

DEPARTMENT OF TRANSPORTATION

RECEIVED

Office of Chief Counsel

2001 MAR -2 PM 1:32

Title 67. Transportation

REGULATORY
REVIEW COMMISSION

Part I. Department of Transportation

Subpart B. Non-Vehicle Code Provisions

Article V. General Provision

Chapter 491. Administrative Practice and Procedures

and

Chapter 445. Outdoor Advertising Devices

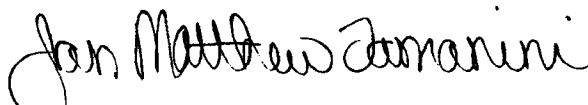
**Report of the Department of Transportation upon resubmission of regulations to
the IRRC and Standing Committees after Commission disapproval**

On December 14, 2000, the IRRC disapproved the Department's above-referenced regulations, citing two points of disagreement with the final-form text submitted by the Department. First, the Commission requested that the Department add a definition of the term "party" to Section 491.2 (relating to definitions). Second, the Commission requested that the Department delete the term "participant" from Section 491.8 (relating to service).

The Department has complied with these requests and the requested changes have been made in the final-form regulations submitted today. Specifically, has added a definition for the term "party" to Section 491.2 of Chapter 491, relating to definitions; the Department has also changed the term "participant" to "party" in Section 491.8, relating to service.

This report is being delivered to the Commission and the House and Senate Transportation Committees in conformity with the requirements of Section 7(c) of the Regulatory Review Act, 71 Pa.C.S. § 745.7(c). A copy of the Commission's disapproval order is appended to this report, along with a copy of the amended final-form regulation, with an order adopting the regulation as amended.

Respectfully submitted,



Jan Matthew Tamanini, Regulatory Counsel
Pennsylvania Department of Transportation

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held December 14, 2000

John R. McGinley, Jr., Chairman
Alvin C. Bush, Vice Chairman, by phone
Arthur Coccodrilli
Robert J. Harbison, III, dissenting
John F. Mizner

Regulation No. 18-349
Department of Transportation
Administrative Practice and Procedure;
Outdoor Advertising

On October 6, 1999, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Transportation. This rulemaking amends 67 Pa. Code Chapters 445 and 491. The proposed regulation was published in the October 23, 1999 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on November 8, 2000.

The final-form regulation revises the current administrative procedural rules applicable to Department hearings, enumerates the specific requirements for hearing requests and facilitates the administrative review of Department procedures. The Department made several changes that further streamlined and clarified administrative procedures. However, we have two remaining concerns with the final-form regulation that relate to the criteria of clarity, feasibility and reasonableness (71 P.S. § 745.5a(i)(3)).

First, the regulation does not contain a definition of the term "party." Throughout the regulation, the Department changed the references to "interested parties and other participants" to "parties." In our Comments, we recommended that a definition of "party" be added to Section 491.2 (relating to definitions). However, the Department has not followed our recommendation.

Many agency regulations contain a definition of "party" or another term to designate a person involved in an administrative proceeding. Such definitions eliminate confusion as to who is entitled to notice and service of pleadings. A definition of "party" in these regulations would likewise serve to make the regulation clearer.


Second, retention of the term "participant" in Section 491.8 (relating to service) is inconsistent with revisions made in the remainder of the regulation. The Department revised Section 491.8 in the final-form regulation. In the first part of this provision, the Department deleted the term "parties" but retained the term "participants." This is the only section in the regulation where the term "participant" has been retained. Since the term "party" is used throughout the regulation, the term "participant" in this one instance could result in confusion for a party in determining who is entitled to service of documents and pleadings.

We have determined this regulation is consistent with the statutory authority of the Department (2 Pa. C.S. §§501-508 and 701-704) and the intention of the General Assembly. However, after considering the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.





John R. McGinley, Jr., Chairman

DEPARTMENT OF TRANSPORTATION

Office of Chief Counsel

Title 67. Transportation

Part I. Department of Transportation

Subpart B. Non-Vehicle Code Provisions

Article V. General Provision

**Chapter 491. Administrative Practice and Procedures
and**

Chapter 445. Outdoor Advertising Devices

Final Adoption After Rulemaking

By this order, the Department of Transportation, acting through its Office of Chief Counsel, adopts amendments to Title 67 of the Pennsylvania Code, Chapters 445, Outdoor Advertising Devices, and 491, Administrative Practice and Procedure, as set forth in Annex A.

Purpose of final-form rulemaking

This rulemaking provides a clearer, more comprehensive set of rules governing administrative proceedings before the Department, enumerating specific requirements for hearing requests and facilitating administrative review of Department decisions.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, Act of June 30, 1989 (P.L. 73, No. 19, 71 P.S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 29 Pa. B. 5515 (October 23, 1999), to the Independent Regulatory Review Commission and the Chairpersons of the House and Senate Transportation Committees. In addition to these regulations, the Department provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In compliance with Section 5(c) of the Regulatory Review Act, the Department provided the IRRC and the standing committees with copies of all comments received. In preparing the final-form regulations, the Department considered all comments submitted as outlined below.

Comments and Responses

The Department received two responses to the request for comments from private sector attorneys. In addition, the Independent Regulatory Review Commission's regulatory review produced several comments. The Department prepared a comment and response document to address these comments; copies of this document are available upon request.

On December 14, 2000, the IRRC disapproved the Department's regulations citing two points: first, the Commission requested that the Department add a definition of the term "party" to Section 491.2 (relating to definitions). Second, the Commission requested that the Department delete the term "participant" from Section 491.8 (relating to service). The Department has complied with these requests and the requested changes have been made in the final-form regulations.

The final text of the regulations contains additional modifications, deletions, and additions; none of these enlarge the scope of the regulations as previously proposed. The following represents a summary of the additional changes:

- ◆ Section 491, *Definitions*, has been amended, at the request of the IRRC, to define the phrase "date of filing" as the date of receipt at the office of the agency and to further clarify the definition of "office of the agency" to include matters under 2 Pa. C.S. §§ 501-508 and 701-704.
- ◆ Section 491.2a, *Separation of adjudictory function from representation before the Department*, has been amended at the request of the IRRC for verb consistency and LRB style and to delete the term "likewise" at the beginning of Section 491.2a(c).

- ◆ Section 491.3, *Request for a hearing*, has been further amended at the request of the Commission, adding a new paragraph (4) at § 491.3(a), directing the party requesting a hearing to include an address where documents and pleadings may be served.
- ◆ Section 491.6, *Notice of conduct of hearing*, has been amended at the conclusion of subsection (d)(2)(ii) to correct an editorial mistake made at the time of the proposed rulemaking. The subsection now explains that this supplements 1 Pa. Code §§ 35.27 - 35.36.
- ◆ Sections 491.7, *Filing requirements*; 491.8, *Service*; and 491.9, *Order to show cause*, have been amended to delete references to "participants" in the proceedings. This change, which was inadvertently omitted from the proposed rulemaking, makes the final adoption consistent with similar changes made throughout the chapter in the notice of proposed rulemaking.

Statutory Authority

The statutory authority for these regulations is found in the Administrative Agency Law at 2 Pa.C.S. §§ 501-508 and 701-704.

Persons and Entities Affected

These regulations affect all Department personnel involved in the administrative hearing process as well as any person who requests administrative review of Department determinations.

Fiscal Impact: Paperwork Requirements

These regulations will not impose any increased costs on private persons or on state or local governments. No additional reports or other paperwork requirements will be developed as a result of these amendments.

Effective Date

These regulations are effective as of the date of publication in the *Pennsylvania Bulletin*.

Sunset Date

As these regulations are necessary to administrative practice before the Department, no sunset date is established.

The Department will continue to monitor these regulations for their effectiveness.

Contact Person

Individuals who need information about the final-form regulations may contact Robert H. Raymond, Jr., Administrative Hearing Officer, Pennsylvania Department of Transportation, P.O. Box 8212, Harrisburg, PA 17105-8212.

ANNEX A

TITLE 67. TRANSPORTATION

Part I. DEPARTMENT OF TRANSPORTATION

Subpart B. NON-VEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 445

OUTDOOR ADVERTISING DEVICES

§ 445.9. Erection, maintenance and repair of signs.

* * * * *

(f) *Hearing.* A person notified of the revocation or denial of a permit under this section shall be granted a [Departmental] hearing by the [Chief, Division of Right of Way, or his representative,] Department hearing officer if a request is made within [20] 30 days of the date of the notice revoking or denying the permit. A request for a hearing shall operate to stay the revocation of a permit pending disposition of the hearing.

ARTICLE V. GENERAL PROCEDURES

CHAPTER 491. ADMINISTRATIVE PRACTICE AND PROCEDURE

§ 491.1. Applicability of [general rules] General Rules.

This chapter [is intended to supplement and supersede] supplements and supersedes inconsistent provisions in [1 Pa. Code Part II (relating to) the [general rules of administrative practice and procedure)] General Rules.

(1) This chapter is applicable to activities and proceedings before the Department in matters under 2

Pa.C.S. §§ 501-508 and 701-704 (relating to the administrative agency law) which are not vested in other bodies by law.

(2) To the extent this chapter does not supplement nor supersede the [general rules of administrative practice and procedure] GENERAL RULES, the [general rules of administrative practice and procedure] GENERAL RULES will apply to activities and proceedings before the Department.

§ 491.2. Definitions.

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

Department. The Department of Transportation of the Commonwealth.

DATE OF FILING. THE DATE A LEGAL DOCUMENT IS RECEIVED AT THE OFFICE OF THE AGENCY.

DATE OF RECEIPT AT THE OFFICE OF THE AGENCY. THE DATE ON WHICH A LEGAL DOCUMENT IS RECEIVED AND DOCKETED BY THE APPROPRIATE DEPARTMENT DOCKET CLERK.

General [rules of administrative practice and procedure] Rules. The rules found [at] in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

Office of the agency. The office of the Administrative Docket Clerk, or the Driver Licensing Docket Clerk, upon which commencement of process is made upon the Secretary FOR THE PURPOSE OF ACTIVITIES AND PROCEEDINGS BEFORE THE DEPARTMENT IN MATTERS UNDER 2 PA. C.S. §§ 501-508 AND 701-704.

PARTY. ANY APPELLANT, APPELLEE, COMPLAINANT, INTERVENER, PETITIONER, OR RESPONDENT IN A MATTER BROUGHT BEFORE A DEPARTMENT HEARING OFFICER.

Secretary. The Secretary of the Department.

§ 491.2a. Separation of adjudicatory function from represent of the Department.

(a) Separation of adjudicatory function. The adjudicatory function performed in accordance with this chapter and the General Rules will be separated from the function of representing the Department in administrative hearing matters. [The regulations] THIS CHAPTER prescribes that an administrative hearing officer will preside over any hearing and, should exceptions be filed by any party, the decision ultimately is made by the Secretary. The Department's Chief Counsel advises the Secretary in his adjudicatory capacity.

(b) [Ex parte] EX PARTE discussions. Under no circumstances may any Department attorney representing the Department in an administrative hearing matter, or any Department employe involved in such a matter, discuss the case ex parte with the Administrative Hearing Officer, the Chief Counsel or the Secretary.

(c) Prohibited discussions with employees. Likewise, ~~the~~ THE

Administrative Hearing Officer, the Chief Counsel and the Secretary will MAY not discuss with, or exercise any supervisory responsibility over, any employe with respect to an administrative hearing matter with which that employe is involved.

(d) Designation by Chief Counsel and Secretary. If it becomes necessary for the Chief Counsel or the Secretary to become involved on behalf of the Department in any administrative hearing matter, they are prohibited from participating in the adjudication of the case and ~~should~~ SHALL designate appropriate individuals to exercise their ADJUDICATORY functions.

§ 491.3. Request for hearing.

(a) Content. [A written request for a hearing shall contain a clear, concise statement of the facts, including the essential elements of the case and the relief requested.] A request for a hearing shall be made in writing and shall contain:

(1) A clear and concise statement of the facts of the case, including all essential elements of the claim.

(2) A clear and specific list of the legal issues upon which the appeal is based and the desired remedy.

(3) A copy of the denial or revocation letter, permit, statutory or regulatory provision or other document which gives rise [for the occasion of] TO the appeal.

(4) FOR THE PARTY REQUESTING THE HEARING, AN ADDRESS WHERE DOCUMENTS AND PLEADINGS MAY BE SERVED UPON THAT PARTY.

(b) Timeliness of petition for hearing.

(1) General rule. Except as otherwise provided in

paragraph (2) or by statute or regulation, every request for a hearing shall be filed within 30 days of the Department's determination which gives rise to the appeal.

(2) Request for credit toward serving driving privilege or vehicle registration suspensions. Every request for a hearing to request credit toward serving a driving privilege or vehicle registration suspension shall be filed consistent with whichever of the following events occurs first ON THE EARLIER OF THE FOLLOWING DATES:

(i) Thirty days after the mailing date of the Department's letter denying credit.

(ii) Thirty days after the date the person requesting the hearing knew or should have known that the person was not receiving credit.

[(b)] (c) Determination of insufficiency. The Department hearing officer may determine that a request for a hearing is insufficient or improper under [1 Pa. Code Part II (relating to) the [general rules of administrative practice and procedure]] General Rules or this chapter, and may direct the [administrative] docket clerk to mark the matter closed and to return the request, with notice of the deficiency, to the initiating party [with notice of the deficiency].

(d) Department's request for clarification of the issues. The Department may request that the Department hearing officer order that the opposing counsel or party more specifically articulate the issues giving rise to the cause for the appeal.

[c] (e) Supplementation. This section supplements 1 Pa. Code § 35.121 (relating to the initiation of hearing).

§ 491.4. Institution of proceedings.

(a) *Approval and docketing.* Upon approval, under § 491.3(b) (relating to request for a hearing), of a written request for a hearing, or upon receipt of a written request from the Department for an order to show cause under § 491.9 (relating to order to show cause), the [administrative] docket clerk will assign the matter a caption, including [an administrative} A docket number, and will enter the matter [onto] into the [administrative] docket.

(b) *Caption and docket number.* The caption and docket number shall [thereafter] appear on all correspondence, pleadings, briefs or other papers relating to the case.

(c) Docket clerks [designated] AS office of the agency/timely filings. For purposes of activities an proceedings before the Department in matters under 2 Pa.C.S. §§ 501-508 and 701-704 (relating to the administrative agency law) which are not vested in other bodies by law, the Administrative Docket Clerk and the Driver Licensing Docket Clerk are designated as the office of the agency. As the office of the agency, all correspondence, pleadings, briefs, orders and other papers relating to the case shall be filed with the Administrative Docket Clerk or the Driver Licensing Docket Clerk. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative for SHALL DETERMINE TIME OF timely filing. purposes.

(d) Address for filing. Correspondence, pleadings, briefs, orders or other papers relating to the case shall be filed with the [administrative] appropriate docket clerk at the following address:

(1) Secretary of Transportation, Driver Licensing Docket Clerk, 1101 South Front Street, 3rd Floor, Harrisburg, Pennsylvania 17104-2516 (OR SUCH OTHER ADDRESS AS MAY BE DESIGNATED BY THE DEPARTMENT FROM TIME TO TIME) for matters involving:

(i) Appeals from the Department's denial or recall of an occupational limited license.

(ii) Appeals from the Department's cancellation, denial or recall of a probationary license.

(iii) Requests for record review under Section 1516 of the Vehicle Code (75 Pa.C.S. § 1516) (relating to department records).

(iv) Hearings to request credit toward serving driving privilege or vehicle registration suspensions.

(2) Secretary of Transportation, Administrative Docket Clerk, c/o Office of Chief Counsel, [Room 521, Transportation and Safety Building,] COMMONWEALTH KEYSTONE BUILDING, 400 NORTH STREET, 9TH FLOOR, HARRISBURG, PENNSYLVANIA 17120-0096 (OR SUCH OTHER ADDRESS AS MAY BE SPECIFIED BY THE DEPARTMENT FROM TIME TO TIME), for all matters not specified in SECTION 491.4(D)(1), including but not limited to:

(i) Minimum use driveway permits.

(ii) Low, medium and high volume driveway permits.

(iii) School bus/hazardous walking routes.

(iv) Overweight or oversize truck hauling permits.

(v) Private airport permits.

(vii) Outdoor advertising sign permits.

(viii) Prequalification, suspension or debarment.

(ix) Personnel salary claims.

(x) Municipal reimbursements.

(xi) Appeals from the Department's refusal to issue a certificate of title for reasons other than failure to pay any required fee or tax in connection with or resulting from the acquisition or use of a vehicle.

(xii) MATTERS PERTAINING TO REASONABLE ACCESS FOR TRACTOR-TRAILER VEHICLE COMBINATIONS.

(XIII) Miscellaneous matters (including petitions to intervene).

[d] (e) Supplementation. This section supplements 1 Pa.Code § 135.121 (relating to the initiation of hearings).

§ 491.5. Filing fee.

(a) *Fee required with request for a hearing.* A filing fee shall accompany a written request for a hearing in all matters except those involving the suspension or revocation of a permit, license, certificate or privilege by the Department, [wherein] IN WHICH EVENT a filing fee is not required, EXCEPT AS SPECIFIED IN SUBSECTION (B).

(1) The schedule of filing fees will be reviewed [and revised annually by the Department as necessitated by the

increasing costs of adjudication] and revised periodically by the Department and will be published in the *Pennsylvania Bulletin*.

(b) *Suspension or revocation of operating privilege.* A written request for a hearing to determine credit toward serving a period of suspension or revocation of a driver's operating privilege shall be accompanied by the required filing fee.

(c) *Fee not received with filing.* If a written request for a hearing is received without the required filing fee, the [administrative] docket clerk will immediately provide the requesting party with written notice that the fee shall be forwarded TO and received by the [administrative] docket clerk within 20 days of the mailing date of the notice.

(d) *Request not docketed for failure to remit filing fee.* If the Department does not receive the required filing fee within 20 days after the mailing date of the notice to the requesting party, [and the filing fee is not waived,] the [administrative] docket clerk may refuse to allow the matter to be docketed, may determine the matter to be closed and may return the written request to the requesting party.

(e) *Supersession.* This section supersedes 1 Pa. Code § 33.21 (relating to filing fees).

§ 491.6. Notice and conduct of hearing.

(a) *Written notification to [interested] parties.* Upon docketing a written request for a hearing, the [administrative] docket clerk will provide written notification to all [interested]

parties [and other participants] of the request for a hearing and of referral of the matter to the Department hearing officer for scheduling.

(b) *Scheduling.* The Department hearing officer will schedule a hearing for the docketed request and will direct the [administrative] docket clerk to issue written notice of the time and place of the scheduled hearing to all [interested] parties [and other participants].

(c) *Authority of Department hearing officer.* [After referral of the matter, the] The Department hearing officer will have the authority to decide all motions, petitions, requests for supersedeas, discovery requests or other matters presented by the parties to [the] this action [or other participants] and to proceed in accordance with 1 Pa. Code Chapter 35 Subchapter E (relating to presiding officers).

(d) *Intervention.*

(1) *Petition to intervene.* A person who seeks to intervene as a party in a proceeding shall file a petition for leave to intervene with the ~~Administrative~~ Docket Clerk. The petition shall contain a concise statement of the interest of the moving party and the grounds for intervention.

(2) *Refusal.*

(i) *Delay.* THE DEPARTMENT MAY REFUSE A PETITION FOR INTERVENTION ~~A petition for intervention may be excused~~ if the moving party has unduly delayed in applying for intervention or the intervention will unduly delay or

prejudice the hearing or the adjudication of the rights of the parties.

(ii) ~~Supersedes.~~ SUPPLEMENTATION. This subsection supplements the provisions of 1 Pa. Code §§ 35.27-35.36.

(e) Continuances.

(1) THE DEPARTMENT HEARING OFFICER WILL CONSIDER A A request for continuance will be considered if the docket clerk is notified in writing of the grounds at least 10 days prior to the date of the hearing. Continuances will be granted only for substantial or compelling reasons, at the discretion of the Department hearing officer.

(2) THE DEPARTMENT HEARING OFFICER WILL CONSIDER A A request for continuance made less than 10 days prior to the date of the hearing will not be considered ONLY IF the Department hearing officer is satisfied that circumstances relating to the requested continuance occurred within 10 calendar days of the hearing date.

(3) The requesting party shall seek the agreement of the other parties to the proceeding prior to requesting the continuance. The position of the opposing parties must specifically be noted in the continuance request. The hearing officer may refuse a request for continuance in spite REGARDLESS of the concurrence of all parties.

(f) Depositions. The testimony of a witness may be taken by deposition only upon application by a party in a proceeding before the Department. The granting of an application for depositions

shall be entirely discretionary with the Department hearing officer and will only be ~~granted~~ PERMITTED for substantial and compelling reasons.

(g) Request for a stay or supersedeas.

(1) Conditions for grant. The Department hearing officer, upon written motion of a party, may grant a request for a stay or supersedeas, PROVIDED—if the requesting party can demonstrate the—following—to the satisfaction of the Department hearing officer:

(i) A likelihood of success on the merits of the matter before the Department Hearing officer.

(ii) Immediate and irreparable harm will result from the failure to grant the stay or supersedeas.

(iii) Issuance of the stay or supersedeas will not substantially harm other parties to the proceedings.

(iv) No other remedy is available.

(v) The moving party has given reasonable notice of the request to all parties.

(2) Requirement to provide security. The hearing officer, AT HIS DISCRETION, may require a non-Commonwealth party submitting a request for a stay or supersedeas to provide a bond or other appropriate security, as determined by the Department hearing officer, for the satisfaction of the order if it is affirmed or if for any reason the appeal is dismissed, or for the satisfaction of any modification of the

order and in either case costs, interest and damages for delay that may finally be awarded.

(3) Memorandum in Opposition. Any party to a proceeding may file with the Office of the Administrative Docket Clerk a memorandum in opposition to a request for a stay or supersedeas within 10 days of the filing of the request.

(h) Dispositive motions.

(1) Dismissal. The Department hearing officer, on motion of a party, may dismiss the action in whole or in part:

(i) Whenever there is no genuine issue of [any] material fact as to a necessary element of the cause of action or defense.

(ii) For failure to preserve the right to an appeal by a timely filing.

(iii) For mootness.

(iv) For any other reason appearing in the record.

(2) Supersession. This rule supersedes 1 Pa.Code § 35.180 (relating to action on motions).

(i) Appeal to the Secretary of a hearing officer's order. Unless otherwise provided by this chapter, any appeal from an order rendered by the hearing officer shall be filed with the appropriate docket clerk within 30 days of the date the order is entered.

(j) Supplementation. This section supplements 1 Pa.Code § 135.123 (relating to the conduct of hearings).

§ 491.7. Filing requirements.

(a) *Number of copies.* The original and two conformed copies of briefs, pleadings or other documents relating to the case, subsequent to the written request for a hearing, together with a certificate of service showing service to all other parties—and participants, as required in § 491.8 (relating to service), shall be filed with the [administrative] docket clerk who will date stamp them upon receipt and provide copies to the Department hearing officer.

(b) *Telefacsimile and electronic transmission not accepted.* A request for a hearing, subsequent correspondence, briefs, pleadings or other documents relating to the case will not be accepted for filing if received electronically or by telefacsimile.

(c) *Supersession.* This section supersedes 1 Pa. Code §.33.15 (relating to number of copies).

§ 491.8. Service.

One copy of all documents and pleadings filed subsequent to the written request for a hearing, together with a certificate of service showing service to all OTHER PARTIES [AND PARTICIPANTS], shall be served by [each party to, or other participant in, a proceeding to every other party to, or participant in, that] PARTIES IN THE proceeding. Service shall be accomplished in accordance with 1 Pa.Code §§ 33.31-33.36.

§ 491.9. Order to show cause.

(a) *Initial request.* When the Department (initiates) files a written request for an order to show cause, that request shall be

accompanied by a copy of the proposed order to show cause for the signature of the Department hearing officer.

(b) *Notification to respondent.* Upon the [signature by the Department hearing officer of an order to show cause] issuance of an order to show cause by the Department hearing officer, the [administrative] docket clerk will forward a copy of the order to the respondent [and all interested parties], directing the respondent to show cause why the subject action should not be taken by the Department.

(c) *Content of request for an order to show cause.* The request for an order to show cause shall set forth the grounds for the action to be taken and shall state the particulars concerning all matters relevant for framing the issues for consideration.

(d) *Answer.* The order to show cause shall include a notice to the respondent to answer, in writing, within [20] 30 days of the date the notice was mailed. A respondent who fails to file an answer within [20] 30 days of the mailing date of the notice shall be deemed to have waived objection to the Department's proposed action.

(e) *Notification to [interested] parties [and other - participants].* Upon timely filing of an answer to an order to show cause, the [administrative] docket clerk will notify all [interested] parties [and other participants] of referral of the matter to the Department hearing officer for the scheduling of a hearing.

(1) Timely filing of an answer to the order to show cause will not operate as an automatic stay or supersedeas of action taken by the Department prior or subsequent to the receipt of the order to show cause.

(2) Persons initiating a formal request for stay or supersedeas shall direct their applications to the Department hearing officer.

(f) *Scheduling of hearing.* The Department hearing officer will schedule a hearing and will direct the [administrative] docket clerk to issue notice to all [interested] parties and other participants of the time and place of the hearing.

(g) [*Authority of*] *Department hearing officer.* The Department hearing officer will preside at the hearing or scheduled prehearing conference and will rule on questions regarding the admissibility of evidence or other matters relating to the conduct of the hearing.

(h) *Waiver.* Upon the failure of the respondent to file a timely answer to the order to show cause, the Department hearing officer may direct the [administrative] docket clerk to send to all parties [and other participants] a notice that objections to the order to show cause are deemed irrevocably waived and the proposed action of the Department IS deemed approved.

(i) *Supplementation.* This section supplements 1 Pa. Code § 35.14 (relating to orders to show cause).

§ 491.10. Hearings.

(a) *Recording.* Upon the scheduling of a hearing, the [administrative] docket clerk will arrange for a stenographer to record the testimony presented at the hearing. [The administrative docket clerk will notify the stenographer of continuances, withdrawals and rescheduling.]

(b) *Presentation of evidence.* The party with the burden of proof in a proceeding will proceed first with the presentation of evidence at a hearing.

(1) In matters involving the suspension or revocation of an existing permit, license or privilege by the Department, or the debarment of a contractor, the Department will proceed first with the presentation of evidence at the hearing.

(2) In matters involving the denial of an application for a permit, license, certificate, prequalification, privilege, credit toward suspension or other requested action by the Department, the permit or license applicant shall proceed first with the presentation of evidence at the hearing.

(3) In matters initiated by an intervener challenging the Department's actions, the intervener shall proceed first with the presentation of evidence at the hearing.

(c) *Authority of Department hearing officer.* The Department hearing officer will preside at the hearing or scheduled prehearing conference and rule on questions regarding the admissibility of evidence or other matters relating to the conduct of the hearing.

(d) *Findings of fact and conclusions of law.* At the close of the hearing, the parties or other participants [will] may, at the

discretion of the Department hearing officer, be required or given an opportunity to file [Recommended Findings of Fact and Conclusions of Law] recommended findings of fact and conclusions of law, together with a brief or memorandum discussing the applicable law and relevant facts of record. [The Department hearing officer may also request the parties or other participants to file the same.]

(e) *Filing of hearing transcript.* Upon the filing of the transcript of the hearing, the [administrative] docket clerk shall mail notice of the date the transcript was filed to the parties.

(f) *Supplementation.* This section supplements 1 Pa.Code §§ 35.123 and 35.125 (relating to the conduct of hearings; and the order of procedure).

§ 491.11. Proposed report.

(a) *General.* Following the hearing and the timely submission of any posthearing filings, the Department hearing officer will prepare and file a proposed report with the [administrative] docket clerk.

(b) *Contents.* The proposed report shall contain:

- (1) Findings of fact.
- (2) A discussion of the applicable law and relevant evidence of record.
- (3) Conclusions of law.
- (4) An [administrative] order.

(c) *Notification.* The [administrative] docket clerk will forward copies of the proposed report to all parties [or participants] of record.

(d) *Supplementation.* This section supplements 1 Pa.Code §§ 35.201--35.207 (relating to proposed reports generally).

§ 491.12. Exceptions.

(a) *Filing.* A party (or other participant) desiring to appeal to the Secretary may file exceptions to the proposed report within 30 days after the mailing date of the proposed report by the [administrative] docket clerk.

(b) *Reply.* A party [or other participant] may file a reply to the exceptions filed by another party [or other participant] within [10] 20 days of the filing date of exceptions filed by another party [or participant].

(c) *Record.* When timely exceptions are filed, the docket clerk [Department hearing officer] will forward the following to the Secretary:

- (1) The proposed report.
- (2) The exceptions filed and replies thereto.
- (3) The record in the case.
- (4) A proposed order to grant or deny the exceptions, that is prepared for the Secretary's signature.

(d) *Waiver.* If no party (or other participant) files exceptions to the proposed report within the time prescribed in subsection (a), those persons shall be deemed to have irrevocably

waived objections to the proposed report, and the proposed report will be deemed approved by the Secretary.

(e) *Supplementation.* This section supplements 1 Pa.Code §§ 35.211--35.214 (relating to exceptions to proposed reports).

§ 491.13. Transmittal of certified record upon appeal.

If a final order of the Secretary is appealed to Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies), the [Department hearing officer together with the administrative] docket clerk[,] will prepare and forward the certified record to the clerk of Commonwealth Court.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us



Office of Chief Counsel
P.O.Box 8212
Harrisburg, Pennsylvania 17105-8212
(717) 787-5079

March 2, 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: 67 Pa. Code, Chapter 455. Outdoor Advertising Devices
67 Pa. Code, Chapter 491. Administrative Practice and Procedure
#18-349

Dear Mr. Nyce:

In accordance with Section 7(c) of the Regulatory Review Act, 71 P.S. Section 745.7(c), the Department of Transportation resubmits the above regulations with revisions, along with a report on the changes. The report and attachments have also been given to the House and Senate Transportation Committees and to the Governor's Office this date.

The Department of Transportation will provide you with any assistance you require to facilitate final approval of these revised regulations.

Sincerely,

A handwritten signature in black ink that reads "Jan Matthew Tamanini".

Jan Matthew Tamanini
Regulatory Counsel

**TRANSMITTAL SHEET FOR REPORT PURSUANT TO SECTION 7(c)
OF THE REGULATORY REVIEW ACT**

RECEIVED

2001 MAR -2 PM 1:32

REGULATORY
REVIEW COMMISSION

I.D. NUMBER: 18-349
 SUBJECT: Outdoor Advertising Devices and Administrative Practice and Procedure
 PA CODE: 67 Pa. Code Chapters 445 and 491
 AGENCY: Transportation

TYPE OF REPORT

- Agency Report contains the revised final-form regulation, the findings of the Commission and agency response and recommendation pursuant to Section 7(c) of the Regulatory Review Act.

FILING OF REPORT

DATE	SIGNATURE	DESIGNATION
3/2/01	<u>J. Allen</u>	GOVERNOR'S OFFICE (333 Market Street)
3/2/01	<u>Richard Geist</u>	HOUSE COMMITTEE ON TRANSPORTATION Hon. Richard Geist, Chairman
3/2/01	<u>Italo Cappabianca</u>	Hon. Italo Cappabianca, Minority Chairman
3/2	<u>Roger Madigan</u>	SENATE COMMITTEE ON TRANSPORTATION Hon. Roger Madigan, Chairman
3/2	<u>J. Barry Stout</u>	Hon. J. Barry Stout, Minority Chairman
3/2	<u>Diana Pagan</u>	INDEPENDENT REGULATORY REVIEW COMMISSION

March 2, 2001