



**Philadelphia
Parking
Authority**

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Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

October 5, 2011

Re: Philadelphia Parking Authority
Final Rulemaking Order
(Regulation ID No. 126-1 and IRRC No. 2885)

Dear Chairman Lutkewitte:

As you are aware, the Philadelphia Parking Authority's ("Authority") above referenced final-form regulations will be considered at the October 6, 2011 meeting of the Independent Regulatory Review Commission ("Commission"). I write now to respond to certain comments submitted in regard to those final-form regulations.

Preliminarily, I would like to thank the Commission members and staff for the time and consideration invested in the review of these final-form regulations. I would also like to thank the many current members of the Pennsylvania Legislature who have taken the time to draft letters to your attention in support of the approval of these final-form regulations. We are please to note that Philadelphia Mayor Michael A. Nutter, the 44th Governor of Pennsylvania, Mark S. Schweiker, 8 Members of the Philadelphia City Council and several Southeastern Pennsylvania travel, convention and tourism organizations have also taken the time to express their support. This broad based and bi-partisan support indicates the importance of approving the final-form regulations in order to continue the implementation of Act 94.

Several commentators who were critical of the Authority's proposed regulations have declined to oppose these final-form regulations and some have expressed support for their approval. From a review of IRRC's website on October 4, 2011, the vast majority of comments to these final-form regulations were positive with only 3 unsupportive commentators. We believe we have achieved the consensus IRRC seeks to instill in the regulatory promulgation process.

Many of the comments submitted by the 3 commentators opposed to the regulations were submitted to the Authority as part of the Advanced Notice of Public Comment process used prior to adoption of the Final Rulemaking Order and the Authority's responses are already incorporated into that Order.



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Therefore, we respond to the following comments submitted to the Commission in regard to the final-form regulations:

1. Germantown Cab Co. (Filed September 26, 2011, Letter dated September 23, 2011—
Identified as Germantown Comment # 1 on Commission Website).

The commentator submitted a lengthy transcript from a Pennsylvania Public Utility Commission (“PUC”) hearing in 1994, apparently to show that the certificate holders referred to in the final-form regulations as “partial-rights taxicabs” were once also (or exclusively) referred to as “neighborhood cabs”. The commentator seems to suggest that it prefers the second term; however, we believe that this amounts to a distinction without a difference. The extent of the rights of the certificate holder to provide service within areas of Philadelphia is the issue of primary concern, not the term applied to the classification of those service providers. This term does not enhance or diminish any right or obligation of a partial-rights certificate holder.

2. Germantown Cab Co. (Filed September 26, 2011, Letter dated September 26, 2011).

This commentator suggests that the Authority’s 2005 locally promulgated Taxicab and Limousine Regulations were promulgated improperly because they were not first submitted to the Advisory Committee for consideration. The commentator also suggests that it was denied the opportunity to participate in the promulgation process associated with the Authority’s 2005 regulations. The commentator follows that since the 2005 regulations were not promulgated properly they can not form the basis of a cost comparison. The commentator concludes by asserting that the Authority’s 2005 regulations have caused it great harm and that the final-form regulations before the Commission will also cause the commentator great harm.

Preliminarily, the assertion that the Authority’s 2005 regulations were implemented without this commentator’s knowledge or opportunity for input is simply untrue. Beginning in 2003, in anticipation of the regulatory transfer that was eventually directed by Act 94, the Authority initiated numerous individual meetings and group meetings with members of the regulated community. The Authority also conducted public comment hearings during that period to solicit comments regarding proposed regulations.

The Authority’s first proposed local regulations were issued for public review on August 16, 2004 (approximately 8 months before the transfer of power from the PUC to the Authority). Those proposed regulations were subject to public comment, public comment hearings and consideration by the Authority at Sunshine Act meetings. The August 16, 2004, draft regulations were changed in response to public comment before being implemented in April 2005.

We note that the commentator has been a member of the regulated community for many years, including as far back as 2003. Therefore, the commentator had every opportunity to participate in the development of the local regulations. Act 94 did not authorize the creation of the Advisory Committee until after the date the Authority officially assumed regulatory control of taxicabs and limousines in Philadelphia.¹ Just as it would have been impossible to submit the terms of its agreement with the PUC related to the transfer (as directed by Act 94), the Authority could not comply with a provision of the Act that was not effective until the day the Authority assumed that power from the PUC.

¹ See Section 25 of Act 94.

Perhaps most important for the commentator to consider is that the 2005 regulations were heavily amended in 2008 after several Sunshine Act meetings, a period of public comment, a public comment hearing at the Pennsylvania Convention Center that was attended by hundreds of people, and submission to the Advisory Committee. Those 2008 regulations are the current regulations in place in Philadelphia.

We also disagree with the commentator's suggestion that it has been harmed by the Authority's current regulations and will be harmed by the continuation of the regulatory status quo through these final-form regulations. While every regulatory transition will be associated with challenges and the national economy has been in recession over the past several years, we note that the commentator's fleet of taxicabs with Philadelphia rights has risen from approximately 70 in 2005 to approximately 140 today. In contrast to the assertions of the commentator, the Authority's regulations have created the stability and predictability necessary for businesses to succeed in this challenging environment.

3. Germantown Cab Co. et al. (Filed September 12, 2011 and Titled:
"Before the Philadelphia Parking Authority")

This comment was actually submitted to the Authority (as the title suggests) during the Advance Notice of Final Rulemaking period. The final-form regulations contain changes in response to issues raised in this comment, such as the deletion of §§ 1017.3 (f), 1055.3 (f), 1017.35(c) and 1055.3 (f).² Those sections were deleted because we agreed with the commentator that those penalty provisions could be better addressed in a penalty schedule guidance document. Because this comment is not directly related to the final-form regulations before you now, we believe the Final Form Order now pending before the Commission is fully responsive to the issues raised in this pre-final-form document.

4. Germantown Cab Co. (Filed September 26, 2011 and dated September 23, 2011—
Identified as Germantown Comment # 2 on Commission Website).

The commentator addresses 4 issues in this comment, although not necessarily directly related to the final-form regulations. The commentator notes that it is subject to a field inspection of its vehicles by both the Authority and the PUC. The commentator suggests that this is a form of "double-regulation". Field inspections are a tool used to promote the continuing cleanliness, safety and reliability of taxicabs and limousines in Philadelphia and every other jurisdiction in the United States known to the Authority.

There are certainly circumstances in which a taxicab may be subject to a field inspection by the Authority and the PUC. However, the vehicle could also be reviewed in a substantially similar manner by local or state police in the Commonwealth or any other area in which the vehicle travels. The potential for multiple inspections is not inconsistent with Act 94. In fact, in many cases it is a necessary by-product of the decision to create 2 regulators of taxicabs and limousine in Southeastern Pennsylvania.

The commentator also noted the fact that the Authority may place a vehicle out of service under certain conditions. The commentator noted that the PUC also exercises this power. We believe that the requirements antecedent to an out of service designation and the availability of a rapid process for addressing the validity of that designation, provide both Authority staff and the regulated community with bright line guidance as to when this enforcement tool is appropriate. This issue is addressed in § 1003.32 of the final-

² References in this format relate to the final-form regulations, unless otherwise indicated.

form regulations and was addressed in our response to comments on that section in the Final Rulemaking Order.

The commentator also expressed concern about the impoundment of vehicles used to provide taxicab service. This comment relates to § 1017.52, which was the subject of comments in the proposed stage and to which we provided a specific response. The Authority's power to impound and auction taxicabs is provided by section 5714 (g) of Act 94. The conditions for the release of impounded vehicles are also in Act 94. The impoundment power as expressed in Act 94 is fairly broad and has been applied judiciously and with success in furtherance of removing illegal service providers from the Philadelphia market.

We incorporate our response to comments to §§ 1001.43 and 1001.61 regarding our decision not to include a fee schedule or penalty schedule in the final-form regulations. These issues are not before the Commission at the present time.

5. Germantown Cab Co. (Filed September 26, 2011 and dated September 24, 2011—
Identified as Germantown Comment # 3 on Commission Website).

The commentator raises several issues pertaining to the dual regulatory environment related to taxicab (and limousine) companies that operate under the jurisdiction of both the PUC and the Authority.

The commentator cited alleged inconsistencies between the PUC's regulations and the final-form regulations. Specifically, the commentator suggests that the PUC's requirement that drivers be at least 21 years of age is inconsistent with the Authority's prohibition barring drivers 20 years of age or younger. While this may be a different way of saying the same thing, we do not believe that these regulations are inconsistent. Drivers simply have to be 21 years of age or older in each jurisdiction.

The commentator also cited the Authority's requirement that a driver's certificate applicant have a driving history in the United States of at least 1 year. § 1021.4 (6). The commentator notes that the PUC requires only the possession of a valid driver's license. We incorporate our response to comments to § 1021.4 regarding this issue.

We believe that it is reasonable for the public to expect that an individual has some experience operating a motor vehicle before initiating transportation of the public in a crowded urban environment. This requirement has been in place in Philadelphia since 2005. While this requirement exceeds that of the PUC, we note that a person that is qualified to operate a taxicab in Philadelphia will also be able to operate a taxicab in the balance of the Commonwealth, at least as to this issue. We believe this is a reasonable requirement that is consistent with our statutory obligation to promote safe taxicab and limousine service.

The commentator raised issues related to the Authority's implementation of the driver certification program required by section 5706 of Act 94, and as provided for in the final-form regulations in Chapter 1021 (as to taxicab drivers). This program assures that drivers have some training in certain key areas related to properly serving the public, including Philadelphia geography, customer service, hygiene and safe driving issues. The driver applicant's qualifications to provide service to the public are also reviewed. We incorporate our responses to comments submitted in regard to §§ 1021.4, 1021.5 and 1021.8.

The commentator suggests that partial-rights taxicab companies should not be subject to this training and certification process. The commentator cites as support for this argument the PUC's application of the

driver training provision of the now repealed Medallion Act (66 Pa.C.S. Ch 24) to only medallion taxicab drivers. While the language of section 5706 of Act 94 is similar to that of the Medallion Act, Act 94 was not enacted to address only medallion taxicab issues. Indeed, section 5706 of Act 94 specifically includes limousine drivers, which the Medallion Act clearly did not govern.

Also, Act 94 defines the term “driver’s certificate” as a “certificate to drive a taxicab or limousine” and then defines the term “taxicab” in a manner that includes partial-rights and medallion taxicabs. 53 Pa.C.S. § 5701. We incorporate our response to comments to § 1011.2 regarding the definition of “partial-rights taxicab”, which may be of assistance when considering jurisdictional arguments. There is no question that partial-rights taxicab drivers are subject to the driver certification requirements of Act 94, and that the Legislature’s decision in that regard was in the best interests of the riding public.

The commentator suggests that the Authority’s taxicab driver training requirements will address issues that do not affect the drivers of partial-rights taxicabs. The Authority’s taxicab driver certification training addresses many issues related to Philadelphia taxicab service. A taxicab driver’s certificate does not distinguish between medallion and partial-rights service. Therefore, a person may operate a partial-rights taxicab on Monday and a medallion taxicab on Tuesday. It is important that taxicab drivers understand the similarities and distinctions between these types of service.

The commentator also suggests that the Authority’s requirement that taxicab drivers undergo a criminal history review is inconsistent with the PUC’s regulations. The commentator fails to consider that the entire driver certification program required by Act 94 is completely different than the driver qualification rules related to non-medallion taxicab drivers in PUC jurisdictions. Unlike the PUC, the Legislature chose to place the obligation to screen and train drivers with the Authority, in lieu of the certificate holder.

The PUC regulation cited by the commentator provides that a driver may not operate a taxicab if convicted of a felony or misdemeanor that “relates adversely to that person’s suitability to provide service safely and legally.” 52 Pa. Code § 29.505 (c). The final-form regulations now before IRRC specifically identify what crimes render a driver unsuitable to be a taxicab driver. *See* § 1011.2. This will eliminate guess work and provide the regulated community with clear guidance on this issue.

Also, the final-form regulations place a shelf-life on the criminal convictions prohibition because it relates only to such crimes committed within the preceding 5 years, and covers the period through 6 months from the date the sentence entered as punishment for the conviction has been completed. *See* § 1011.5 (a). We suggest that this is a more forgiving policy than that suggested by the commentator. We incorporate our response to comments to § 1011.5.

We have added a new subsection (f) to the final-form version of § 1011.5 to provide a clear procedure for the certification of individuals who might otherwise be excluded based on this conviction prohibition. By specifying the criminal convictions that impact the suitability of a driver applicant we have already addressed the commentator’s concerns related to the legality of the review of such convictions when evaluating an applicant’s suitability for a driver’s certificate.

6. Germantown Cab Co. (Filed October 3, 2011).

The commentator noted that certain posting that must appear in taxicabs as required by the PUC and the Authority will overlap. We agree that taxicabs with the ability to operate in Philadelphia through rights issued by the Authority and with the ability to provide service elsewhere in the Commonwealth through

rights issued by the PUC will be required to use postings applicable to each jurisdiction. We have attempted to minimize those overlapping requirements and will continue to do so.

In the scenario referenced by the commentator, we believe that it is very important that passengers know what fares apply to their trips and where to report problems with service. A passenger traveling in Philadelphia must know that problems with service need to be reported to the Authority. We will continue to explore the potential for postings that will satisfy the concerns of both the PUC and the Authority and thereby reduce the number of postings in these dual-jurisdiction taxicabs.

7. Germantown Cab Co. (Filed October 3, 2011).

The commentator noted several issues related to the cost of the dual regulation of its taxicabs by the PUC and the Authority; however, as we noted above this dual regulation issue is a necessary by-product of Act 94. We will continue to seek means of reducing friction between the deviating jurisdictional requirements of PUC and Authority regulations.

Preliminarily, we note that this commentator has complied with the Authority's regulations, including those related to vehicle age and mileage requirements, inspections and annual renewal fee payments for years. During those years this commentator's fleet of taxicabs grew significantly, despite the economic recession. Many of the costs that the commentator cites in this comment are costs associated with continued compliance with the current local regulations, which are replicated in these final-form regulations. The costs that the commentator alleges are new are actually generated not by these final-form regulations, but by the commentator's unilateral decision to refuse to comply with current standards in Philadelphia.

Because the commentator has decided to ignore vehicle mileage and age standards, refused to appear for scheduled vehicle inspections, refused to pay fees due pursuant to the Authority's Fee Schedule, removed the safety shields between customers and the driver and failed to have vehicles inspected prior to entry into service it will certainly incur costs associated with coming back into compliance. The commentator's actions may also result in the imposition of administrative penalties resulting from those decisions. But these are costs any regulated party would incur if it refused to follow the law and applicable regulations, and are not caused by these final-form regulations.

The commentator expressed concern with the Authority's annual Fee Schedule as it relates to the commentator's annual payment to the Authority, titled "assessment". As we have noted in our response to comments to § 1001.43, the Fee Schedule is developed through procedures outlined in section 5707 (b) of Act 94 and is not before the Commission at this time.

The commentator alleges costs of these final-form regulations associated with vehicle inspections. However, the inspection requirements under the final-form regulations do not deviate from those currently followed by every regulated party in Philadelphia, except the commentator and three or four other entities associated with the commentator. These are not new costs or new requirements and there will be no fiscal impact associated with these inspection regulations. Our Fiscal Impact Statement at Exhibit "C" addresses several issues related to vehicle inspections.

The commentator wrote that the Authority's inspection facilities are only open between 7:30 a.m. and 12:30 p.m. The inspection hours are actually 7:30 a.m. to 6:00 p.m. Scheduled vehicle inspections generally end at 3:00 p.m. and require approximately 45 minutes for a state inspection and 35 minutes for a regulatory inspection. Inspections may be conducted on Saturdays by appointment as well.

8. Pennsylvania Taxi Association.

The commentator expressed pleasure with the many improvements to the final-form regulations. Subsequent to the submission of this comment, the commentator submitted a comment on October 3, 2011, in which it recommends that the Commission approve the final-form regulations.

In the comment it submitted on September 14, 2011, the commentator expressed a single concern related to the final-form regulations. That concern relates to the invalidation of agreements of sale for transferable rights (such as medallions) if the agreement is not executed by all of the parties to the agreement before an Authority officer as provided in § 1027.5 (b). The term transferable right is defined in the regulations (§ 1011.2).

Taxicab medallions are by far the most commonly transferred right.³ Act 94 has always required medallion sales agreements to be executed by the parties in the presence of an Authority staff member, under penalty of being declared void by operation of law.⁴ That obligation continues to be relied upon in the final-form regulations. Because we believe that the Pennsylvania Taxi Association is most concerned about medallion transfers we direct the commentator to section 5718 of Act 94.⁵

The Authority has also employed this procedure for the transfer of all other transferable rights since 2005. Act 94 provides the following:

The transfer of a certificate of public convenience, by any means or device, shall be subject to the prior approval of the authority which may, in its sole or peculiar discretion as it deems appropriate, attach such conditions, including the appropriate allocation of proceeds, as it may find to be necessary or proper.⁶

Thus, prior approval by the Authority is required before a person can contractually transfer rights to serve (or begin service) to the public.⁷ The attachment of conditions (by regulation) on the transfer of certificates of public convenience is no different from the attachment of any other condition to certificates, such as the requirements of tariff filings or proof of insurance, and, here, the regulation imposes such a condition requiring the witnessing of certain contracts.

The fraudulent transfer of various rights within the regulated industries necessitates this minor prophylactic measure. The Authority has encountered various documents seeking to transfer rights or obligations associated with taxicab and limousine service in Philadelphia that were determined to be fabricated. While the Legislature dictated that the requirements of § 1027.5 be applied to combat this

³ Pursuant to Section 1027.2 only the following rights may be subject to sale:

- (i) A certificate of public convenience to provide partial-rights taxicab service.
- (ii) A certificate of public convenience to provide dispatching services.
- (iii) A medallion.
- (iv) A certificate of public convenience to provide limousine service.

⁴ 53 Pa.C.S. § 5718 (a).

⁵ We also reference our responses to comments to §§ 1027.5 and 1059.5 provided in our Final Rulemaking Order, which relate to this issue.

⁶ 53 Pa. C.S. § 5711(c)(5), which deals with taxicab and dispatcher certificates. *See also* 53 Pa. C.S. § 5741.1(c)(3), which deals with limousine certificates.

⁷ *See Wattsburg Tel Coop Assn v. Pa. P.U.C.*, 128 A.2d 160 (Pa. Super. 1957).

problem as to medallion transfers, we have exercised our discretion to apply the Legislature's transaction security procedures to any sale of transferable rights as a condition of certification.

The commentator suggests that the requirements of § 1027.5 will "derail how medallion transfers are currently conducted, and would cause great hardship to the industry." The agreement execution process is quick and easy and conducted by appointment. Again, this process is not new. It has been in place in Philadelphia for 8 years and the outcome predicted by the commentator has simply never materialized. However, we believe that this process has insulated those parties from becoming a victim of some of the fraudulent transfer practices that have occurred in the past, and we believe it will continue to be of great assistance in that regard.

The Authority will not approve an agreement of sale executed outside of these procedures. As noted above, it would be impossible for the contracting parties to perform under any sales agreement without the prior approval of the Authority. Without satisfaction of this statutory or regulatory condition precedent, the sale could not be consummated and there would be no contractual duties to be performed. Without a sale or contractual duties, there should be no breach of the sales agreement to be enforced before the Courts.

Again, we believe this simple and quick process has protected the regulated industries from fraudulent transactions over the past 8 years and will continue to do so under the final-form regulations.

We note again that this commentator has now recommended that the Commission approve the final-form regulations.

9. Unified Taxi Workers Alliance of Pennsylvania.

This commentator raised several issues, including the statutory power of the Authority to regulate the age and mileage of vehicles used to provide taxicab and limousine service in Philadelphia. We incorporate our response to comments to § 1017.3 regarding this issue. We have attached as Exhibit "A" the comments of Representatives John J. Taylor and Dwight Evans dated September 28, 2011 regarding this issue and expressing support for the approval of these final-form regulations. We have also drafted an additional legal review of this issue which is attached as Exhibit "B" and also attach the Fiscal Impact Consideration of this issue and others as Exhibit "C".

We believe that the age and mileage of the vehicles used to provide taxicab and limousine service are crucial conditions of those vehicles that must be regulated to achieve our statutory mandate to develop a clean, safe, reliable and well regulated taxicab and limousine industry. *See* 53 Pa.C.S. § 5701.1 (2). The requirements of the final-form regulations in regard to age and mileage will be the same as those currently in place in Philadelphia.

Because they have been in effect for years in Philadelphia, the impact of these age and mileage requirements are not subject to speculation. They have directly resulted in a higher quality of service to the public through the use of cleaner, safer and more reliable vehicles. They have also contributed to the unprecedented increase in the fair market value of the 1,600 medallions over that period of time. The average medallion sold for less than \$60,000 in 2005. That same medallion will sell today for approximately \$350,000. People want to be in the Philadelphia market because its overall quality has been drastically improved for reasons that include the use of newer lower mileage vehicles.

The commentator questioned the definition of “conviction” in § 1011.2, specifically as to the consistency of subparagraph (iii) with the balance of the definition. Subsection (iii) notes that the definition of “conviction” does not include misdemeanors or summary offenses except for the crimes identified under subparagraph (i) and for crimes resulting in participation in an Accelerated Rehabilitative Disposition Program (“ARD”).

We do not believe that an inconsistency exists. The enumerated crimes of subparagraph (i) include sexual offenses and kidnapping. They are serious crimes. The public reasonably anticipates that drivers of taxicabs have not been recently engaged in criminal activity of this nature. This certainly goes to assuring safe taxicab and limousine service. 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. *See* 234 Pa. Code §318 (c). Therefore, the Authority will not treat the matter as resolved until that time. We disagree with the commentator’s suggestion that only summary offenses are eligible for consideration in the ARD context. *See Commonwealth v. Lutz*, 495 A.2d 928 (Pa. 1985).

The commentator expressed concerns related to certain fees charged by the Authority. We incorporate our response to comments to § 1001.43 and note that the Authority’s fee schedule is developed each year after review by the Appropriations Committees of the Pennsylvania House of Representative and Senate and is not before the Commission at this time.

The commentator expressed a preference for having driver certifications renewed on a two year basis, instead of the annual basis in place for the last 8 years and continued through these final-form regulations. We incorporate our response to comments to § 1001.3 (c) (3) (iv).

The commentator suggested that the Authority’s review of a driver’s outstanding moving violations and parking violations is inappropriate. We disagree and note that the failure to address these issues may result in the loss of a driver’s license and the suspension of a vehicle’s registration, which directly affects that status of the driver or the vehicle used to provide taxicab service to do so legally. We incorporate our response to comments to § 1011.7. The commentator also raised several issues related to credit card processing fees that were generally raised in the proposed stage; we incorporate our response to comments to §§ 1017.23 and 1017.24.

The commentator also suggested that the Dodd-Frank Wall Street Reform and Consumer Protection Act may preclude or limit certain fees currently charged in relation to taxicab credit card or debit card transactions. While additional statutory or regulatory requirements may always impact the manner in which credit card and debit card transactions occur, there is no provision of the statute cited by the commentator that is inconsistent with the 5% transaction fee cap imposed by these final-form regulations. In fact, our attempt to cap these fees is consistent with the general policies underlying Dodd-Frank. These final-form regulations do not impose a mandatory transaction fee, but simply limit the high fees that were charged to taxicab drivers prior to 2005. We will continue to insist that any provider of credit card and debit card transactions adhere to all applicable laws and regulations, including Dodd-Frank.

The commentator commented about Driver Owned Vehicles, which we addressed in our response to comments to § 1011.9. The commentator’s raised concerns about the lack of a penalty schedule in this final-form regulation, which we addressed in response to comments to § 1001.61.

10. Edward M. Burkhardt.

The commentator raised many issues, several of which were also raised in the proposed stage or as comments submitted in response to the Advanced Notice of Final Rulemaking. Several of those issues have already been addressed above. In order to reduce the length of this letter we will address issues that appear new and will certainly be available to respond to questions of the Commissioners.

The commentator suggested that a certificate holder is only permitted to have one power of attorney (agent) through § 1001.28. However, the section merely requires that one agent be used in any given circumstance. For instance, only one agent may appear on the certificate holder's behalf at a vehicle inspection. Nothing in this section prohibits the use of more than one agent by a certificate holder.

The commentator suggests that § 1001.38 relating to the Authority's ability to reject a filing, if not made pursuant to the procedures of the final-form regulations, is capable of being abused. While any regulation is subject to abuse, the ability to reject inappropriately filed documents is a very common practice exercised by every Prothonotary and file clerk in the Commonwealth, including administrative agencies. The language of this section is taken directly from the PUC's regulations, has not been amended since the proposed stage and the commentator's earlier comments did not address this issue. *See* 52 Pa. Code § 1.38.

The commentator suggests that the Authority has no power to inspect vehicles at the facilities of certificate holders or require production of records for regulatory compliance review. We disagree. The Authority has been endowed with that exact power. *See* 53 Pa.C.S. § 5505 (d) (24). The commentator made several comments in regard to the requirements in the proposed regulations that partial-rights taxicabs use the same meter system as medallion taxicabs, including as to dispatchers. That requirement has been eliminated in the final-form regulations. We responded to this issue under § 1017.24.

The commentator suggests that the taxicab driver trip sheet requirements of § 1021.17 are too cumbersome and time intensive for partial-rights taxicab drivers. We disagree and note that these requirements are substantially similar to the current requirements in Philadelphia, as well as the PUC's trip sheet requirements that partial-rights taxicabs will have to adhere to when operating outside of Philadelphia. *See* 52 Pa. Code § 29.313.

I look forward to appearing before the Commission on October 6, 2011. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


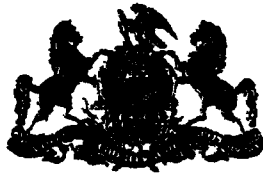

Vincent J. Penerty, Jr.
Executive Director
Philadelphia Parking Authority

EXHIBIT “A”



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

September 28, 2011

Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
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333 Market Street
Harrisburg, PA 17101

**Re: Final Rulemaking Order (Regulation ID #126-1/IRRC # 2885)
Philadelphia Taxicab and Limousine Regulations**

Dear Chairman Lutkewitte:

Representative Evans and I write in furtherance of my August 8, 2011 letter recommending that the Philadelphia Parking Authority's ("Authority") above referenced final-form regulations be approved. As noted in that earlier letter, I was the prime sponsor of Act 94 of 2004, which transferred regulatory Authority over taxicabs and limousines in Philadelphia from the Pennsylvania Public Utility Commission ("PUC") to the Authority.

Representative Evans and I write now to address issues that have been raised by the Independent Regulatory Review Commission ("IRRC") and other commentators in regard to the Authority's regulations, particularly because a question of legislative intent seems to be at issue.

Age of Vehicles.

The Authority is required by Act 94 to develop a clean, safe, reliable and well regulated taxicab and limousine industry in Philadelphia. 53 Pa.C.S. § 5701.1. We do not believe that the Authority can achieve this legislative mandate without implementing regulations related to the condition of the vehicles used to provide these services. The age and mileage of a vehicle are crucial conditions that directly impact its ability to operate in a clean, safe and reliable manner. Act 94 necessitates the Authority's regulation of those components of taxicabs and limousines.

Prior to the enactment of Act 94 there were no concrete limitations on the age of vehicles used to provide taxicab and limousine service in the Commonwealth, certainly not in Philadelphia. While the regulations of the PUC contain a ceiling as to the age of taxicabs, that age cap is not mandatory and permits the continued operation of vehicles beyond that age. See 52 Pa. Code. § 29.314 (d).

Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review commission
September 28, 2011

We understand that wear and tear on taxicabs in rural areas may be less severe than the congested stop-and-go traffic of Philadelphia. A more fluid vehicle age limitation may work fine in those areas, but in Philadelphia we believe a maximum age ceiling was needed. That ceiling is represented by the 8 year age cap in Act 94. 53 Pa.C.S. § 5714 (a). While we believe in the need to grant administrative agencies a certain amount of latitude in regard to developing regulatory requirements, it was crucial to remove the discretion to permit vehicles older than 8 years from providing taxicab service in Philadelphia. That is why Act 94 contains that age cap.

Some have asserted in comments to these regulations that this age cap constitutes a statutory right to operate a vehicle until it is 8 years old. That interpretation is inconsistent with the plain meaning of the language of § 5714 (a) and the legislative intent of that section. Again, the purpose of this language was to remove discretion from the Authority to allow the use of vehicles older than 8 years, not to preclude the steady improvement of these vehicles through increasingly demanding age and mileage standards.

As noted above, age and mileage are conditions of every vehicle. We believe that it is unreasonable to limit the power of the Authority to regulate those conditions as to taxicabs or limousines simply because § 5714 (a) contains a single requirement related to one element of those conditions. Act 94 was not intended to limit the Authority's power to exercise discretion in regard to vehicle condition regulations; in fact the need for improved vehicle conditions is precisely why Act 94 became law. Act 94 does not interfere with the Authority's ability to set vehicle condition requirements related to the age of limousines or mileage for either classification of service. Statutory silence as to a potential limitation of an agency's regulatory power should not be interpreted to as a limitation in and of itself. The Authority has the power to regulate vehicle condition under this Act and those conditions include age and mileage.

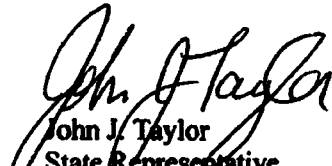
We also understand that the fiscal impact of the regulations, particularly the age and mileage requirements, has been questioned by commentators. The final-form regulations maintain the same vehicle age and mileage requirements that have been in place in Philadelphia for 8 years. While these regulations may be new to our state agency level of scrutiny, they are not new to the regulated community. We are satisfied that the final-form regulations before you now will not result in a fiscal impact beyond that expressed in the Authority's Regulatory Analysis Form. We are also extremely confident that the Authority works hard to reduce unnecessary costs and streamline procedures for the taxicab and limousine industries in Philadelphia while simultaneously implementing policies and regulations to improve these services.

Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review commission
September 28, 2011

We understand that you are in receipt of not less than 20 current Legislators who have already submitted comments favorable to the Authority's regulations. Support of this nature from the Legislature for any regulatory package is not common and goes strongly to belief in the form and content of the regulations and the pressing need for their prompt implementation.

We respectfully request that IRRC vote to approve the Authority's final-form regulations at your October 6, 2011 meeting.

Sincerely,


John J. Taylor
State Representative
177th Legislative District


Dwight Evans
State Representative
203rd Legislative District

EXHIBIT “B”

Philadelphia Parking Authority Mileage and Age Limitations on Vehicles

Background

The General Assembly has directed the Philadelphia Parking Authority (“PPA” or “Authority”) to develop “a clean, safe, reliable and well-regulated taxicab and limousine industry” in Philadelphia.¹ In order to achieve this legislative mandate, the Authority’s regulations clearly must include requirements related to the inspection of vehicles and to vehicle safety and appearance.

Consistent with its legislative mandate, the Authority seeks to curtail the use of unclean and unsafe vehicles to provide service to the riding public. Passengers should not be required to risk life, limb or property by riding in a taxicab or limousine.

The Authority has found that the age and mileage of a vehicle are crucial conditions that directly impact its ability to operate in a clean, safe and reliable manner. Taxicabs and limousines can do considerable mileage every year. The amount of mileage will, of course, vary with the use and type of work to which the owner puts the vehicle. Urban driving, such as that within Philadelphia, with increased stopping and starting causes higher wear and tear than that found with the average family car. Thus, generally speaking, the older a vehicle being used to provide service to the public the more likely it was that it may not be in a suitable condition.

Comments to the rulemaking show a 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.

Statutory Age Cap

Section 5714(a) of Title 53 creates a definitive maximum age limit for operation as a taxicab. It states, in part, that:

Authority inspection requirements shall be in addition to the vehicle requirements set forth in Title 75 (relating to vehicles). Authority inspection and recording requirements shall be established by regulations. **No vehicle which is more than eight years old shall continue in operation as a taxicab.** Notwithstanding the foregoing, the authority may authorize the operation of antique vehicles in call or demand service in such circumstances as the authority may deem appropriate.²

¹ 53 Pa. C.S. § 5701.1(2).

² 53 Pa. C.S. § 5714(a) (emphasis added).

This statutory ceiling is a clear cut 8 year litmus test for taxicabs to operate, except as antique taxicabs, in Philadelphia. Some have asserted in comments that Section 5714 constitutes a statutory right to operate a vehicle until it is 8 years old. That interpretation is inconsistent with the plain meaning of the language of Section 5714 and the legislative intent of that Section. The plain language in Section 5714 creates a limitation on operations, not a right to operate.³ Moreover, the existence of any “right” to operate is limited by the condition of the vehicle. This is clear because the sentences that precede the age limitation require vehicles to comply with the Authority’s safety and inspection requirements. Moreover, Section 5714 does not create a right to use a taxicab that is unsafe or unreliable. There is no prescriptive right to continue a condition that is contrary to the safety of the public.⁴

Simply put, the purpose of this language was to remove discretion from the Authority to allow the use of vehicles older than 8 years, not to preclude the steady improvement of these vehicles through mileage standards.

The Power To Adopt Regulations

The Authority is vested with broad powers regarding the supervision and regulations of taxicabs and limousines relative to protecting the rights of the public.

The Authority may prescribe such rules and regulations as it deems necessary to govern the regulation of taxicabs [and limousines] within cities of the first class under this chapter.⁵

The construction of a statute by an agency charged with execution and application of that law is entitled to great weight and should not be disregarded unless it is clear that such construction is clearly erroneous.⁶

A regulation cannot be upheld if it is contrary to the statute under which it was promulgated.⁷ Stated otherwise, an administrative regulation must be upheld unless it is in conflict with the statute under which it was promulgated.⁸

³ The Legislature could have worded section 5714 (a) of the act to grant taxicab certificate owners the right to use vehicles through the age of eight (e.g., “Vehicles less than eight years old may be operated as a taxicab.”). It did not.

⁴ See, e.g., *Commonwealth v. New York & Pennsylvania Co., Inc.*, 79 A. 2d 439 (Pa. 1951); *Freedman v. West Hazleton Borough*, 146 A. 564 (Pa. 1929). See also *Pennsylvania R.R. v. Sagamore Coal Co.*, 126 A. 386, 391 (Pa. 1924) (“(T)here can be no prescriptive right to maintain an obstruction in the highway or to pollute a stream to the detriment of the public.”).

⁵ 53 Pa. C.S. §§ 5722 (taxicabs), 5742 (limousines). See also 53 Pa. C.S. §§ 5703 (rates), 5704 (insurance), 5705 (contested complaints), 5706 (driver certification), 5707 (notice to industry), 5711 (dependable service), 5714 (inspections), 5714 (assessment), 5718 (sales contracts), 5721 (centralized dispatchers), 5741 (limousine service), 5741 (assessment).

⁶ *Spicer v. Com.*, 428 A.2d 1008 (Pa. Cmwlth. 1981).

⁷ See *Northern Area Personal Care Home Administrators Association v. Department of Public Welfare*, 899 A.2d 1182, 1188 (Pa. Cmwlth. 2006) (providing, “where there is a conflict between a statute and a regulation

The primary purpose of Act 94 was for the PPA to develop “a clean, safe, reliable and well-regulated taxicab and limousine industry” in Philadelphia.⁹ In fact, in 2009, the Pennsylvania Supreme Court concluded that Act 94 was intended to be a comprehensive system of regulation for taxicabs and limousines operating in Philadelphia.¹⁰

The Authority’s regulations are intended to further the expressed intention of the Legislature. As discussed in greater detail below, the Authority’s regulations clearly circumscribe both the age and the mileage of vehicles to help ensure that only safe and reliable vehicles are used to provide service to the public.

Age

The regulatory age limitation is consistent with Section 5714. The Authority’s regulations provide that taxicabs and limousines must be retired from service upon reaching an age of 8 years. Section 5714 provides that taxicabs must be retired from service upon reaching an age of 8 years.

Mileage

The Authority has promulgated regulations that would impose mileage standards in addition to the age ceiling in Section 5714. As discussed in greater detail below, Section 5714 does not invalidate the regulatory mileage standard merely because both deal with standards for safe and reliable vehicles providing service to the public.

(1) The Statutory Age Standard Is Not Exclusive

Section 5741 does not expressly or implied indicate that the age standard is intended to be the exclusive standard. To the contrary, Section 5741 explicitly refers compliance with other safety and inspection requirements. The statutorily mandated maximum vehicle age is not the equivalent of a limitation upon the Authority’s administrative powers to regulate the mileage of vehicles. Nothing in Section 5714 indicates that the Legislature intended to prohibit the Authority from establishing mileage (or other) limitations on vehicles providing service to the public.

promulgated thereunder, the statute must prevail”), aff’d, 919 A.2d 187 (Pa. 2007). *See also Pelton v. Department of Public Welfare*, 523 A.2d 1104, 1107 (Pa. 1987).

⁸ *See Consulting Engineers Council of Pa. v. State Architects Licensure Bd.*, 560 A.2d 1375, 1376 (Pa. 1989).

⁹ 53 Pa. C.S. § 5701.1(2).

¹⁰ *See Blount v. Philadelphia Parking Authority*, 965 A.2d 226, 232 (Pa. 2009) (“The PPA is responsible for the high volume Philadelphia area while the PUC is responsible for the remaining parts of the Commonwealth.”).

**(2) The Mileage Standard Does Not Directly Conflict with the
Statutory Age Standard**

The regulatory mileage standards are not at odds with the age standard under Section 5714. The mileage standard is an additional qualification that vehicles must meet before being used to provide service to the public. Vehicles must satisfy both the mileage and the age standards to provide service to the public. The failure of one or both of these standards will prevent the vehicle from being eligible to serve the public.

Moreover, it should be noted that industry members could seek a waiver of the mileage standard for a vehicle that is less than 8 years old. *See* PPA Proposed Reg., § 1005.23 (relating to petitions for issuance, amendment, repeal, or waiver of Authority regulations). But, an application for wavier of the statutory age standard is not possible.

(3) The Mileage Standard is Consistent with Legislative Intent

Regulations promulgated by an administrative agency pursuant to a statutory directive are invalid if they are contrary to the legislative intent of statutory provisions to which they relate.¹¹ An administrative agency's regulations cannot conflict with the statutory intention.¹² The statute is always controlling. The Pennsylvania Supreme Court has noted that although an interpretation of a statute by an administrative agency is entitled to great weight, the interpretation may be disregarded if the interpretation is clearly erroneous or inconsistent with the statute under which the regulation is promulgated.¹³

Regulatory mileage standards are consistent with the legislative intent. The legislature empowered the Authority to promulgate regulations to provide for “the development of a clean, safe, reliable and well-regulated taxicab and limousine industry.”¹⁴ The legislature also directed the Authority to adopt inspection standards – beyond those used by the Pennsylvania Department of Transportation.¹⁵ As noted above, the mileage limitation is an additional qualification that vehicles must meet before being used to provide service to the public.

¹¹ *Johnson v. Workers' Compensation Appeal Board (Sealy Components Group)*, 982 A.2d 1253 (Pa. Cmwlth. 2009).

¹² *Mercy Reg'l Health Sys. v. Department of Health*, 645 A.2d 924 (Pa. Cmwlth. 1994).

¹³ *Gardner*, 585 Pa. at 381, 888 A.2d at 767 (*quoting Terminato v. Pennsylvania Nat'l Ins. Co.*, 645 A.2d 1287, 1293 (Pa. 1994)).

¹⁴ 53 Pa. C.S. § 5701.1(2).

¹⁵ 53 Pa. C.S. § 5714, 5722, 5742.

The PUC's Age Limitation

Two years **after** the transfer of regulatory authority to the Authority,¹⁶ the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted new regulations governing passenger carrier service provided in Pennsylvania.¹⁷ In doing so, the PUC found that an 8 age limitation would "ensure a current, reliable fleet."

The statutory ceiling in Section 5714 is more restrictive than the PUC's regulation, which permits deviation from its 8 year age ceiling upon inspection. The only deviation permitted by Section 5714 is for antique vehicles.

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

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.¹⁸

As noted, the PUC created a regulatory mechanism by which carriers could obtain relief from the age limitation for appropriate vehicles. Waivers from the age limitation are a matter of discretion.¹⁹ In considering requests for such waivers, the PUC has noted that:

High mileage, i.e. more than 200,000 miles on the odometer for taxicabs, will be considered a factor that weighs against the granting of an inspection for vehicles of nine or more model years of age.²⁰

¹⁶ Act 94 of 2004; *Jurisdictional Agreement Pursuant to Act 94 of 2004*, 35 Pa. B. 1649, 1737 (March 12, 2005); *Notice of Transfer of Regulatory Oversight*, 35 Pa. B. 2087, 2189 (April 9, 2005).

¹⁷ 36 Pa.B. 4181 (Saturday, August 5, 2006).

¹⁸ 36 Pa.B. 4181 (Saturday, August 5, 2006).

¹⁹ See also *Petition of the Pennsylvania Taxi and Paratransit Association*, 2007 Pa. PUC LEXIS 27 (Order entered June 1, 2007) (the Bureau of Transportation and Safety is hereby given delegated authority to approve/disapprove inspection requests, to schedule and conduct inspections, and to grant or deny waivers).

This reflects a policy determination by the PUC that vehicles with high mileage are less likely to be in a suitable condition for service to the public. This policy determination is consistent with the Authority's determination that high mileage vehicles should be retired from service to the public

Conclusion

The Authority's mileage and age standards are just and reasonable. The imposition of reasonable mileage (and age) requirements is an accepted method of maintaining or improving taxicab service in the Commonwealth and in other jurisdictions in the United States.

²⁰ PUC Request for Waiver of Taxi or Limo Vehicle Age, at p. 1, ¶ (3), which is available at: http://www.puc.state.pa.us/general/onlineforms/doc/Taxi-Limo_8Year_Age_Requirement_Request.doc.

EXHIBIT “C”

Fiscal Impact Statement
Final-Form Regulation No. 126-1
Philadelphia Taxicab and Limousine Regulations
Philadelphia Parking Authority
Exhibit "C"

Executive Summary

The final-form regulation presents little to no change from the current regulatory system governed by the Philadelphia Parking Authority (Authority). In continuing the current system, the minimal compliance costs for the taxicab and limousine industry remain unchanged. Simultaneously, the final-form regulation will maintain ongoing improvements in the taxicab and limousine services that bring benefits to the industry, its riders and Philadelphia as a whole. Key findings in this fiscal impact examination include:

- Taxicab owners and drivers utilize inexpensive replacement vehicles to meet the age and mileage limits that are retained in the final-form regulation.
- Replacement vehicle costs are low and easily comprise less than one percent of the total market value of the 1,600 medallions in Philadelphia.
- Six to eight year old vehicles can be and are used as taxicabs and limousines in Philadelphia.
- Mileage limits bring benefits in reliability, economy and air quality by promoting the use of newer and less traveled vehicles.
- The market value of medallions in Philadelphia rose from about \$52,000 in 2005 to \$350,000 in 2011.

Introduction

The vibrant diversity of the taxicab and limousine marketplace in Philadelphia presents some difficulty in ascertaining costs attributable to the local regulations. Despite this complexity, the experiences of the Taxicab and Limousine Division (TLD) of the Authority

combined with data from different sources provide insights on the impact of the current regulatory system on the marketplace. The current system, consisting of the local regulations, policies and orders of the TLD and Authority, is encapsulated in the final-form regulation. Therefore, the final-form regulation, in its present form, is essentially revenue-neutral for taxicabs and limousines that operate in Philadelphia.

Costs associated with the current regulatory system originate in two different areas. There are costs associated with provisions within the final-form regulation. Another area of cost is the TLD fee schedule. The Authority submits the fee schedule to the House and Senate Appropriations Committees for review each year pursuant to 53 Pa.C.S. § 5707(b). In a process that is very similar to certain provisions for legislative committee review within the Regulatory Review Act, the Authority fee schedule becomes effective if the Committees do not act within a certain timeframe. Hence, the fees are not included in this rulemaking, and the Authority cannot alter or amend them via this rulemaking.

Commentators raised concerns with possible costs associated with different areas that are in the final-form regulation. The Order (Preamble) included substantive responses for most of these areas. The following paragraphs identify costs associated with four areas in the final-form regulation and provide supplemental information for these areas.

Mileage and age provisions

Sections 1017.4 and 1055.3 of the final-form regulation set forth age and mileage standards for taxicabs and limousines and are consistent with Chapter 13 of the existing local regulations. The age limitation in both the local regulations and final-form regulation is consistent with the language for taxicabs in the statute at 53 Pa.C.S. § 5714(a) which prohibits the use of vehicles over eight years old.

Both the local regulations and final-form regulation also contain mileage limitations. To enter into service as a taxicab, the vehicle must have traveled less than 135,000 miles. Once a vehicle odometer reaches a maximum of 250,000 miles, the vehicle is not eligible to be submitted for the next scheduled biannual inspection.

The mileage and age limits are enforced at biannual inspections. A taxicab that has reached 250,000 miles or eight years cannot be present at inspection. Operationally, if the vehicle is presented at a scheduled inspection with 249,000 miles and passed, it would be permitted to return to service. The vehicle would have to be replaced before its next biannual inspection. The taxi owner or company can provide service with the vehicle for another six months. The additional mileage on the vehicle in six months will vary but could be at least 25,000 to 30,000 miles. In these situations, the taxi owner or operator is in effect given another six months to locate a replacement vehicle.

For limousines, the entry cap is set at less than 51,000 miles. There is an exception for limousines with a model year age of five or less and a cumulative mileage of less than 75,000 miles. These vehicles may qualify for certification by the Authority contingent upon completion of a compliance inspection. The mileage limit for limousines is 350,000 miles. An exception for limousines with a model year age of five or less may be granted for another year in service after successful completion of a compliance inspection.

Working within the existing age and mileage limitations, taxicab businesses find ways to reduce their costs by buying used vehicles at auctions for prices ranging from \$3,800 to \$12,000. When they buy cars at auction, taxicab companies select vehicles with total miles on the odometers below the entry cap of 135,000 miles. For example, taxicab owners brought in three model year 2005 vehicles for initial inspections and medallion transfers with odometer readings at about 73,000, 84,000 and 98,000. Most of the prices paid for vehicles in the observed sample

of vehicle replacements were in the \$4,000 to \$6,000 range. At the high end of the market, a taxicab company brought in three used hybrid Ford Escapes (two years old) that were purchased for \$12,000 each. Since the Authority began regulating taxicabs in 2005, only two vehicles delivered to TLD for inspection and certification as taxicabs were new.

The number of vehicles brought into TLD to become taxicabs via an initial inspection and transfer of a medallion varies from month to month from as low as 30 vehicles in one month to 67 vehicles during this September. The high number for September is due in part to taxicab owners and operators waiting to the last minute to transfer medallions from 2003 model year vehicles to newer models. This occurrence is notable for two reasons.

First, it illustrates a minor difference between the current local regulations and the final-form regulation. Under Chapter 13.c. of the local regulations, the model year begins on the first day of October. In the final-form regulation, this date is changed to the last day of December. In effect, the final-form regulation gives operators and owners three additional months in which they may use the vehicle, and more flexibility and time to locate replacement vehicles.

Second, the spike in September demonstrates that the local regulations and final-form regulation do not strictly prevent the use of eight-year-old vehicles for taxicabs. Instead, these vehicles are cycled out of service in an organized fashion by permitting their continued use up to the date of the next scheduled Authority inspection. Just as with the mileage cap, the age limitation is enforced by simply prohibiting vehicles that have reached the maximum age from being presented at the next scheduled vehicle inspection. For example, under the current local Authority regulations the model year of a vehicle increases each October 1st. On September 30, 2011, a taxicab successfully completed a scheduled inspection. Although that vehicle turned eight years old on October 1, 2011, it was permitted to continue in service until the date of its next scheduled inspection, most likely in May 2012.

In addition to the purchase price, there is also a TLD “vehicle replacement transfer fee” of \$200, which is part of the fee schedule reviewed by the House and Senate Appropriations Committees pursuant to Act 94 of 2004. Other expenses include two charges: \$65 for removal of the meter, panic button, GPS and credit/debit card equipment package; and \$195 for its installation into the newly certified vehicle. Often a medallion owner, taxicab owner and driver will negotiate the payment of these fees and charges.

There is also the cost of paint jobs, lettering, dome lights and other equipment costs. However, these costs are not readily available to TLD and are subject to the vagaries of various agreements and negotiations between drivers, taxicab companies, medallion owners and others. For example, dispatch associations often offer free colors and marking incentives for joining and staying for an agreed upon period of time.

During the past six months, there were 276 transfers to replacement vehicles. In a recent 12 month period, there were 781 transfers to replacement vehicles. Assuming, for the purpose of a comparison, an average cost of \$6,500 for each vehicle brought into service, the total cost for all replacements in a year would be close to \$5.1 million. By statute, there are 1,600 medallions for taxicabs in Philadelphia. At the beginning of 2005, the going price of a medallion was \$52,800. Recently, there were 11 medallions transferred to new owners at the sale price of \$350,000 each. At this amount, the current total value of all medallions in Philadelphia is about \$560 million. Therefore, the estimated annual cost for replacement vehicles is less than one percent of the market value of medallions in Philadelphia.

Unfortunately, there is no nationwide data on vehicle replacement costs for taxicabs. However, there is data on national averages for fares. Figures from a survey by the Taxicab, Limousine and Paratransit Association (Association) indicate that the national average fare for a

seven-mile trip is \$17.56. The annual average number of trips per taxicab is 4,974. The average distance per taxicab trip is 7.49 miles.¹

For a taxicab company with a fleet of vehicles, replacement costs could range from \$4,000 to \$12,000 every three years for each vehicle. This would be the case if it buys a used vehicle with approximately 100,000 miles on the odometer and the vehicle is driven approximately 50,000 miles each year as discussed by a commentator.²

Based on revenues reported by the Authority for medallion taxicabs, vehicle replacement costs would only be about two to four percent of the average revenues generated by each medallion taxicab.

Metered revenues for medallion taxicabs in Philadelphia from both cash and credit card transactions in 2009 and 2010 were \$103.6 million and \$106.4 million respectively. Divide these revenues by 1,599 operating medallion taxicabs and each vehicle generated average revenues of approximately \$64,790 per vehicle in 2009 and \$66,500 per vehicle in 2010. These are revenues without tips included.

As noted above, the cost of a used replacement vehicle may run from \$3,800 to \$12,000 and it may be usable for three to five years depending on its age and mileage when put into service. Spread the range of replacement costs over three years and it is approximately \$1,267 to \$4,000 depending on the used vehicle. This range represents approximately two to six percent of the average revenue per vehicle in 2010. This cost is minimal compared to the potential benefits offered by the mileage limits in the proposed regulation.

Concerning costs for limousines, Philadelphia companies recently bought used limousine vehicles for prices ranging from \$6,200 to \$38,400 and new vehicles for about \$63,800. The nationwide average annual revenue per limousine vehicle in 2009 was identified as \$108,000 based on information gathered by the Association.³ In addition, the average annual miles per

limousine was 37,967 miles according to the Association. At this rate, a new limousine will reach about 304,000 miles in eight years. Hence, the mileage limit of 350,000 would not necessarily prevent a limousine from being driven for eight years.

Despite the flexibility provided by the age and mileage limits, TLD staff have observed the limousine companies will “cycle out” older models well in advance of the age and mileage limits and update their fleets. They are apparently responding to market demand for newer and better-equipped limousines.

Age and mileage limits in other metropolitan areas

Several local agencies use only vehicle age as a condition for vehicle entry into and retirement from taxicab and limousine service. However, this does not mean that the final-form regulation is out-of-step with or more stringent than rules in other areas. For example, New York City and the City of Boston allow only new vehicles to enter into taxicab service.⁴

In addition to its stringent entry requirements, New York City requires retirement from service for taxicabs within three years for the vehicles that are “double-shifted.” This is common if vehicles are part of a fleet and driven by more than one driver. Most Philadelphia taxicabs are operated on double shifts, or even triple shifts, seven days a week. For taxicabs driven by a single driver, retirement from service must occur in five years. Starting in 2014, all limousines in “Black Car service” in New York City must be retired after they turn six model years old.

Boston allows taxicabs to remain in service for six model years. A single driver, who owns a medallion, may be allowed to keep a vehicle in service for seven model years based on a review by the “Inspector of Carriages.” In Los Angeles, a vehicle may not be placed into service if it is more than four years old.

There are municipalities that also use both mileage and age limits. In San Francisco, the service entry cap is that the vehicle cannot have more than 70,000 miles on the odometer and

cannot be more than six model years old. Retirement is required when a vehicle has reached 350,000 miles or is older than eight model years.⁵

Benefits of age and mileage provisions

The rules in New York City and Boston put newer taxicab vehicles on the streets. This action brings several benefits. In New York City, some of the advantages were documented in March 2006:

Older cars fail much more frequently than newer models. During inspections in Sept. to Dec. 2005, 75% of model year 2005 cars passed the initial inspection compared with 51% of model year 2004 cars and 27% of model year 2002 and prior year cars. *[Analysis of TLC inspection data]*⁶

Reducing failures in initial inspections has positive advantages for both the private and public sectors. It allows the taxicab and its driver to spend more time picking up fares and making money rather than going back and forth between an inspector and a mechanic. Hence, the driver benefits when the taxicab is spending less time in a garage. It also allows the regulator to inspect greater numbers of vehicles rather than working on the same vehicles in repeat inspections. Achieving similar benefits in Philadelphia would be consistent with Act 94 which calls for “the development of a clean, safe, reliable and well-regulated taxicab and limousine industry.” 53 Pa.C.S. § 5701.1(2).

Another potential benefit of mileage limits getting older vehicles off the streets would be improvements in air quality. There is a greater probability that the emissions control equipment on newer vehicles, or less traveled, vehicles would be more efficacious, less apt to fail, or in better condition than vehicles that have been run between 300,000 to 400,000 miles. The Philadelphia area is currently in nonattainment for ozone and PM_{2.5} (small particulates that

measure less than 2.5 micrometers (0.0000025 meters)).⁷ Any reductions in pollution from automobiles in Philadelphia would be beneficial.

One drawback to the provisions in New York City and Boston is that new taxicabs can range in price from \$21,000 to \$29,000. This is three to five times more than the costs being paid to convert used vehicles into taxicabs in Philadelphia. The provisions in the final-form regulation promote the use of newer or less traveled vehicles through mileage limits while simultaneously maintaining the flexibility and lower costs provided by the outer boundary of the maximum age for vehicles set forth in Act 94.

Insurance costs

The insurance requirements for taxicabs and limousines in Section 1025.3 and 1065.1, respectively, in the final-form regulation are very similar to the current regulatory system. Based on survey data gathered by the Association, the insurance requirements for taxicabs in Pennsylvania are among the lowest limits nationwide. For limousines, the insurance requirements appear to be nearer to the highest state limits in the data gathered by the Association.

Across the country, annual insurance premiums for taxicabs ranged from \$700 to \$11,000 per car in 2010 based on data gathered by the Association. In the case of limousines, annual premiums ranged from \$1,300 to \$8,000 per car.

Driver training and testing

This is one area of significant difference between the current local regulations and the final-form rulemaking. The local regulations allow the Authority to schedule up to 40 hours of in-class training for taxicab drivers. In the final-form rulemaking, an applicant is only required to take 18 hours of in-class training. After the in-class training, the applicant is given two hours

to complete a test. This reduction in training hours represents a significant reduction in the cost of obtaining a driver's certification.

According to data gathered by the Association, beginning taxicab drivers may earn \$8.08 to \$11.22 per hour. Under the local regulations, driver applicants could be losing up to \$449 in potential earnings while sitting in a training program and being kept from driving taxicabs. Under the requirements in the final-form regulation, they may forgo up to about \$224 in earnings to attend training and take the test.

The 40-hour in-class training provision did not apply to limousine driver applicants in the local regulations as well. There is no specific number of hours in training required for limousine driver applicants in the final-form regulation. They are given topics to study, and are required to take a test.

Out-of-state criminal history checks and drivers' histories

Part of the application process for drivers of taxicabs or limousines includes checks of the applicants' criminal backgrounds and drivers' histories. For records within the Commonwealth, the application fee charged by TLD includes the costs of TLD obtaining background reports from the Pennsylvania State Police and Department of Transportation.

Applicants who have lived outside of Pennsylvania during the five years before they applied for taxicab or limousine driver's certification must obtain records from the jurisdictions where they lived before coming to Philadelphia. According to TLD staff, most of the out-of-state applicants come across the river from either Delaware or New Jersey.

The costs that these applicants will need to pay the states of Delaware or New Jersey for a certified driver's history is \$15. If they lived in New York, it is \$10. The cost of obtaining criminal background report from these three states is a bit more expensive. It is \$41 for New Jersey, \$45 for Delaware and \$60.75 for New York.⁸

Notes

1. *2010 TLPA Taxicab Fact Book, Statistics on the U.S. Taxicab Industry*, p. 4.
2. Comments submitted by Unified Taxi Workers Alliance of Pennsylvania, dated January 21, 2011, www.irrc.state.pa.us/full_list.aspx?IRRCNo=2885&type=1 (January 27, 2011), p. 11.
3. *2010 TLPA Limousine & Sedan Fact Book, Statistics on the U.S. Limousine & Sedan Industry*, p. 4.
4. City of Boston Police Department Rule 403, Section 3.II.
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