

Comments of the Independent Regulatory Review Commission



Philadelphia Parking Authority Regulation #126-3 (IRRC #2992)

Impoundment of Vehicles and Equipment

May 29, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the March 30, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Philadelphia Parking Authority (PPA or Authority) to respond to all comments received from us or any other source.

1. Statutory authority; Whether the regulation is consistent with the intent of the General Assembly.

In the Regulatory Analysis Form (RAF), PPA states that this rulemaking will affect approximately 4,300 drivers, 700 taxicab medallion owners, six partial-rights carriers, four brokers, 13 dispatchers, and 127 limousine companies. We have received comments from a partial-rights carrier questioning PPA's authority to regulate them in general and specifically to impound their vehicles.

In the Preamble to this proposed rulemaking, it is noted that in 2012, Commonwealth Court found that PPA does not have the authority to impound a vehicle acting as a taxicab in Philadelphia without rights to do so, provided that the vehicle was authorized to be a taxicab elsewhere in the Commonwealth. *Sawink, Inc. et al., v. Philadelphia Parking Authority*, 34 A.3d 926 (Pa. Cmwlth. 2012), *affirmed*, 57 A.3d 644 (Pa. 2012). According to the PPA, Act 119 of 2012 (Act 119) was enacted to amend the provisions of the Parking Authorities Act (Act) (53 Pa.C.S.A §§ 5701, *et seq.*) to address, among other things, issues raised by the Commonwealth Court in *Sawink*.

Based on the explanations provided in the RAF and the Preamble, we are unable to determine if PPA has the statutory authority to promulgate this rulemaking and whether it is consistent with the intent of the General Assembly and their enactment of Act 119 and the Court's ruling in the *Sawink* case. We ask PPA to identify the specific sections of the revised Act and the specific statutory language in Act 119 that provides the PPA the authority to impound vehicles of partial-rights carriers.

2. Determining whether the regulation is in the public interest.

Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) directs this Commission to

determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the RAF.

PPA's responses to sections 12, 13 and 18 through 23 of the RAF are not sufficient to allow this Commission to determine if the regulation is in the public interest. Without this information, we cannot determine if this proposed regulation is in the public interest. In the RAF submitted with the final-form rulemaking, the Board should provide more detailed information required under § 745.5(a) of the RRA. Specifically, we seek answers to the following questions:

- How does this regulation compare with those of other states?
- How will this affect Pennsylvania's ability to compete with other states?
- Will the regulation affect any other regulations of the promulgating agency or other state agencies? Of particular concern to this Commission is how this rulemaking will work in conjunction with the regulations of the Pennsylvania Public Utility Commission and their jurisdiction over partial-rights carriers.
- For the regulated community, what costs are associated with the impoundment of a vehicle?

3. Section 1017.52. Impoundment of vehicles and equipment. – Protection of the public health, safety and welfare; Implementation procedures; Fiscal impact; Clarity.

Subsection (b) Notice of impoundment

Paragraph (4) of this subsection states that the notice of impoundment will include "Other information required under section 5714(g)(2)(ii) of the act." Since the cited section of the Act does not require any other information besides the information listed in Paragraphs 1, 2 and 3 of this subsection, we recommend that Paragraph 4 be deleted. We have a similar concern with § 1055.32(b)(4), pertaining to notice of impoundment for limousines.

Subsection (c) Impoundment hearing

We have three concerns with this subsection. First, under Paragraph (1), the registered owner of an impounded vehicle may file a hearing request with the Clerk "at any time after impoundment." Paragraph (2) provides that Clerk will immediately schedule a hearing to be conducted within two days. Section 1001.8 of PPA's regulations establishes the hours of operation for the PPA. Those hours are 8:30 a.m. until 4:30 p.m. on business days except Saturdays, Sundays and legal holidays. In addition, the PPA may be open on Saturdays by appointment. We are concerned that the impoundment of a vehicle on a Friday or Saturday may impose a significant cost to the regulated community because they would not be able to file a request for a hearing for two, or possibly three days. Having a vehicle out of service for that long, before a hearing can even be scheduled could financially harm a registered owner. We ask PPA to explain how this provision will be implemented and suggest that language be added to the final-form rulemaking that would minimize the potential fiscal impact this provision could

have on the regulated community. We have a similar concern with § 1055.32(c)(2), pertaining to impoundment hearings for limousines.

Second, Paragraph (3) states that if a presiding officer determines that an impoundment was not proper, the impounded property may be immediately reclaimed by the registered owner without a need to pay a penalty or cost associated with the impoundment. We note that § 1017.52 (f) of PPA's existing regulations is being deleted in its entirety. This subsection currently requires PPA to refund the costs of towing and impoundment when it is determined that the grounds for impoundment are unsubstantiated. Why is this provision being deleted from PPA's regulations? In order to ease the potential fiscal impact this rulemaking could have on the regulated community, we ask PPA to consider adding a similar provision to the proposed rulemaking. We have a similar concern with § 1055.32(c)(3).

Third, presiding officers of impoundment hearings have the authority, under Paragraph (4), to "establish terms for the release of the impounded property including the posting of collateral and inspections by the Enforcement Department." Are the terms to be established based on any other regulatory provisions or statutory provisions of the Act? If so, we recommend that the final-form regulation include a reference to the appropriate regulatory or statutory provision. If not, we recommend that the final-form regulation provide direction on how presiding officers are to establish the terms. We have a similar concern with § 1055.32(c)(4).

Subsection (g) Final disposition of impounded property

We have two concerns with this subsection. First, if a respondent is found liable for the violation averred by the Enforcement Division and disagrees with that determination, does the respondent have a right to appeal that determination? If so, we recommend that the final-form regulation specify how and where an appeal can be filed. Additionally, the appeal procedures should be specific to all parties affected by the rulemaking, including partial-rights carriers. We have a similar concern with § 1055.32(g), pertaining to final disposition of impounded property for limousines.

Second, under Paragraph (2), respondents found not liable for a violation may reclaim their property without payment of a penalty, fee or cost. Similar to our concern above on § 1017.52(c)(4), why has PPA excluded the refund provision that can be found in existing regulations? We have a similar concern with § 1055.32(g).

Subsection (h) Immediate repossession.

This subsection allows a registered owner to reclaim impounded property at anytime by paying the associated penalties, fees and costs. If the property in question was impounded for safety concerns, would those concerns have to be addressed and the property inspected before the property is returned to the registered owner? Failure to correct the underlying safety concern that lead to the impoundment could be a potential threat to the public health, safety and welfare of the citizens of the Commonwealth. We ask PPA to address this concern when the final-form regulation is submitted for final review. We have a similar concern with § 1055.32(h), pertaining to immediate repossession of limousines.

4. Miscellaneous clarity.

The definitions of “impoundable offense” found in §§ 1017.51 and 1055.31 both begin with the phrase “The Authority may immediately confiscate and impound a vehicle” This phrase is substantive and should not be included in either definition. If the phrase is needed, it should be moved to the appropriate sections in the body of the regulation.