a taxicab's certificate of public convenience and specifically includes reference to attempts to conceal the nature of the unauthorized service by rerouting the service through an authorized area. This section is substantially similar to a PUC regulation found at § 29.312 (6). This section has been amended only through a renumbering to §1011.20 in consideration of the deletion of § 1011.20. A commentator suggested that this section include language related to service provided at Philadelphia International Airport, which is located in both Philadelphia County and Delaware County. Because this section is drafted to address fraudulently provided service, as opposed to legitimate service between counties, we do not believe the suggested reference to the disposition of the airport is necessary.

CHAPTER 1013. MEDALLION TAXICABS.

Subchapter A. GENERAL REQUIREMENTS

§ 1013.1. Certificate and medallion required.

Section 1013.1 explains what is required in order for a taxicab to provide citywide service.

§ 1013.2. Attachment of a medallion.

Section 1013.2 explains who may attach a medallion and what must take place before a medallion may be attached.

§ 1013.3. Removal of a medallion.

Section 1013.3 provides that a taxicab medallion may only be removed by the owner upon advanced authorization of the Authority and that upon removal the medallion must be held by the Authority until it is reattached to a taxicab as provided in § 1013.2. A commentator questioned why an owner that removes a medallion from a taxicab must deliver it to the Authority within 2 days, but a lender upon execution is provided five days to do so, as provided in § 1013.22. We would prefer to require that medallions be immediately delivered to the Authority upon removal from a taxicab to prevent the potential for fraudulent use, however, these timeframes were established to provide reasonable and articulable periods for compliance. A lienholder in the midst of a seizure is simply involved in a more complex transaction with less familiarity as to the Authority's procedures; therefore, they have been afforded three additional days to report to the Authority. Although § 1013.22 in the proposed form regulations did not specifically provide for a period of time to deliver the medallion to the Authority, only to report the seizure within five days. We have amended § 1013.22 in the final-form regulations to address that deficiency.

§ 1013.4. Medallion renewal.

Section 1013.4 explains how and when medallions are to be renewed.

Subchapter B. LIENS ON MEDALLIONS

§ 1013.21. Notice of medallion lien.

Section 1013.21 provides procedures for properly filing a lien upon a medallion.

§ 1013.22. Execution on and seizure of a medallion.

Section 1013.22 provides for procedures applicable to situations in which a medallion is executed upon and seized pursuant to law. *See* 53 Pa.C.S. § 5713 (a).

(a). Subsection (a) requires a party that has executed upon or seized a medallion to report that fact to the Authority and deliver the medallion to the Authority. We have amended

subsection (a) to require that a seized medallion be delivered to the Authority within 5 days for reasons noted in our response to comments to §1013.3 above, which are incorporated here.

A commentator suggested that the driver of a medallion taxicab be provided 30 days notice of the intent of an execution or seizure. We decline this suggestion as inconsistent with the act, which provides for no such limitation. Additionally, that collateral warning period would make standard execution and seizure practice even more challenging. Placing additional burdens upon lenders will increase costs without justification and may dissuade lenders from participating in the medallion market. We believe the attraction of established, reputable and experienced lenders to the medallion market is a key component of providing stability in the industry and to advancing the statutory goal of increasing medallion values. *See* 53 Pa.C.S. § 5712 (a).

(c). Subsection (c) provided that if a medallion, after execution and seizure, is not sold as provided in section 5713 of the act that the medallion would be surrendered to the Authority. A commentator suggested that the requirement to deliver the medallion to the Authority if not sold within one year amounted to a taking. We disagree with the commentator and note that a medallion has no intrinsic value beyond the licensing right it represents. Nevertheless, we note the distinction between the language used in the proposed form regulation as opposed to section 5713 (a) of the act and will delete this subsection and rely upon the clear statutory language. We incorporate the responses to similar questions about the value of medallions provided by the PUC at 26 Pa.B. 5816-5817.

§ 1013.23. Invalidation upon execution or seizure.

Section 1013.23 explains the effect of medallion seizures and the procedure parties must use if they wish to try to reclaim their medallions.

CHAPTER 1015. PARTIAL RIGHTS TAXICABS

§ 1015.1. Purpose.

Section 1015.1 provides for the general purpose of Chapter 1015 relating to partial rights taxicabs.

We incorporate our response to questions related to the definition of partial-rights taxicab in § 1011.2. We also note that some commentators suggest that these regulations may create an

unfair burden upon partial-rights taxicab owners. We note that at least one other commentator has suggested that partial-rights taxicabs unfairly interfere with medallion taxicab operations. We have attempted to address these issues through various amendments to the proposed regulations and disagree that the final-form regulations create any such imbalance in competition; however, we note that the Legislature has assigned the Authority the obligation to regulate taxicabs in Philadelphia in a manner consistent with the act.

As we have noted, while partial-rights taxicabs are not free to provide service throughout Philadelphia, they are permitted to provide service within sections of Philadelphia and almost everywhere within Philadelphia, provided the taxicab trip in question begins or ends in their designated partial-rights section of the city. For that reason, partial-rights taxicabs may be seen all over Philadelphia and their partial-rights status is invisible to the public. The traveling public within the partial-rights taxicab zones of Philadelphia deserve no less quality of service than citizens in other areas of the city. Some commentators have disputed the similarities between medallion taxicab service and partial-rights taxicab service. We incorporate our comments above regarding the many similarities between those services, particularly as to members of the traveling public. We have deleted subsection (b) because we believe it relates more to policy than substantive regulation and that its deletion has no impact upon the requirements of partial-rights taxicabs under the act or these final-form regulations.

§ 1015.2. Certificate required.

Section 1015.2 provides that a certificate of public convenience must be first issued by the Authority before a partial-rights taxicab may provide service within Philadelphia. A commentator suggested that the use of the term "person" in subsection (a) was inconsistent with the definition of the term provided in the proposed form regulations. We agree with the commentator and believe that the wording of this section was confusing. This section has been changed to simply provide: "A partial-rights taxicab may not provide taxicab service in Philadelphia unless certificated by the Authority."

§ 1015.3. New or additional rights restricted.

Section 1015.3 provides for limitations upon the expansion of partial rights certificates as provided in section 5714 (d) (2) of the act, including specific limitations upon the number of

taxicabs each partial-rights taxicab certificate owner may use. The Democratic Chairperson of the House Urban Affairs Committee, IRRC and other commentators questioned the legislative purposes and means of implementation related to subsections (a), (c) and (d) of this section and we have chosen to delete those sections at this time, despite some support from at least one medallion owner. While we do not necessarily agree that that these requirements are inconsistent with the act or the overall best interests of the public, we recognize that they represent a change from the status quo. We will review this issue at a later date with additional input from the regulated industries. We have also deleted subsection (b), because we believe this prohibition is already clearly provided for in the second sentence of 5714 (d) (2) of the act.

§ 1015.4. Partial-rights certificate holders.

Section 1015.4 provides for identification numbers for partial rights taxicab companies, for the territorial limitations of those certificate holders as provided in their certificates as issued by the PUC and continued by the Authority, and requires association with a certified dispatcher.

(a). Subsection (a) lists the partial-rights taxicab companies and their respective identification numbers. A commentator suggested that the listing of the individual partial-rights taxicab certificate holders was inappropriate because those names may change. We believe that the use of this subsection is unnecessary because the numbers assigned to certificates by the Authority is not of a nature necessary for inclusion in our regulations; therefore, we have deleted it from the final form regulation as unnecessary.

(b). Subsection (b) lists the geographical boundaries of each partial-rights taxicab certificate holder in Philadelphia. A commentator objected to this section because it failed to consider areas within the PUC's jurisdiction. We disagree with the commentator position, but will delete this subsection because we agree that it is unnecessary and may create problems related to the sale and transfer of these rights.

(c). Subsection (c) of the final-form regulation provided that each of the taxicabs used by a partial-rights taxicab certificate holder must use the services of the same dispatcher. Because § 1017.5 (b) (2) has been amended to only require medallion taxicabs to use certificated dispatchers, this section has been deleted as unnecessary. This deletion will address comments regarding the impact and necessity of this provision.

§ 1015.5. Partial-rights taxicab numbers.

Section 1015.5 requires partial-rights taxicab certificate holders to file a monthly report identifying the vehicles used by the certificate holder to provide taxicab service in Philadelphia and a list of the certified drivers used by the certificate holder. Commentators suggested that information about specific partial-rights taxicabs is better kept by the Authority and disputed the need of partial-rights taxicab certificate holders to report driver information to the Authority based on the argument that the Authority does not have the statutory authority to regulate partial-rights taxicabs.

We believe that the simple transfer of this information to the Authority on a monthly basis is the best way to be certain that the vehicles and taxicab drivers used by partial-rights taxicab certificate holders comply with the act and the Authority's regulations. This issue is of particular importance as to partial-rights taxicabs because they do not require the medallion attachment process provided for in § 1013.3. However, in order to address this potential source of additional costs to the operational requirements of partial-rights taxicab certificate holders; we will delete this section from the final-form regulation and review the need for this provision in a subsequent rulemaking. While we review this matter we believe the continuing need to file vehicle number changes with the Authority and to obtain approval of the Authority to add new vehicles as required through section 5712 (b) of the act will address this concern. We incorporate our response provided in response to comments to the definition of "partial-rights taxicab" in § 1011.2 regarding the Authority's power to regulated partial-rights taxicabs.

CHAPTER 1017. VEHICLE AND EQUIPMENT REQUIREMENTS

Subchapter A. GENERAL PROVISIONS

§ 1017.1. Purpose.

Section 1017.1 provides for the purpose of Chapter 1017.1 and provides definitions of terms not previously used in earlier sections of the regulations.

IRRC suggested that a separate section be developed for definitions so that the purpose and definitions subsections are separate. In response to IRRC's comment we have deleted subsection (a) and re-titled this section "Definition". We believe the reader of these regulations will understand the general purpose of this Chapter from a reading of this Chapter's title. Based

on that deletion this section need not contain subsections; therefore, the identification of subsection (b) has been deleted.

(b). Subsection (b) of the proposed form regulation provided certain definitions, this subsection of the final form regulation constitutes the entire section as noted in our response to subsection (a) above.

"Antique vehicle." IRRC questioned what the Authority considers "substantially in conformance" with manufacture specifications to mean. In adopting this definition the Authority copied the exact definition used by the Pennsylvania Department of Transportation in its regulations at 67 Pa. Code § 67.2. Our intent was to employ language commonly understood in the Commonwealth. The term noted by IRRC is intended by the Authority to permit minor deviations from the original specifications of the vehicle while also maintaining its original appearance, which is the point of using an antique vehicle. We will not require that every single component of a vehicle offered for "antique" status exactly match every specification of the vehicle on the day it was manufactured. While the term is somewhat elastic, this discretion is important because all of the potential deviations from manufacturer specifications can not be anticipated and a requirement to exactly match all original specifications will place an unreasonably high burden on the certificate holder. Section 5714 (a) of the act specifically provides the Authority with the power to permit antique vehicles as taxicabs.

"Hybrid vehicles." In the proposed regulations we attempted to create an incentive for taxicab certificate holders to use hybrid vehicles. We adopted the definition "hybrid vehicle" used by the Pennsylvania Department of Transportation in its regulations at 67 Pa. Code § 67.2. One commentator asked:

> "How much ethanol must be included in a gasoline mix and how would that be enforced? Does a diesel vehicle qualify? Does a compressed natural vehicle that uses no gasoline qualify? Does an all electric vehicle qualify? How does PPA enforce that the primary source of an electric hybrid vehicle is electricity and not gasoline, which is generally not the case? Why is there not a provision for high mileage gasoline powered vehicles?

IRRC's comments referenced those comments and added a question regarding the failure of this provision to include language related to "high efficiency vehicles that use gasoline only" and ethanol only vehicles. Representative Dan Moul correctly noted in his comment that vehicles powered by compressed natural gas should be encouraged for use as taxicabs. A commentator also suggested that the incentive offered by the Authority to use hybrid vehicles is insufficient to encourage their use.

We acknowledge that this is a very complex issue. This Chapter of the proposed form regulations represented the Authority's first attempt to promote the use of alternative energy or high efficiency vehicles as taxicabs and we recognize that a significant amount of research and review will be necessary to arrive at a comprehensive and effective regulation. Therefore, we have withdrawn the use of the term hybrid vehicle from the final-form regulations. After the approval of this final form rulemaking we will initiate a new rulemaking process to address this issue after first engaging in discussions with the regulated industries and other interested parties.

§ 1017.2. Preservice inspection.

Section 1017.2 provides that a TLD inspection sticker is required for a vehicle to perform taxicab service.

§ 1017.3. Taxicab age parameters.

(a). Subsection (a) provides the formula for determining a vehicle's age. We amended this subsection in the final form to simply provide the method to calculate a vehicle's age. We have moved the example of the an age calculation to the new § 1017.4 (a), which notes the age limitation. That language has been changed to follow the calendar year, as opposed to an October 1 through September 30 year. This change will clarify that a vehicle will not be ineligible to provide taxicab service until the completion of its eight model year. We believe this will be easier for the industry to follow and that it will be consistent with PUC standards for calculating the age of a vehicle, which also uses the December 31 end date. *See* 52 Pa.Code § 29.314 (d). This change in the method to compute a vehicle's age will constitute a deviation from current practice in Philadelphia, which calculates age using the October 1 date. This change will be effective upon publication of the final form regulations in the *Pennsylvania Bulletin*.

(b). Subsection (b) establishes maximum age requirements for the introduction and continued use of a taxicab. The Democratic Chairperson of the House Urban Affairs Committee commented that the proposed entry level mileage requirements of the proposed regulation would essentially require taxicab owners to purchase new vehicles and cause a severe economic burden on many taxicab operators. Representative Mark B. Cohen also expressed opposition to the entry level mileage ceiling of the proposed regulations, being 15,000 miles and the mandatory retirement mileage of 200,000 miles. Representative Cohen commented that those limitations would damage the economic situation of drivers and adversely impact taxicab service in more remote areas of Philadelphia. Representative Cohen believed that the statutorily mandated 8 year age limitation was sufficient to protect public safety. Representative Kate M. Harper commented that the entry level requirements provided in the proposed regulations for both age and mileage, created an undue financial burden for owners. IRRC and several commentators raised the same issues in relation to mileage restrictions as were expressed when commenting on the age limitations provided in § 1017.3 of the proposed regulations. Chairperson Thomas, IRRC and other commentators questioned the statutory power of the Authority to set an age cap different from the 8 year ceiling imposed upon the taxicab industry through section 5714 (a) of the act, which provides: "No vehicle which is more than eight years old shall continue in operation as a taxicab."

We do not believe that a statutorily mandated maximum vehicle age is the equivalent of a limitation upon the Authority's administrative powers to regulate the age (or mileage) of taxicabs. The language of that section of the act can not reasonably be interpreted to grant a right to use a vehicle up to 8 years of age. Although the Legislature could have worded section 5714 (a) of the act to grant taxicab certificate owners the right to use vehicles <u>through</u> the age of eight, it did not.

We believe section 5714 (a) was intended to <u>prohibit</u> the Authority from permitting vehicles with a model year age in excess of 8 years from being used as taxicabs, except as an antique. We also note that the statutory <u>ceiling</u> imposed by section 5714 (a) is more restrictive than the PUC's regulation, which permits deviation from its 8 year age ceiling upon inspection. *See* 52 Pa. Code § 29.314 (d).

When the PUC promulgated its 8 year ceiling regulation, it responded to comments as follows:

§ 29.314. Vehicle and equipment requirements.

* * *

> Finally, we proposed that no vehicles older than eight years be permitted to be utilized in taxi service. We believed this vehicle age limitation will ensure a current, reliable fleet. This requirement would be phased in over a one year period.

* * *

> Finally, much commentary was provided on the vehicle age requirement. Generally, the commentary suggested that this requirement would unnecessarily increase costs, including insurance costs. Further, commentators suggested that a vehicle's age is not an accurate barometer of the vehicle's condition.
>
> While we understand that age is not synonymous with condition, we are also cognizant that age is one of the most important factors to ensure a vehicle is fit for service. We have the difficult task of ensuring a safe and reliable taxi fleet for the public, with only limited tools available to meet this challenge. Age of fleet is a viable, efficient tool for this job.
>
> However, we recognize that this requirement may cause undue hardship on select carriers. Therefore, we will allow a compromise. We will continue to impose an 8 year limit, subject to specific exemption. A carrier may request our enforcement personnel to inspect any vehicle more than 8 years old to determine if that vehicle is fit for service. While this necessitates a certain amount of discretion be exercised by our enforcement personnel, this is the necessary result when the clear cut 8 year litmus test is rejected.

36 *Pa.B.* 4181 (August 5, 2006). We believe it is instructive that the Legislature chose not to grant the Authority the ability to exercise discretion to leave vehicles in service after reaching 8 years of age, but for antiques.

Both the PUC and the Legislature have acknowledged that the age of a taxicab impacts upon its reliability and the quality of service it can provide. Why else would this ceiling be imposed by the act? Since the time the PUC established an eight year age limit for taxicabs, it

has also done so for limousines. *See* 52 Pa.Code § 29.333 (e), further supporting the precedential nexus between newer vehicles and higher quality service.

Professor Matthew Daus, former Director of New York City's Taxicab and Limousine Commission, commented in support of proposed age and mileage limitations. Professor Daus noted that age and mileage restrictions were the most significant reform ever undertaken in New York's taxicab industry and resulted in a fleet of taxicabs that are safer, cleaner, experience fewer mechanical breakdowns and lower inspection failure rates.

Section 5714 (a) requires each taxicab to submit to periodic inspections by the Authority "to ensure that the vehicle meets the requirements of this subchapter and authority regulations." Section 5718 (b) also requires the owner of a medallion to comply with the Authority's "inspection requirements" when a medallion is sold. The Legislature clearly intended the Authority to establish vehicle standards against which taxicabs would be measured. *See* 53 Pa. C.S. §§ 5701.1. The Legislature knew that the Authority's predecessor established age requirements related to vehicles used as taxicabs and the Legislature itself imposed a maximum age requirement for taxicabs. Both age and mileage are clearly "conditions" of a vehicle subject to regulatory requirements. We see no distinction between our power to set mileage and age restrictions and our power to require four door vehicles as taxicabs, or to prohibit motorcycles as taxicabs, subjects that are also not covered in the act. These are all "conditions" of vehicles used to provide taxicab service.

The Legislature declined to set a vehicle age cap in the act in 2004 of less than 8 years. However, we do not believe that the Legislature intended to prohibit the Authority from establishing vehicle requirements capable of increasing the quality and reliability of vehicles in use as taxicabs, such as age and mileage limitations. Similarly, we believe it is necessary to end the practice of using vehicles with a model age of six or even seven years as "new" vehicles in Philadelphia. For all of the reasons related to quality and reliability of service and the role of taxicabs in improving the economic vitality of the Philadelphia region expressed both in this response and the act, it is simply unacceptable that vehicles with such advanced age and mileage can be entered into service as taxicabs in Philadelphia for the first time as "new" taxicabs.

The imposition of reasonable age (and mileage) requirements is an accepted method of maintaining or improving taxicab service in the Commonwealth and in other jurisdictions in the United States, and we believe our ability to deliver the results mandated by the Legislature in

section 5701.1 of the act will be unnecessarily and unreasonably constrained by an inability to access those standard administrative tools.

However, IRRC and several commentators have questioned the economic impact of the age and mileage restrictions in the proposed regulations. We believe that the requirement in the proposed regulations to use newer vehicles was the primary source of discontent among those members of the regulated community who did comment. We further believe that the continued use of the age and mileage restrictions currently in place in Philadelphia in the final-form regulations will assuage the concerns of the members of the regulated industries as to the alleged negative economic impact of such requirements, particularly when combined with the reductions to the insurance requirements for taxicabs and limousines in the final-form regulation.

It is important to the Authority, the regulated industries and the general public to have a comprehensive set of regulations in place in order to remove the instability in the Philadelphia taxicab and limousine market created by the *Germantown Cab* decision referenced above. If we can yield on this issue in order to obtain that stability then we must. Therefore, we will continue the age and mileage limitations that are currently in place in Philadelphia, and have been in place since 2005 through amendments to § 1017.4. IRRC requested a cost assessment of the new lower mileage restrictions provided in the proposed regulations. Because the taxicabs and limousines have adhered to the mileage requirements of the final-form regulations for several years, there will be no change or fiscal impact associated with the continued adherence to those established limitations. The status quo as to mileage and age requirements will be maintained in Philadelphia through these final-form regulations.

The changes present in the final-form regulations have resulted in significant alterations to both § 1017.3 and § 1017.4. The new sections will appear as "§ 1017.3. Age and mileage computation" and "§ 1017.4. Age and mileage limitations." New §1017.3 will be comprised of the changes referenced in subsection (a) above, and the new imputed mileage subsection that formerly appeared at subsection (c) of § 1017.4, is amended as referenced in our response to comments to that section. This section also includes a new subsection (c) titled "Reporting of odometer malfunctions" taken from § 1017.4 (d) of the proposed regulation, although stated penalties applicable to intentional odometer violations have been deleted. We believe the penalty provisions of § 1001.61 will suffice. We believe we have made the language related to

age and mile restrictions easier to understand through combining those requirements in one new § 1017.4.

§ 1017.4. Taxicab mileage parameters.

Section 1017.4 of the proposed regulations established mileage restrictions related to the entry and retirement of vehicles to be used as taxicabs. As referenced in our response to comments to § 1017.3, this section has been retitled "Age and mileage limitations." We drafted our responses to comments to § 1017.3 to address the comments to both the age and mileage issues (including cost), we incorporate those responses here.

(a) Retirement age and mileage. Consistent with our responses provided under § 1017.3, the new subsection (a) provides the age and mileage at which a vehicle must be retired from taxicab service, which is identical to the current age ceiling in place in Philadelphia. Subsection (a) (1) relates to the vehicle's age and provides an example of when a vehicle must be retired in a manner consistent with that used by the PUC in 52 Pa. Code § 29.314 (d). A vehicle may not be in service on the day it is scheduled for a biannual inspection by the Authority after the vehicle reaches 8 years old. This staggered form of vehicle retirement has been in place in Philadelphia since 2005 and permits the Authority to efficiently supervise the replacement of vehicles while giving certificate holders with some flexibility in terms of when to replace the vehicle. Therefore, a 2006 vehicle will be 8 years old on December 31, 2014. If that vehicle is scheduled for a biannual inspection on February 3, 2014, it must be retired before that date unless it has been granted a waiver to operate as an antique as provided in subsection (c).

Subsection (a) (2) provides the maximum mileage for a vehicle. Taxicabs may not appear for a scheduled Authority inspection as provided in § 1017.31 with a mileage over 250,000, unless it has been granted a waiver to operate as an antique as provided in subsection (c). These limitations have been in place in Philadelphia for several years and represent the regulatory status quo; therefore, the continued adherence to these limitations will not create an economic or fiscal impact.

(b) Entry mileage. Subsection (b) provides that a vehicle may not enter service as a taxicab with a mileage of 135,000, unless it has been granted a waiver to operate as an antique as provided in subsection (c). This limitation has been in place in Philadelphia for years and

represents the regulatory status quo; therefore, the continued adherence to these limitations will not create an economic or fiscal impact.

(c) Antique vehicles. Subsection (c) provides that taxicabs may be operated in excess of the age and mileage limitations of this section, upon issuance of a waiver based on antique status.

IRRC reflected the concerns of other commentators who questioned the difference in vehicle requirements between taxicabs and limousines. There are many differences between these types of service. Preliminarily, limousines must be equipped with high end accoutrements and generally be a more luxurious type of service. Taxicabs will pass vehicle inspections that limousines would fail based on the condition of a vehicle, particularly the interior. The varying vehicle requirements simply reflect the differing nature of these types of service. While there are varying types of limousine service, our experience has been that taxicabs are used more frequently, in harsher conditions and therefore simply wear out faster than limousines. Most limousines are also purchased new, or nearly new, by certificate holders who employ drivers and regularly inspect and maintain the limousines. The combination of less wear and tear and better maintenance permits most vehicles used as limousines to remain in service longer, while not diminishing the quality of service. However, both the Authority and the PUC agree that there is a point at which even limousines must be retired, which is addressed in our response to comments in § 1055.3. *See* 52 Pa.Code § 29.333 (e).

§ 1017.5. Basic vehicle standards.

Section 1017.5 provides for basic vehicle requirements applicable to taxicabs.

(a). State vehicle standards. Subsection (a) provides that taxicabs must be in continuous compliance with applicable Department of Transportation equipment inspection standards stated in 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection) when providing taxicab service. IRRC commented that the term "except where those standards are exceeded or otherwise altered by this subpart[.]" was unclear. We agree with IRRC and have deleted that phrase, although we disagree with a commentator who suggested the Authority does not have the ability to set its own vehicle condition requirements and incorporate here our response to § 1017.3.

(b). Standard taxicab vehicle requirements. Subsection (b) provides a series of specific requirements applicable to taxicabs.

(b)(2). Subsection (b) (2) provides that taxicabs must use the services of a certified dispatcher as required by section 5721 of the act. A commentator noted that drivers should not be required to maintain a relationship with a dispatch association. We agree and note that this subsection creates no such requirement, although a driver may not accept from a certificate holder a taxicab unless it is associated with a certified dispatcher. A certificate holder must have its taxicab inspected each day to assure that it meets the requirements of this section as provided in subsection (f).

Another commentator suggested that the Authority does not have the statutory power to require partial-rights taxicabs to use the services of a certified dispatcher, we disagree with the commentator and believe partial-rights taxicabs are subject to the Authority's sole jurisdiction when operating in Philadelphia as we have noted in response to comments to the definition of "partial-rights taxicab" in § 1011.2, which we incorporate here. We also do not believe that a statutory requirement applicable to a particular class of service acts as a prohibition to the application of that requirement to other classes of service. However, we recognize that partial-rights taxicab certificate holders currently dispatch their own taxicabs and will amend this subsection to eliminate the obligation of partial-rights taxicabs to associate with dispatchers.

(b)(3). Subsection (b) (3) of the proposed regulation required the presence of a two-way radio and a mobile data terminal in each taxicab to facilitate dispatcher communication. We have deleted reference in this subsection to a "mobile data terminal" because that item is currently a component of the taxicab meter system in place in Philadelphia and requiring it both in this subsection and through subsection (b) (13) is duplicative. Also the term "radio" has been deleted from the phrase "dispatch radio system" in order to permit the potential technological expansion of dispatching options in Philadelphia beyond mobile data terminals and two-way radios as considered below.

IRRC and other commentators questioned the propriety of the requirement in subsection (b) (3) to maintain a two-way radio in taxicabs, particularly when mobile phones may suffice. Two-way radio communication is a proven commodity used to maintain efficient and cost effective communication lines between taxicab drivers and the centralized dispatch system all taxicabs must use. We agree. The Authority has already granted a waiver authorizing dispatch operations through two-way mobile phones and will continue to analyze evolving technology to consider additional mediums of dispatcher communication. We have amended this subsection to

permit alternative forms of dispatch communications, as approved by the Authority. The approval process will permit the Authority to evaluate the two-way radio alternative proposed and assist in our evaluation of the value of changing this requirement through a subsequent rulemaking.

One commentator suggested that partial-rights taxicabs do not fit squarely with this two-way radios requirement. We agree and note that partial rights taxicabs do accept service through advanced reservation, which is communicated to the driver by radio. In fact, partial-rights taxicabs are only permitted to pick up fares outside of their designated areas of operation and inside of Philadelphia, through advanced reservation. Further, these taxicabs currently use two-way radios for this purpose, so this requirement will not create any fiscal impact. We have amended this subsection to note that the obligation to be connected to an approved dispatch system applies to medallion taxicabs and that partial-rights taxicabs that are not associated with a dispatcher must maintain a two-way radio connection with the certificate holder or its agent.

One commentator suggested that all taxicabs be required to have *only* two-way radios. For the reasons referenced above, we believe that such a limitation would inevitably collide with evolving technology to the detriment of the regulated industries and the public.

(b)(4). Subsection (b) (4) requires the posting of taxicab rates in taxicabs. The phase "the Authority's uniform" was deleted in order to add clarity to this subsection.

(b)(6). Subsection (b) (6) requires that each taxicab display the uniform rates for service established by the Authority. A commentator correctly noted that this subsection appeared duplicative of language in subsection (b) (24) (ii), which we have deleted. We have amended subsection (b) (6) to include reference to sections 5703 or 5720 of the act due to the deletion of Chapter 1023.

(b)(12). Subsection (b) (12) provides that taxicabs must be equipped with a protective shield separating the driver from the passenger compartment. A commentator suggested that this provision was only applicable to medallion taxicabs and not partial rights taxicabs. Section 5714 (b) of the act requires that "all taxicabs operating within cities of the first class shall be equipped with a protective barrier for the protection of the driver". Taxicab is defined by the act to include partial-rights taxicabs. *See* 53 Pa.C.S. § 5701. Partial-rights taxicabs provide taxicab service within Philadelphia. Therefore, this statutory requirement applies to partial-rights taxicabs. A

typographical error related to the sequential numbering of the subparagraphs of paragraph (12) is now corrected in the final-form regulation.

The Legislature clearly recognized the safety issues associated with being a taxicab driver in Philadelphia and sought to impose some form or mandatory protect. While we believe technological advances, including the use of surveillance cameras, may provide greater protection, at present these barriers are required by statute. These barriers are also already in every taxicab in Philadelphia, including all partial-rights taxicabs; therefore, there is no increase in operation costs associated with this requirement.

(b)(17). Subsection (b) (17) provides that the passenger seats of a taxicab must be in good order. A typographical error was corrected by inserting the word “or”.

(b)(19). Subsection (b) (19) requires the interior temperature of a taxicab to be maintained within a certain range.

A commentator suggested this would create an undue burden upon the taxicab industry and damage the environment. The commentator fails to realize that this requirement has applied in Philadelphia since 2005 and has been subject to enforcement since that time; therefore, the industry already complies with this basic requirement and no new cost will be associated with its continuance. This requirement is in place to combat one of the most frequent sources of complaints from the riding public during warmer times of the year, that being the refusal of a taxicab driver to turn on an air conditioning system, or the inoperable nature of such a system in taxicabs. The Authority’s Inspectors are equipped with hand held electronic temperature gauges to enforce this regulation, which has required less enforcement activity over the past several years as most taxicabs already comply. The requirement to activate the temperature control system while in a taxi stand only applies when the taxicab approaches the front of the line so that the taxicab is comfortable for passengers upon entry. This requirement has also been in place in Philadelphia since 2005.

(b)(22). Subsection (b) (22) requires taxicabs to be equipped with a map of Philadelphia. IRRC and other commentators questioned the need to maintain a map in each taxicab given the presence of GPS technology available through the taxicab meter system. While the GPS system is very reliable, as with any form of electronic technology reliability is never 100%. In the event the GPS function of the taxicab meter system malfunctions, for any reason, drivers should have a readily accessible means of determining the best route to the customer’s destination. The status

quo in Philadelphia requires the presence of a map in each taxicab, which can be obtained for less than $5; therefore, this regulation will not increase taxicab operation costs.

(b)(24)(ii). Subsection (b) (24) (ii) requires the posting of taxicab rates in taxicabs. Consistent with our response to comments in subsection (b) (6), we have deleted this paragraph and re-identified each subsequent paragraph.

(b)(24)(iii). Subsection (b) (24) (iii) requires that taxicabs display a posting to provide notice of non-cash fare payment options. A commentator disputed the wisdom of requiring non-cash payment options; however, this subsection only requires the posting of the notice, which will be provided by the Authority at no cost to the certificate holder.

(b)(24)(iv). Subsection (b) (24) (iv) requires that taxicabs display a posting listing passenger rights, which is a standard posting provided by the Authority at no cost to the certificate holder. A commentator suggested that a list of driver rights should also be posted. We agree with the commentator and will continue the present practice of issuing form postings of driver rights and passenger rights at no cost to certificate holders. Regardless of the posting of driver rights, drivers are encouraged to report any crime committed against them to both the Philadelphia Police Department and the Authority.

(c) Interstate drivers. This subsection clarifies that the vehicle requirements of this section are not intended to disrupt or interfere with interstate commerce. The position is stated generally, except for a citation to a specific federal statute. IRRC correctly noted that the citation was inaccurate and questioned the need for this subsection in a section dealing with vehicle requirements. This subsection was not intended to only reference interstate drivers, but only to provide clarity in the event of an inconsistency between these requirements and any federal requirements associated with the regulation of interstate commerce. We believe the guidance this subsection will provide is important and will delete reference to specific federal statutes and amend the title to "Interstate travel".

(e)(1). Advertising prohibited. Subsection (e) prohibits the use of advertising in or about a taxicab except for roof top panels, which is the status quo in Philadelphia. Commentators suggested that certificate holders be permitted to advertise without limitation. Taxicabs in Philadelphia use a certain colors and marking scheme to identify each dispatcher. We believe that external advertisements beyond that permitted on the roof panel will interfere with the distinctive markings currently required in Philadelphia and as continued by these final-form

regulations. The PUC maintains this same requirement at 52 Pa.Code § 29.402 (3). The distinctive colors and markings of taxicabs not only assist dispatchers in developing a brand, but greatly assist the Authority in the investigations of complaints by passengers who do not recall the name or number of the taxicab. We are also concerned that such advertising will obscure vehicle identification numbers and may impede unobstructed views for drivers and passengers. We further believe that interior advertising will distract attention from the limited space available for notices. However, we note that we have granted waivers from this provision in the past. We have added language to this section to clarify that such waiver options are available.

(f). Inspection by certificate holder. Subsection (f) requires a certificate holder to inspect its taxicab on a daily basis. IRRC and other commentators suggested that when a taxicab is leased the certificate holder will not have access to the taxicab in order to conduct such an inspection. The Authority's administrative hearing records are replete with examples of certificate holders who seek to pass along their obligation to properly maintain a taxicab to a taxicab driver through a lease. The driver is generally the individual least financially capable of providing proper vehicle maintenance. That scenario, in which the most financially capable person in the taxicab relationship is relieved of maintenance obligations, results in the operation of poorly maintained vehicles, which places the public safety as issue and debases taxicab service.

However, we agree with IRRC's concern that even the certificate holder with the highest standards of service may be precluded from daily inspections of taxicabs that are subject to a lease agreement. We accept IRRC's suggestion to grant the certificate holder the discretion to select another person to conduct these inspections on the certificate holder's behalf, without absolving the certificate holder of the obligation to assure that its taxicabs continually comply with this section.

§ 1017.6. Required documents.

Section 1017.6 requires that certain documents be continually present in taxicabs. A commentator questioned the meaning of "proof of vehicle ownership". As used in this section that term means the registration card issued by the Pennsylvania Department of Transportation. This section does not relate to inspections of vehicles upon entry into taxicab service as a commentator appeared to note in one comment.

§ 1017.7. Transportation of blind, deaf or physically disabled persons with service animals.

Section 1017.17 requires taxicab service providers to transport leashed animals, including guide dogs. A typographical error was corrected in this section by changing the reference to "disable persons" to "disabled persons".

Subchapter B. COLORS AND MARKINGS

§ 1017.11. Distinctive colors and markings.

Section 1017.11 describes the color, marking, and dispatcher requirements for both city-wide and partial-rights taxicab companies. Consistent with our responses to § § 1017.4 and 1017.5, which we incorporate here, we have deleted subsection (b) (3) dealing with the association of partial-rights taxicabs with dispatchers.

§ 1017.12. Required markings and information.

Section 1017.12 provides for certain markings and information that will need to be displayed on each taxicab.

(a)(1). Section (a) (1) requires that the taxicab identification number be posted on the front fenders of the taxicab and on the rear of the taxicab in print 5 inches high or larger. The print size requirement has been reduced from 5 inches to "at least 3 inches in height and at least ½ inch in width". This change is consistent with our response to comments to subsection (a) (2). However, the height of the taxicab identification number is slightly larger that the minimum height requirement in subsection (a) (2) because the number is generally easier for the riding public to remember and is more specific as to which taxicab is at issue. For that reason we believe the taxicab identification number should meet this height requirement. Although, certificate holders are free to print all letters in this size. There will be no other required lettering on the rear of the taxicab to compete with this size numbering requirement.

(a)(2). Section (a) (2) requires that the name of each taxicab certificate holder be displayed on the front fenders of each taxicab. The PUC has a similar requirement for taxicabs. *See* 52 Pa.Code § 29.71. Commentators suggested that the Authority's size requirement for taxicab numbers (5 inches) is in conflict with the PUC's requirement of "at least 2 inches in

height and at least 1/2 inch in width." *See* 52 Pa.Code § 29.71 (a). The five inch letter requirement has been in place in Philadelphia since 2005 and does not conflict with the PUC requirement. A taxicab that is compliance with the Authority's regulation will also be in compliance with the PUC's regulation, provided the lettering is at least ½ inch wide, which they all currently are in Philadelphia. However, we agree that the inclusion of the name of the certificate holder in conjunction with the vehicle's numbers may not permit for sufficient space. Therefore, we will use the PUC's "at least 2 inches in height and at least ½ inch in width" standard.

IRRC and other commentators questioned the need for this provision given the number of certificate holders in Philadelphia. Our experience has been that the public is often confused about who owns a taxicab. The Authority routinely fields requests for the name of taxicab owners that would otherwise be easily obtained by simply looking at the vehicle. The public often wrongly presumes the dispatcher is the owner of the taxicab. Specific knowledge about the owner of the taxicab will assist the public in reporting complaints and even in selecting preferred taxicab service providers, which we hope will be some small incentive to provide better service. We have added language to permit the continued operation of taxicabs without this marking requirement through the vehicle's first scheduled inspection after January 1, 2012, to permit the regulated industry time to come into compliance. Because each taxicab certificate holder is responsible for assuring that its taxicabs are properly painted and otherwise marked, the name of the certificate holder can be easily attached to the vehicle at the time it is outfitted for taxicab service, just as is done in every other county in Pennsylvania under the PUC's jurisdiction.

§ 1017.13. Removal of name, colors and markings.

Section 1017.13 prohibits vehicles from impersonating a certified taxicab and requires the removal of the markings that identify a vehicle as a taxicab within 72 hours of the removal of the vehicle from taxicab service. This practice is currently in place in Philadelphia.

Commentators suggested that vehicle owners have been subject to administrative penalties in the past for not sufficiently removing the name, colors and markings on vehicles upon removal from taxicab service. We believe that is true and that type of reasonable enforcement is necessary. Vehicles with partially removed taxicab colors have been found to provide illegal service in the past. Once removed from taxicab service a vehicle must adequately

remove the identifying markings that advertise it as a taxicab. To permit otherwise would permit unauthorized vehicles to, at a minimum, appear to offer taxicab service, create public confusion and assist illegal service providers. Certificate owners may avail themselves of the administrative adjudication process to dispute the validity of a citation issued for failure to follow this section. *See* §1005.13.

§ 1017.14. Taxicab numbering.

Section 1017.14 provides for certain numbering requirements related to taxicabs.

(b) Partial-rights taxicabs. Subsection (b) requires partial-rights taxicabs certificate owners to number their vehicles in sequence. A typographical error in paragraph (2) has been corrected by changing the term "if it determines" to "if it is determined".

Commentators seemed to claim that this subsection is a burden because some partial-rights taxicabs also have to comply with PUC sequential numbering requirements. This section is a continuation of the rule in place in Philadelphia since 2005, which has not created a problem of the nature theorized by the commentator despite the on-going dual regulation of those vehicles by the PUC and the Authority and we do not believe that it will in the future. We also note that the Authority's regulation is more flexible than the requirements of the PUC as expressed by the commentator. The Authority does not require that taxicabs owned by partial-rights taxicabs certificate holders without Authority rights be numbered sequentially with taxicabs that do have Authority rights.

Subchapter C. METERS

§ 1017.21. Taxicab meters.

Section 1017.21 generally provides for the condition of meters, including the need to have each meter sealed by the Authority.

§ 1017.22. Meter calibration and testing.

Section 1017.22 generally provides for the calibrating of taxicab meters by the Authority. A typographical error in subsection (a) has been corrected by deleting changing the word "calculates" to "calculate".

§ 1017.23. Approved meters.

Section 1017.23 provides a process through which the Authority will identify meters approved for use in Philadelphia taxicabs. IRRC commented that the list of approved meters was not posted on the Authority's website at www.philapark.org/tld. That oversight has been corrected. The website we have identified in the regulations will immediately display the TLD's home site and display links to the various forms, notices, or lists applicable to the regulated industry. We decline to use a more specific link than the one provided out of concern that it may be corrupted or changed at some point causing confusion among the regulated community. This list is now very easy to locate.

IRRC suggested, based on averments of other commentators, that only one meter has been approved by the Authority. Representative Mark B. Cohen and other commentators commented that multiple GPS and credit card processing service providers should be permitted. There are technically four approved meters: two meters for medallion taxicabs and two meters for partial-rights taxicabs. For medallion taxicabs, there is only one approved meter system because that new system was purchased with taxicab fund money as part of the hospitality initiative mandated by Section 23 (2) of the act. The meter system was selected through a public request for proposal process after consideration by the Authority's Board at a Sunshine Act meeting.

That new meter system includes credit card payment options, automatic paper receipt capability, two-way communication between the taxicab and the dispatcher or the Authority, an emergency assistance button in the driver's area of the vehicle, GPS functions, and several other technological advances designed to improve the quality of taxicab service. Similar systems now exist in New Your City, Las Vegas and other major cities in the United States and Europe. The Authority has delayed the final implementation of its contract, which will include hardware and software upgrades, pending the final determination of these regulations.

The approved medallion taxicab meters are integrally linked to the overall meter system; therefore, random meters will not be approved for service without complete compatibility with

the overall system. The meter system and the approved medallion taxicab meters are performing at a very high level, with very few complaints. However, a regulated party may seek the use of an alternative meter through a waiver petition as provided in § 1005.23. We also incorporate our response to comments to § 1017.24 related to credit card processing issues.

§ 1017.24. Meter activation and display.

Section 1017.24 provides for the capabilities that taxicab meters must have and for the manner in which those meters must be used.

(a) and (b). Subsections (a) and (b) provide instructions on the point of a fare at which the meter must be engaged and when it must be disengaged. A commentator suggested that taxicabs be permitted to engage the meter before a passenger is in the taxicab and while a passenger is exiting a taxicab. We agree that the language of the proposed regulation was unnecessarily restrictive and have deleted the language of these subsections entirely. The final-form regulation will employ the meter engagement concept used by the PUC's regulation on this issue. *See* 52 Pa.Code § 29.314 (b) (7), but will also note that a meter may not be in operation before a passenger engages the services of the taxicab. For example, a taxicab driver may not place the meter in operation upon being hailed by a potential passenger until the taxicab comes to a safe and legal stop at a point that the hailing party can safely enter the taxicab. This change will permit the flexibility necessary for taxicab drivers to be compensated for time associated with the loading and unloading of passengers and continue the established practice for taxicab meter engagement.

(d)(4). Subsection (d) (4) requires all taxicab meters to accept fare payment by credit card, and caps the credit card processing fee applicable to those transactions at five percent of the fare's value. This is a cap and not a mandatory fee.

IRRC and other commentators questioned the reasonableness of this five percent fee and if the credit card processing function was subject to competition by multiple vendors. The five percent cap for credit card processing fees has been in place in Philadelphia for several years. Prior to that time, it was not unusual for dispatchers to charge drivers a fee of ten percent or more to process credit card payments. It is this abuse that the Authority's five percent cap has cured and we believe it is crucial to the stability of the taxicab industry to maintain that cap. This cap has reduced the fees charged to drivers by at least half over the past eight years. This cap does

not restrict the use of a lower processing fee. The five percent maximum fee was competitively bid as a component of the meter system, as referenced in our response to comments to § 1017.23 above, the credit card processing function was also a component of the proposal process.

IRRC also questioned whether the five percent cap was over market rates for "other businesses." Again, the five percent cap is a ceiling above which fees may not be charged. We do not believe that it is appropriate to compare a rate ceiling with an actual rate that may be charges to a particular vendor. Many vendors benefit from lower transaction rates for a variety of reasons, including the vendor's credit worthiness, volume of transactions, tenure in business and overall financial stability. When this process started many drivers, who are all independent contractors, did not have personal bank accounts into which funds could be deposited. However, we know for certain that before this rate ceiling was put in place through the Authority's regulations in 2005, drivers were often charged ten percent or more for these transactions, that is why a cap was employed. Upon the resolution of this regulatory promulgation process, and the return of regulatory stability to Philadelphia's taxicab industry, we will continue our negotiations with the current vendor of the meter system to obtain even lower transaction rates.

For a more direct comparison to comparable markets, maximum credit card processing fees in other major cities have been as follows:

- New York City 5%
- Miami 5%
- Boston 6%
- Las Vegas 5%
- Atlanta 7-10%
- San Francisco 5%
- Chicago 5%

The Authority will continually review options for reducing credit card processing fees charged to drivers. We believe the continuation of the status quo in Philadelphia of capping those fees is in the best interest of the regulated industries and the public and is a reasonable exercise of the Authority's regulatory power.

Commentators also questioned the applicability of this section to partial-rights taxicabs. For the reasons we have identified above in response to comments to the definition of "partial-

rights taxicab" in § 1011.1, we believe that partial-rights taxicabs should provide the public with the basic meter requirements provided in this section. However, we recognize that some of the more technologically advanced requirements of this section may place an unreasonable burden upon some partial-rights taxicab certificate holders and have deleted this requirement from the final-form regulations. Therefore, we believe we have addressed the concerns of commentators about the fiscal impact of this section upon partial-rights taxicabs.

Commentators also suggested that the tracking of taxicab operations through the GPS function of the meter system was outside of the Authority's scope. We disagree. Taxicab operations are and have always been a heavily regulated industry. Taxicabs always advertise their services, even when a driver may claim he or she is not seeking a fare. Taxicab regulation is based upon the close contact taxicabs have with customers and the potential for abuse or harm to passengers at the hands of drivers and vice versa. The GPS component has and will continue to improve driver safety through the use of the emergency button. When activated by a driver under distress, both the Authority and the taxicab's dispatcher will know where a driver is in order to direct police attention. The GPS function has also been used to locate countless taxicabs on behalf of passengers who left behind valuable items after exiting the taxicab. The GPS function has been used to assist the police in investigating crimes inflicted upon taxicab drivers or by taxicab drivers upon others. The manner in which taxicabs offer service or appear to offer service is squarely within the scope of the Authority's regulatory powers, regardless of when it happens. Also, taxicab drivers are not prohibited from using their own GPS units, in addition to that included in the meter system.

Commentators questioned the impact of this section upon the taxicab meters currently installed in medallion taxicabs. The current medallion taxicab meters fully comply with the requirements of this section.

§ 1017.25. One meter.

Section 1017.25 provides that a taxicab may be equipped with only one meter. In the past, some drivers have skirted the requirement to use sealed and calibrated meters by switching the approved meters for illegal meters, which had been manipulated to charge higher fares. In those cases the extra meter was usually hidden under the front car seat of the vehicle when encountered by Authority Inspectors. Commentators suggested that partial-rights taxicab

operators may be unable to comply with this requirement because they may charge different rates in non-Philadelphia service related areas. We note that this is an existing requirement and that partial-rights taxicab operators have been using one meter for this exact purpose since at least 2005. This regulation represents the regulatory status quo in Philadelphia and is in the best interests of the public as we have noted above.

§ 1017.26. Certificate holder responsible.

Section 1017.26 requires certificate holders to inspect their taxicab meters each day to assure that all meters are properly sealed. It is crucial that the inter-workings of a meter be sealed in order to prevent manipulation of the rate calibration.

Commentators raised concerns related to the ability of a certificate holder to conduct these inspections on a daily basis and again suggested that the taxicab driver is the appropriate party to supervise and repair taxicabs, as opposed to the certificate holder or the owner of the medallion worth more than $300,000. We incorporate our response to comments made to § 1017.5 (f). We have made a similar modification to this section in the final-form regulation to permit agents of the certificate holder to inspect the meters, without alleviating the certificate holder of ultimate responsibility for the condition of the meter.

Commentators suggested that this inspection requirement is antiquated because the certificate holder derives no revenue from the operation of the taxicab meter. The commentator misses the point. The certificate holder reaps the benefit from the improved quality of taxicab service in Philadelphia through the ever increasing value of medallions. It would be inconsistent with the intent of the act, and the public good generally, to promulgate regulations that absolve certificate holders of any obligation to supervise and properly maintain the public utilities that they own.

Subchapter D. TAXICAB INSPECTIONS

§ 1017.31. Biannual inspections by Authority.

Subsection 1017.31 requires taxicabs to submit to two pre-scheduled bi-annual inspections by the Authority. The ability to conduct thorough examinations of the vehicles used to provide taxicab service is crucial to maintaining a clean, safe and reliable fleet of taxicabs.

Over the past 8 fiscal years the City of Philadelphia has experienced a significant increase in to quality of these vehicles. We believe that improvement is tied directly to the pre-scheduled bi-annual inspection process continued through this regulation.

We continually strived to reduce the time necessary to complete these inspections and have made significant improvements over the years, aided by a dedicated inspection station located within minutes of Center City, the Philadelphia International Airport, and Philadelphia's sports stadium complex. We believe that our existing procedure, which is continued in these final-form regulations, is the most efficient and thorough manner in which to conduct taxicab inspections. In the Authority's inspection facility the inspectors are experience in dealing with taxicabs and have the resources, including a safe vehicle lift, to conduct quality inspections.

Again and again we observe that those certificate holders who maintain their vehicles properly generally clear these inspections easily and then quickly return to service. Unfortunately, many certificate holders operate their taxicabs with the minimum amount of maintenance possible to keep the vehicle on the street. Those certificate holders often encounter delays associated with either an inspection failure or the need to make repairs to their vehicle and reappear at another inspection.

The Authority's <u>scheduled</u> inspections of taxicabs (meaning the certificate holder and driver knew weeks in advance that the vehicle would be inspected) have revealed many truly egregious conditions, including the following:

- An overwhelmingly bad odor from the interior of the vehicle was discovered to be a decomposing rodent. The certificate owner attempted to conceal the odor with multiple hanging air fresheners.
- Upon inspection, the carpeting in the passenger compartment of a taxicab appeared loose. Upon lifting the carpet the inspector observed the floor of the inspection station. The floor of the vehicle had completely rotted away long before it was presented for inspection.
- Tires so worn that the steel belts are showing (this is unfortunately common).
- Holes in the floor of a taxicab that are repaired by attaching license plates to the floor with steel screws.
- Exhaust system leaks into to passenger compartment.

- Repeated cases of improperly manipulated wiring creating fire hazards. In one case, the headlights of the taxicab came on every time the brakes were pressed.
- Shock absorbers welded to the shock tower.
- Metal bumpers and frames with damage so severe the vehicle can not be safely operated. In one case, a "repair" to a taxicab amounted to the removal of the steel bumper and the replacement of the bumper cover only, which was then held in place with piano cord.
- One driver was using the taxicab's engine to cook his dinner at the time it was presented for inspection (cans of stew and chili were warming on the manifold).

With limited staffing, the Authority is simply not able to continually patrol the entire City of Philadelphia in search of these conditions, although we do make every reasonable effort to do so. This organized and thorough biannual inspection process is fundamental to Authority's ability to achieve the Legislative purposes of the act.

A commentator suggested that this section makes partial-rights taxicabs more heavily regulated than medallion taxicabs, because medallion taxicabs are not subject to regulation by the PUC. We incorporate our response to comments to the definition of "partial-rights taxicab" in § 1011.2 here.

Partial-rights taxicabs are in a uniquely beneficial position in the taxicab industry. These carriers may provide taxicab service in areas of Philadelphia reserved for medallion taxicabs, without need to buy a medallion and with the ability to operate an unlimited number of taxicabs on one certificate of public convenience. Those certificate holders may also use those same taxicabs to provide service outside of Philadelphia, while statutes and regulations prohibit medallion taxicabs from doing the same.

Partial-rights taxicab certificate holders are free to self-designate taxicabs as Authority or PUC only, in which case those taxicabs would not be subject to dual inspection requirements. However, most partial-rights taxicab certificate holders opt to cross-designate their taxicabs to maximize the value of being able to legally operate inside and outside of Philadelphia. To the extent that those carriers seek to provide taxicab service within Philadelphia, this section simply

holds them to the same standard applied to the other taxicab certificate holders. This has been the practice in Philadelphia since 2005.

§ 1017.32. TLD inspection sticker required.

Section 1017.32 provides for the manner in which state vehicle inspection and Authority regulatory stickers are issued and attached to taxicabs. A commentator suggested that if a partial-rights taxicab failed a state vehicle inspection the carrier would be unfairly penalized because the taxicab would be unable to provide taxicab service in PUC regulated areas. Taxicabs are not immune from the Commonwealth's vehicle inspections standards, regardless of which county the taxicab services. Therefore, we disagree with the commentator's suggestion that regulatory jurisdiction is relevant to the state inspection requirement.

§ 1017.33. Failure to appear for scheduled inspection.

Section 1017.33 provides for a fee to be imposed upon a certificate holder in the event a vehicle is scheduled for inspection by the Authority, but fails to appear. IRRC raised several questions related to this rescheduling fee. To eliminate confusion related to this issue, we have deleted reference to the fee and clarified the language related to the imposition of penalties for failing to appear for inspection. The penalty process is initiated through formal compliant.

§ 1017.34. Field inspections.

Section 1017.34 provides for field inspections of taxicabs by the Authority. The ability to investigate the operation of taxicabs while they are in service is crucial to the Authority's ability to achieve the legislative intent of the act. *See* 53 Pa.C.S. § 5701.1. In response to comments, we note that the Authority's Inspectors are routinely trained and re-trained in terms of the appropriate manner in which to conduct a field inspection of taxicabs, in the least intrusive manner possible, both for the benefit of the taxicab driver and potential passengers. The Authority does not conduct field inspections of taxicabs while a passenger is in the vehicle, absent some exigent circumstance, including a request by a passenger.

§ 1017.35. Failure to submit to field inspection.

Section 1017.35 provides for procedures related to the initiation of taxicab field inspections. We have amended subsection (b) by removing the mandatory out of service designation for failing to submit to a field inspection. Instead, the discretion to initiate that process will be with the Enforcement Department. A commentator questioned the subjective nature of Authority Inspectors when imposing the potential $1,000 fine for refusing to yield to a field inspection request. We believe the penalty provisions of § 1001.61 will suffice to provide notice of certain penalties and have removed this section from the final-form regulations. Any penalty may only be enforced through the formal complaint process. Through that process a driver will be afforded the opportunity to participate in an on the record hearing before a presiding officer of the Authority's Adjudication Department. This section does not reference the impoundment of taxicabs.

§ 1017.36. Reinspection.

Section 1017.36 requires a taxicab that fails an Authority vehicle inspection to submit to another inspection prior to reinitiating taxicab service. A commentator suggested that the Authority's Fee Schedule should charge a flat fee for vehicle inspections, regardless of the need for multiple inspections of the same vehicle. This issue may be addressed through the fee schedule process. The Authority adheres to standard practice related to fees charged for state inspections.

§ 1017.37. Inspection subsequent to vehicular accident or damage.

Section 1017.37 provides standards related to the removal and re-entry of taxicabs from active service following certain types of accidents.

Unfortunately, taxicabs damaged in motor vehicle accidents or other incidents are often repaired in a manner that would cause the vehicle to fail an Authority inspection, if one were immediately conducted. Too often, the rush to return the damaged taxicab to active service in order to generate revenue trumps the time and costs associated with completing the needed repairs properly. Absent a provision in the regulations requiring removal of the taxicabs from service and an inspection prior to re-initiation of taxicab service, these poorly repaired vehicles will continue to service the public until the next scheduled bi-annual Authority inspection or review through a field inspection by pure happenstance. These are not hypothetical scenarios,

but are instead unfortunately common and are completely inconsistent with the legislative intent of the act. *See* 53 Pa.C.S. § 5701.1. For that reason, the proposed regulation established several repair thresholds requiring removal of a taxicab from service and an inspection prior to returning to service.

(a). Subsection (a) requires removal from service in the event a taxicab is engaged in an incident listed in this subsection. IRRC suggested the deletion of subsections (a) (2) and (5) from the list of threshold removal requirements because they were vague or superfluous. We agree and have deleted paragraphs (2) and (5) and renumbered the remaining paragraphs as necessary.

IRRC and other commentators have suggested that subsection (a) (3), which requires the removal of a taxicab in the event it suffers damage that requires more than $500 to repair, is also vague and potentially confusing. We agree that the use of a threshold dollar figure is not sufficiently narrowly tailored. Instead, we have identified three major components of a vehicle that if damaged and in need of repair will require the immediate removal of the vehicle from taxicab service. Those components are airbags or passenger restraints (seat belts), an axel or the vehicles frame. These are bright line safety related issues that will permit the Authority to adequately monitor the quality of major post-accident repairs, but release drivers and certificate holders from the obligation to remove taxicabs from operation and report accidents resulting in relatively minor repairs.

(b). Subsection (b) requires the certificate holder and driver to contact the Manager of Enforcement and remove the damaged vehicle from taxicab service upon the occurrence of an incident listed in subsection (a).

IRRC commented that in some cases the driver and certificate holder may be required to contact the police and that the language of this subsection should be altered to provide for that event. We disagree and believe that the term "immediately" is neither overly broad nor suggestive of an obligation to ignore emergency medical care, police interaction or standard accident scene contingencies simply to inform the Authority that an accident has occurred. However, the problem this subsection seeks to prevent is the rapid and slipshod repair to vehicles that may be conducted in a matter of hours after an accident covered by subsection (a), therefore, we believe this language must remain in order to prevent the fraud it targets. IRRC noted that § 1021.15 also contains a post-accident reporting requirement. IRRC asked for an explanation of

the need for each section. While § 1021.15 does provide for a reporting requirement, it does not require removal of a taxicab from service. The language of this subsection dealing with the reporting requirement is integral to the overall understanding of this subsection related to the scenarios identified in subsection (a). This section does not conflict with § 1021.15, but has been amended to clarify that accidents of the nature addressed in this section should first be reported to the police and then the "Manager of Enforcement".

(c). This subsection provides that a vehicle removed from taxicab service as provided in this section may not return to active service until it has completed an Authority compliance inspection. IRRC identified a typographical error in this section found at the reference to subsection "(b)" which has been changed in the final-form regulation to "(a)". A commentator suggested that language be added to this section to relieve the taxicab driver of lease requirements if it was determined that the driver was not at fault in the vehicle accident. We believe that a determination of liability for an accident would be simply too difficult to rapidly achieve and may be outside of our jurisdiction.

Subsection (c) has also been amended to clarify that the Authority will not charge a fee for vehicle inspections conducted pursuant to this subsection.

§ 1017.38. Change of vehicle.

Section 1017.38 provides for an inspection at the time a vehicle used as a medallion taxicab is substituted with another vehicle or when a new vehicle is added to a partial-rights taxicab certificate holder's list, including replacements of retiring vehicles. A commentator suggested that this requirement is burdensome. The Authority strives to minimize the amount of time associated with these routine vehicle inspections; however, we believe it is crucial that each taxicab complete a compliance inspection prior to the time it initiates taxicab service. This regulation continues a practice in place in Philadelphia since 2005.

§ 1017.39. License plate change.

Section 1017.39 requires a taxicab to submit to a compliance inspection in the event that the certificate holder changes the license plate. Taxicabs are required by the Pennsylvania Department of Motor Vehicles to have special license plates, which clearly identify the vehicle as a taxicab. A commentator questioned the need for this inspection. We agree that this section

can continue with only a reporting requirement associated with the replacement of a taxicab's license plated and have amended subsection (b) accordingly.

§ 1017.40. Transfer inspection.

Section 1017.40 requires a taxicab that is subject to a sale to be inspected by the Authority prior to being operated by the new owner.

§ 1017.41. Attendance at scheduled inspection.

Section 1017.41 requires the certificate holder or its attorney in fact (an agent) to be present when the certificate holder's taxicab appears for inspection by the Authority. The inspection of taxicabs is one of the most crucial tools the Authority has to ensure clean, safe and reliable service, particularly given the advanced age of the taxicab fleet in Philadelphia. The certificate holder attendance obligation has been in effect in Philadelphia since 2005; therefore, there will be no additional cost associated with its implementation. The agents used by certificate holders tend to be employees or associates of the certificate holder.

IRRC questioned the need to have a certificate holder or hired attorney present at the vehicle inspection. There is no reason to have a licensed attorney present at a vehicle inspection, although a certificate holder could appoint one if they desired. This regulation requires the certificate holder or an agent to be present in order to rapidly address vehicle condition issues. This is not a typical family car vehicle inspection. These vehicles transport the public for compensation and have a heightened obligation to do so safely. These inspections frequently reveal the need for expensive safety repairs. Inspections are commonly discontinued to permit the certificate holder or its agent to repair the vehicle and then resubmit it for inspection by the Authority, often in the same day. This rapid decision making process avoids an out-of-service designation and requires the participation of the certificate holder, directly or through an agent. The certificate holder is responsible for maintaining its taxicabs, not the driver that may be leasing the taxicab for a given 12 hour shift.

The ability to use an agent gives the certificate holder the option to appear, or not, at inspections, and adequately addresses the Authority's concern about having a competent person present to address vehicle condition issues promptly, including issues that may require the immediate removal of the vehicle from taxicab service.

§ 1017.42. Prerequisites to inspection.

Section 1017.42 provides that a taxicab will not be accepted for a scheduled inspection by the Authority if either the taxicab or certificate holder is out of compliance with the act or specified provision of the regulations. A commentator noted that outstanding and unappealed parking violations accrued by taxicab drivers may prohibit a certificate holder from having its taxicab inspected. Because a certificate holder is able to transfer liability for parking tickets to the applicable driver of the taxicab through the Fleet Program provided for in § 1011.6, we believe outstanding parking violations accrued by drivers will not prohibit taxicabs from being inspected.

In subsection (b) (3) we amended the title of § 1011.7 to reflect the changes noted in our response to comments to that section.

§ 1017.43. Approved models and conditions.

Section 1017.43 provides that the Authority will maintain a list of vehicles by make and model that may be used to provide taxicab service. IRRC suggested that the Authority amend this section to make clear that the list is not exclusive and may be amended upon written request to the Authority. We agree with IRRC's suggestion and have made those changes.

A commentator suggested that the list of approved vehicles should match the PUC's list or at least be consistent with the regulations. We can not constrain our discretion as to permissible makes and models of vehicles used to provide taxicab service to another agency. The final-form regulations do provide certain criteria, such as the number of doors, leg room parameters, trunk capacity, etc., against which additions to this list will be measured. *See* § 1017.5.

§ 1017.44. Reconstructed vehicles prohibited.

Section 1017.44 provides that salvaged or reconstructed vehicles are not allowed to provide taxicab service.

Subchapter E. IMPOUNDMENT OF VEHICLES AND EQUIPMENT

§ 1017.51. General.

Section 1017.51 defines the following terms for Subchapter E. Impoundment of Vehicles and Equipment: (1) vehicle; (2) registered owner; and (3) registered lienholder.

§ 1017.52. Impoundment of vehicles and equipment.

Section 1017.52 provides for the impoundment of taxicabs, medallions and taxicab service related equipment for violation of the act or the Authority's regulations. The purpose of this section is to provide guidance on the manner in which section 5714 (g) of the act will be implemented by the Authority. The procedures identified in this section, including those related to the manner in which impounded property may be recovered. A typographical error in subsection (b) has been corrected by deleting "or" and inserting "of".

(e). Public auction. Subsection (e) notes that confiscated property may be subject to public auction as provided in section 5714(g)(2)(i) of the act. The language of this subsection in the proposed regulation mingled the timeline related to reclaiming confiscated property with the auctioning process in a manner that was not incorrect, but was unclear. This section has been amended to eliminate that statutory reference and language related to recovery of impounded property and now deals solely with the issue of auctioning.

(f). Return of funds. Subsection (f) requires the Authority to return any funds paid by the respondent related to towing and storage of the impounded property if the impoundment is determined to be unsubstantiated by a presiding officer. Section 5714 (g) of the act does not contain such a provision. A commentator suggested that subsection (f) was unfair because it required only the refund of towing and storage costs and not lost profits, etc. This provision was included in this section to reduce the affect of errant impoundments upon regulated parties. In these cases the Authority will lose the funds that reimbursed its time and costs associated with the impoundment. Beyond the Authority's general obligation to act reasonably (which may be reviewed by the Adjudication Department and appellate courts), we believe that this economic disincentive to the Authority will also act as an incentive to carefully implement the impoundment powers provided in section 5714 (g) of the act.

(h). Emergency hold on impounded property. Subsection (h) permits the Enforcement Department or Trial Counsel to seek an order from a presiding officer prohibiting the release of impounded property pending the conclusion of the enforcement proceeding. A commentator suggested that subsection (h) was unreasonable because the owner should be able to return the vehicle to active service. We note that section 5714 (g) of the act does not require the release of impounded property prior to the final determination of the enforcement action. We have developed this early release process to mitigate economic harm to the respondent. Subsection (h) simply permits the Authority stay the release of the impounded property if good cause exists. In the event the release is stayed the underlying enforcement action must proceed on an expedited basis.

A commentator suggests that partial-rights taxicabs may not be impounded by the Authority pursuant to this section or section 5714 of the act, even if discovered to be providing service as a medallion taxicab without ownership or display of a medallion. We disagree with the commentator's argument, which relies heavily on misinterpretations of that section of the act. For instance, partial-rights taxicabs determined to be in the course of providing medallion taxicab service do so "without a certificate of public convenience and a medallion" in violation of section 5714 (f). The commentator seems to believe that impoundments, under the act, may only be conducted if that subsection (f) has been violated. As we have noted, the partial-rights taxicab would have been in violation of subsection (f) and; therefore, subject to impoundment under subsection (g) of section 5714 of the act, even under the commentator's logic. More importantly, section 5714 (g) of the act, which deals with impound procedures, was specifically amended by the Legislature to expand the scope of potential impoundments from not only statutory violations, but also acts "which are in violation of regulations of the authority." Therefore, we disagree with the commentator's position and believe this section is both consistent with the act and a vital tool necessary to securing the act's goals. We believe this section will address concerns and comments related to the process through which vehicles may be impounded, instead of relying solely on the statutory language.

Subchapter F. TAXICAB LEASES

§ 1017.61. Control of vehicle.

Section 1017.61 establishes the principle that certificate owners are responsible to supervise the conduct of their taxicabs. The purpose of this section is to clarify that the owners may not pass their duty to maintain their taxicabs to the most financially ill-equipped members of the taxicab industry, the drivers. Certificate holders may not act as absentee lessors. A commentator suggested that a certificate holder can not watch a taxicab to make certain it is being operated properly at all times, which is true. But the certificate holder is the owner of the right to provide this public utility service and must remain actively involved in supervising its taxicabs; this does not require constant monitoring but reasonable review.

§ 1017.62. Taxicab leases.

Section 1017.62 provides certain guidelines related to the leasing of taxicabs. Because the certificate holder (including medallion owners) must own the vehicle used to provide taxicab service, there is no need to address medallion only leases. *See* § 1011.9 (relating to taxicab service limitations).

The Democratic Chairperson of the House Urban Affairs Committee and another commentator suggested that the Authority should impose a standard taxicab lease agreement upon all regulated parties and include a "whistleblower" provision. Other commentators suggested that the language of the proposed regulation was overly broad and interfered too greatly in the owner-driver relationship. We believe that the revised version of this final-form regulation is currently sufficient to address concerns related to abuse in the contracting process; however, we will monitor lease arrangements and do not dismiss the potential for the use of a form lease agreement in the future.

We note that the Authority is empowered to investigate rates and lease related issues as provided in section 5720 (c) of the act. In the event a standard form lease is determined to be necessary, we will seek the input of the regulated community through public comment and standard investigation proceedings in regard to the content of such a standard lease. While this regulation maintains the status quo in Philadelphia by not requiring a specific form of lease agreement, we recognize the validity of the comments submitted in that regard and will include those comments in any investigatory review of this issue in the future. A commentator suggested that subleases of taxicabs without the involvement of the certificate holder should be permitted. We disagree and believe that the further direct legal and operational connections between the

driver and owner are the lower the amount of certificate holder involvement in the operation of the taxicab will be. We believe that type of separation is not in the best interests of maintaining quality vehicles and service.

(b). Transfer of obligations. Subsection (b) of the proposed regulations provided that taxicab certificate holders may not transfer their statutory or regulatory obligations to another party, including taxicab drivers. A commentator suggested that this subsection be more specific as to what obligations may not be transferred, we believe this subsection to be sufficiently clear. We have received numerous comments from medallion owners who indicate that this provision would constitute a significant change to the regulatory status quo in Philadelphia. We agree and have deleted this subsection from the final-form regulations. We will include the reintroduction of this requirement in our consideration of future rulemakings related to driver owned vehicle issues.

(c). Basic components of a lease. Subsection (c) requires each taxicab lease to include certain information.

A commentator suggested that a form lease must include a variety of additional information, apparently intended to protect the driver, including lease cap figures, and minimum wages for the lessee drivers. We do not believe that it would be appropriate to require minimum wages for lessee non-employees; also, the current lease caps will be posted on the Authority's website at www.philapark.org/tld, negating the potential for outdated rate information in lease documents. Drivers or certificate holders may petition the Authority to initiate an investigation into the need for adjustments to rates as provided in section 5720 of the act. We also believe that the language of subsection (c) (4) sufficiently provides for the existence of non-monetary lease consideration between drivers and certificate holders, without subverting any other requirements of this section and will decline the request of a commentator to add specific prohibitions to that subsection.

(c)(4). Subsection (c) (4) requires each taxicab lease to include the monetary amount of the lease. This subsection has been amended only to delete reference to § 1017.63, which has been deleted in the final-form regulations.

(c)(7). Subsection (c) (7) requires the parties to a taxicab lease to provide 10 days notice of the lease termination. We agree with commentators who suggest that this provision does not adequately consider leases that may be less than 10 days, as well as the potential for breach. We

have amended this subsection to provide that the notice be equal to the term of the lease, if the lease has a term of less than 10 days. We have also clarified that this lease termination language does not relate to cases of breach. The purpose of this section is to provide non-breaching drivers with some advanced notice of the termination of their taxicab leases to permit time to seek out a new taxicab lessor.

(c)(9). IRRC commented that subsection (c) (9) failed to take into account varied relationships between drivers and medallion owners, we disagree. In the event the owner of a taxicab leases its taxicab to a taxicab driver, these provisions will apply. As we noted in response to comments to § 1011.9, the concept of a driver owned vehicle (DOV) has not existed in Philadelphia since 2005, and will not be recreated through these final-form regulations. In all cases, the taxicab lease will be between the owner and a taxicab driver. However, we have deleted subsection (c) (9) because we believe the language to be superfluous in consideration of other sections of these regulations, including subsection (b) of this section. We have reidentified paragraph (10) in the final-form regulations in response to this deletion.

§ 1017.63. Wages, maximum lease amounts and uniform rates.

Section 1017.63 provides for the manner in which the Authority will investigate and establish taxicab driver wages, maximum taxicab lease amounts and the uniform taxicab rates charged to the public. IRRC correctly noted that this provision is largely duplicative of section 5720 of the act (relating to wages) and questioned the need for the majority of the section. We agree and believe that the statutory language of section 5720 adequately provides for the guidelines and process related to these issues and have deleted this section entirely from the final form regulations. We understand the concerns of taxicab drivers related to the elimination of this section; however, we note that this language has not been in place for the past 8 fiscal years. The Authority will issue orders related to these matters as provided in the act, and members of the regulated industries, including certified drivers, are authorized to petition the Authority to open investigations into these lease and uniform rate issues.

In its Comment No. 3, IRRC inquired as to how the Authority has implemented section 5720 (b) of the act in terms of setting uniform taxicab rates charged to passengers in Philadelphia, specifically in reference to how that rate relates “to the drivers’ opportunity to earn a minimum wage.” We disagree with the premise of IRRC’s question. Section 5720 (a) requires

medallion owners to pay drivers a minimum wage "or, in the alternative, charge at most, a prevailing maximum lease amount to the drivers of its taxicab, as determined by the Authority upon investigation." Section 5720 (a) does not guarantee, or even express a position, as to a minimum wage for drivers who operate taxicabs through a lease agreement as independent contractors.

We fully recognize the constant challenges of driving a taxicab in Philadelphia. Everything from being constrained to lease and operate a vehicle that is in a worn condition, diminished profit margins caused by increasing fuel charges, the ever present threat of crime and the general difficulty of sitting in a vehicle for protracted periods of time. Driving a taxicab is simply a very hard job. That is why in 2005 we increased the uniform taxicab flag drop rate from $1.80 to $2.30 and increased the Airport flat rate from $20.00 to $25.00. That act represented the first rate increase drivers had received since the Medallion Act went into effect on January 11, 1991, nearly 14 years. The timing and the amount of the increase was subject to public comment and resulted from many meetings with the regulated industry, including driver advocacy groups. The increase was considered at a Sunshine Act meeting with no noted opposition.

On October 20, 2005 we also granted a fuel surcharge of $.40 per metered trip and added $1.50 per trip to the Airport flat rate in response to requests from taxicab drivers, as the prices of fuel began to subside, the Board on February 28, 2008 removed the surcharge and incorporated it into a needed rate increase, effective June 2, 2008. The new approved rates were $2.70 for the flag drop and $28.50 for the Airport flat rate. A new $1.00 charge for each additional passenger after the first, excluding children, was approved. In addition, the minimum trip from the Airport was increased to $11.00. Each of these changes was implemented at an advertised Sunshine Act meeting of the Authority's Board after an investigation that involved several meetings with the regulated community. In fact, on most occasions the Authority's initial proposal was higher than the drivers' proposal. Representatives of the taxicab drivers opposed tariff increases that may result in diminished ridership. That balance between charging a fare sufficient to fairly compensate taxicab drivers and simultaneously not chase customers away is always at the forefront of the minds of both the regulated industry and the Authority when adjustments to the uniform taxicab rates are considered.

Recently, on May 11, 2011 the Taxicab and Limousine Committee (TLC) met to hear comments on a new fuel surcharge. This meeting was in compliance with the Sunshine Act. The TLC recommended a $1.00 fuel surcharge on every trip. The Board approved it at their regular meeting held on May 26, 2011, effective May 27, 2011.

§ 1017.64. Receipts.

Section 1017.64 requires taxicabs to be equipped with a receipt book for use in the event that the taxicab is unable to provide an automated meter receipt through the meter system. This provision is necessary because drivers have resorted in the past to writing "receipts" on blank pieces of paper or torn pieces of brown paper bags. Those receipts are not generally accepted as evidence on the expense reports of business travelers, are generally unreliable, and are not indicative of a well regulated taxicab industry. *See* 53 Pa.C.S. § 5701.1 (2).

Commentators questioned the need for this provision and the impact of requiring a three-part form. The three-part form requirement has been deleted. We have also deleted subsections (b) and (c). We believe that subsection (b) was duplicative of the requirements in subsection (a) and subsection (c) is no longer applicable due to the deletion of the three-part form requirement. Those deletions required the reidentification of subsection (d).

CHAPTER 1019. DISPATCHERS

§ 1019.1. Purpose and prohibition.

Section 1019.1 provides general guidance on the purpose of Chapter 1019 and notes that a dispatcher must be certificated by the Authority. A commentator suggested that no taxicabs be required to associate with a dispatcher. Such authorization through these final-form regulations is inconsistent with section 5721 of the act. Another commentator cited this section and quoted this section, but did not provide a comment to this section.

§ 1019.2. Ineligible persons for dispatcher service.

Section 1019.2 provides guidance on basic qualifications for those applying to the Authority for a dispatcher's certificate. IRRC questioned the value of the standard for determining the degree to which a dispatcher applicant could dispatch in the English language found in paragraph (2) of this section. We agree that the standard employed in the proposed

regulation would be challenging to apply, particularly because the individuals used by a dispatcher to actually dispatch taxicabs are not tested or certificated by the Authority. Therefore, we have amended this paragraph by deleting the sufficiency language, but we have retained the obligation to dispatch in the English language. Also, paragraph (4) has been amended to note the new revised title of § 1011.7.

§ 1019.3. Dispatcher application.

Section 1019.3 provides basic information on how a person may apply for a certificate of public convenience to be a taxicab dispatcher.

(a). This subsection has been modified to eliminate reference to the form “DSP-1” because that form has been replaced by a multiuse form named “SA-1”. The SA-1 form has been modified for multiple purpose applications, including dispatcher applications. Replacement of the reference to form “DSP-1” with “SA-1” was also made in subsections (b) and (c) of this section. This section has also been amended to direct the filing of the application with the Manager of Administration. No direction was provided in the proposed regulation; therefore, this change should reduce any confusion in that regard.

(b)(7). Subsection (b) (7) requires certain persons affiliated with a taxicab dispatch applicant to provide criminal background reports as part of the standard application process. The purpose of this requirement is to assure the public that persons with direct control or a strong influence over the business operations of the applicant meet the same criminal background check criteria applicable to those officially identified as the principals of the applicant. This issue applies most poignantly to non-individual applicants. The language of this section has been changed to make it consistent with other similar provisions of the regulations. The Authority believes that the criminal backgrounds of all applicants and the persons with business influence over those applicants, as provided in the regulations, should be evaluated when determining the applicants’ qualification to operate a public utility that will have direct financial dealings with the public and maintain certain personal information about the public, including names, addresses, travel habits, credit card information, etc.

Specifically, the word “complete” which appeared before “criminal history report” in this subsection has been deleted as superfluous. The term criminal history report is a defined term in the regulations, for that reason the words “as provided in § 1001.10” have also been deleted as

superfluous. This subsection has also been amended to clarify that the criminal history report must be issued within 30 days of the application date.

A commentator suggested that the dispatcher application seeks too much information by requesting such documents as articles of incorporation. We disagree. A thorough review of proposed providers of this public utility is crucial to providing clean, safe, reliable and well regulated taxicab service in Philadelphia. Requesting that these common and easily available documents be provided in the application process is not burdensome and in the best interests of the public. Applicants for these rights have been required to provide records of this nature to the Authority since 2005. Also, subsection (b) (8) (ii) has been amended to note the revised title of § 1011.7 and subsection (b) (12) has been deleted to remove the need to provide Philadelphia Business Privilege information.

§ 1019.4. Application changes.

Section 1019.4 explains how and when an applicant for a dispatcher certificate must notify the Authority about a change that affects the accuracy of the information in the application while the application is under review. A commentator cited this section and quoted this section, but did not provide a comment to this section.

§ 1019.5. Facility inspection.

Section 1019.5 provides guidelines regarding the Authority's review of dispatcher facilities and requires that the all dispatching service be provided from Philadelphia. A commentator questioned the ability of the Authority to require dispatching services be provided from Philadelphia. We believe it is important to be able to investigate the operation of certificate holders in order to assure a clean, safe, reliable and well regulated taxicab service in Philadelphia. The Authority has offices only in the City of Philadelphia; therefore, in order to efficiently regulate taxicab operations we believe it is important that the physical location of dispatchers be accessible by Authority Inspectors. However, we recognize that those services may be easily conducted in areas within the Commonwealth and on the periphery of Philadelphia, without compromising the intent of the act. Therefore, we have amended this provision to require dispatching services be conducted within Philadelphia or within 10 miles of

Philadelphia in the Commonwealth. This will provide some additional flexibility to dispatchers, but not unduly interfere with the Authority's investigatory obligations under the act.

§ 1019.6. Review of dispatcher application.

Section 1019.6 explains the circumstances under which an application for a dispatcher's certificate will be denied and under what circumstances it will be granted. A commentator generally suggested that the application process was inconsistent with the intent of the act to improve economic conditions in the Philadelphia area and to promote the creation of jobs. We disagree. The purpose of the act is to advance those objectives, and others, through the development of a clean, safe, reliable, and well regulated taxicab and limousine industry in Philadelphia. *See* 53 Pa.C.S. § 5701.1. We believe the review of those who seek to be involved in those industries as provided in this section and others in these final-form regulations, is entirely consistent with the intent of the act to foster that economic growth through the presence of good taxicab and limousine service in this area of the Commonwealth. Another commentator cited this section in support of his position that partial-rights taxicabs should not be required to be affiliated with a dispatcher. We incorporate our response to comments to § 1017.5.

§ 1019.7. Name, colors and markings review.

Section 1019.17 provides for the procedure through which a dispatcher may apply for its distinctive name, colors and markings. As provided in subsection (b), the Authority will deny such an application if it determines that the proposed name, colors and markings of an applicant too closely mirror those of an existing dispatcher and deny the application.

§ 1019.8. Dispatcher requirements.

Section 1019.8 provides basic dispatcher operation requirements.

(6). Paragraph (6) requires that all dispatchers maintain an advertisement in a telephone book of city-wide circulation and a website advertising their services. IRRC questioned the need and economic impact of requiring each form of advertisement. We agree with IRRC's comment and have amended the final-form regulations to require either a website advertisement or telephone book advertisement.

(8). A commentator questioned the requirement that a dispatcher use dispatching hardware and software compatible with approved meters systems, particularly as to partial-rights taxicabs. We incorporate our response to §§ 1017.4 and 1017.5 (b) (2) regarding the application of these standards to partial-rights taxicabs.

§ 1019.9. List of affiliated taxicabs.

Section 1019.9 requires dispatchers to file reports with the Authority identifying the current fleet of taxicabs using the dispatcher's services. It is important for the Authority to know which taxicabs are affiliated with which dispatcher at any given time in order to assist in investigations and make certain that taxicabs are actually affiliated with a dispatcher. One commentator suggested that the weekly filing of the DSP-4 form was burdensome. Because the taxicab affiliation list is generally maintained electronically by each dispatcher and the DSP-4 may be filed electronically we do not believe the filing of the dispatcher's current list will create a burden, particularly in consideration of the importance to the Authority of maintaining the most current version of this information. However, we will compromise and reduce the filing period from once a week to once a month. We believe this change will adequate address the commentator's concern, while also providing the Authority with recent data from which to monitor taxicab operations.

§ 1019.10. Dispatcher rates.

Section 1019.10 provides for the filing of proposed dispatching rates with the Authority. Pursuant to section 5721 of the act a dispatcher must charge a reasonable fee for dispatching services. A typographical error in subsection (a) has been corrected by adding the word "the" directly before "DSP-5".

(d). Subsection (d) provides that the Authority may deny a dispatchers proposed fee schedule if the fees are unreasonable. A commentator questioned the basis for determining that a proposed fee is unreasonable. Another commentator suggested that we set mandatory rates, which we decline to do. We have not encountered an unreasonable dispatcher fee to date, however, in the event such a denial occurs the basis will be explained in writing and the dispatcher will have the right to a hearing on the record. *See* § 1005.24.

§ 1019.11. Disclosure of conflicts.

Section 1019.11 requires dispatchers to disclose internal conflicts of interests through a standardized filing with the Authority. An example of such a conflict would be when a child of a dispatcher is a taxicab driver operating through affiliation with the parent's dispatch system. Other taxicab certificate holders may then assess that conflict and any potential preferential treatment that the child taxicab driver may receive in terms of preferred taxicab work when deciding to affiliate with the dispatcher. A commentator suggested that dispatchers also disclose non-taxicab related dispatching services. We decline to create such a requirement because absent a violation of the act or the Authority's regulations, such additional dispatching work is irrelevant to our regulation of the taxicab industry.

§ 1019.12. Bond required.

Section 1019.12 provides for certain bonding requirements applicable to taxicab dispatchers. Given the level of financial information and funds that will be handled by dispatchers, the Authority believes that these agents must maintain a bond at levels that adequately assure the public of the ability to recover against dispatchers in appropriate situations, such matters involving fraud or negligence by error or omission. This section has been amended to the elimination of form DSP-1 in place of the multiuse Form SA-1. Subsection (b) has also been amended to refer to the proper subsection of § 1003.51. The reference should have been to subsection "(f)". The SA-1 form has been modified for multiple purpose applications, including dispatcher applications. In the event the bond of a dispatcher was not accepted by the Authority the basis for the denial will be explained in writing and the dispatcher will have the right to a hearing on the record. *See* § 1005.24. Subsection (c) has been amended to provide for the current level of bonding required under the Authority's current regulations, being $10,000 as opposed to the $50,000 required in the proposed regulations, again, to maintain the regulator status quo in Philadelphia.

§ 1019.13. Maximum number of dispatcher certificates.

Section 1019.13 of the proposed regulation provided that the number of dispatcher certificates in Philadelphia may not exceed 12. A commentator suggested that this limitation will not encourage economic growth in Philadelphia, we disagree. There are a finite number of

taxicabs in Philadelphia. While we believe that taxicab certificate holders should have a choice of dispatchers to encourage competition, we also believe that the public should not have to call several dispatchers to find one with an available taxicab. While this certainly may already happen at times of high demand, such as when it rains during rush hour, it should not be a regular occurrence.

We do not believe that an unlimited number of dispatchers, all with different names, colors and markings and ever decreasing numbers of affiliated taxicabs will result in an improvement to the reliability of taxicab service. A dispatcher must have enough affiliated taxicabs to answer public demand; the more dispatchers that exist in a market, the fewer taxicabs each dispatcher will be able to call upon to answer advanced reservation work. However, we have also eliminated this dispatcher cap and reserved this section. The reason for implementing a cap remains valid; however, we will consider the issue in a more narrowly tailored rulemaking after advanced notice to the public and regulated parties.

A commentator also noted that the inability of a partial-rights taxicab certificate holder to dispatch its own taxicabs as currently permitted, will cause undue harm to those service providers. We disagree with the idea that requiring partial-rights taxicabs to affiliate with certified dispatchers will cause economic harm to partial-rights taxicab certificate holders. Instead, we believe that such affiliations with larger dispatch operations will serve to widen the use of those taxicabs, within the limits of the act and the Authority's regulations. However, we have again compromised in the final-form regulations by requiring only <u>medallion</u> taxicabs are required to affiliate with certified dispatchers, partial-rights taxicab certificate holders may request an exemption. *See* § 1017.5 (b) (2). A requirement that partial-rights taxicabs be dispatched through certified dispatchers may be advanced in a future rulemaking after input from the industries and the public.

§ 1019.14. Minimum number of taxicab affiliations.

Section 1019.14 requires all dispatchers to maintain an affiliation with at least 20 active taxicabs. In the final-form regulation the 20 taxicab requirement has been amended to require affiliation with at least 20 medallion taxicabs. The name of the section has been amended to reflect that change. A commentator suggested that there should be no minimum number of

taxicab affiliations. We disagree with this position for the same reason that we believe that an unlimited number dispatchers will cause harm to the industry. While we have lifted the dispatcher cap for now (there is no current cap in place in Philadelphia), we continue to believe that the dispatchers that do exist must have a sufficient number of taxicabs to respond to calls for service throughout Philadelphia and that this low threshold number of 20 is reasonable. There are currently 12 dispatchers in Philadelphia for 1,600 medallion taxicabs, not including partial-rights taxicabs. That averages out to 133 taxicabs per dispatcher, if a dispatcher can not maintain a fleet of 20 or more taxicabs it may be an indication that the dispatcher is providing poor service, and it will likely lead to an inability to service the riding public when they attempt to arrange for taxicab service, which is contrary to the legislative intent of the act. We incorporate our response to § 1019.13 above.

§ 1019.15. Dispatcher records.

Section 1019.15 describes what types of records must be maintained by dispatchers. A commentator listed this section along with a series of other sections without providing a direct comment. We incorporate our response to comments to § 1011.11.

CHAPTER 1021. TAXICAB DRIVERS

§ 1021.1. Purpose and scope.

Section 1021.1 provides that the purpose of Chapter 1021 is to provide minimum standards for taxicab drivers and permits certificate holders to impose higher standards for their driver's performance. A commentator suggested that the imposition of higher standards by a certificate holder may be interpreted as an element of an employer-employee relationship and that certificate holders seek to avoid that interpretation. This regulation does not require certificate holders to impose higher taxicab driver standards, nor does it relate to employee versus independent contractor drivers.

§ 1021.2. Certification required.

Section 1021.2 explains that only a taxicab driver is authorized to provide taxicab service. The section also describes where a taxicab driver's certificate must be placed, the condition a taxicab driver's certificate must be in, and how many taxicab driver's certificates

may be displayed in a cab at one time. Finally, the section states that taxicab driver's certificates are not transferable.

§ 1021.3. Maximum number of taxicab driver's certificates.

Section 1021.3 of the proposed regulation established a maximum number of taxicab drivers and provided for the designation of current driver's certificates for either taxicab or limousine use. For the reasons provided below, the title of this section has been amended to "Designation of taxicab driver's certificate".

IRRC questioned the statutory basis of the Authority's limitation of the taxicab driver's certificates and noted that this limitation was among the most controversial provision of the proposed regulations. Representative Mark B. Cohen also expressed opposition to this provision, while the United Taxi Workers Alliance expressed support for the Authority's position. Other commentators questioned the legality and overall propriety of this limitation. We believe that section 5706 of the act permits the Authority to impose limitations of this nature for drivers of taxicabs within Philadelphia. We also believe a limitation of this nature is necessary in order to stem the abuse of taxicab drivers by unscrupulous certificate holders who will simply seek the next driver in line upon receipt of a reasonable complaint from a driver associated with the condition of a taxicab or other service related issues. However, we recognize the importance of establishing the appropriate number for the taxicab driver cap and that this provision would constitute a deviation from the regulatory status quo in Philadelphia.

Therefore, we have deleted this cap entirely from the final-form regulations and intend on initiating public comment and further review related to this issue in the future. The elimination of the driver cap has necessitated the deletion of subsections (a) and (b) of the proposed regulation and required the reidentification of the subsequent subsections with certain deletions within those subsections of references to the previous subsection (a).

We have also added a paragraph (3) to the amended subsection (a) to clarify that new driver certificates will distinguish between taxicab and limousine drivers. The Democratic Chairperson of the House Urban Affairs Committee commented that this distinction exceeds the Authority's statutory mandate. The preceding subsections relate primarily to the affect of these regulations upon certificated drivers as of the time the final-form regulations become effective. Since 2005 we have received many complaints from certificate holders, particularly limousine

certificate holders that the "one size fits all" approach to driver certification was costly and wasteful and in some cases counter-productive given the different types of service provided by these carriers, we agree with those comments.

Section 5706 (a) of the act provides the Authority with broad discretion in the development of a driver's certification program, in which it concludes as follows: "The authority may establish orders or regulations which designate additional requirements governing the certification of drivers and the operation of taxicabs or limousines by drivers, including, but not limited to, dress codes for drivers." (emphasis added). Commentators who questioned the necessity of this division miss the fact that there are many differences in the type of service provided by taxicabs and limousines and we believe the intent of section 5706 (a) was to permit the Authority the discretion necessary to implement deviating standards between taxicab and limousine drivers if necessary to achieve our legislative mandate of providing a clean, safe, reliable, and well regulated taxicab and limousine industry" in Philadelphia. 53 Pa.C.S. § 5701.1 (2). We believe these distinguished and more narrowly tailored training requirements provided in the final-form regulations are a necessity to achieve our obligations under the act and will improve the quality of both taxicab and limousine service in Philadelphia and are consistent with the requests and comments of may regulated parties submitted to the Authority over the years.

§ 1021.4. Ineligible persons for taxicab driver certificate.

Section 1021.4 provides criteria that will render individuals ineligible to be taxicab drivers. IRRC noted the comment of another commentator in regard to the requirement of paragraph (6) that each taxicab driver applicant must have a driving history in the United States of at least 1 year prior to the date of the application. IRRC questioned the need for this requirement. The Authority has an obligation to make sure that taxicabs are operated in as safe a manner as possible. A driving record provides guidance on an applicant's experience operating a motor vehicle, the longer the record the more evidence that the applicant knows how to drive and actually does drive safely.

IRRC noted that an applicant may have a long driving record from Canada that could be considered in the taxicab driver application process.

We agree with IRRC's comment. We recognize that some driving records from outside the United States may be accessible by the Authority and reasonably relied upon. However,

taxicab driver applicants come from all over the world and we do not believe that a one-size-fits-all alteration to this section is possible in consideration of the varying laws, record keeping and other conditions in those countries. Therefore, we have amended paragraph (6) in the final-form regulations to permit the Authority to consider driving records from other countries in the application process if the applicant has been in the United States for less than 5 years.

§ 1021.5. Standards for obtaining a taxicab driver's certificate.

Section 1021.5 provides for the taxicab driver application process and identifies information that the applicant must present along with the application in order to be considered, such as a driver's license, driver history report, etc. Subsection (a) has been corrected by deleting reference to § 1021.3 and the limitation of the aggregate number of taxicab drivers provided in that section of the proposed regulations.

(b)(2). Subsection (b) (2) requires taxicab driver applicants to submit certain contact information. Comments from the United Taxi Workers Alliance (the "Alliance") suggested that this section should require drivers to submit an email address. We will decline this suggestion and in doing so note that the Alliance strenuously objected to this exact requirement when the Authority's local Taxicab and Limousine Regulations were in the proposed stage in 2005. The Alliance's position had been that many taxicab drivers do not own computers and do not have access to email accounts. We see no reason to deviate from the established process and hold taxicab drivers responsible for checking email accounts that they do not have. However, the language in the final-form regulations will permit drivers to voluntarily participate in the email notification process.

(b)(6). Subsection (b) (6) requires taxicab driver applicants to submit a criminal history report from each jurisdiction in which the applicant has resided during the 5 years preceding the date of the application. We have corrected a discrepancy noted by IRRC in subsection (b) (6). In the second sentence of that subsection the term "criminal history record" is used, while the final-form regulations instead define the term "criminal history report." We have corrected that discrepancy in the final-form regulations.

IRRC, and other commentators, questioned the impact of the 5 year look back period in this subsection, as well as subsection (b) (8) relating to driving history reports, on immigrants who have not lived in the United States for 5 years. To address this concern we have amended

subsections (b) (6) and (8) to clarify that such individuals will meet the applicable requirements by consenting to the release of the required reports by the governments of other countries, and in the case of criminal history reports, Interpol or records of the United States government relating to the individual's immigration.

IRRC also questioned the need to check the criminal history of persons who have immigrated legally to this country. A person may have legally entered the United States several years before applying to be a taxicab driver and committed crimes in the interim. The standards that the Homeland Security Department uses to determine the eligibility of an immigrant who has a criminal history from another country to enter the United States may be different than the standards the Authority will apply in determining if an individual should be permitted to provide taxicab service. Also, even if the standards used by Homeland Security today were at least as stringent, a simple policy change in that department would directly and unknowingly impact the Authority and taxicab service in Philadelphia. We believe a review of an applicant's criminal history is very close to the minimum level of scrutiny that the public should expect from an agency charged with screening and regulating taxicab drivers, we see no reason to exempt immigrants from that review.

(b)(10). Subsection (b) (10) requires disclosure of other ownership interests in Authority or PUC certificates. IRRC questioned the meaning of "or other rights". That term has been deleted in the final-form regulations.

(b) (11). Subsection (b) (11) requires a taxicab driver applicant to submit a writing affirming that several facts are true, such as the confirmation that the applicant has not been subject to a criminal conviction. Subsection (b) (11) (ii) has been amended to note the revised title of § 1011.7. IRRC commented that the reference to "reports" in subsection (b) (11) (iii) was vague. We agree and have deleted that subparagraph from final-form regulation. The deletion required the reidentification of the subsequent subparagraph.

§ 1021.6. Application changes.

Section 1021.6 explains how and when an applicant for a taxicab driver's certificate must notify the Authority about a change that affects the accuracy of the information in the application while the application is under review. This section also details the consequences that an applicant will face for providing false information.

§ 1021.7. Taxicab driver training scheduled.

Section 1021.7 provides that upon submission of a taxicab driver's application the applicant will be immediately scheduled for training by the Authority, unless the application documents evidence that the applicant is clearly ineligible. For example, an applicant who does not possess a valid driver's license will not be scheduled for training. A commentator suggested that this general training requirement will delay an applicant's initiation of taxicab service. We agree that the applicant will not be able to provide taxicab service until after he or she is trained, tested, and has completed the application process, but fail to see how any undue delay will occur. The reason the applicant will be immediately scheduled for training is to avoid such a delay. A typographical error in subsection (b) was corrected by deleting the term "illegible" and inserting the word "ineligible".

§ 1021.8. Certain training subjects.

Section 1021.8 identifies several subjects that will be part of the taxicab driver's certification test. The United Taxicab Workers Alliance suggested that the test be expanded to include such things as the ability to operate a motor vehicle and a drug test. We note that § 1021.9 (c) (4) already permits the Authority to test an applicant's ability to operate a motor vehicle. We agree that a procedure related to testing for alcohol and controlled substances would be wise; however, it is a controversial issue that was not addressed in the proposed regulations. We will consider adding such a requirement through a subsequent rulemaking. A commentator suggested that the training of taxicab drivers should not be geared entirely toward medallion drivers and such a focus may place drivers of partial-rights taxicabs in danger of violating territorial restrictions. Although the Authority's training has made this distinction since 2005, we understand the commentator's concern and have amended this section to specify that training taxicab driver training will addresses the differences that exist between partial-rights taxicab and medallion taxicab services, although most driver training will apply regardless of which type of service the driver provides. Again, this will not be a new practice in Philadelphia.

The Democratic Chairperson of the House Urban Affairs Committee commented in regard to driver issues that the Authority should consider including a provision in the regulations requiring the development of a handbook for the use of industry members. We currently employ

this practice as to our current regulations and will continue to use guidance documents to assist regulated persons in the process of understanding the requirements of the regulations and the act. Indeed, this need for understanding, not only of requirements but also rights, is one of the reasons that the regulations require many regulated persons to submit to training by the Authority, including taxicab drivers.

§ 1021.9. Taxicab driver test.

Section 1021.9 provides for the creation of a taxicab driver test by the Authority and certain components that may be a part of that test. IRRC questioned the meaning of subsection (c) (5) in terms of the requirement that an applicant "demonstrate" an ability to read and write the English language. We have deleted paragraph (5) in order to avoid the lack of clarity that concerned IRRC. We have amended subsection (a) to clarify that answers to test questions must be in the English language. We believe the applicant's ability to successfully complete the driver test will provide a clear and objectively measurable demonstration of an ability to adequately communicate with the public in English. A typographical error in subsection (f) was corrected by deleting "registration" and inserting "a driver's certificate" in order to be consistent with the balance of the chapter.

§ 1021.10. Expiration and renewal of certificate.

Section 1021.10 provides for the annual expiration of a taxicab driver's certificate and other requirements related to annual renewal.

(a). Subsection provides for the annual expiration of a taxicab driver's certificate. IRRC commented that subsection (a) is redundant with § 1011.3 (a) (2). We agree and have deleted this subsection from the final form.

(b). Subsection (b) provides that a taxicab driver in good standing need not submit to a new taxicab driver test at the time of annual renewal. IRRC suggested that this subsection be relocated to § 1011.3 which deals squarely with annual renewal issues. We have deleted this subsection in its entirety because there is no section of the regulations that requires retraining or retesting simply because a taxicab driver is required to renew a driver's certificate; therefore, language exempting a taxicab driver from such a requirement is unnecessary and has been deleted in the final-form regulations.

(c). Subsection (c) of the proposed regulation provided that a suspended driver must submit to the annual renewal process on time despite the suspension and that a suspended driver will have to submit to retraining and testing in order to renew taxicab service if so ordered in the suspension order. IRRC suggested that this subsection be relocated to § 1011.3 which deals squarely with annual renewal issues. We agree that § 1011.3 (e) already requires rights to be renewed despite a suspended status; therefore that language of this subsection has been deleted as redundant in the final-form regulations. The balance of the subsection is unnecessary because the suspension order will control the obligation to resubmit to training and testing; therefore, that language will also be deleted.

(d) Subsection (d) of the proposed regulation provided that a driver's certificate could be denied renewal if the driver is out of compliance with a specific section of the regulations. We agree that § 1011.3 (d) (2) already provides that rights may be denied at the time of renewal if that process reveals information about the renewing person that would have resulted in a denial of an initial application. Therefore, this subsection has been deleted from this section. Because every section preceding subsection (e) has been deleted and there are no subsequent subsections, this section no longer requires subsections.

§ 1021.11. Driver requirements.

Subsection 1021.11 provides specific requirements applicable to drivers when providing taxicab service. A typographical error was corrected in subsection (b) (11) by properly spelling the word "Manager".

Commentators suggested that the public should not be able to pay for taxicab service through the use of a credit card and questioned the process through which credit cards are accepted. We disagree with those comments and incorporate our response to comments to §§ 1017.24 here.

(c). Permitted fares. Subsection (c) provides that a taxicab driver must charge the rates approved by the Authority. This subsection has been amended to reflect the deletion of § 1017.63 and replaces that reference with section 5720 of the act, which empowers the Authority to establish those rates by order.

(d)(1). Gratuities or payment method. Subsection (d) (1) of the proposed regulations prohibited a taxicab driver from insisting upon a gratuity for providing taxicab service. We have

replaced “insist upon” with “request” to clarify that taxicab drivers may not seek gratuities. They may certainly accept one if offered by the passenger without prompting.

The term “insist” creates a presumption that demands for a gratuity are acceptable, provided they do not cross an unspecified line, which would have caused confusion. We note that the medallion taxicab meter system prompts passengers to select a certain tip amount, or no tip, when fare payments are paid by credit cards. However, actual communications from the driver will make many passengers uncomfortable and may lead to a form of *de facto* rate increase if unscrupulous drivers resort to requests for gratuities.

§ 1021.12. Additional requirements.

Section 1021.12 provides several requirements applicable to drivers while providing taxicab service.

(b). Subsection (b) of the proposed regulations required taxicab drivers to be in operation for certain periods of time. This language was important when used in connection with the former 3,000 taxicab driver limit provided in the proposed regulation of § 1021.3; however, that maximum aggregate number of taxicab drivers has been deleted in the final-form regulations negating the need for this language, which has also been deleted in the final-form regulations.

IRRC, and other commentators, questioned why the current maximum number of hours a taxicab driver may be in service was not continued in these regulations. We agree with IRRC and the commentator, that the failure to include that important public safety requirement was an oversight that has been corrected in this section of the final-form regulations. The maximum number of hours a taxicab driver may provide taxicab service will remain at 14 hours from the beginning of a shift, regardless of breaks that may be taken during that period. Only 8 hours off duty will permit a taxicab driver to operate for another 14 hour period.

Most taxicab drivers do operate for periods very close to the current maximum 14 hour period. We have limited the number of hours that a taxicab driver may provide taxicab service since 2005 because exhaustion and sleep deprivation lead to poor driving decisions and vehicular accidents. We believe that the 14 hour maximum shift should be retained in Philadelphia and that the requirement to remain out of service for eight consecutive hours will permit drivers time to adequately rest before reinitiating taxicab service. We believe this section also leaves enough

elasticity to permit part-time taxicab drivers to safely provide service in segments during each 14 hour maximum driving period.

(e). Subsection (e) of the proposed regulation provided guidance to taxicab drivers related to the provision of non-exclusive taxicab service. However, as detailed above in response to changes made to § 1011.19, taxicab service in Philadelphia is provided on only an exclusive basis, barring a specific order from the Authority otherwise. Therefore, reference to non-exclusive service has been deleted.

(f). Subsection (f) clarifies that the intent of this section or these regulations are not interfere with interstate commerce. This subsection was amended to remove reference to a specific federal statute because the subject of this language goes beyond that single statute.

§ 1021.13. Taxicab driver's certificate upon cancellation.

Section 1021.13 provides for status of a taxicab driver's certificate upon cancellation and specifically notes that once cancelled a driver's certificate may not be reinstated. A formerly certificated individual would have to reapply for a driver's certificate in such cases.

§ 1021.14. General taxicab driver reports

Section 1021.14 provides that a taxicab driver must make timely reports to the Authority as required by the act and these regulations and specifies subjects for reporting, including the current status of the individual's state issued driver's license in the event it becomes invalid.

§ 1021.15. Taxicab driver reports after accident.

Section 1021.15 provides for certain driver requirements in the event a taxicab driver is involved in an accident while providing taxicab service. We have deleted paragraphs (2) and (3) in the final-form regulation in consideration of IRRC comments in regard to the confusion that may be created by the requirement to take necessary precautions to prevent further accidents at the scene and to render reasonable assistance to injured persons. Paragraph (5) has been reidentified as (3) in consideration of those deletions.

§ 1021.16. Service issues regarding people with disabilities.

Section 1021.16 provides that a taxicab that is in service and not otherwise engaged in providing service to another individual must stop when hailed by a disabled person. A commentator suggested this language could be confusing to partial-rights taxicab drivers who are not authorized to accept street hails in many areas of Philadelphia. We agree and have changed the language of the proposed regulation to be identified as subsection (a) and we have added a new subsection (b) to clarify that a taxicab will not be in violation of this section for failing to stop in an area where the driver may not accept a street hail.

§ 1021.17. Partial-rights taxicab driver log.

Section 1021.17 requires partial-rights taxicab drivers to maintain a service log and provides for certain requirements of that log.

(b)(11). Subsection (b) (11) of the proposed regulations was a catch-all provision related to the content of a partial-rights taxicab service log. IRRC questioned the meaning of subsection (b) (11) which requires unspecified information "as may be required by this subpart." We agree with IRRC's concern and have deleted that language in the final-form regulation.

(f). Subsection (f) provides that the Authority may require the use of a specific form of partial-rights taxicab service log, the term "trip sheet" was used in the proposed regulation; however, that term has been substituted with the term "taxicab service log" to be consistent with the rest of this section, although there is no substantive difference between the terms. IRRC questioned the need for a form service log given the specificity of this section as to content of a service log. While we have attempted to be specific about the content of these service logs, we reserve the right to require a specific form in the event we determine that the service logs used are unsatisfactory. For example, if the forms used are too small to permit easy reading or too big to permit easy filing or include information or data that makes the service log confusing to use or read. The mere requirement to include certain data may be insufficient to produce a legible and usable service log. A commentator noted that a partial-rights taxicab driver may have to log trips regulated by both the PUC and the Authority. We agree and note that this is not a change from the status quo in Philadelphia or anywhere else in the Commonwealth. The PUC also requires a trip sheet or service log for the taxicab service these partial-rights taxicabs provide in PUC areas, through a regulation very similar to the requirement of this section. *See* 52 Pa. Code § 29. 313 (c) (relating to service standards and requirements). There is no prohibition in these regulations

from logging all trips (those regulated by the PUC and the PPA) on one service log, so long as all trips regulated by the Authority are noted.

CHAPTER 1023. TAXICAB RATES

§ 1023.1. Uniform taxicab rate.

Section 1023.1 provides that taxicab service within Philadelphia will be provided pursuant to a single rate structure that will be changed after investigation. A commentator suggested that all participants in the taxicab industry be provided an opportunity to participate in such an investigation. We agree and note that this is already the practice in Philadelphia and has been since 2005. Any process that gives rise to a rate change will continue to involve an investigation and a Sunshine Act meeting of the Authority's Board. We understand and agree that the industry and the interested members of the public must be centrally involved in this process.

We have deleted Chapter 23 because we believe it is unnecessary and may be read to conflict with certain authorizations and procedures clearly provided for in the act related taxicab rates in Philadelphia. *See e.g.* 53 Pa.C.S. §§ 5703, 5720 and 5714 (c).

§ 1023.2. Taxicab fare refunds.

Section 1023.2 provides that a taxicab driver found to have charged a passenger a rate higher than that required by the Authority may be directed to refund that overcharge to the customer. We incorporate our response provided in §1023.1.

§ 1023.3. Rates for parcels, packages and property.

Section 1023.3 provided for procedures related to the delivery of parcels or other items through taxicab service. A commentator suggested drivers be compensated for periods of time waiting for signatures upon delivery; however, we note that this issue may be addressed more specifically in an Authority order authorizing such service as provided in sections 5703 or 5720 of the act. Therefore, this section has been deleted from the final-form regulation along. We incorporate our response provided in §1023.1.

CHAPTER 1025. INSURANCE REQUIRED

§ 1025.1. Definitions.

Section 1025.1 provides general definitions related to this insurance chapter.

§ 1025.2. Insurance forms and procedures.

Section 1025.2 provides for certain forms, content and procedures related to taxicab insurance issues, particularly the certification that proper insurance is in place and notification of any cancelation of insurance. IRRC referenced subsection (c) (2) and noted that the language of that section was vague and left potential for changes outside of the rulemaking process. We have deleted paragraph (2) and former paragraph (3) has been reidentified as paragraph (2). We have amended subsection (h) by removing the mandatory out of service designation for failing to submit to maintain insurance. Instead, the discretion to initiate that process will be with the Enforcement Department.

§ 1025.3. Insurance required.

Section 1025.3 provides the level of automobile insurance that taxicab certificate holders must maintain in order to provide taxicab service.

(b). Subsection (b) provides specific guidelines related to the level of insurance benefits that taxicab certificate holders must maintain. IRRC noted the comments of many commentators in relation to the proposed increase to the status quo insurance requirements for taxicabs in Philadelphia, which is currently equal to the minimum coverage required for any passenger vehicle in the Commonwealth. Representative Mark B. Cohen commented that the proposed insurance changes would negatively affect the economic vitality of taxicabs. The Democratic Chairperson of the House Urban Affairs Committee requested further explanation of the fiscal impact of the increased financial responsibility requirements of the proposed regulation. A taxicab driver commented that insurance levels should be increased to cover driver medical costs or that a special medical payment fund be established by the Authority. The introduction of new insurance requirements would be inconsistent with the Authority's intent to promulgate regulations that maintain the status quo in Philadelphia and the creation of a special medical care fund is not authorized in the act.

We recognize that the proposed increases in insurance levels will require a more detailed review of industry conditions and public needs than this large rulemaking will afford. We are concerned about the availability of insurance for taxicabs in Philadelphia and understand the concern that the current insurers may not wish to remain involved in the Philadelphia market if the levels of insurance originally proposed become final.

Therefore, the final-form regulations return the required insurance levels to their status quo levels. However, we will issue a request for public comment and investigate the need for an increase in these levels of insurance in the future. That investigation will involve a review of insurer capability, costs and the potential for bringing more insurers to this market.

(c). Subsection (c) provides for the release of a certificate holder's insurance loss runs to the Authority. A commentator suggested that it is not possible to release loss runs within 2 days as required by this subsection and raises questions of the confidentiality of the content of the loss runs. The Authority will not require an insurer to release the loss runs of an insured without the insured's consent, which is clearly provided for in this section. In the Authority's experience insurers have no difficulty producing loss runs within 2 days of a request; however, we will compromise and grant an additional day for the production of that information. The need to produce these records promptly relates directly to the ability of the Authority to certificate the insurer's client in as expeditious a manner as possible; therefore, we believe the timeline for production benefits all parties.

§ 1025.4. Applications to self-insure.

Section 1025.4 provides guidelines for certificate holders to apply for authorization from the Authority to act in a self-insured capacity pursuant to the act.

§ 1025.5. Standards for adjustment and payment of claims.

Section 1025.5 provides for the adjustment procedures to be used by taxicab certificate holders in the event they qualify to act in a self-insured capacity. Commentators, including IRRC, questioned the meaning of the phrase "fair claims settlement and compromise practices" in this section and requested a citation for guidance. We have deleted this language in the final-form regulation; however, the list of prohibited conduct provided in the proposed regulation will remain to provide guidance related to the adjustment of these claims.

§ 1025.6. Additional requirements.

Section 1025.6 provides for disclosures by insurers to their insureds, specifically as to any deviation from standard ISO requirements in a policy.

CHAPTER 1027. SALE OF RIGHTS

§ 1027.1. Purpose.

Section 1027.1 provides for the general purpose of Chapter 1027.

§ 1027.2. Definitions.

Section 1027.2 provides definitions applicable primarily to the sale of transferable rights. IRRC commented that each subpart of the final rulemaking should contain a definition section identifying terms used in that subpart and that the terms should be consistent throughout the rulemaking. We agree with IRRC, although this adjustment has required a significant amount of editing. We have attempted to reduce, as much as practical, the use of definitional language outside of the definition sections. Section 1027.2 is a section that the Authority believes can be eliminated as a definition section. Terms defined in this section will be moved as provided below:

- "Medallion taxicab certificate" has been moved to §1011.2.
- "Partial-rights taxicab certificate" has been moved to §1011.2.
- "Sale" has been moved to the §§1001.10, 1011.2 and 1051.2.
- "Transfer fee" as worded in this section has been moved to §§1011.2 and 1051.2 and will replace the definition of that term used in the proposed regulation.

Section 1027.2 has been re-titled "Transferable rights" and will now simply outline those rights issued by the Authority that may be subject to sale. For consistency purposes and because the term sale is defined, the first sentence of this section will list the rights subject to "sale" as opposed to the use of the term "transferable". For example, a driver's certificate or broker's

registration is not eligible for sale. Subparagraph (iv) has been reworded to clarify that a certificate of public convenience to provide limousine service is subject to sale.

IRRC's comment regarding the placement of "medallion taxicab certificate" has been addressed through the removal of that term, along with the term "partial-rights certificate", from this section and placement of those terms in §1011.2.

A commentator questioned why transfer fees are nonrefundable. These fees are nonrefundable because the Authority's staff is required to perform a significant amount of work in order to perform its statutory transfer review duties. The transfer fee is charged in order to defer some of the costs associated with that review. Those costs accrue to the Authority regardless of the decision or ability of the regulated parties to complete the transaction. Regulated parties should carefully review the act and the Authority's regulations and their ability to meet basic requirements in advance of participating in an application to buy or sell rights.

§ 1027.3. Authority approval of sale of rights.

Section 1027.3 provides that the sale of rights must be approved by the Authority in advance.

(b). Sale of securities in transferable rights. Subsection (b) of the proposed regulation provided that the sale of securities in an entity with an ownership interest in a transferable right is a sale that is subject to the approval of the Authority.

IRRC and other commentators commented that this provision may create an undue burden upon certain regulated persons by impeding upon the free transfer of stock. There are few holders of certificates of public convenience or medallion owners registered as individuals. Nearly every certificate holder has created a small corporation to own the relevant transferable right, and thereby insulate the individual owner(s) from liability and other unwanted burdens of direct personal ownership. Several individuals have created multiple small corporations, or other types of entities, to hold various transferable rights. Certificate holders can sell transferable rights merely through the sale of securities, without a change to the name of the owning corporation or other entity. Our experience has been that nearly all of the securities transfers in the taxicab and limousine industry result in the transfer of large percentages of the issued securities for these entities. The sale of the securities is, in reality, the sale of the rights issued by the Authority. In the past, some regulated parties and persons seeking to become involved in the

taxicab and limousine industry have attempted to simply "sell the business" along with the Authority rights without seeking the Authority's approval of the sale and the qualifications of the new owner(s). This process is clearly inconsistent with provisions of the act that require the Authority to review these changes in ownership.

In order to meet our statutory burden to review all medallion and certificate of public convenience sales, our regulations must have provisions related to the sale of securities in an entity that owns those rights. *See* 53 Pa.C.S. §§ 5711 (c) (5), 5718 (a) and 5741.1 (c) (3). The Authority can not permit individuals who are otherwise prohibited from participating in the taxicab and limousine industries from doing so behind the veil of a corporation through the accumulation of securities.

However, we understand that requiring the approval from the Authority for the sale of a *de minimis* number of securities may pose a burden upon some regulated parties. Therefore, we have accepted IRRC's recommendation to establish a threshold by amending this section of the final-form regulations to exempt the sale of securities equaling less than 2% of the issued securities of the subject. A sale that will result in the accumulation of 2% or more of such securities by a person will require approval by the Authority, regardless of the number of securities currently suggested for sale. While the potential burden referenced in the comments has not materialized in Philadelphia from 2005 through the date of this comment, we believe this compromise will alleviate the potential for such a burden, while adequately protecting the public's interest in knowing that the owner of transferable rights is both capable of providing the required service and not otherwise prohibited from doing so. A commentator questioned the difference in the definition of a "sale" with the transfer authorization granted in subsection (b) The sale of this *de minimis* number of securities in an entity that owns a transferable right is a special subset of a sale governed by this section. The limitations of the individual sale combined with the limitation of the buyer's aggregate ownership interests will both permit the flexibility IRRC and commentators requested and prevent control of rights by persons not subject to review.

In response to IRRC's comments we have deleted the phrase "or other ownership interests" from this section of the final-form regulations because we believe that it is unnecessarily expansive and that the balance of the language of this section squarely addresses the type of ownership transfers at issue.

§ 1027.4. Certificate required for medallion sales.

Section 1027.4 provides that the buyer of a medallion must be a medallion taxicab certificate holder in order to take possession of the medallion through a sale.

§ 1027.5. Agreement of sale.

Section 1027.5 requires the parties to an agreement of sale relating to transferable rights to execute the agreement in the presence of an Authority representative. This is a continuation of the existing practice in Philadelphia dating to 2005. The parties to agreements of sale execute the agreements at TLD Headquarters at appointed times, which decreases delays associated with the execution of documents.

A representative for a medallion owner commented that this requirement was unnecessary. However, we believe it is required by section 5718 (a) of the act. This practice alleviates justifiable concerns related to forged agreements of sale and fraudulent conveyances of rights and will not create a new obligation on the part of regulated parties.

§ 1027.6. Application for sale of transferable rights.

Section 1027.6 identifies the form application necessary to initiate the sale of transferable rights and provides for the manner in which it must be filed. A commentator suggested that the application process would require less copying if it were completed electronically. We agree and will review ways to permit this type of filing in the future as budgetary constraints allow; however, the process will remain the same under these final-form regulations as it has been since 2005 until an alternative method is developed. In the meantime, and in the form of a compromise, we have amended subsection (a) to require only one copy of the application.

(d). Multiple rights. Subsection (d) provides that a single sale application may be used to transfer multiple transferable rights and that the transfer fee charged by the Authority will be based on the higher of the aggregate value of the rights transferred or the transfer fee for each right. IRRC questioned the basis for developing this method of calculating. This section does not establish a transfer fee. The transfer fee is set each year as provided in section 5707 (b) of the act. We have deleted reference to this calculation from the final-form regulations and believe it is more appropriately addressed in the Authority's annual budget and fee schedule process.

§ 1027.7. Required application information.

Section 1027.7 provides certain guidelines related to the process through which a person may apply to the Authority to obtain or sell rights and specific documents that must accompany the application. Including all the documents with the application will permit a more efficient review of the application.

(b). Required information. Subsection (b) identifies specific documents that must be submitted with the sale application.

(4). Paragraph (4) requires a non-individual applicant to file a copy of the certificate of good standing issued by the Corporate Bureau. A commentator suggested that this process is unnecessary and will delay the review of applications. We agree that this requirement will be unnecessary for entities that already own a certificate of public convenience and have amended this paragraph to reflect that position in the final-form regulations. We disagree that the status of a non-individual proposed buyer of transferable rights is not relevant to determining an entity's fitness to operate a public utility. The certificate of good standing is easily obtained from the Corporate Bureau. Including that document at the time of filing will permit a thorough and efficient review of the application.

(12). Paragraph (12) requires certain persons affiliated with an applicant to provide criminal background reports as part of the standard application process. The purpose of this requirement is to assure the public that persons with direct control or a strong influence over the business operations of the applicant meet the same criminal background check criteria applicable to those officially identified as the principals of the applicant. This issue applies most poignantly to non-individual applicants. The Authority believes that the criminal backgrounds of all applicants and the persons with business influence over those applicants, as provided in the regulations, should be evaluated when determining the applicant's qualification to operate a public utility that will have direct financial dealings with the public and maintain certain personal information about the public, including names, addresses, travel habits, credit card information, etc. The act prohibits approval of a sale of application related to medallions or certificates of public convenience if the proposed owner as been convicted of a felony within the preceding 5 years. 53 Pa.C.S. §5718 (c).

Specifically, this subsection has been amended to clarify that the criminal history report must be issued within 30 days of the application date and to delete a superfluous reference to "part-time" residences. The term "residence" incorporates both full and part-time usage.

(14). Paragraph (14) requires a verified statement from the owner of proposed buyer of the transferable rights that each are in compliance with the terms of section 1011.7, which deals with current payments or fees, penalties, etc. This subsection has been amended simply to note the revised title of § 1011.7.

(16). Paragraph (16) of the proposed regulation required the applicant for transferable rights to provide a Philadelphia Business Privilege License number. Because the possession of such a license is not currently required for taxicab certificate holders, this paragraph has been deleted.

§ 1027.8. Additional application requirements.

Section 1027.8 provides for several requirements regarding the content of agreements of sale for transferable rights, the manner in which the agreements may be executed, the continued operation of the rights subject to sale and submission of certain loan documents for review.

A commentator questioned the need to publish notice of each sale application in the *Pennsylvania Bulletin* and asserted that this notice publication would delay the review period. We believe that publication of the sale application will benefit the public and the regulated parties in a variety of ways, including advanced knowledge of the parties to each sale, which may generate submission of additional information to the Authority for consideration during the review period. Notice can be published in the *Pennsylvania Bulletin* on less than two weeks notice. During that time the sale application will be in the review stage, there will be no delay of an application's approval simply due to this publication requirement.

(b). Execution of agreement of sale. Subsection (b) provides that agreements of sale must be signed at one time by all parties before the Director or a designee on or before the date the SA-1 is filed. Paragraph (2) has been deleted because it placed limitations on the use of valid powers of attorney.

§ 1027.9. Financial fitness generally.

Section 1027.9 provides specific guidelines related to the Authority's review of an applicant's financial fitness to own and operate Authority rights.

(a)(1). Subsection (a) (1) requires the proposed buyer of rights to have at least $5,000 in its bank account or 2% of the value of the rights it is acquiring. For example, if a person sought to purchase a medallion for $300,000, that person must have $6,000 in its bank account in unencumbered funds. A typographical error in subsection (a) (2) has been corrected to clarify that the review will seek a balance of $5,000 or 2% of the value of rights sold, not $25,000.

IRRC questioned the basis for this specific requirement. We believe that the owner of a medallion or certificate of public convenience must have the financial capability of paying for the basic necessities associated with operating a public utility. The presence of this small amount of available financial resources, relative to the value of the rights acquired, will evidence that the proposed owner has the ability to at least initiate the use of the rights acquired, such as the acquisition and preparation of vehicles or dispatch related equipment. This provision does not apply to drivers, only persons who seek to own and operate these public utilities.

We have deleted the requirement that the fund balance be in place for 6 months in light of the fact that some companies will be newly formed for the purpose of acquiring the rights and may not have been in existence for 6 months.

(a)(3). Subsection (a) (3) requires the submission of a credit report for the proposed buyer of the transferable rights and sets a credit score goal of 600. A commentator questioned the need for this requirement. The presence of a credit score below 600 is not a prohibition from ownership of transferable rights; it is a factor to be considered. However, we believe a person's credit score will provide information related to past economic dealings and will assist in the determination of the proposed buyer's fitness to operate a public utility. A typographical error was also corrected in this subsection by replacing reference to paragraph (11) of section 1027.7 (b) of the proposed regulation with paragraph (12). This section requires review of the credit report of the buyer and those with integral associations with the proposed buyer who also have to submit criminal history reports. The list of those persons is identified in § 1027.7(b) (12).

(a)(4). Subsection (a) (4) requires disclosure of outstanding and unappealed civil judgments against the proposed buyer. IRRC questioned why this was necessary. The presence of outstanding and unappealed civil judgments against a proposed buyer is not a prohibition from ownership of transferable rights; it is a factor to be considered. However, the presence of such

judgments may reveal economic exposure that will strain the ability of the proposed buyer to provide quality service through the medallion or certificate of public convenience and jeopardize the loss of equipment related to that service through execution on the judgments, including upon medallions. *See* 53 Pa.C.S. § 5713. We believe this is important information to consider when determining if the issuance of rights to a person is in the best interests of the public. A typographical error was also corrected in this subsection by replacing reference to paragraph (11) of section 1027.7 (b) of the proposed regulation with paragraph (12). This section requires review of the civil judgment records of the buyer and those with integral associations with the proposed buyer who also have to submit criminal history reports. The list of those persons is identified in § 1027.7(b) (12).

§ 1027.10. Regulatory compliance review.

Section 1027.10 of the proposed regulations provided that the Authority's review of an application to acquire transferable rights will include a review of any history of violations of the regulations of the Authority or the PUC. Applicants may not have been subject to a suspension, cancellation or revocation of rights by the Authority or common carrier rights regulated by the PUC during the year preceding the application date. IRRC questioned the meaning of the phrase "regulatory compliance record" in subsection (a). We have amended this subsection by replacing that phrase with "record of regulatory violations", which we believe will be easily understood. The purpose of this provision is to place applicants on notice that a history of violations of Authority or PUC common carrier regulations will be considered when reviewing these applications to protect the public interest.

§ 1027.11. Authority review.

Section 1027.11 provides general guidance as to the basis for the Authority's review of a sale application and threshold issues related to that review, being a determination that the acquisition of transferable rights by the applicant is in the public interest.

(d). Subsection (d) of the proposed regulation provided that the Authority will review the terms of any loan associated with the acquisition of the transferable rights.

A commentator questioned the propriety of the Authority's review of this information. This regulation does not seek to establish rules or regulations related to the lending of money and

does not require the denial of applications accompanied by loan documents that are inconsistent with this section. However, one of the major problems facing the taxicab industry in Philadelphia in 2005 related to the manner in which medallions were sold and financed. Frequently, the terms of loan agreements were unreasonably harsh toward the borrower, who was often unsophisticated and insufficiently versed in the English language to understand its terms. These unreasonable lending terms have been curtailed through the use of the Authority's current locally promulgated regulations and this regulation seeks to prevent the return of that type of lending in the Philadelphia taxicab industry. We believe that loans made by lenders that may not be approved by the Commonwealth or with terms so unreasonable as to make a default and subsequent transfer of those rights likely, are not in the public interest when associated with medallions or certificates of public convenience. We believe the review of this information is crucial to the regulation of a clean, safe, reliable and well regulated taxicab industry in Philadelphia and to assure that the sale of transferable rights "is consistent with the public interest." 53 Pa.C.S. § 5718 (b).

§ 1027.12. Approval process and closing on sale.

Section 1027.12 provides for the method of approval of sale applications including approval by the Authority's Board and scheduling of a closing date.

§ 1027.13. Settlement sheet.

Section 1027.13 provides for use of a standardized settlement sheet and identifies information that must be included in that form.

§ 1027.14. Attachment of medallion.

Section 1027.14 provides that upon the conclusion of closing on the sale of a medallion the Enforcement Department will schedule a time and date to attach the medallion to the taxicab. This process can often be completed immediately after the closing.

§ 1027.15. Commencement of service.

Section 1027.15 provides that the new owner of rights must begin to operate those rights within 30 days of closing.

CHAPTER 1029. BROKERS

§ 1029.1. Purpose and definitions.

Section 1029.1 provides for the purpose of Chapter 1029 and certain definitions related to this chapter. Subsection (b) has been amended to delete reference to broker training as a requirement. Subsection (c) has been deleted because it contained only the definition of "broker", which has been defined in § 1011.2. The deletion of the definition portion of this section negates the need for reference to "definitions" in the title; therefore, that word has been deleted. We incorporate our response provided in §§ 1001.10 and 1029.6 as to brokers.

§ 1029.2. Use of broker.

Section 1029.2 provides that a broker, or an attorney, must be used for all sales. The involvement of individuals experienced with regulatory matters and procedures related to the taxicab and limousine sale and operations will benefit all parties and improve the efficiency of the application review process. A commentator strongly supported this requirement and the regulations related to brokers.

§ 1029.3. Use of attorney.

Section 1029.3 provides that the use of an attorney licensed to practice law in the Commonwealth, will supersede the requirement to use a broker.

§ 1029.4. Ineligible persons for broker certification.

Section 1029.4 provides specific criteria that will render an individual ineligible to be a broker. As used in this section, these conditions of ineligibility relate to applicants for brokers rights.

IRRC raised the same issue noted in its comment to § 1011.5 of the regulations here in relation to the affect of an arrest and initiation of a prosecution against an applicant for a broker registration. An individual subject to a prosecution that may result in a conviction that will render that individual ineligible to act as a broker should withhold the pursuit of that registration until the criminal matter is resolved. We believe it will be against the best interests of the public

to permit the registration of such an individual and permit that individual to have access to private information about clients, as well as the client's money, and then initiate a regulatory action against the individual broker to revoke the registration upon conviction of the charges that were known and pending at the time the Authority approved the broker application in the first place.

To the extent a criminal prosecution is initiated against a broker, the Authority may initiate a formal complaint to revoke the registration, a process that will afford the regulated party the right to a hearing on the record. We also note that the inclusion of the new subsection (f) in the final-form version of § 1011.5 enables an applicant to obtain a waiver from the provisions of § 1011.5, a process that will equally apply to broker registration applicants. Paragraph (4) has been amended to note the revised title of § 1011.7 and paragraph (6) has been amended to remove reference to training because of changes made to §§ 1029.6 and 1029.7. We incorporate our response as to those sections here.

§ 1029.5. Broker registration.

Section 1029.5 provides guidelines for issuance of an Authority broker registration. Brokers are individuals with experience dealing with taxicab and limousine regulatory and operational matters. Brokers assist those interested in buying or selling transferable rights in a manner similar to the way a real estate agent assists buyers and sellers of real estate. The review process related to applications to sell rights or obtain new rights is extensive. The Authority has determined that these applications are successfully processed and approved on a significantly accelerated timeline when a qualified broker or attorney has assisted with the preparation of the application. Given the significant investment associated with acquiring and operating these rights, the costs associated with employing the services of a broker to shepherd the application through the regulatory review process are *de minimis*.

The use of brokers for these purposes pre-dates the Authority's regulation of taxicabs and limousines in Philadelphia. The regulation of these industry participants is crucial to our mandate to provide a well regulated taxicab and limousine industry. *See* § 53 Pa.C.S. § 5701.(2) Brokers are involved in nearly every sale of a medallion and many certificates of public convenience. The Authority is directed to review and approve all of these sales and transfers and directly interact with these brokers and review their work product. *See* 53 Pa.C.S §§ 5711 (c)

(5), 5718 (a) and (b) and 5714.1 (c) (3). The registration process will also help assure those who use a broker's services that the broker's qualifications have been reviewed and approved in advance by the Authority.

(b)(4). Subsection (b) (4) requires the individual applicant and any key employee of that applicant to provide criminal background reports as part of the standard application process. The purpose of this requirement is to assure the public that the applicant and other persons with direct control or influence over the business operations of the applicant meet a criminal background check criteria created as part of an overall assessment of good character. The Authority believes that the criminal backgrounds of all applicants and the persons with business influence over those applicants, as provided in the regulations, should be evaluated when determining the applicant's qualification to operate as a broker. Brokers will occupy a position of trust in the industry and will have access to their client's sensitive financial and personal information and may be required to hold funds of the parties to a sale or transfer.

Specifically, the word "complete" which appeared before "criminal history report" in this subsection has been deleted as superfluous. The term criminal history report is a defined term in the regulations, and for that reason the words "as provided in § 1011.2" have been deleted as superfluous. This subsection has also been amended to clarify that the criminal history report must be issued within 30 days of the application.

(b)(5). Subsection (b) (5) (ii) requires a verified statement from the broker and each key employee confirming that all are in compliance with these regulations, including § 1011.7, which deals with current payments or fees, penalties, etc. This subsection has been amended to note the revised title of § 1011.7.

(b)(6). Subsection (b) (6) requires the submission of a Form BR-5 "Business Experience Questionnaire" with each broker registration application. The second sentence of paragraph (6) contained an improper reference to Form DSP-3, which has been deleted and replaced with "Form BR-5" in the final-form regulations.

(b)(8). Subsection (b) (8) has been deleted to eliminate the requirement to obtain a Philadelphia Business Privilege License, which is consistent with the deletion we have made in § 1011.7. The subsequent paragraphs have been renumbered.

(b)(11). Subsection (b) (11) (now (b)(10)) provides that an applicant for a broker registration must submit a resume identifying 5 years of prior work history. A typographical

error was corrected in this subsection by adding the word “a” and amending “brokers” to “broker”.

§ 1029.6. Broker training.

Section 1029.6 provides for the optional training of individuals who seek a broker registration. This section specifies the subjects that must be addressed and a minimum number of hours of training. We incorporate our response provided in § 1026.5 related to the important function of brokers in the taxicab and limousine industries in Philadelphia.

(a). Subsection (a) provides that broker training will now be an option for broker applicants. Therefore, the word “will” has been replaced with “may” and the phrase “upon request of the applicant” has been added. We incorporate or response to comments provided in subsection (b).

(b). Subsection (b) provides for a minimum of 2 hours of training for broker applicants who opt for the training and specifies training subjects. IRRC questioned the value of only 2 hours of training. IRRC also asked if the Authority would accept a national licensure for brokers. We note that this section provides for a minimum of 2 hours of training, to the extent the Authority determines that this is an insufficient amount of training time, the regulation permits the flexibility to require longer training periods. We are unaware of a national broker training program that focuses on the regulations and statutes related to the taxicab and limousine industries in Philadelphia; therefore, we are unable to evaluate the suitability of such a program. Again, training of broker applicants is designed to equip those individuals with the ability to assist their clients through the sale process.

IRRC questioned the consistency of this training requirement with the act. While we believe that such a requirement is consistent with the act and may be crucial to our regulation of the taxicab and limousine industry in Philadelphia, we will eliminate this training as a requirement. Applicants may opt to participate in this training as a means of improving their understanding of procedures and services to their clients. We will review the value of making this training a requirement and revise this provision in a future rulemaking, if necessary.

(c). Subsection (c) has been added to this section to clarify that an applicant may discontinue training and have a broker test scheduled as provided in § 1029.7.

§ 1029.7. Broker testing.

Section 1029.7 provides for the testing of brokers prior to issuance of registration.

(a). Subsection (a) provides for the manner in which broker testing will be scheduled. This subsection has been amended to reflect that fact that this training is voluntary and to equitably address scheduling conflicts between the applicant's schedule and the designated testing date.

(b). Subsection (b) identifies the subject to addressed in testing. This subsection has been changed to address the fact that testing is now voluntary. There will not necessary have been a presentation of subjects made during training for each test taken as some may opt to skip training.

(c). Subsection (c) notes that the purpose of the test is to assure that the applicant understands the major issues associated with being a broker and references the training subjects of 1029.6 (b). This subsection has been changed to address the fact that testing is now voluntary.

§ 1029.8. Broker registration approval.

Section 1029.8 provide that the Authority will issue documentation to a successful broker application confirmation a registered status.

§ 1029.9. Broker representation letter.

Section 1029.9 provides that a broker must file the broker registration letter through a designated form as part of documents submitted with an application for each sale.

§ 1029.10. Broker agreements required.

Section 1029.10 requires a broker to use a written agreement to confirm a broker relationship and provides for declarations that must be made in such agreements.

§ 1029.11. Professional liability insurance.

Section 1029.11 requires brokers to maintain certain levels of insurance to protect clients from negligence, including errors and omissions. A commentator suggested that the requirement to maintain a policy in the aggregate amount of $3,000,000 is excessive. We disagree. Many taxicab and limousine businesses that may be subject to sale through a broker are worth far in

excess of $3,000,000. Also the negligent sale of several medallions could easily result in damages at or about these policy limits. For that reason we believe this insurance requirement is reasonable and necessary to ensure confidence in the actions of brokers, which are so integral to the sale of transferable rights and the overall health of the taxicab and limousine industry in Philadelphia. However, in order to be consistent with the overall scope of this final-form regulation we will maintain the status quo in Philadelphia by requiring only $50,000 in insurance and review the propriety of increasing that coverage through a subsequent rulemaking.

§ 1029.12. Broker duties.

Section 1029.12 provides for certain duties and obligations related to the conduct of being a broker.

§ 1029.13. Disclosure of interest.

Section 1029.13 provides for the disclosure of certain interests by a broker to a client. This section is intended to create transparency and eliminate conflicts of interest.

§ 1029.14. Broker conduct and obligations.

Section 1029.14 provides a series requirements intended to outline the minimum level of good conduct and duties owed to clients of brokers. A typographical error was corrected in subsections (d) (3) and (4) by adding the word "the" to each subsection.

§ 1029.15. Duty to deposit money belonging to another into escrow account.

Section 1029.15 provides for the standards and duties applicable to brokers upon receipt of client funds or other funds not belonging to the broker and related to the broker relation.

§ 1029.16. Nonwaiver of escrow duty.

Section 1029.16 provides that the broker's escrow duties may not be waived through an agreement with a client.

§ 1029.17. Deadline for depositing money into escrow account.

Section 1029.17 provides deadlines associated with a broker's obligation to escrow funds.

§ 1029.18. Escrow account.

Section 1029.18 provides for the creation and maintenance of an escrow account by a broker.

§ 1029.19. Prohibition against commingling or misappropriation.

Section 1029.19 provides that a broker may not commingle or misappropriate escrowed funds.

§ 1029.20. Procedure when entitlement to money held in escrow is disputed.

Section 1029.20 provides for the procedure that a broker must adhere to in the event that funds placed in escrow are subject to a dispute.

§ 1029.21. Escrow records.

Section 1029.21 provides for the records that a broker must maintain in regard to funds placed in escrow.

§ 1029.22. Broker in possession of medallion.

Section 1029.22 provides that a broker who comes into possession of a medallion must deliver the medallion to the Authority for storage within 48 hours.

Subpart C. LIMOUSINES

CHAPTER 1051. GENERAL PROVISIONS

§ 1051.1. Purpose.

Section 1051.1 provides for the purpose of this subpart.

§ 1051.2. Definitions.

Section 1051.2 provides definitions primarily applicable to the limousine subpart of this rulemaking. IRRC commented that each subpart of the final rulemaking should contain a definition section identifying terms used in that section and that the terms should be consistent throughout the rulemaking. We agree with IRRC and have attempted to reduce, as much as practical, the use of definitional language outside of the definition sections. IRRC also suggested that each defined term used in a part be defined in that part. That has resulted in the duplication of several definitions, as we noted in our responses to IRRC's comments to §§ 1001.10 and 1011.2, which we incorporate here.

Several terms in this section have been amended and others have been added, including those referenced in our response to § 1027.2, which we incorporate here. Other additions or changes to this section are set forth below.

Consistent with the Authority's response above to IRRC's comments on § 1001.10 (relating to definitions) the terms "broker" and "transferable rights" have been defined in § 1051.2. The term "sale" was defined in § 1027.2 (formerly relating to definitions) and will appear in this section of the final rulemaking because it is used in the term "transferable rights", as will the definition of "securities" as referenced in our response to § 1011.2.

IRRC also commented that the term "common carrier" as defined in this section is vague and appears unnecessary in light of definitions provided in sections 5701 and 5703 (g) of the act. We have changed this definition to address IRRC's comment and be consistent with that provided in § 1011.2. Our comment to §1011.2 addresses this issue and we incorporate it here.

IRRC commented as to the term "key employee" and noted that the following language was unclear: "other entity identified by the Authority". We agree with IRRC and have deleted that phrase. This term has been amended to clarify that it applies to applicants and regulated persons. We believe this change should eliminate the potential confusion noted by IRRC.

The term "limousine" has been revised by deleting a reference to the act. As noted by IRRC and another commentator, the act does not define this term. Limousine has been redefined to mean any vehicle authorized by the Authority to provide limousine service. IRRC suggested that the term "limousine certificate" as defined in § 1059.2 be moved to this section for consistency, as well as § 1011.2. The term need not appear in section § 1001.10 because it is not used in Subpart A.

IRRC and another commentator suggested that the term “limousine service” was ill defined in the proposed regulation. IRRC recommended that the definition of limousine service simply be adopted from the act. We agree and have amended the final-form regulation as recommended to incorporate the definition provide in section 5701 of the act.

Several additional terms have been added to this provision in response to a comment by IRRC and as more fully addressed in our response to comments to § 1001.10.

IRRC also commented that the definition of the term “moving violations” contained a typographical error. We agree and have added the word “of” after the word “one.” The term “proposed buyer” has been deleted and moved to the position below “parking violations” to correct that alphabetizing error in the proposed version of the regulations. IRRC commented as to the term “regulated person” and suggested that the phrase “this part, or an order of the Authority” be deleted because reference to the act is sufficient. We agree with IRRC’s comment and have made the requested changes. We have also added the term “or regulated party” to the defined term to address the alternating use of those common terms in the final form regulations. IRRC made the same comment about the term “rights” that was raised in § 1011.2. We incorporate here our response provided in that section above.

IRRC note the comment of other commentators that the term “stretched vehicle” was inconsistent with federal law. We disagree that the term is either inconsistent with federal law or that limousine service in such vehicles is outside the jurisdiction of the Authority (just as it is not outside the jurisdiction of the PUC). However, as a result of changes made to § 1053.41, the definition of this term is no longer necessary and it has been deleted in the final-form regulations.

The term “transfer fee” was defined in this section of the proposed regulations in a manner consistent with the definition in § 1011.2, but differently from the manner in which the term was more precisely defined in § 1027.2. Therefore, “transfer fee” has been amended in this section of the final-form regulations to reflect the definition provided in § 1027.2 of the proposed regulations. That term is now defined consistently throughout the final-form regulations.

IRRC also noted the comment of a commentator relating to various “chauffeured services” and questioned if those services are included in limousine service or not. It is impossible to predict which varied attempt to provide a chauffeured type service is or is not going to conflict with limousine service without knowing the context of the proffered service.

We believe we have provided clear guidance as to what type of service is regulated by the Authority. To the extent a person provides service covered by the act without first obtaining a proper certificate of public convenience and otherwise complying with the act and our regulations, the Enforcement Department will conduct an investigation and act accordingly.

§ 1051.3. Annual rights renewal process.

Section 1051.3 provides the process through which the Authority will annually review the status of limousine certificates and limousine drivers and review the renewing person's continuing eligibility to hold the rights and process assessment and renewal fees in conjunction with § 1015.4. The purpose of this section is the same as stated in response to § 1011.3 and we incorporate our response to comments to that section here.

(a). Expiration of certificate. Subsection (a) provides that the Authority will consider rights expired for failing to complete the annual renewal process provided for in this section. This has been the practice in Philadelphia since 2005.

(a)(1). Subsection (a) provides that limousine certificates will expire on July 1 of each year. The July 1 expiration was a typographical error. This date has been changed to June 30 of each year. The Authority's fiscal year runs from July 1 to June 30, as do the periods covered by the annual renewal and fee payment process.

IRRC questioned the impact of the June 30 deadline upon a party who may have been issued a new certificate only a month before the renewal deadline. We agree with IRRC's concern and have added a new subsection (f) to this section which provides that a certificate will not be subject to the renewal requirements of this section during the calendar year in which it is first issued. The addition of this section has necessitated the inclusion of exception language in subsections (a) (1) in the final form regulation.

(a)(2). Subsection (a) (2) provides that a limousine driver's certificate will expire one year from the date issued, if not otherwise renewed. IRRC and another commentator questioned the reason for an annual renewal when a state issued driver's license is issued for a longer period. We require annual renewal because we seek to confirm that an individual remains qualified to be a driver. We believe this is crucial to our goal to provide clean, safe, reliable, and well regulated limousine service. For example, if the state issued driver's license of a limousine driver is in a suspended or revoked status or if a driver has been convicted of a felony in the last year, the

renewing party may be denied the requested renewal. The Authority does not receive notice from the Department of Transportation when a state issued driver's license has been suspended, nor do we receive notice from the criminal courts when a driver is convicted of a crime that would prohibit that individual from driving a limousine service. We have to look for that information. The annual renewal provides that opportunity. We believe this process works very well with a minimal burden upon either the Authority or the regulated community. That burden has already been factored into baseline costs of the regulated industries because it has been the process followed in Philadelphia since 2005.

(b). Expired rights. Subsection (b) provides for the invalidation of expired rights.

(b)(1). Subsection (b) (1) of the proposed regulation provided that expired rights will be placed out of service and cancelled by the Authority. We have amended this section by deleting the cancellation language and will, instead, rely solely on the out of service enforcement mechanism provided for in § 1003.32 in cases where affirmative action is taken to have expired rights invalidated.

(b)(2). Subsection (b) (2) provides that a limousine driver's certificate will be deemed cancelled if it has been expired for 60 or more days. IRRC questioned the use of notice for deemed cancellations of this nature. Preliminarily, we have amended this section in the final-form regulations to expand the 60 day period to 1 year. Therefore, this provision will only apply when a driver fails to renew a driver's certificate for an entire year after the date provided on the driver's certificate as the expiration date. There are thousands of taxicab and limousine drivers in Philadelphia and the Authority currently does not have the technological capacity to track the status of each driver's certificate. This is the responsibility of the driver. We agree that a notice of cancellation or expiration may be of assistance in certain situations and will consider including it in our standard operating procedures. We will consider adjustments to future budgets that will be necessary to fund a process of tracking and mailing notices to thousands of drivers throughout the year. We do expect all regulated parties to remain aware of the status of their rights on their own, particularly when the expiration date is printed on the certificate and the certificate is carried and displayed for public review by the driver everyday. We note that the cancellation of a driver's certificate pursuant to this section will not necessarily prohibit an individual from reapplying for a new driver's certificate.

(c). Renewal forms. Subsection (c) provides for the procedures related to the filing of annual renewal forms.

(c)(1). Subsection (c) (1) requires rights renewal forms to be filed with the Director of the TLD. In order to be more specific, this subsection has been changed in the final form regulations to direct that renewal forms be submitted to the Manager of Administration.

(c)(2). Subsection (c) (2) identifies certain renewal requirements and forms applicable to the different types of service providers subject to the act. IRRC questioned the implication of the phrase "order of the Authority". In order to remove any confusion we have deleted that phrase from the final-form regulations.

(c)(3)(i). Subsection (c) (3) (i) requires limousine certificate renewal forms to be filed with the Authority on or before May 15 of each year. IRRC questioned if this filing date will permit the Authority time to review all of the applications. Upon further review of this matter we agree with IRRC and have moved this filing date forward to April 1 in the final-form regulations.

(c)(3)(ii). Subsection (c) (3) (ii) requires individuals holding limousine driver's certificates to file the required renewal form 60 days before the driver's certificate is scheduled to expire. IRRC questioned whether 60 days was enough time to permit a driver to submit a renewal form, we believe it is. However, to be consistent with changes made to § 1011.3 (c) (3) (iv) relating to taxicab driver renewals, we have set a time frame during which the renewal form may be filed. This change clarifies that the renewal form need not be filed on a specific day, but during a range of days. A commentator suggested that the driver renewal form should be filed out only a week before the expiration date. We disagree. We believe such a small window of time will burden all parties with the obligation to complete a hasty review with limited time for correction to renewal problems or supplementation of information necessary to complete renewal.

(e). Suspended rights. Subsection (e) has been added to this section to require those holding rights that have been suspended to complete the renewal process outlined in this section, despite the fact that the rights may be in a suspended status at the time they are scheduled to expire. This requirement is counterintuitive, but necessary. The suspension period for rights is generally established through Authority order following an enforcement action, for that reason the terms of suspensions all vary. This section will assure that on the date the suspension period

ends the subject rights will be in a current status and be capable of immediate operation without need to submit to some irregular renewal date. IRRC noted the absence of this provision in this section, while it was present in § 1011.3, and we have made this amendment to correct that oversight. We incorporate our response to questions related to this provision provided in § 1011.3.

(f). New certificates. Subsection (f) provides that a limousine certificate will not be subject to the renewal requirements of this section during the calendar year in which it is first issued. This new subsection has been added for the reason provided in response to comments to (a) (1) above.

IRRC also questioned the absence of a provision related to waivers in this section, while one was found in the proposed regulations at § 1011.3 (a) (4). We note that subsection (a) (4) of § 1011.3 has been deleted in the final-form regulations. We have not included it in this section for the reason provided for its deletion from § 1011.3.

§ 1051.4. Annual assessments and renewal fees.

Section 1051.4 provides procedures related to the payment of annual assessments and fees which are included in the Authority's fee schedule. The fee schedule is developed to fund the Authority's estimated annual operational costs as required by section 5707 (b) of the act. Under that section the budget and fee schedule of the Authority are subject to annual review by the Appropriations Committee of the House of Representatives and the Senate and are not part of this regulatory promulgation process.

IRRC noted that some commentators have questioned the difference in the way the Authority and the PUC collect fees from regulated parties in order to support the regulatory functions of their respective agencies. Based on those comments, IRRC requested that the Authority explain why there appears to be an increased fiscal impact between Authority and PUC regulations. We incorporate our response to this question provided in § 1011.4.

(d)(1). Late assessment and renewal fee payments. Subsection (d) (1) provides a deadline for making assessment and renewal fee payments. IRRC questioned why the deadline for payment is 3:00 p.m. on the date the payment is due when the Authority's offices are open until 5:00 p.m. The 3:00 p.m. deadline will provide the Authority's staff with the time to process the payment and address any issues or problems that may arise in the payment process. We have

deleted the 3:00 p.m. deadline for the reasons provided in response to comments in § 1011.4 (h). We have also amended 1051.4 (d) (2) to comport with our response to § 1011.4 (h) (3) related to the discretionary application of the out of service process to regulated parties who do not make assessment or renewal fee payments on time. The deletion of paragraph (1) has negated the need for the use of paragraphs in this subsection.

§ 1051.5. Ineligibility due to conviction or arrest.

Section 1051.5 addresses the eligibility of a regulated party or applicant to hold Authority rights when that person has been convicted or is being prosecuted for committing certain crimes. IRRC and other commentators raised concerns about the affect upon regulated parties of an arrest and prosecution, as opposed to a conviction and the impact upon associated parties. This same issue was raised and responded to in § 1011.5, which is identical to this section. We have made the same changes to this section necessitated by comments to § 1011.5, our response to that section is incorporated here.

§ 1051.6. Payment of outstanding fines, fees and [,] penalties[and taxes].

Section 1051.6 of the proposed regulation required regulated parties and applicants for rights issued by the Authority to remain current on the payment of fines, fees and taxes payable to the Authority, the City of Philadelphia or the Commonwealth. This section mirrors § 1011.7. We have made the same changes here in the final-form regulations in response to comments from IRRC and other commentators that we did in § 1011.7. We incorporate our response to § 1011.7 here.

§ 1051.7. Facility inspections.

Section 1051.7 provides that the Authority may inspect the facilities of certificate holders and brokers used to provide service pursuant to the act, this section mirrors § 1011.8 (relating to facility inspections). IRRC commented that the terms “operating locations” and “facility inspections” were vague and required differentiation. We agree with IRRC’s comment and have revised this section by deleting the general language used in the proposed form regulations and replacing it with language specific to limousine certificate holders and brokers. A commentator suggested that some limitation as to when these facility inspections may occur should be made a

part of the final form regulations; we agree and have added such language. We incorporate here our response to comments to § 1011.8, which is nearly identical to this section.

§ 1051.8. Limousine service limitations.

Section 1051.8 provides general guidance on the service limitations associated with limousine service, particularly relating to who may operate a limousine and the continuing obligation of a certificate holder to supervise the operation of its limousines.

(c). Subsection (c) provides for driver requirements related to limousine service provide as part of a funeral. IRRC commented that this subsection uses the term "Authority-certified" limousine for the first time and questioned the statutory basis for the Authority's regulation of limousines used to provide local, nonscheduled common carrier service for passengers on an exclusive basis for compensation in a funeral. Limousine service provided during a funeral squarely meets the definition of "limousine service" as defined in the act. *See* 53 Pa.C.S. § 5701. To eliminate any confusion about this wording we have deleted the term "Authority-certified" from this subsection.

The purpose of this subsection is to continue the practice in Philadelphia of permitting funeral homes to provide limousine service as a component of their overall funeral services without need to secure an individual with a driver's certificate. Because these businesses are not otherwise engaged in providing limousine service (except during a funeral), this exemption has been created for funeral related limousine service only. The vehicles do have to be inspected and otherwise comply with the act, these regulations or an order of the Authority. To the extent that the limousine is used to provide any other type of limousine service, a certified driver must be used. The drivers used during funerals do need to submit a criminal history report to the Authority to evidence compliance with § 1051.5 and possess a valid state issued drivers license. These drivers are not permitted to provide any other form of limousine service except as part of the funeral service.

§ 1051.9. Discrimination in service.

Section 1051.9 provides that limousine service providers may not illegally discriminate against people based on race, religion, etc.

§ 1051.10. Record retention.

Section 1051.10 provides guidelines for the manner in which records related to service provided under the act or this part must be stored. IRRC's comments in regard to this section were identical to those submitted for § 1011.11. We incorporate our response to comments provided in § 1011.11 here. A commentator suggested that this section required the retention of paper through subsection (c). Subsection (c) has been deleted in the final-form regulations as part of the overall modifications made to this section.

§ 1051.11. Aiding or abetting violations.

Section 1051.11 provides that a person may not aid, abet, encourage or require a regulated party to violate the act, this part or an order of the Authority.

§ 1051.12. Interruptions of service.

Section 1051.12 requires limousine certificate holders to report any discontinuance in the provision of limousine service that lasts 5 or more days. The proposed regulations contained more restrictive reporting requirements and terms for cancellation of the certificates in violation of this section than we believe are unnecessary and have removed them from the final-form regulations. IRRC and another commentated questioned the need for the narrower reporting timeline in the proposed regulation, as well as the meaning of the terms "interruption" and "suspension" as previously used in that section.

The final-form regulation clarifies that <u>any</u> discontinuation in the provision of limousine service that lasts 5 or more consecutive days must be reported to the TLD's Manager of Enforcement within 7 days of the beginning or the period of discontinued service. The report may be easily submitted through email and must identify the reason for the discontinuation and its projected duration. We need to maintain information of this nature in order to monitor the current supply of limousines in the Philadelphia area. Events which lead to the discontinuance of a large number of limousine certificate holders may be indicative of problems that require regulatory attention by the Authority. Without the simple and easy reporting requirement created by this section, the Authority will be without important information that directly affects the limousine industry in Philadelphia. The language of subsection (a) of the proposed regulation

has been amended and now comprises the entirety of this section, negating the need for subsections.

§ 1051.13. Voluntary suspension of certificate.

Section 1051.13 created a process through which a certificate holder may seek to voluntarily suspend its certificate. IRRC raised the same issues noted in regard to § 1011.14 in regard to this section. Section 1011.14 provides for voluntary suspension related to taxicabs, while this section deals with limousines. We believe we have addressed IRRC's concerns in this section by making the same relevant changes made to § 1011.14 and we incorporate here our response to comments to that section. The question of fees that may be charged for considerations of applications related to this section will be addressed through the fee scheduled promulgation process provided for in section 5707 (b) of the act.

§ 1051.14. Death or incapacitation of a certificate holder or certain persons with controlling interest.

Section 1051.14 provides for the disposition of a limousine certificate of public convenience in the event of the death or incapacitation of the certificate holder or designated persons with a controlling interest in the entity that owns the rights.

§ 1051.15. Power of successors by law.

Section 1051.15 provides guidance on the operation and disposition of a certificate of public convenience when taken into possession by the successor in law.

§ 1051.16. Limitations.

Section 1051.16 simply provides that those who temporarily continue the operation of limousines through the certificate of public convenience possessed through the procedures provided in § § 1051.14 and 1051.15 must adhere to the act and these regulations.

§ 1051.17. Application review generally.

Section 1051.7 provides that applications for limousine rights will be reviewed pursuant to the standard application review procedures of § 1003.51.

§ 1051.18. Method of operation.

This section presented a form of "catch all" designation for limousine service that was not otherwise identified in the rule making. IRRC noted the comment of the PUC that the provision should include not only the potential loophole types of limousine service, but all types of service. We have addressed this concern by eliminating this section as superfluous.

CHAPTER 1053. STANDARD CLASSIFICATIONS OF LIMOUSINE SERVICE

Subchapter A. CLASSIFICATIONS

§ 1053.1. Standard classifications of limousine service.

Section 1053.1 provides for the various types of limousine service as defined broadly in the act and as classified by the Authority as permitted by 53 Pa.C.S. § 5741(a). A commentator suggested that there are too many types of limousine service created in the regulations; another commentator suggested that an existing classification of limousine service has been eliminated by these regulations. These final-form regulations continue the types of limousine service provided in Philadelphia since 2005 in a manner consistent with the definition of "limousine service" provided in the act.

(b). Section (b) provides for the various classifications of limousine service that will be approved by the Authority. IRRC noted that language in the second sentence of this section seemed to create a mechanism for the creation of classifications of limousine service outside the method provided for in the act. We have deleted that sentence to address IRRC's concerns and amended the grammar of the first sentence of this subsection necessitated by that deletion.

(b)(1). Luxury limousine service. This subsection of the proposed regulations provided for the issuance of a certificate of public convenience to provide luxury limousine service as defined in this chapter.

In the final-form regulations this subsection has been amended to include reference to the two existing classifications luxury limousine service. The first is comprised entirely of the

service identified in the proposed regulation with amendments to address IRRC's comments as provided below. That service now appears as (b) (1) (i). The second existing classification of limousine service in Philadelphia provides luxury limousine type service, through vans or similar vehicles that do not meet the requirements of a "luxury vehicle". This service is provided in a vehicle that can seat between 9 and 15 people. Subparagraph (ii) has been added to this subsection to clarify that this distinct type of service has not been discontinued through this rule making.

(b)(1)(i). Subsection (b) (1) (i) provides for the luxury limousine classification provided for in the proposed regulations under this section. IRRC commented in regard to the original language now found in subparagraph (i) that the term "luxury-type vehicles" is used without defining the term. However, this term is defined in § 1053.23. To address IRRC's concern we have included a reference to § 1053.23 in subparagraph (i). We also note that this is the same format provided for in the PUC's regulations; therefore, this language will be familiar to regulated parties who also operate through a PUC certificate of public convenience. *See* 52 Pa. Code § 29.333. The last sentence of this paragraph has been amended to clarify that it only applies to the subparagraph (i) classification.

(b)(1)(ii). This subsection has been added to address the concern of a commentator about the potential elimination of a category of limousine service. There is currently a type of limousine service provided in Philadelphia primarily through the use of vans that can seat at least nine passengers including the driver. Service providers have paid for this right and new applicants have always been eligible to do so. This subsection will not create a new classification or a new cost associated with acquiring or maintaining these rights. These vehicles will not seat more than 15 passengers including the driver. While not necessarily luxurious, these vehicles do otherwise provide standard limousine service, simply to several people at a time. The service is currently referred to as "Exclusive Bus" service, which we have found ill-fitting. We believe that the continuation of this service will maintain the status quo in Philadelphia and will fill the public need addressed successfully by this service in Philadelphia since 2005. The failure to include the distinction between these classifications of limousine service in the proposed regulation was an oversight. These separate classifications have existed in Philadelphia since 2005.

(b)(2). Airport transfer service. This subsection provides for the issuance of a certificate of public convenience to provide airport transfer services as defined in this chapter. This subsection has been amended to bring the parameters of airport shuttle service in line with the definition of that service provided in section 5741 (a.2) and to clarify that the definition is applicable to those service carriers authorized by the Authority as opposed to those similarly situated service providers certificated by the PUC, which specifically commented on the need to address this definition. IRRC and the PUC also commented on the fact that the term "bus station" is not included in section 5741(a.2) which relates to this type of service, but instead "hotel" is used in the act. We have amended this section to address the concerns of IRRC and the PUC.

(b)(3). Remote carrier. This subsection provides for the classification of limousine service that will seek to pickup passengers at Philadelphia airports, railroad stations and hotels using only a PUC issued certificate of public convenience. The Authority is constrained to regulate this type of service, but has opted to employ a very limited form of oversight, provided these PUC carriers are in compliance with PUC regulations and certain Authority regulations focused on registration and safety compliance. *See* § 1053.43. Authority certificates of public convenience to provide limousine service automatically grants access to Philadelphia's airports, train stations and hotels, without need to obtain a remote service provider designation.

This subsection has been amended to address potential confusion among PUC carriers authorized as "limousines", "airport shuttle services", and "group and party services". While the definition of limousine service provided in section 5701 of the act considers these various classifications of services to be "limousine services", the terminology employed by the PUC does not. Therefore, the final-form regulation specifically identifies the PUC carriers intended to be included within the meaning of the term "remote carrier", because the term "limousine" was simply to narrow.

IRRC questioned the impact of section 5741 (a.3) (3) on this subsection and questioned a perceived conflict between the two. We do not believe that a conflict exists. Section 5741 (a.3) identifies the Philadelphia related rights that limousines certificated by the PUC only will have as of right under the act.

Generally speaking, a limousine certificate holder in Pennsylvania may initiate or terminate service in an area outside of its defined geographic boundaries, provided one of the

two (the point of origination or point of destination) is in the approved geographic boundary of the certificate holder. Section 5741 (a.3) (3) creates an exception to that standard service practice by identifying the Authority as the sole source of authorization to provide limousine service that originates at airports, train stations or hotels in Philadelphia, regardless of where the service destination may be. We developed the remote service provider classification to provide a level of certainty among PUC limousine certificate holders who do not provide limousine service within Philadelphia, but who do commonly engage in the origination of service at airports, train stations or hotels in Philadelphia that terminates in areas outside of Philadelphia. We do not believe that carriers with such limited contacts in Philadelphia should be required to obtain Authority certificates of public convenience.

Because this narrow classification of a limousine service provider will not provide service within Philadelphia, but instead primarily in PUC territory, we believe it is appropriate to create this reduced level of regulation. We have amended this section to reflect the fact that registrants for remote carrier status will be issued a certificate of public convenience to provide that limited Philadelphia service along with the remote carrier stickers. *See* § 1053.43 (f). The certificate of public convenience will be renewed through the streamlined remote carrier registration process as provided in § 1053.43 (d) (1) and (4). We believe this will address IRRC's comment to § 1051.3 related to the method of approving PUC carriers to provide service from airports, train stations or hotels in Philadelphia.

The act grants the Authority the power to regulate this classification of service and to promulgate this regulation, which will reduce the costs of these PUC limousine certificate holders who would otherwise be constrained to obtain an Authority certificate of public convenience or abandon service from their PUC areas to the most popular destinations in Philadelphia, or vice versa. We do not believe those alternatives would be in the best interest of the public and we see no conflict between this subsection and section 5741 (a.3) (3) of the act.

Also, the final sentence of subsection (b) (3) has been deleted. This was a non-substantive sentence and we do not believe that the example provided by that sentence was helpful or is applicable given the changes to remote carrier authorization represented in the final-form regulation.

Subchapter B. LUXURY LIMOUSINE SERVICE

§ 1053.21. Purpose.

Section 1053.21 provides that this subchapter applies to luxury limousine service.

§ 1053.22. Method of operation.

Section 1053.22 provides general guidance on the manner in which luxury limousine service may be provided in Philadelphia. This section represents a nearly word-for-word adoption of the same language used by the PUC to regulate luxury limousine service in the rest of the Commonwealth. *See* 52 Pa.Code § 29.332. IRRC commented that subsection (a) created caveats to the requirements of this section without sufficient identification of the reason or manner in which such exceptions would apply. We believe that the language used in this section and the regulation of the PUC is very clear and that it is understood by all regulated parties. However, we will address IRRC's concern by deleting the phrase "Unless otherwise specifically provided in this subpart or the certificate of public convenience" from the final-form regulation. IRRC also suggested that the word "following" be inserted before the word "rights", we have made that change.

(a)(2). Subsection (a) (2) requires a single payment for a given luxury limousine service trip by either one person or an organization on behalf of all of the passengers, not each of the passengers on an individual basis. This is consistent with the overall concept of exclusive service. This provision also represents a direct and unedited adoption of the PUC's regulation related to this exact issue. *See* §29.332 (a) (2). IRRC noted the comment of a commentator expressing confusion about the import of this paragraph. Because the commentator is the Vice President of a company that holds a luxury limousine certificate of public convenience from the PUC, this provision already applies to the commentator and will simply need to be followed both in Philadelphia and the balance of the Commonwealth.

§ 1053.23. Vehicle and equipment requirements.

Section 1053.23 provides for vehicle and equipment requirements related to the provision of luxury limousine service and seeks to mandate the use of a high quality vehicles for this purpose, consistent with the expectations of the general public. This section represents an

adoption of the PUC's regulation at 52 Pa.Code §29.333 (relating to vehicle and equipment requirements). A commentator suggested that this section would prohibit the use of a Lincoln Town Car, we disagree. Preliminarily, we note again that the Authority's use of the language in this section will bring parity between the requirements of both the PUC and the Authority. Additionally, we are uncertain as to which of the requirements the commentator is referencing as creating this prohibition, but to the extent reference was made the minimum wheelbase of 109 inches, a Lincoln Town Car would qualify as a luxury limousine given its factory specified wheelbase of 111.7 inches for the Signature Limited edition and 123.7 inches for the Signature L series.

A commentator noted that the Authority maintains a list of vehicle's acceptable for limousine service at § 1055.20 and suggested that the list constitutes a separate set of requirements, in addition to this definition of a luxury limousine. We disagree. The Authority routinely fields telephone calls from limousine certificate holders about the ability of a particular make or model of vehicle to meet basic regulatory requirements, such as leg room, wheel base, etc. The list of approved vehicles is maintained to advise limousine certificate holders of the vehicles that have been approved for service in order to save the certificate holder the time of researching the issue or potential cost of buying a vehicle and then learning that it is not compliant with the regulations. This vehicle list is not exclusive and will be continually updated to provide up-to-date information.

§ 1053.24. Consumer information.

Section 1053.24 provides that postings must be placed in limousines to provide notice to limousine passengers as to how to file limousine service related complaints with the Authority and provides specific contact information. A commentator suggested that this type of notice is inappropriate to luxury service. We incorporate our response to comments to § 1055.4 (15) and have amended this section in a manner consistent with those comments. We have also deleted subsection headings (a) and (b), because the information in prior subsection (b) is the actual language that the prior subsection (a) will require in the posting. Because all of the information in this section is part of the same paragraph, subsections are not necessary. The Authority's contact telephone number has been changed.

Subchapter C. AIRPORT TRANSFER SERVICE

§ 1053.31. Purpose.

Section 1053.31 provides general guidance on the purpose of Subchapter C. A typographical error was corrected in this section by adding the word "to", which was missing in the proposed regulation.

§ 1053.32. Method of operation.

Section 1053.32 addresses the Authority's airport transfer service classification of limousine service. IRRC commented that the first sentence of this section created a caveat to the requirements of this section without sufficient identification of the reason or manner in which such exceptions would apply. We believe that the language used in this section and the regulation of the PUC is very clear and that it is understood by all regulated parties. However, we will address IRRC's concern by deleting the phrase "Unless otherwise specifically provided in the certificate of public convenience" from the final-form regulations.

IRRC also noted the comment of the PUC which suggested that this section should be modified to clarify that it applies to certificates issued by the Authority and not the PUC. While we do not express an opinion as to the distinction between the definition of limousine service in the act and the affect of section 5741 (a.2) upon that definition, we have amended this section to delete the language which essentially paraphrased section 5741 (a.2.) and to simply specifically cite that section of the act to avoid any source of confusion.

§ 1053.33. Tariff and schedule requirements.

Section 1053.33 provides guidance on requirements related to tariffs, including filing with the Authority.

§ 1053.34. Consumer information.

Section 1053.34 provides guidance on the required consumer information that should be posted in limousines. The Authority's contact telephone number has been changed.

Subchapter D. LARGE VEHICLES AND REMOTE CARRIERS

§ 1053.41. Large vehicles.

Section 1053.41 creates special requirements related to limousine service provided in large vehicles. The definition of "limousine service" in the act does not contain a seating capacity limitation; therefore, a vehicle with a seating capacity of 55 people that provides local, nonscheduled common carrier service for passengers on an exclusive basis for compensation, provides limousine service under the act, and is within the Authority's regulatory jurisdiction. Special rules related to these large vehicle limousines have been in place in Philadelphia since 2005 and before that time these vehicles were regulated by the PUC in Philadelphia and throughout the Commonwealth. The act divested the PUC of that power in Philadelphia only; however the PUC continues to regulate these carriers throughout the rest of the Commonwealth. We have not created a new category of limousines to regulate, as one commentator suggests, this type of limousine has always been regulated.

A large vehicle is simply a limousine that can seat 16 passengers, including the driver. Because these vehicles are not generally understood to be limousines by the general public and due to certain federal preemption issues addressed below, we have created a modified regulatory scheme for this classification of service. Subsection (a) requires that limousine certificate holders using large vehicles first be PUC certificate holders for the type of service to be provided in Philadelphia as a prerequisite to registering with the Authority. Subsection (b) identifies what regulations these large vehicles must then adhere to, including registration with the Authority.

IRRC noted the suggestion of one commentator that any regulation of this classification of service is prohibited by federal statute. The commentator cited 49 U.S.C. § 14501 (a) (1) (C) in support of that position. The commentator did not cite § 14501 (a) (2) which provides:

> *Matters not covered.* Paragraph (1) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

The commentator supported its position that the Authority was preempted from regulating large vehicles by noting that the PUC and Pennsylvania Department of Motor Vehicles already impose safety regulations upon these large vehicles, as well as insurance filings

and moderate registration requirements, negating any need for the Authority to do so. *See* 67 Pa. Code Chapters 229 and 231, *see also* 52 Pa. Code 32.11. The commentator fails to consider that the PUC no longer has jurisdiction to regulate these service providers in Philadelphia; therefore, if the Authority does not do so, no one will. Additionally, the Authority's regulations as they relate to large vehicles only address safety, insurance and certain minor registration requirements. Another commentator suggested that special regulations for these large vehicles are inconsistent with the statute, without any specific reference. We disagree and believe by treating these carriers in a manner like the PUC we have duly addressed the narrow field of authority we have here without coming into conflict with federal preemption issues. We also believe the final-form regulations are not preempted by federal statute and we have modified them further to comport with the practices of the PUC.

(a). Subsection (a) requires large vehicles to have a PUC certificate of public convenience for the designated classification of limousine service or substantially similar categorization of service provided by the PUC as a prerequisite to obtaining Authority limousine rights. PUC certification does not grant these carriers with the authorization to provide service within Philadelphia that is within the jurisdiction of the Authority. IRRC asked if the PUC certification of these carriers equated to automatic reciprocity with the PPA; it does not. The Authority's review and certification of these carriers is necessary in order to permit their continued access to Philadelphia. They must register, pay a fee, evidence compliance with PUC certification obligations, confirm current insurance and provide service within Philadelphia consistent with the requirements of this chapter. These carriers remain subject to the Authority's regulatory enforcement as provided in § 1053.43 (d), (e) and (g). IRRC also questioned the validity of the licensure process considering that the proposed regulations only authorized the issuance of a registration. We agree with IRRC's comments and now provide for a certification process in § 1053.43 (g), which will address this issue. The PUC also requires a similar registration process for these large vehicle carriers that results in the issuance of a certificate.

(b). Subsection (b) of the proposed regulation provided that large vehicles would be exempt from most of the requirements of this chapter, except for specifically identified provisions. However, vehicles that had been "stretched" to a seating capacity that met the large vehicle threshold would not enjoy that exemption under the proposed regulation. The final-form regulation eliminates the stretch vehicle language entirely from this section because we believe it

created unnecessary confusion and that an exemption of that nature was not necessary for the few vehicles that fell into that category.

The final-form regulation also makes clear that the driver of the vehicle is included in the calculation of the vehicle's seating capacity, which is a commonly understood concept and the failure to include that language in the proposed regulation was an oversight. We have also amended this section to provide that the requirements of this subpart, as opposed to the "chapter", do not apply to large vehicles, except for the requirements of § 1053.43 (c) – (f). We have also amended this section to delete the reference to the subsections of § 1053.43. A comment by IRRC to §1053.43 (b), seems to reference confusion created by that reference. An exemption from only this chapter would not have achieved the goal of narrowing the regulatory scope applicable to large vehicles. Because § 1053.43 was drafted to address the special rules that will cover remote carriers and large vehicles, reference to specific subsections is unnecessary here.

§ 1053.42. Remote carriers.

Section 1053.42 provides guidance as to the limitations on services that may be provided by remote carriers. We incorporate here our response to comments to § 1053.1 regarding the need for special regulations related to these PUC certificated limousines.

Subsection (a) has been edited to delete the duplicative term "relating to" which was a typographical error and the unnecessary term "a certificate holder providing service as". Remote carrier service is defined by the regulations and direct reference to this classification is clearer without the deleted language. Subsection (b) has been edited to delete the words "limousine", which appeared in this sentence twice in the proposed regulations, in order to make the scope of a partial rights service provider consistent with the changes made to § 1053.1 (b) (2).

IRRC noted the suggestion of a commentator that the regulation of remote carriers violates the federal "RIDE ACT". However, the citation provided by IRRC and the commentator contains a specific requirement that the service provider meet "all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business", which we believe includes these regulations. *See* 42 U.S.C. § 14501 (d) (1) (B). If the commentator's line of reasoning were upheld, no state

could regulate limousine service related to airports, which is a position unsupported by any law known to the Authority.

§ 1053.43. Certain limousine requirements.

Section 1053.43 was created to provide a special form of registration for remote carriers and large vehicles. While these service providers are within the definition of limousine as provided in section 5701 of the act, remote carriers have very little contact with Philadelphia and large vehicles are not commonly considered to be limousines by the public. Subsection (a) identifies the purpose of this section. IRRC commented that subsection (a) did not clearly state which types of limousines were intended to be addressed by this section. Therefore, this subsection has been amended to specifically reference subsection (b) which identifies remote carriers and large vehicles as the focus of this section. Both remote carriers and large vehicles have been a component of the Authority's regulation of limousines in Philadelphia since 2005, no new type of service provider has been created. We incorporate our response provided in § 1053.1.

(b).Certain limousines covered. This subsection has been amended to clarify that this section applies to both remote carriers and larger vehicles as provided in 1053.41 (b). We believe this amendment will address IRRC's comment which noted that § 1053.41 (b) which applies to large vehicles also referenced this section. This section now clearly identifies that it is applicable to the special classifications of limousines designated as either remote carriers or large vehicles. A sentence was also added to this section to clarify that vehicles that are both remote carriers and large vehicles need only comply with the large vehicle requirements. This will prevent potential confusion related to the need to adhere to two separate sets of requirements for such vehicles.

(c). Registration. This subsection of the proposed regulation provided for the registration fee and renewal requirements applicable to remote carrier and large vehicles. The first sentence of subsection (c) (1) has been amended to delete the term "certificate holder" and replaced with "person", which is a defined term. While we believe the subject of this requirement was clear from context and other sections of the regulations, we take this opportunity to add further clarity. We incorporate our response to subsection (e) and (f) below.

(3). Subsection (c) (3) of the proposed form regulations provided for the registration fee applicable to remote carriers. The term registration is used when referencing remote carriers because certification by the Authority is not required to provide remote carrier service (nor large vehicle service) because of the unique type of service provided by these carriers as identified in response to comments to § 1053.1 (b) (3) and 1053.41. We have amended the language of subsection (c) (3) which was intended to address the registration costs of remote carriers in the event this final-form regulation became effective before the 2012 fiscal year. Because this regulation will become effective in the 2012 fiscal year and the Authority's 2012 fee schedule addresses remote carrier fees, the language of proposed subsection (c) is no longer necessary. However, the Authority's 2012 fee schedule does not provide for the registration costs of large vehicles. Therefore, a one-time $15 fee is provided in subsection (c) (3) for large vehicle registrants. The fee is not based on the number of large vehicles registered and will be replaced by the provisions of the Authority's subsequent fee schedules. This large vehicle registration policy will bring the Authority's regulations in line with those of the PUC and avoid a potential conflict with federal statutes referenced in our response to § 1053.41. *See* PUC order dated August 13, 1998 at 28 Pa.B 4583 (September 5, 1998).

(4). Subsection (c) (4) of the proposed regulations related to the expiration of remote carrier registrations and simply provides that this registration will expire contemporaneously with Philadelphia limousine certificates and require an annual renewal filing with the Authority. The presence of the annually issued Authority remote carrier sticker (issued upon registration) on these vehicles will assist our Inspectors in ascertaining the legality of a PUC certificated limousine's presence at an airport, rail road station or hotel in Philadelphia.

IRRC questioned the similarity between the term "continued registration" used in this section and the term "renewal" in § 1051.3. We agree with IRRC that this annual process is similar to the renewal process of § 1051.3, which is applicable to holders of certificates of public convenience issued by the Authority; however, it is not the same. A commentator sought clarity on the scope of a remote carrier's rights. A remote carrier holds rights that have a very tenuous connection to Philadelphia and no intra-Philadelphia service rights at all, yet this narrow classification of service is within the Authority's jurisdiction under the act as noted in our response to comments to § 1053.1, which we incorporate here. Also, remote carriers and large vehicles are not subject to any other provisions of Subpart C, except as provided in this

subchapter. Therefore, we believe that this distinctive and streamlined manner of annually renewing remote carrier rights will adequately protect the public interest, not burden these carriers who have no other connection to Philadelphia, and be easily understood.

IRRC also questioned the registration deadline of "on or before February 15 of each year" provided in this paragraph. We agree with IRRC's comment and have amended this subsection to be consistent with the April 1 filing date in § 1051.3. We have also amended this paragraph to clarify that it relates to remote carriers by adding the term "remote carrier" in the place of the phrase "limousine subject to this section".

(d). Regulation. Subsection (d) provides that vehicles regulated pursuant to this section will be subject to Authority enforcement actions related to vehicle condition and inspection requirements as provided by the Pennsylvania Department of Transportation. While this chapter provides a significant amount of freedom from regulatory interaction between these unique carriers and the Authority, we will not cede our obligation to make certain that these vehicles continuously meet the basic safety requirements established by the Commonwealth. A commentator questioned the application of the Authority mileage and age requirements, driver training requirements and regulatory vehicle inspection requirements. Those specific requirements are not identified in this chapter of the final-form regulations; therefore; they will not apply to remote carriers or large vehicles.

(2). Subsection (d) (2) provides that remote carriers and large vehicles must comply with field inspection requirements of the Authority. IRRC and a commentator questioned the use of the term "Authority staff" when referencing who may initiate a field inspection. We agree with these comments and have deleted that term. This section now provides that Inspectors may initiate field inspections. As provided in the definition of "Inspector", all Inspectors will carry identification and have been issued a badge. We decline one commentator's suggestion to specify the different forms of training that has been provided to these Inspectors as that training will change from time-to-time.

(3). Subsection (d) (3) provides that the remote carriers and large vehicles are exempt from adhering to Authority regulations, except as provided in this chapter, and must adhere to PUC regulations.

IRRC question how the Authority has jurisdiction over these carriers if they are following PUC regulations and orders. The Authority has jurisdiction pursuant to the definition of

"limousine service" in section 5701 of the act. Through these regulations we have required these carriers to follow PUC regulations and orders while operating in Philadelphia. Because the PUC can not regulate this service in Philadelphia and because we seek to implement the least burdensome, yet effective, regulations related to this unique service, we have simply permitted the expansion of the reach of the PUC's regulations and orders through this section. We will enforce these regulations because we are in Philadelphia and the PUC has had a very limited footprint here since 2005. We do not believe that directing these carriers to adhere to the PUC's regulations divests the Authority of jurisdiction any more than requiring adherence to the Pennsylvania Department of Transportation's vehicle equipment and inspection requirements.

IRRC questioned the need for these carriers to register with the Authority and display an Authority sticker, when they already have documentation from the PUC. While the certificate holder of a large vehicle(s) will be required to register one time with the Authority, there will be no stickers issued to these service providers nor annual fee or renewal obligation. In any event, because remote carriers and large vehicles are within the Authority's jurisdiction when providing service within Philadelphia it is necessary that we provide regulatory guidance to these carriers in relation to that service.

The Authority's inspectors regularly patrol Philadelphia's airports, train stations and hotels. Because the vast amount of regulated service at these locations is provided by taxicabs, airport shuttles and traditional sedan-type limousines, those are the key areas of the inspectors' attention. If a limousine is observed initiating a service trip from one of those locations it must be authorized by the Authority to do so. An Authority sticker in the bottom portion of the passenger side windshield advises the Authority's inspectors that the vehicle is so authorized and is not an illegal service provider. That notice will save both the Authority and the limousine certificate holder time associated with a vehicle stop and document inspection. By requiring the annual registration of remote carriers the Authority will maintain accurate information on the number of limousine service providers in Philadelphia and be more capable of responding to complaints related to that carrier. By requiring the one time registration of large vehicle certificate holders, the Authority will simply continue the practice employed by the PUC elsewhere in the Commonwealth, but now outside its jurisdiction in Philadelphia by virtue of the act.

(e). Insurance. Subsection (e) provides that each person registered pursuant to this section must comply with the Authority's insurance requirements, provided that those requirements do not exceed those of the PUC. This subsection has been amended to delete reference to § 1053.41, because that section does not include a registration process. The term "certificate holder" has been deleted and replaced with the term "person" which is more applicable to the PUC carrier that first seeks Authority rights through this section, as well as those who are granted those rights and then seek to renew them. We believe this change will increase clarity.

(f). Remote carrier sticker and certificate. Subsection (f) in the proposed form regulation was titled "Alternative carrier sticker." Because special stickers will be issued to remote carriers, but not large vehicles we have amended the title of this subsection and the language of the regulation by renaming this sticker a "remote carrier sticker." We believe this minor change will eliminate any confusion related to a large vehicle's need to display an Authority registration sticker. We have also added language related to the issuance of a certificate of public convenience in order to be consistent with our response to comments to § 1053.1 (b) (3), which we incorporate here, and a concern of IRRC related to the issuance of authorization to conduct this type of service without a certificate. Subsection (f) (3) has been deleted as unnecessary.

(g). Large vehicle certificate. Consistent with our response to comments to 1053.41 (a), we have added subsection (g) to provide for the certification of large vehicles. This section provides for the certification of large vehicles upon compliance with this section and notes that the certificate may be revoked in the event the carrier's PUC certificate becomes invalid. There is no annual renewal requirement for large vehicles.

CHAPTER 1055. VEHICLES AND EQUIPMENT REQUIREMENTS

Subchapter A. GENERAL PROVISIONS

§ 1055.1. Purpose.

Section 1055.1 provides that the purpose of this chapter of the Limousine subpart of the regulations titled "Vehicle and Equipment Standards" is to provide guidance on the condition, type and inspection of vehicles used to provide limousine service. IRRC commented that the inclusion of subsection (b), which provides certain definitions, makes this section unclear and

recommended separating the two provisions. We agree with IRRC's comment and have simply deleted subsection (a) as unnecessary given the clear meaning of the chapter based on its title. Therefore, this section has been amended by changing the title to "Definitions" and deleting subsection (a) in its entirety. As a result of that deletion there is no longer a need for subsections in this section.

IRRC raised the same comment in regard to this section as it did in § 1017.1 regarding the term "antique vehicle." We incorporate our response provided in § 1017.1 here. IRRC also questioned the definition of "compliance inspection" and questioned why emissions testing will not be required for limousines. The term "compliance inspection" relates to the Authority's inspection of a vehicle to assure compliance with the act and the regulations. The term "state inspection" includes an emissions test through its reference to 75 Pa.C.S. Chapter 47. Each of these terms is separately defined in this section. The Authority is not authorized to waive a vehicle's obligation to obtain an emissions sticker at the time of a state inspection. In the event the Authority conducts a state inspection and the vehicle passes that inspection, an emission sticker will be issued by the Authority unless a regulation of the Pennsylvania Department of Transportation or statue provide otherwise.

§ 1055.2. Limousine rights sticker.

Section 1055.22 provides that a limousine may not provide limousine service in Philadelphia without an attached limousine rights sticker, issued by the Authority.

§ 1055.3. Limousine age and mileage parameters.

Section 1055.3 provides for limitations on the age and mileage of a vehicle introduced for limousine service and a mandated age and mileage for removal from active limousine service. All of the age and mileage requirements of this section are currently in place in Philadelphia. Entry level and exit level age and mileage restrictions have been in place since 2005. This regulation will result in <u>no</u> <u>change</u> to the manner in which limousine certificate holders acquire and retire vehicles for limousine service and, therefore, will have a neutral fiscal impact upon those carriers.

(a). Method of age computation. Subsection (a) provides the formula for determining a vehicle's age. We amended this subsection in the final form regulations to follow the calendar

year, as opposed to an October 1 through September 30 year. We believe this will be easier for the industry to follow and that it will be consistent with PUC standards for calculating the age of a vehicle. *See* 52 Pa.Code § 29.314 (d) (relating to vehicle and equipment requirements). The example provided in this subsection has been deleted and moved to subsection (b), which actually established the age requirements to taxicabs.

(b) Age. Subsection (b) provides that a limousine must be removed from service upon reaching the age of 8 years, except for special authorization for antique vehicles. IRRC questioned the Authority's power to create this age ceiling. This same issue was raised in regard to taxicabs in § § 1011.3 and 1011.4. We incorporate our response to those sections in regard to our obligation under the act to develop "a clean, safe, reliable and well regulated taxicab and limousine industry" in Philadelphia and the general deterioration of vehicles as they reach 8 years of age and reach mileage milestones. *See* 53 Pa.C.S. § 5701.1(2). We have replaced the sentence establishing the maximum age of a limousine with the same language used in § 1017.4 relating to taxicab mileage and section 5714 (a) of the act. The change in language provides clarity and consistence between the age ceilings of subpart B and subpart C. We incorporate our response to comments in § 1017.4 regarding the manner in which to calculate a vehicle's age.

We believe that the inability to regulate the type and condition of vehicles used to provide limousine service would needlessly and unreasonably restrict our ability to fulfill our legislative mandate. We note that the PUC has also created an eight year ceiling for vehicles used to provide limousine service within its jurisdiction. *See* 52 Pa. Code § 29.333 (e). While the Authority is given a broad and weighty direction in terms of its obligations to improve limousine service in Philadelphia, there is no statutory restriction from addressing the age or mileage of vehicles used to do so, nor is there a right provided to regulated parties to use a particular vehicle for a given number of years or miles. It has been our experience that many limousine certificate holders operate without consideration of the age or mileage limitations of this section because they wish to maintain a fleet of the high quality vehicles the public anticipates when limousine service is ordered. They achieve this goal by circulating new or newer, vehicles into their fleet and then remove those vehicles that have reached a high age or mileage, a mark subjectively set below the limits mandated by the Authority.

The vehicle age ceiling continued through subsection (b) has been in place in Philadelphia since 2005 and has assisted the Authority in improving the quality of vehicles

offered for limousine service by many carriers. While limousines endure less daily wear and tear than taxicabs, our experience since 2005 has been that over an eight year period or after operating 350,000 mile or more, or both, these vehicles are not capable of providing the quality of service we have been directed to ensure in Philadelphia.

The current age and mileage limits arose after public comment hearings were conducted and many meetings were held with regulated parties and interests groups. In fact, the entry level age and overall mileage restrictions currently in place in Philadelphia, and continued through these final-form regulations, were specifically agreed to by the Philadelphia Regional Limousine Association after several protracted sessions related to regulatory issues in the Philadelphia market. We also note that there were no negative comments submitted in regard to the maximum vehicle age restriction.

(c). Mileage. Subsection (c) establishes mileage restrictions related to vehicles used, or intended for use, as limousines. All of the mileage requirements of this subsection are currently in place in Philadelphia. This subsection will result in no change to the manner in which limousine certificate holders acquire and retire vehicles for limousine service and, therefore, will have a neutral fiscal impact upon those carriers. We incorporate our response to comments in subsection (b) above as to the Authority's power to implement vehicle mileage restrictions.

(1). Subsection (c) (1) provides that a vehicle first submitted for service as a limousine in Philadelphia may not have more than 51,000 miles registered on its odometer. An exception is made for a newer vehicle, those with a model year age of 5 or less, which permits entry into limousine service with up to 75,000 miles upon successful completion of a compliance inspection. Again, this entry level mileage restriction is already in place in Philadelphia. While we note that a representative of the Philadelphia Regional Limousine Association ("PRLA") commented that there should be more mileage considerations in the final-form regulations, we note that the PRLA specifically agreed to the exact language used in this section, which can be found in the Authority's locally promulgated regulations at 13 PPA Regs. §d. ii.

(2). Subsection (c) (2) provides that except for an exception provided in subsection (c) (3), vehicles used to provide limousine service must be retired upon reaching 350,000. A commentator involved in providing limousine service suggested that mileage should not be a factor in the Authority's analysis of the quality and condition of limousines, and that the only factor should be the successful completion of a safety inspection. We disagree and offer this

comment as an example of why bright line quality parameters are necessary in order to assure a high level of service is provided in the limousine industry. Passing a safety test is the minimum goal a common carrier should seek to obtain. A safety test will not gauge the quality of a vehicle's ride, the condition of the vehicles interior, or the operation of the accoutrements that set limousine service apart from taxicab or bus services. Those distinguishing characteristics wear out with usage and do not provide the high quality presentation or operation the public reasonably expects from a limousine service provider.

(3). Subsection (c) (3) permits a limousine owner to continue to use a vehicle that has reached the 350,000 mile mark, provided the vehicle has a model year age of 5 or less and the certificate holder files a waiver petition seeking continued service. Upon passing a compliance inspection the vehicle will be permitted to continue in service for 1 year.
The requirements of this subsection are a replication of the Authority's locally promulgated regulation at 13 PPA Regs. §d. ii., and have been in place in Philadelphia as an exception to the 350,000 mile ceiling of subsection (2) since 2007. A commentator seemed to have misread this section as reducing the maximum age of a limousine to 5 years, which it does not. However, we believe the regulation is clear as to its purpose and that we have thoroughly explained it here.

The final-form regulation eliminates the need to file a waiver petition, which is a formal process that can be dispensed within these inspection cases. That change will save regulated parties both the time and cost of filing a waiver petition. In order to obtain this service extension, the limousine certificate holder can simply request that the Enforcement Manager direct a compliance inspection of the vehicle prior to the date it reaches 350,000 miles or upon reaching that mark. The final form regulation also permits the extended period of service to run from the date the vehicle passes the compliance inspection, as opposed to the date it reached the 350,000 mark. This exception is intended to address lower aged vehicles that are used largely for longer trips. Those longer trips accrue more mileage on the vehicle without exposing it to the wear and tear of frequent stops, urban travel and passenger changes.

(d). Subsection (d) of the proposed regulation provided for an imputed vehicle mileage formula to be used in situations where the odometer of a vehicle used to provide limousine service has malfunctioned or is unreliable. The imputed mileage was set at 3,333 miles per month. An imputed mileage calculation is necessary because certificate holders have intentionally disconnected odometers or failed to repair malfunctioning odometers in order to

conceal the vehicle's true mileage. Some certificate holders or drivers, or both, have been found to manipulate odometers to increase a vehicle's value or permit it to continue in service in Philadelphia beyond maximum mileage limitations. Therefore, a mechanism to address these situations is necessary to provide an alternative to the prohibition of vehicles with unreliable or malfunctioning odometer readings.

IRRC questioned the basis for the imputed mileage calculation. We agree that because the specific imputed mileage figure expressed in the proposed regulation was based on the average monthly mileage of taxicabs in Philadelphia this section must be adjusted. The average mileage accrued by taxicabs is much easier to estimate than limousine service, because while taxicabs provide an almost exclusively local service, some limousines specialize in providing transportation over long distances. Therefore, paragraph (1) now provides that when a vehicle is inspected by the Authority and found to have a malfunctioning meter or an unreliable odometer reading, a monthly imputed mileage will be assigned to that vehicle based on the criteria provided in paragraph (2). To the extent a certificate holder disagrees with the assignment of imputed mileage to its vehicle, the certificate holder may request a review of the decision pursuant to §1005.24.

(2). Paragraph (2) provides for the method by which an imputed mileage calculation will be made. An imputed monthly mileage will be assigned to the vehicle for each month from the date of the last reliable odometer reading through the date the vehicle presents to the Authority. The imputed mileage will be determined by averaging the two most recent state inspection or compliance inspection odometer readings, or a combination of the two, for the subject vehicle and dividing that sum by 24, the quotient will be the imputed monthly mileage. We believe this method of determining a vehicle's true odometer reading will produce a more accurate mileage estimate based on the vehicle's historical use.

(3). Paragraph (3) provides that except as otherwise permitted by the Authority, a vehicle with a malfunctioning odometer or an unreliable odometer reading may not provide limousine service if a reliable baseline for a vehicle's mileage can not be ascertained. While this circumstance is unlikely to occur, it is possible that a vehicle's inspection history may be lost or be otherwise unavailable. The combination of the unavailability of a vehicle's mileage history and a malfunctioning odometer raise legitimate concerns about a vehicle's fitness to serve the public. A certificate holder may identify legitimate reasons for the lack of reliable odometer

readings and obtain relief from the prohibition of this paragraph in the discretion of the Manager of Enforcement.

(f). Penalties. Subsection (f) of the proposed regulations provided for specific penalties related to odometer manipulation. Commentators questioned the propriety of including penalties of this nature in the regulations. We believe the penalty provisions of § 1001.61 will suffice to provide notice of certain penalties and have removed this section from the final-form regulations.

§ 1055.4. Basic vehicle standards.

(a). State vehicle standards. Subsection (a) provides that limousines must be in continuous compliance with applicable Department of Transportation equipment inspection standards stated in 67 Pa. Code Chapter 175 (relating to vehicle equipment and inspection) when providing limousine service. IRRC commented that the term "except where those standards are exceeded or otherwise altered by this subpart[.]" was unclear. We agree with IRRC and have deleted that phrase, although we disagree with a commentator who suggested the Authority does not have the ability to set its own vehicle condition requirements and incorporate here our response to § 1017.3 (relating to taxicab age parameters).

(b)(4). Subsection (b) (4) provides that a limousine must have four full sized tires that are in good repair. Because some larger limousines may use more than four tires, this subsection has been amended to require "at least" four tires.

(b)(15). Subsection (b) (15) provides certain specific requirements related to the condition and presentment of limousines. Paragraph (15) provides that limousines must display postings to inform passengers of the manner in which to register limousine service related complaints. A typographical error was corrected by changing the word "additions" to "addition".

One limousine operator commented that there was no place in a limousine to "tastefully" display these postings and that the users of limousines do expect to see notices in limousines, presumably because this is a higher classification of service than taxicabs. Another limousine operator commented that this limousine service is a "luxury" and that limousine passengers do not expect to see this type of notice. We agree with the view of these commentators that limousine service is supposed to be a higher class of service with more refinements and comforts than taxicab service. We note that the view of limousine service expressed by these commentators tends to support the purpose of § 1055.3 related to the need to prohibit old or high

mileage vehicles from limousine service. We have amended this paragraph in the final-form regulation to permit a different method of notifying limousine passengers of the manner in which they may file limousine service related complaint with the Authority. For example, a limousine certificate holder may request the approval of the Director to provide this notice as part of its standard reservation process or as part of its service receipt process.

IRRC noted a typographical error in this paragraph in which “posting” needed to be corrected to “postings”. That correction has been made.

(16). Subsection (b) (16) provides that the Authority may require a limousine certificate holder to install a separate heating or cooling system in a vehicle that has been stretched to increase seating capacity. Paragraph (16) has been deleted as superfluous because the requirement of Subsection (b) (12) to maintain certain temperatures does not create an exception for these vehicles.

(c). Interstate drivers. Subsection (c) makes clear that the requirements of Subpart B of the regulations is not intended to impermissibly conflict with the Real Interstate Drivers Equity Act of 2002. IRRC questioned the use of the term “subpart” when this subsection is a component of a section. The intent of the regulation is to cover the entire subpart because not all of this subpart’s requirements related to limousine drivers are located in § 1055.4. IRRC also questioned the placement of this subsection in this section, particularly in consideration of its presence in § 1057.12. We agree with IRRC’s comment and have deleted this subsection. That deletion has required the reidentification of the succeeding subsections of this section.

(e). Advertising prohibited. Subsection (e) prohibits advertising in or on limousines. IRRC requested an explanation for this prohibition. A limousine commentator who objected to the complaint notice posting of (b) (15) commented that limousines should be able to advertise on the exterior of a limousine. That commentator also sought guidance on the availability of newspapers in limousines, because those papers contain advertisements. As noted in several places in this response, including in our response to comments to subsection (b) (15), limousine service is intended to be a higher class of service. The placement of random advertisements for any range of products or services on limousines is inconsistent with the purpose of requiring a higher level of transportation service. However, we do not discount the potential for tasteful advertising in limited circumstances and have amended this section to permit advertisement upon approval of the Authority. A certificate holder may seek such approval through request to the

Director, who will conduct a review of the request and make a determination consistent with the intent of the act and this subpart.

As noted above, this subsection has been reidentified as subsection (d).

(f). Inspection by certificate holder. Subsection (f) requires a certificate holder to inspect its limousines on a daily basis. IRRC questioned this requirement in light of its similar comment to § 1017.5. Preliminarily, we note that the leasing of limousines to drivers is much less frequent in the limousine industry than the taxicab industry. Where there are no taxicab drivers that are employed by a taxicab certificate holder, most limousine certificate holders employ their drivers. Therefore, the ability of the certificate holder to access each limousine on a daily basis is much less challenging for limousine certificate holders.

However, we agree with IRRC's concern that even the certificate holder with the highest standards of service may be precluded from daily inspections of limousines that are subject to a lease agreement. We accept IRRC's suggestion to grant the certificate holder the discretion to select another person to conduct these inspections on the certificate holder's behalf, without absolving the certificate holder of the obligation to assure that its limousines continually comply with these regulations.

As noted above, this subsection has been reidentified as subsection (e).

§ 1055.5. Required documents.

Section 1055.5 requires limousines to continually contain certain documents when providing limousine service. An extraneous period which appeared as a typographical error in the proposed form regulation at the end of subsection (a) has been deleted.

(3). Paragraph (3) requires the presence of a current trip sheet in a limousine. A commentator questioned the ability to use electronic trip sheets. Because many limousine certificate holders use electronic documents of this nature, this section does not require a paper trip sheet. Indeed, compliant electronic trip sheets have been in use in Philadelphia for many years and been accepted by the Authority and we will continue to do so.

§ 1055.6. Transportation of blind or deaf persons with dog guides.

Section 1055.6 provides that limousines must transport dogs trained for the purpose of guiding blind or deaf persons when accompanying blind or deaf persons paying a regular fare, and further provides that the guide dogs must be properly leashed and may not occupy a seat.

Subchapter B. LIMOUSINE INSPECTIONS

§ 1055.11. Scheduled compliance inspections.

Section 1055.11 provides that the Authority may direct that up to 25% of each certificate holder's limousines registered with the Authority submit to a scheduled compliance inspection on an annual basis. This exact limousine inspection process is currently in place in Philadelphia and has been the process followed since 2005.

IRRC questioned how the Authority developed the 25% number. Our experience has been that limousines are generally better maintained and received less wear and tear than taxicabs; therefore, we have dedicated a disproportionate amount of rather limited resources to focusing on bi-annual inspections of taxicabs. Through discussions with limousine certificate holders and representatives, including the Philadelphia Regional Limousine Association, the Authority determined that a random inspection of up to 25% of a limousine certificate holder's fleet will assure compliance with the act and these regulations.

IRRC noted the question of a commentator related to the application of this inspection process on remote carriers. Vehicles used to provide remote carrier type service in Philadelphia are not currently subject to inspection by the Authority and that procedure will be continued in the final-form regulations. Our regulations at §1053.43 (d) (3) specifically identify what regulations must be followed by remote carriers and this inspection requirement is not one of them. Again, remote carriers are PUC certificated carriers that have no rights to provide service within Philadelphia.

§ 1055.12. Offsite inspections.

Section 1055.12 provides for the inspection of limousines by the Authority at locations other than Authority facilities. There were no comments directly to this section.

§ 1055.13. Failure to appear for scheduled inspection.

Section 1055.13 provides for a fee to be imposed upon a certificate holder in the event a vehicle is scheduled for inspection by the Authority, but fails to appear. IRRC raised several questions related to the rescheduling fee referenced in this section. To eliminate confusion related to this issue, we have deleted reference to the fee and clarified the language related to the imposition of penalties for failing to appear for inspection. The penalty process is initiated through a formal complaint. A commentator suggested that a certificate holder's assertion that a vehicle is needed for limousine service should be a *per se* excuse to fail to appear at a scheduled compliance inspection is not reasonable. One of the reasons that limousine certificate holders have advocated for the 25% cap provided in § 1053.11 is to permit the certificate holder the flexibility to address exactly these issues.

§ 1055.14. Field inspections.

Section 1055.14 provides for field inspection of limousines by the Authority Inspectors. There were no comments directly to this section.

§ 1055.15. Failure to submit to field inspection.

Section 1055.15 provides for actions in response to the failure of a limousine driver (or owner) to yield to a direction to submit to an Authority field inspection of a limousine. We have amended subsection (b) by removing the mandatory out of service designation for failing to submit to a field inspection. Instead, the discretion to initiate that process will be with the Enforcement Department. Commentators questioned the propriety of including penalties of this nature in the regulations, including specific reference to impoundment. Reference to impoundment of a limousine has been removed from subsection (b), section 5741 (f) and §§ 1055.31 and 1055.32 if the final-form regulations adequately address this issue. Because we believe the penalty provisions of § 1001.61 will suffice to provide notice of certain penalties and have removed subsection (c) from this section of the final-form regulations.

§ 1055.16. Reinspection.

Section 1055.16 provides that in the event a limousine fails any Authority inspection or is removed from limousine service by the Authority for any reason, the limousine must

successfully complete a compliance inspection. A commentator suggested that this inspection was unnecessary and should be free. We disagree. We believe that a limousine that has already failed an inspection or has been removed from service by the Authority should pass a compliance inspection in order to assure that the vehicle is then in compliance with the act and the regulations before reinitiating limousine service. Fees associated with inspections will be established pursuant to 5707 (b) of the act (relating to budget and fees). However, we believe that a fee to cover the Authority's costs associated multiple inspections of the same vehicle is reasonable.

§ 1055.17. Removal of vehicle and change of license plate.

Section 1055.17 requires a limousine certificate owner to report the removal of a vehicle from limousine service within 48 hours. Notice should be by email.

§ 1055.18. Attendance at scheduled inspection.

Section 1055.18 requires the certificate holder or its attorney in fact (an agent) to be present when the certificate holder's limousine appears for inspection by the Authority. The inspection of limousines is one of the most crucial tools the Authority has to assure clean, safe and reliable service, particularly given the advanced age of the limousine fleet in Philadelphia. The certificate holder attendance obligation has been in effect in Philadelphia since 2005; therefore, there will be no additional cost associated with its implementation. The agents used by certificate holders tend to be employees or associates of the certificate holder.

IRRC questioned the need and statutory authority to require a certificate holder or hired attorney present at the vehicle inspection. There is no reason to have a licensed attorney present at a vehicle inspection, although a certificate holder could appoint one if they desired. This regulation requires the certificate holder or an agent to be present in order to rapidly address vehicle condition issues. This is not a typical family car vehicle inspection. These vehicles transport the public for compensation and have a heightened obligation to do so safely. These inspections frequently reveal the need for expensive safety repairs. Inspections are commonly discontinued to permit the certificate holder or its agent to repair the vehicle and then resubmit it for inspection by the Authority. This rapid decision making process avoids an out-of-service

designation and requires the prompt participation of the certificate holder, directly or through an agent.

The ability to use an agent gives the certificate holder the option to appear at inspections, and adequately addresses the Authority's concern about having a competent person present to address vehicle condition issues promptly, including issues that may require the immediate removal of the vehicle from limousine service. Again, this procedure has been in place in Philadelphia since 2005 and has been a crucial tool in the Authority's implementation of its legislative mandate to provide for a "clean, safe, reliable and well regulated" limousine industry in Philadelphia. *See* 53 Pa.C.S 5701.1 (2).

§ 1055.19. Prerequisites to inspection.

(a). Subsection (a) provides that the Authority will not initiate the inspection of a vehicle that is out of compliance with the act or these regulations. For example, a limousine that presents for inspection with a model year age of 10, without a waiver authorizing service in such condition, will not be inspected.

(b). Subsection (b) provides that the Authority will not initiate the inspection of a vehicle owned by a certificate holder that is out of compliance with the act or these regulations. For example, a vehicle owned by a certificate holder who has failed to pay a renewal fee or is in contempt of an Authority order will not be inspected. Reference to the title of § 1051.6 has been changed to mirror changes to that section.

(c). Subsection (c) provides that vehicles presented for inspection and found to be ineligible for inspection for a reason provided in subsection (a) or (b) will be placed out of service pursuant to the process provided in § 1003.32.

We believe these prerequisites for inspection are straightforward and easy to understand.

§ 1055.20. Approved models and conditions.

Section 1055.20 provides that the Authority will maintain a list of makes and models of vehicles that may be used to provide limousine service. IRRC suggested that the Authority amend this section to make clear that the list is not exclusive and may be amended upon written request to the Authority. We agree and have made those changes.

§ 1055.21. Reconstructed vehicles prohibited.

Section 1055.21 provides that salvaged or reconstructed vehicles may not provide limousine service.

Subchapter C. IMPOUNDMENT OF VEHICLES AND EQUIPMENT

§ 1055.31. Impoundment of vehicles and equipment.

Section 1055.31 of the proposed regulations provided for the impoundment of vehicles and equipment used to provide common carrier service in Philadelphia. In the proposed regulations this section adopted the impoundment related procedures provided in §§ 1017.51 and 1017.52 which is found in Part B of the regulations relating to taxicabs.

IRRC noted that § 1017.52 references section 5714 (g) of the act which is found in the Subchapter of Chapter 57 which deals with taxicabs and that the mere incorporation of the procedure of § § 1017.51 and 1017.52 into the limousine part of the regulations was improper. We agree with IRRC's comment and have amended Subchapter C, which previously included only § 1055.31, to include an additional section § 1055.32. The language used in Subchapter C is identical to that of §§ 1017.51 and 1017.52, except that it references limousine service and section 5741 (f) of the act, which deals with the Authority's impoundment powers related to limousines in language that is nearly identical language to the taxicab impoundment language of section 5714 (g) of the act. The title of § 1055.31 has been amended to "General" and it includes several definitions applicable to the impoundment process. The new § 1055.32 has adopted the title of former 1055.31 and contains the same procedures and safeguards related to impoundment as provided in § 1017.52.

§ 1055.32. Impoundment of vehicles and equipment.

Section 1055.32 provides for procedures and safe guards related to the impoundment of limousines and equipment used to provide limousine service. We incorporate here our comments to § 1055.31.

CHAPTER 1057. LIMOUSINE DRIVERS

§ 1057.1. Purpose and scope.

Section 1057.1 provides that this chapter establishes minimum qualifications for limousine drivers and that a certificate holder may impose more stringent standards in the selection of its limousine drivers.

§ 1057.2. Certification required.

Section 1057.2 provides that limousine drivers must have a limousine driver's certificate to provide limousine service and that the driver's certificate should be displayed within the view of passengers and be in good condition. A commentator suggested that limousine drivers should not have to display the driver's certificate. However, section 5706 (b) requires the display of the driver's certificate and we believe that requirement is consistent with sound public policy.

§ 1057.3. Continuing certificates.

Section 1057.3 provides that individuals who hold an Authority's driver's certificate at the time these final-form regulations are passed will continue to hold that driver's certificate, but that upon annual renewal each individual must self-designate the driver's certificate as a taxicab driver's certificate or a limousine driver's certificate. Subsection (c) provides that this section will not prohibit a limousine driver from obtaining a separate taxicab driver's certificate as provided in Subpart B of these regulations. Specific limousine driver training procedures and subjects are provided in § § 1057.7 and 1057.8

§ 1057.4. Ineligible persons for limousine driver certificate.

Section 1057.4 provides certain conditions of ineligibly that will render an individual ineligible to hold a limousine driver's certificate. A commentator suggested that completion of an Authority proctored test should be eliminated, without further comment. However, we believe the minimum levels of training and testing provided for in the final-form regulations will greatly benefit the public by assuring that drivers understand basic rules and procedures related to limousine service. The commentator also suggested that only citizens of the United States should be permitted to be limousine drivers. We disagree with this comment and believe that it is against public policy to so narrowly constrict the potential field of drivers. We believe it may also be a violation of law to implement such a prohibition. The regulations do require applicants

for limousine driver's certificate's to provide a valid Social Security card or documents confirming the individual's legal ability to work in the United States.

§ 1057.5. Standards for obtaining a limousine driver's certificate.

Section 1057.5 provides for the limousine driver application process and identifies information that the applicant must present along with the application in order to be considered, such as a driver's license, driver history report, etc.

(b)(6). Subsection (b) (6) requires taxicab driver applicant to submit a criminal history report from each jurisdiction in which the applicant has resided during the 5 years preceding the date of the application. We have corrected a discrepancy noted by IRRC in subsection (b) (6). In the second sentence of that subsection the term "criminal history record" is used, while the final-form regulations instead define the term "criminal history report." We have corrected that discrepancy in the final-form regulations and note that the applicants have been required to submit to criminal background checks in Philadelphia since 2005.

IRRC, and other commentators, questioned the impact of the 5 year look back period in this subsection, as well as subsection (b) (8) relating to driving history reports, on immigrants who have not lived in the United States for 5 years. To address this concern we have amended subsections (b) (6) and (8) to clarify that such individuals will meet the applicable requirements by consenting to the release of the required reports by the governments of other countries, and in the case of criminal history reports, Interpol or records the United States government relating to the individual's immigration.

IRRC also questioned the need to check the criminal history of persons who have immigrated legally. A person may have legally entered the United States several years before applying to be a limousine driver and committed crimes in the interim. The standards that Homeland Security uses to determine the eligibility of an immigrant with a criminal history from another country may be different than the standards the Authority will apply in determining if an individual should be permitted to provide limousine service. Also, even if the standards used by Homeland Security today were at least as stringent, a simple policy change in that department would directly and unwittingly impact the Authority and limousine passengers. We believe a review of an applicant's criminal history is very close to the minimum level of scrutiny that the

public should expect from an agency charged with screening and regulating limousine drivers, we see no reason to exempt immigrants from that review.

(b)(9). Subsection (b) (9) exempts an applicant who possesses a current physical exam card issued under the requirements of a commercial driver's license in this Commonwealth. See 49 CFR 391.41—391.49, from the need to complete the Driver Medical History form. This exemption currently exists in the Authority's locally promulgated regulations and was requested several years ago by the Philadelphia Regional Limousine Associate ("PRLA"). A representative of the PRLA commented that this exception should be stricken. We disagree and will continue to allow for this time and cost saving exemption that will not negatively affect the public.

(b)(10). Subsection (b) (10) requires disclosure of other ownership interests in Authority or PUC certificates. IRRC questioned the meaning of "or other rights". That term has been deleted in the final-form regulations.

(b) (11). Subsection (b) (11) requires a limousine driver applicant to submit a writing affirming that several facts are true, such as the confirmation that the applicant has not been subject to a criminal conviction. Subsection (b) (11) (ii) has been amended to note the revised title of § 1051.6. IRRC commented that the reference to "reports" in subsection (b) (11) (iii) was vague. We agree and have deleted that subparagraph from the final-form regulation. The deletion required the reidentification of the subsequent subparagraph.

§ 1057.6. Application changes.

Section 1057.6 provides that an applicant for limousine rights must report changes in circumstances that affect the applicant's eligibility for a limousine certificate to the Authority immediately.

§ 1057.7. Limousine driver training.

Section 1057.7 provides for limousine driver testing. A commentator suggested that limousine drivers should not be trained by the Authority. We disagree and view the training that will be provided as a core function of our implementation of the act. We note that the separation of driver's certificates will enable this training and testing to be more focused on the areas of interest of the driver applicants.

§ 1057.8. Certain training subjects.

Section 1057.8 provides for limousine driver training subjects. A commentator suggested that limousine drivers should not be trained by the Authority. We incorporate our response to comments to § 1057.7.

§ 1057.9. Limousine driver test.

Section 1057.9 provides for the creation of a limousine driver test by the Authority and certain components that may be a part of that test. IRRC questioned the meaning of subsection (c) (5) in terms of the requirement that an applicant "demonstrate" an ability to read and write the English language. We have deleted this paragraph (5) in order to avoid the lack of clarity that concerned IRRC. We have amended subsection (b) to clarify that answers to test questions must be in the English language. We believe the applicant's ability to successfully complete the driver test will provide a clear and objectively measurable demonstration of an ability to adequately communicate with the public in English. We also disagree with a commentator that some geographical information about Philadelphia should not be imparted to limousine drivers. A commentator suggested that limousine drivers should not be trained by the Authority. We incorporate our response to comments to § 1057.7.

§ 1057.10. Expiration and renewal of certificate.

Section 1057.10 provides for the annual expiration of a limousine driver's certificate and other requirements related to annual renewal. Commentators suggested that driver's certificates should not expire after only one year and that the Authority should provide notice of such expirations. Because each of the subjects addressed in this section is already addressed in the §1051.3 (a) or are now unnecessary, we have deleted the language of this section and will not submit it in the final-form regulations. We incorporate our response to comments raised in regard to these issues in §§ 1011.3 and 1051.3.

§ 1057.11. Driver requirements.

Section 1057.11 provides certain requirements necessary to be certificated as a limousine driver.

§ 1057.12. Additional requirements.

Section 1057.12 provides basic standards of conduct including the prohibition from providing service other than the type authorized by the Authority and a prohibition from operating a limousine without a valid state issued driver's license.

§ 1057.13. Interstate commerce regulation.

Section 1057.13 clarifies that the intent of this section or these regulations is not to interfere with interstate commerce. This subsection was amended to remove reference to a specific federal statute because the subject of this language goes beyond that single statute.

§ 1057.14. Limousine driver's certificate upon cancellation.

Section 1057.14 provides that cancelled driver's certificates will not be reinstated and that individuals subject to such cancelation may not reapply for a new driver's certificate for 2 years form the date of cancellation. Also the cancellation of a driver's certificate will be considered as part of any other applications to the Authority for taxicab or limousine rights. A commentator questioned what could lead to a driver's certificate cancellation. Cancellation is a potential penalty for violations of the act, this part or an order of the Authority. We believe that the terms "cancellation" and "revocation" have the same meaning in so far as they each describe a termination of Authority rights by the Authority as a result of a violation of the act or the regulations. A typographical error in subsection (b) has been corrected by replacing the second reference to "taxicab driver" with "limousine driver."

§ 1057.15. General limousine driver reports.

Section 1057.15 provides that limousine drivers must make specified reports to the Authority within a designated period of time.

§ 1057.16. Limousine driver reports after accident.

Section 1021.15 provides for certain driver requirements in the event a limousine is involved in an accident while providing limousine service. A typographical error in the opening sentence of this section has been corrected by deleting the word "is". We have deleted

paragraphs (2) and (3) in the final-form regulation in consideration of IRRC comments in regard to the confusion that may be created by the requirement to take necessary precautions to prevent further accidents at the scene and to render reasonable assistance to injured persons. Paragraph (5) has been reidentified as (3) in consideration of those deletions.

§ 1057.17. Trip sheet requirements.

Section 1057.17 provides specifications as to what information must be part of a limousine's trip sheet. A commentator suggested that the regulation should permit electronic trip sheets. We incorporate our response to comments to § 1055.5 regarding this issue. We agree with the commentator that certain information required by this section is not available until the trip is complete, which is when the information should be added to the trip sheet.

CHAPTER 1059. APPLICATIONS AND SALE OF RIGHTS

§ 1059.1. Purpose.

Section 1059.1 provides that Chapter 1059 establishes and prescribes Authority regulations and procedures for applications for limousine certificates and sale of certain rights issued by the Authority.

§ 1059.2. Definitions.

Section 1059.2 of the proposed regulations provided several definitions related to Chapter 1059. IRRC noted that the term "limousine certificate" appears in this subpart prior to Chapter 1059.2 and that the definition provided in this section should be moved to the primary definition section for this subpart at § 1051.2, which we have done. The balance of the definitions provided in this section have also been included in § 1051.2, negating the need for this section, which will not appear in the final-form regulations. IRCC noted an inconsistency in the definition of "transfer fee" regarding the term "nonrefundable". The term "transfer fee" is now consistently defined. We incorporate our response to comments to § 1027.2 regarding this fee.

§ 1059.3. Applications for limousine rights.

Section 1059.3 provides for certain procedures and the application necessary to obtain a limousine certificate of public convenience. Subsection (a) has been amended to note the unique large vehicle and remote carrier certification process provided for in § 1053.43 (c), and a new subsection (c) has been added to provide guidance to those seeking to obtain a large vehicle or remote carrier certificate of public convenience.

§ 1059.4. Authority approval of sale of rights.

Section 1059.4 provides that the sale of Authority rights must be approved by the Authority in advance and provides guidance on what is considered a sale. For example, the transfer of securities in a corporation that owns a limousine certificate is a sale that must be approved by the Authority. Subsection (b) is identical to § 1027.3 (b) which relate to the sale of taxicab rights. IRRC and other commentators raised the same concern as to subsection (b) as they did with § 1027.3 (b). We have made the same changes to this subsection (b) as to § 1027.3 (b) and we incorporate our response to comments to § 1027.3 here.

§ 1059.5. Agreement of sale.

Section 1059.5 provides that parties to a proposed transfer of a limousine certificate of public convenience must do so through the use of an agreement of sale that is in compliance with the Authority's regulations related to the sale of transferable rights, including the need to execute the agreement of sale before an Authority representative. This procedure has been in place in Philadelphia since 2005. All elements of the sale process involving meetings or interaction between buyer and seller and the Authority are by appointment and are intended to be conducted as efficiently as prudent document preparation and review will permit.

IRRC noted the comment of another commentator who expressed concern about the need to apply to the Authority for authorization to transfer shares of a business that owns a limousine certificate to a family member. This is the same issue addressed in §§ 1027.3 and 1059.4 and we incorporate our responses there, here. Again, a person is not qualified or eligible to participate in the provision of a limousine service simply because they are related to someone who is a current owner of a certificate of public convenience. Taxicabs and limousines are unique business interests that are heavily regulated by the government because of manifest safety concerns related to these transportation services, including vehicle and highway safety and driver

interactions. The owners of these businesses will also possess sensitive information about customers. We believe that it is imperative that we approve the people involved in providing limousine service in advance, including owners and part-owners of certificates of public convenience.

IRRC and another commentator questioned the reason that subsection (b) requires agreements of sale be executed in the presence of the Director or his designee at Authority offices. We acknowledge that the act does not mandate this practice as it does for taxicabs in section 5718 of the act. However, we believe that the overall statutory mandate provided in section 5701.1 to develop a clean, safe, reliable and well regulated taxicab and limousine industry in Philadelphia grants the Authority a significant amount of latitude in terms of initiating that development. Also section 5742 provides that the Authority may prescribe such rules and regulations as we "deem necessary to administer and enforce the regulation of limousine service" in Philadelphia. Section 5742 of the act goes on to say that the broad powers of the Authority set forth in this section exist "not withstanding any other provision of law". Finally, section 5741.1 (c) (3) provides that the "[t]he transfer of a certificate of public convenience by any means or device shall be subject to the prior approval of the authority, which may attach conditions it deems proper."

We have deemed the process provided for in subsection (b) of this section proper because we have, unfortunately, discovered many fraudulently, or at least questionable, executed documents related to the taxicab and limousine industry since 2005. Many regulated persons have claimed that rights they owned, or thought they owned, have been sold out from under them without their knowledge or consent. By requiring the execution of these infrequently processed documents in the presence of an Authority representative, a deterrent to such behavior will exist. We believe that is why the Legislature removed the discretion from the Authority to employ this process in relation to taxicabs and specifically mandated it in section 5718 of the act, and we believe it is a proper process for limousine transfers as well.

IRRC noted that the following sections of the regulations also require in-person interaction or execution of documents:

- § 1059.6 (a) (2), which requires that the Authority's application to sell transferable rights be filed in-person.

- § 1059.6 (b) (1), which requires that the parties to the agreement of sale execute the sale application in the presence of an Authority representative.
- § 1059.8(b) (1), which requires that the sale application be signed before an Authority representative on or before the date the agreement of sale is executed.

Each of these sections works in tandem and they find their basis in the same necessity referenced above. In addition, this focused "team work" approach results in a more promptly and accurately submitted application packet, which will speed the Authority's review and permit the parties to rapidly continue to provide service. In an ordinary case the parties will negotiate the terms of their agreement to transfer rights independent of the Authority and reduce that agreement to writing. Through the use of a broker or an attorney at law the sale application documents will be marshaled and prepared. The parties will appear by appointment at the Authority to submit the documents necessary to obtain approval for the transfer. They will execute the agreement of sale and the sale application and leave the documents for the Authority's review. This process causes the parties to the proposed sale to work together to assure that the documents necessary to complete the sale are promptly produced and are accurate at the time submitted. Again, it is a practice that has been in place since 2005.

§ 1059.6. Application for sale of transferable rights.

Section 1059.6 provides for the application procedure related to the sale of transferable rights, identifies the form application necessary to initiate the sale and the manner in which it must be filed. We incorporate our comments to § 1011.2 regarding brokers in response to a commentator's concerns about the use of brokers in this application context.

(d). Multiple rights. Subsection (d) provides that a single sale application may be used to transfer multiple transferable rights and that the transfer fee charged by the Authority will be based on the higher of the aggregate value of the rights transferred or the transfer fee for each right. IRRC questioned the basis for developing this method of calculating. This section does not establish a transfer fee. The transfer fee is set each year as provided in section 5707 (b) of the act (relating to budget and fees). We have deleted reference to this calculation from the final-form regulations and believe it is more appropriately addressed in the Authority's annual budget and fee schedule process.

A commentator also generally referenced the inclusion of brokers in this process and expressed concerns about the unlawful practice of law. We incorporate our response to similar comments raised in regard to § 1001.10 and relating to the definition of "broker".

§ 1059.7. Required application information.

Section 1059.7 provides certain guidelines related to the information a person must supply as part of the process to obtain approval to sell rights.

(b)(3). Paragraph (3) requires a non-individual applicant to file a copy of the certificate of good standing issued by the Corporate Bureau. We believe that this requirement will be unnecessary for entities that already own a certificate of public convenience and have amended this paragraph to reflect that position in the final-form regulations. We believe that the current status of a non-individual proposed buyer of transferable rights is relevant to determining an entities fitness to operate a public utility, and that persons who are not already known to the Authority through the current ownership of rights must file the certificate of good standing, which is easily obtained from the Corporate Bureau. Including that document at the time of filing will permit a thorough and efficient review of the application.

(b)(11). Subsection (b) (11) requires certain persons affiliated with a limousine certificate of public convenience applicant to provide criminal background reports as part of the standard application process. The purpose of this requirement is to assure the public that persons with direct control or a strong influence over the business operations of the applicant meet the same criminal background check criteria applicable to those officially identified as the principals of the applicant. This issue applies most poignantly to non-individual applicants. The Authority believes that the criminal backgrounds of all applicants and the persons with business influence over those applicants, as provided in the regulations, should be evaluated when determining an applicant's qualifications to operate a public utility, such as a limousine certificate of public convenience, because that certificate holder will have direct financial dealings with the public and maintain certain personal information about the public, including names, addresses, travel habits, credit card information, etc.

Specifically, this subsection has been amended to clarify that the criminal history report must be issued within 30 days of the filing of the application.

(b)(13). Subsection (b) (13) requires a verified statement from the owner or proposed buyer of the transferable rights that each are in compliance with the terms of section 1051.6, which deals with current payments or fees, penalties, etc. This subsection has been amended simply to note the revised title of § 1051.6.

(b)(15). Subsection (b) (15) of the proposed regulations required the applicants to a sale to submit their Philadelphia Business Privilege license number. Because regulated parties will not be required through this rulemaking to obtain those licenses, this paragraph will be deleted from the final-form regulations.

§ 1059.8. Additional application requirements.

Section 1059.8 provides for a series of specific documents and other information that must be submitted along with an application pursuant to this chapter. Commentators suggested that this process was confusing or burdensome and questioned the power of the Authority to review these documents. The Authority is specifically changed with the duty to administer the transfer process and is authorized by section 5741.1 (c) (3) to attach such conditions as we deem appropriate. We believe the review of the information noted in this section is crucial to our task of properly monitoring the transfer of limousine rights.

§ 1059.9. Financial fitness generally.

Section 1059.9 provides specific guidelines related to the Authority's review of an applicant's financial fitness to own and operate Authority rights.

(1). Paragraph (1) requires the proposed buyer of rights to have at least $5,000 in its bank account or 2% of the value of the rights it is acquiring. For example, if a person sought to purchase a medallion for $300,000, that person must have $6,000 in its bank account in unencumbered funds. IRRC noted a typographical error referencing taxicab medallions, which has been deleted from the final-form regulations and replaced with the term "of the transferable rights". A typographical error in this section has been corrected to clarify that the only review will seek a balance of $5,000 or 2% of the value of rights sold, not $25,000.

IRRC questioned the basis for this specific requirement. We believe that the owner of a certificate of public convenience must have the financial capability of paying for the basic necessities associated with operating a public utility. The presence of this small amount of

available financial resources, relative to the value of the rights acquired, will evidence that the proposed owner has the ability to at least initiate the use of the rights acquired, such the acquisition and preparation of vehicles or dispatch related equipment. The presence of those funds in an account for a period of 3 months helps to establish that the funds are actually the applicant's and are available; not simply placed there to make the applicant appear to have some financial resources. This provision does not apply to drivers, only persons who seek to own and operate these public utilities.

(4). Paragraph (4) requires disclosure of outstanding and unappealed civil judgments against the proposed buyer. IRRC questioned why this was necessary. The presence of outstanding and unappealed civil judgments against a proposed buyer is not a prohibition from ownership of transferable rights; it is a factor to be considered. However, the presence of such judgments may reveal economic exposure that will strain the ability of the proposed buyer to provide quality service through the certificate of public convenience and jeopardize the loss of equipment related to that service through execution on such judgments. We believe this is important information to consider when determining if the issuance of rights to a person is in the best interests of the public.

IRRC noted a typographical error relating to the numbering of paragraphs (3) and (4). Those paragraphs were misidentified because paragraph (2) was not used in this section. Therefore, paragraph (3) in the proposed form is paragraph (2) in the final-form regulation and paragraph (4) in the proposed form is paragraph (3) in the final-form regulation.

§ 1059.10. Regulatory compliance review.

Section 1059.10 provides that the Authority's review of an application to acquire transferable rights will include a review of any history of violations of the regulations of the Authority or the PUC. Applicants may not have been subject to a suspension, cancellation or revocation of rights by the Authority or common carrier rights regulated by the PUC during the year preceding the application date. IRRC questioned the meaning of the phrase "regulatory compliance record" in subsection (a). We have amended this subsection by replacing that phrase with "record or regulatory violations", which we believe will be easily understood. The purpose of this provision is to place applicants on notice that a history of violations of Authority or PUC

common carrier regulations will be considered when reviewing these applications to protect the public interest.

§ 1059.11. Authority review.

Section 1059.11 provides for the manner in which the Authority will review and approve applications for limousine certificates of public convenience. A commentator questioned the reasonableness of the Authority participation in the transfer process. We incorporate our response to comments to § 1059.8.

§ 1059.12. Approval process and closing on sale.

Section 1059.12 provides that the Authority will review the sale application and schedule a closing on the sale to be witnessed by an Authority representative. Sales completed outside the presence an Authority representative are void. This procedure has been in place in Philadelphia since 2005.

(b). Subsection (b) provides that upon approval of a sale application, the Director will schedule a closing on the sale to be witnessed by an Authority representative. IRRC and another commentator questioned the power of the Authority to implement this subsection. These comments are identical to those of § 1059.5 and we incorporate our response to those comments here.

(c). Subsection (c) provides that sales completed outside the presence an Authority representative are void. Our response to comments to subsection (c) above are incorporated here. IRRC identified a typographical error in this subsection being the identification of a section of the act which relates to taxicab matters and recommended that be removed. We agree with IRRC's comment and have deleted reference to that section.

§ 1059.13. Settlement sheet.

Section 1059.13 provides for the use of a specific settlement sheet at closings on the sale of a certificate and for information that must be included in that form. A commentator seemed to have questioned the reasonableness of the Authority participation in the transfer process. We incorporate our response to comments to § 1059.8.

§ 1059.14. Commencement of service.

Section 1059.14 provides that the new limousine certificate holder must begin operations within 30 days of receipt of their certificate.

CHAPTER 1061. BROKERS

§ 1061.1. Broker registration.

Section 1061.1 provides for the registration of limousine brokers. The regulations will not distinguish between a limousine broker and a taxicab or medallion broker. In our experience individuals involved in brokering activities of this nature tend to in engage in both types of transactions. Because there will be no distinction, this section incorporates the registration requirements and procedures of Chapter 1029 of the Authority's regulations. Brokers have been used in Philadelphia for these types of transaction since before the initiation of the Authority's regulation of the taxicab and limousine industry in Philadelphia and have been incorporated into our regulations since 2005.

The use and training of brokers is consistent with the legislative intent of the act. See 53 Pa.C.S. §5701.1 (2) and (3). We also incorporate here our response to §§ 1059.5 and 1029.5 and 1029.6 regarding the need for the regulation of these certificate sale services and for the regulation and training of brokers.

IRRC reasserted its comment to §§ 1029.4 and 1029.6 relating to the manner in which the Authority will view broker applicants who are subject to prosecution, but have not been arrested. We agree with IRRC's concern and believe we have adequately amended the regulations to address that concern, as referenced in our response to comments in §§ 1011.5 and 1029.4

CHAPTER 1063. TARIFFS

§ 1063.1. Definition.

Section 1063.1 provides definitions related to this chapter on limousine tariffs.

§ 1063.2. Limousine rates and tariffs.

Section 1063.2 provides certain requirements related to the content and filing of limousine service tariffs with the Authority and prohibits the use of mileage calculations and the

use of meters in limousines. This prohibition is a continuation of the Authority's current regulatory practice. The PUC also prohibits the use of meters in limousines. *See* 52 Pa. Code § 29.334 (relating to tariff requirements).

Commentators noted that a limousine certificate holder does operate with a meter in Philadelphia through a waiver. We agree and reference our response to comments to § 1001.1, which provides that the waiver under which this sole operator provides this metered limousine service will continue upon the effective date of these final-form regulations.

CHAPTER 1065. INSURANCE REQUIRED

§ 1065.1. Limousine insurance.

Section 1065.1 provides parameters related to the levels of automobile insurance that must be carried by limousine certificate holders. The proposed regulation altered the current limousine requirements in Philadelphia by designating specifications of coverage beyond simply $1,500,000 combined single limit per accident level.

IRRC questioned the propriety of these insurance limits and the feasibility of finding multiple insurers to provide these lines. Commentators suggested these changes in coverage would increase the cost of obtaining automobile insurance for limousines. While the availability of insurance carriers for limousine automobile insurance at currently required levels is not as challenging to obtain as it can be in the taxicab industry, we recognize that a change to the limits and types of coverage to be maintained requires a more in depth analysis than this current large rulemaking process will allow.

Therefore, we will eliminate the proposed increase to insurance levels and amend this section to require the same level of automobile insurance required for limousines in Philadelphia since 2005. To the extent a subsequent change in relation to these lines of coverage is contemplated, we will initiate an advanced rulemaking and seek prior input and comment from the public, regulated parties and the insurance industry.

Conclusion

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P.L. 287, No. 22), *as amended*, 53 Pa. C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, 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 745.5a of the Regulatory Review Act, 71 P.S. § 745.5a, the Authority proposes adoption of the final regulations pertaining to the regulation of taxicab and limousine service providers in the City of Philadelphia set forth in Annex A[27], attached hereto;

THEREFORE,

IT IS ORDERED THAT:

1. The Authority hereby adopts the final regulations 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.[28]

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

[27] The Authority does not receive money from the State Treasury and is; therefore, not subject to section 612 of the Administrative Code of 1929, 71 P.S. § 232.

[28] The Governor's Budget Office has determined that rulemakings related to the Authority's Taxicab and Limousine Regulations do not require a fiscal note.

5. The Executive Director shall serve copies of this order and Annex “A” upon each of the commentators.

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

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

THE PHILADELPHIA PARKING AUTHORITY

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Joseph T. Ashdale
Chairman
(SEAL)

Certified:

____

Alfred W. Taubenberger
Vice-Chairman/Secretary
(SEAL)

ORDER ADOPTED: August 29, 2011

ORDER ENTERED: August 29, 2011