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| Regulatory Analysis Form | | RECEIVED This space for use by IRRC 1999 OCT -6 AM 11:40 INDEPENDENT REGULATORY REVIEW COMMISSION Cocodrilli IRRC Number: #2070 |
| (1) Agency Department of Transportation | | |
| (2) I.D. Number (Governor's Office Use) #18-349 | | |
| (3) Short Title Administrative Practice and Procedure Outdoor Advertising | | |
| (4) Pa. Code Cite 67 Pa. Code, Chapter 491 67 Pa. Code, Chapter 445 | | (5) Agency Contacts & Telephone Numbers Primary Contact: Jerry McCoy 787-5739 Secondary Contact: Robert H. Raymond, Jr., 787-2111 |
| (6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted | | (7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor |
| (8) Briefly explain the regulation in clear and nontechnical language. The purpose of these regulations is to provide a more comprehensive version of the rules regarding administrative proceedings before the Department's hearing officers. These rules spell out the particular requirements for a request for an administrative hearing and address the concerns of those seeking redress under the Department's authority. These proposed amendments will establish standards which will facilitate administrative review of the decisions of Department subordinates on matters involving, but not limited to, suspension or revocation of permit privileges, computation of credit for time served under suspension of the driving privilege, and denial of applications for permits related to driveways, placement of billboards on the right of way, and heavy hauling. | | |
| (9) State the statutory authority for the regulation and any relevant state or federal court decisions. The statutory authority for these regulations is 2 Pa. C.S. §§501-508 and 701-704. | | |

(10) Is the regulation mandated by any federal or state law or court order, or federal regulations? If yes, cite the specific law, case or regulation, and any deadlines for action.

No. These regulations are not mandated by federal or state law or court order or federal regulations.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The compelling public interest that justifies these regulations is the culmination of a substantial effort to draft clear, precise, and effective provisions that will facilitate the expeditious and just resolution of matters brought before the Department's hearing officers.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

There are no direct public health, safety, or environmental risks associated with non-regulation. Delay in promulgation or non-regulation are contrary to the general welfare since these rules help facilitate the swift but fair resolution of administrative matters before the Department.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

These regulations benefit both the Department and those persons who have occasion to seek administrative review by delineating the Department's rules on the content of a request for a hearing, continuances, intervention and depositions and by dividing the Department's administrative docket and establishing two hearing officers with distinct responsibilities.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

These regulations will not adversely affect the Department or persons who make requests for administrative hearings.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Department officials involved in the administrative hearing process and persons who have occasion to deal with the Department and are requesting administrative review will be required to conform to these regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

There was no public input in the initial development and drafting of these regulations. Rather, the Office of Chief Counsel did an exhaustive in-house evaluation of our existing rules and collectively developed these amendments. Notwithstanding, these rules will be published as a notice of

proposed rulemaking with a thirty-day public comment period. Further, these regulations will also be reviewed by the Office of Attorney General, the House and Senate Transportation Committees, and the Independent Regulatory Review Commission (IRRC).

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

These regulations will not impose any additional costs on the affected persons. The Department believes that by clearly and concisely stating its rules on continuances and depositions and the like, the rules will be friendly. We hope that these amendments will help eliminate delatory tactics and expedite the process thus saving money. It is however, difficult to quantify any savings at this time.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs and/or savings to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

These regulations will not impose any costs on the Department or state government. These regulations will result in some savings to the Department by helping to cut down the amount of man-hours spent on any one particular appeal. It is however, difficult to quantify a dollar amount in savings.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY + 1 Year | FY + 1 Year | FY + 3 Year | FY + 4 Year | FY + 5 Year |
|----------------------|------------------------------|----------------|----------------|----------------|----------------|----------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community: | Not Readily Measurable | | | | | |
| Local Government: | None | | | | | |
| State Government: | Not Readily Measurable | | | | | |
| Total Savings | Not Readily Measurable | | | | | |

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|------------------------|------|--|--|--|--|--|
| COSTS: | | | | | | |
| Regulated Community | None | | | | | |
| Local Government | None | | | | | |
| State Government | None | | | | | |
| Total Costs | None | | | | | |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | None | | | | | |
| Local Government | None | | | | | |
| State Government | None | | | | | |
| Total Revenue Losses | None | | | | | |

(20a) Explain how the cost estimates listed above were derived.

The Department can not provide exact savings estimate amounts for the Commonwealth and affected person. We anticipate that there will be some savings by making our rules more clear and by eliminating some purposeful delay attorneys may employ to prolong the process.

(20b) Provide the three year expenditure history for programs affected by the regulation.

| Program | FY-3 | FY-2 96-97 | FY-1 97-98 | Current FY 98-99 |
|-----------------------|------|------------|------------|------------------|
| Administrative Docket | | \$ 53,900 | \$ 79,000 | \$ 92,000 |
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(21) Using cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of these regulations outweigh cost since these regulations impose no costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There were no nonregulatory alternatives considered since the only way the Department could amend these rules was through a rulemaking process.

(23) Describe alternative regulatory schemes and the costs associated with those schemes. Provide the reasons for their dismissal.

There were no alternative regulatory schemes considered since the desired changes require a rulemaking with comment to effect.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No, these regulations are not more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These regulations will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These regulations will not affect existing or proposed regulations of the promulgating agency or other state agencies.

(27) Will any public hearings or informal meetings be scheduled? Please provide the dates, times and locations, if available.

No public hearings or informal meeting will be scheduled. These regulations, however, will be forwarded to the House and Senate Transportation Committees and will be considered at a public meeting of the IRRC.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These regulations will not change any existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Neither these regulations, nor this chapter at the time of initial promulgation, were developed to elevate the needs of any affected groups of persons over another.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department anticipates publication of these regulations in the fall of 1999, as a notice of proposed rulemaking. After evaluation of all comments received, the Department will proceed with final adoption.

(31) Provide the schedule for continual review of the regulation.

These regulations will be continuously monitored by the Department for their effectiveness.

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| <p>FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p>(Pursuant to Commonwealth Documents Law)</p> <p>#2070</p> | <p>INDEPENDENT REGULATOR REVIEW COMMISSION</p> <p>DO NOT WRITE IN THIS SPACE</p> |
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| <p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: <u><i>Christina S. O'Brien</i></u> (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p> | <p>Copy of below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;">Department of Transportation (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>18-349</u></p> <p>DATE OF ADOPTION _____</p> <p>BY <u><i>AK J...</i></u> Deputy Chief Counsel</p> | <p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>By: <u><i>Blair R. Gull</i></u></p> <p>_____ Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike Inapplicable Title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p> |
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NOTICE OF PROPOSED RULEMAKING
DEPARTMENT OF TRANSPORTATION
OFFICE OF CHIEF COUNSEL
TITLE 67. TRANSPORTATION
PART I. DEPARTMENT OF TRANSPORTATION
SUBPART B. NON-VEHICLE CODE PROVISIONS
ARTICLE V. GENERAL PROCEDURES
CHAPTER 491. ADMINISTRATIVE PRACTICE AND PROCEDURES
and
ARTICLE III. HIGHWAYS
CHAPTER 445. OUTDOOR ADVERTISING DEVICES

DEPARTMENT OF TRANSPORTATION
Office of Chief Counsel
Title 67. Transportation
Part I. Department of Transportation
Subpart B. Non-Vehicle Code Provisions
Article V. General Provisions
Chapter 491. Administrative Practice and Procedure
and
Article II. Highways
Chapter 445. Outdoor Advertising Devices

Notice of Proposed Rulemaking

The Department of Transportation, Office of Chief Counsel, pursuant to the authority continued in 2 Pa. C.S. §§501-508 and 701-704 (relating to the Administrative Law) proposes to amend Chapter 491, Administrative Practice and Procedures, as set forth in Annex A.

Purpose of Chapter

The purpose of this chapter is to supplement the General Rules of Administrative Practice and Procedures that are promulgated at 1 Pa. Code Chapters 31, 33 and 35 (General Rules). In accordance with the provisions of 1 Pa. Code §31.1(c) (relating to scope), this chapter supersedes any inconsistent provisions in the General Rule in proceedings before the Department of Transportation.

8/20/99

Purpose of These Regulations

The purpose of these regulations is to provide a more comprehensive version of the rules regarding administrative proceedings before the Department's hearing officers. These rules spell out the particular requirements for a request for an administrative hearing and address the concerns of those seeking redress under the Department's authority. These proposed amendments will establish standards which will facilitate administrative review of the decisions of Department subordinates on matters involving, but not limited to, suspension or revocation of permit privileges; computation of credit for time served under suspension or revocation of the driving privileges; and denial of applications for permits related to driveways, placement of billboards on the right of way, and heavy hauling. These amendments also establish, as a consequence of a burgeoning docket, an additional Department hearing officer. The docket will now be divided between two hearing officers with separate docket clerks. One hearing officer will be situated at the Riverfront Office Center and will be responsible for appeals from the Department's denial or recall of an occupational license; appeals from the Department's denial, cancellation or recall of a probationary license; requests for record reviews pursuant to Section 1516 of the Vehicle Code (75 Pa. C.S. §1516); and requests for credit toward

serving driving privilege or vehicle suspension. The other hearing officer will be located at Forum Place and will review all other matters, including but not limited to driveway permits, school bus/hazardous walking routes, overweight or oversize truck hauling permits, outdoor advertising devices, prequalification of bidder suspension or debarment, public or private airport permits and petition to intervene.

From time to time, questions have arisen concerning the sufficiency of the General Rules in matters before the Department's administrative hearing officer. The broad focus of the General Rules represents an effort to promulgate regulations that would address the general practice and procedural regulations of various administrative tribunals. What they do not and cannot do is address the particularized requirements attendant with an individual agency's attempt to implement and interpret the statutory and regulatory authority imposed upon it, and to do so in an efficient, effective and just manner. The potential inability of the General Rules to provide sufficient practice and procedural guidance throughout the entire range of issues addressed by the numerous administrative tribunals within this Commonwealth is evidenced by the promulgation of 1 Pa. Code §31.1 (c), which enables agency-promulgated regulations to supersede inconsistent regulations contained in the General Rules.

Among the issues where the Department has found the General Rules and our existing regulations to be lacking in substantive and procedural guidance, are concerns regarding the specific role of the Department hearing officer at various stages of the review; the specific procedures for requesting and instituting a Departmental hearing; procedures governing intervening parties, continuances, depositions, and requests for a stay or supersedes.

These amendments represent an attempt to remedy the above-mentioned deficiencies and to equip properly the Department's administrative hearing officers with the necessary tools to exercise its increasing role as a means of initial Department review. This proposal is the culmination of a substantial effort to draft clear, precise, and effective provisions that will facilitate the expeditious and just resolution of matters brought before the administrative docket.

The following represents a summary of the significant amendments contained in this proposed rulemaking.

Section 491.2, Definitions, has been amended by inclusion of a definition for the term "office of the agency." The General Rules of Administrative Practice and Procedure provide, at 1 Pa. Code §31.11, that the date of receipt at the office of the

agency, rather than the date of deposit in the mails, is the determinative date for filing purposes. For this reason, and because the Department will have two separate dockets, we have designated the Administrative Docket Clerk and the Driver Licensing Docket Clerk as the office of the agency upon which all commencements of action is served upon the Secretary of Transportation. Determination of filing with the appropriate docket clerk is predicated upon the nature of the action filed, as delineated at Section 491.5(d) (relating to institution of proceedings).

Section 491.3 (relating to separation of adjudictory function from representation of the Department) has been amended by removing the existing content of this section, request for a hearing, and placing the substance of the same in Section 491.4. The new material in Section 491.3, reflects the Department's respect for the constitutional right to due process which requires that the function of representing the Department in an administrative hearing be separated from the role of the adjudicator. Pennsylvania law requires that any commingling of adjudictory and prosecutorial functions, which creates the appearance of bias and where there are no procedural safeguards implemented to ensure a fair and impartial hearing process, is a violation of procedural due process, without a showing of actual prejudice. See *Marchionni vs. Southeastern Pennsylvania*

Transportation Authority, 1998 Pa. Common. LEXIS 638, Decided August 3, 1998 and *Lyness vs. State Board of Medical Examiners*, 529 Pa. 535, 605 A.2d 1204 (1992).

For this reason, it has been the Department's consistent practice to erect a wall between those Department employees and attorneys who are involved in administrative proceedings on the one hand, and the Secretary of Transportation and the Chief Counsel on the other hand. The inclusion of the new language in Section 491.3, is to reemphasize the Department's position and the law.

Section 491.4, restyled as Request for a hearing, has been amended by removing the substance of the existing §491.3, into this section. Further, the content of the request for a hearing has been amended by more fully delineating what an appellant or petitioner must provide in the request. Additionally, in subsection (b), the Department has clearly stated its rules for timely filing of a request for a hearing. For requests for credit toward serving a driving privilege or vehicle registration suspension, every request must be filed consistent with whichever occurs first: either 30 days after the mailing date of the Department letter denying credit or 30 days after the person requesting credit knew or should have known that the person was not receiving credit. The Department believes that

by clearly and concisely stating its rules on these matters, the rules are friendly and more readily make it easier for affected persons to make determinations regarding appeals from Department action.

Section 491.5, has been restyled as "institution of proceedings." Most importantly, this section has been amended to establish two separate docket clerks and consequently two filing addresses. For appeals from denial or recall of an occupational limited license or denial, recall or cancellation of a probationary license, requests for record review pursuant to Section 1516 of the Vehicle Code (75 Pa. C.S. §1516), and hearing to request credit towards a suspension, the pleadings, brief, and other papers shall be filed with the Driver Licensing Docket Clerk, 1101 South Front Street - 3rd Floor, Harrisburg, Pennsylvania 17104-2516. For all other matters, including but not limited to, driveway permits, school bus/hazardous walking permits, oversize and overweight truck hauling permits, outdoor advertising sign permits, prequalification suspensions or debarment, public or private airport permits and personnel salary claims, the pleadings, briefs, and other papers shall be filed with the Administrative Docket Clerk, c/o Office of Chief Counsel, 555 Walnut Street - 9th Floor Forum Place, Harrisburg, Pennsylvania 17101-1900.

For any given month, the Department entertains roughly over 260 cases. Of these cases, approximately 175 concern requests for credit towards serving a driving privilege or vehicle registration suspension. By dividing our administrative docket along the line we have, we provide the forum for our driver licensing docket hearing officer to more readily dispose of the relatively simple but greater volume credit cases as well as other related traffic safety matters. More complex issues will be handled by the hearing officer situated at the Forum Place.

Section 491.7, relating to notice and conduct of hearing, has been amended by moving the substance of the existing rule at §491.6, into this section and by providing substantive and procedural guidance lacking in the General Rules as it relates to an administrative practice before the Department in matters of intervention; continuances, depositions, requests for a stay or supersedes, and dispositive motions.

Pursuant to our amended rules, a request for a continuance will be considered if the same is received in writing ten days prior to the date of the hearing. Our rules now make it clear that continuances will only be granted for compelling reasons, at the discretion of the hearing officer.

Our amended rules also make provision for the taking of testimony of a witness by deposition upon application. The granting of an an application for deposition shall be entirely discretionary with the hearing officer and will only be granted for substantial and compelling reason.

The amendments also spell out the conditions for grant of a stay or supersedes. The request must be in writing and demonstrate to the satisfaction of the hearing officer (1) the likelihood of success in the matter before the hearing officer, (2) immediate and irreparable from failure to grant the stay or supersedes, (3) issuance will not substantially harm other parties to the proceedings, (4) no other remedy is available and (5) reasonable notice has been given to all parties.

All of these amendments are designed to eliminate dilatory action on the part of some attorneys and to facilitate swift resolution of the matter before the hearing officer without sacrificing fairness or fair play.

Chapter 445, Outdoor Advertising Devices, has been amended at §445.9 (relating to erection, maintenance and repair of signs) by indicating that a request for hearing, after a person has been notified by the Department of the revocation or denial of a

permit, must be made within thirty days of the date of the notice revoking or denying the permit. The existing rule provides that the request must be made within twenty days of the revocation or denial of the permit. This change was made because the request for a hearing will not be submitted to the Chief, Right of Way Division, as the existing rule provides, but rather directly to the office of the hearing officer. Accordingly, the request for a hearing must be consistent with the provisions of §491.4(b), relating to timeliness of petition of hearing.

Persons and Entities Affected

These regulations affect all Department officials involved in the administrative hearing process and those persons who have occasion to request administrative review of Department determinations.

Fiscal Impact

These regulations will not impose any increase costs on private persons, state or local governments. These regulations will not occasion the development of any additional reports or other paperwork requirements.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. 745.1-745.15), the agency submitted, on October 6, 1999, a copy of the proposed regulations to the Independent Regulatory Review Commission and to the Chairmen of the House and Senate Committees on Transportation. In addition to submitting these regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objection to any portion of the proposed regulations, it will notify the agency by _____. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation, by agency, the General Assembly and the Governor for objections raised.

Sunset Date

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under Title 2 of the *Pennsylvania Consolidated Statutes* (relating to administrative law and procedure). The Department will, however, continue to monitor closely these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit, within thirty (30) days of publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions or objections regarding the proposed amendments to Robert H. Raymond, Jr., Deputy Chief Counsel, Office of Chief Counsel, 555 Walnut Street, 9th Floor Forum Place, Harrisburg, Pennsylvania 17120.

Contact Person--

The contact person is: Jerry McCoy, Assistant Counsel-In-Charge, Regulations, Office of Chief Counsel, 555 Walnut Street, 9th Floor Forum Place, Harrisburg, Pennsylvania 17120, (717) 787-5299.

Bradley L. Mallory
Secretary of Transportation

ANNEX A

DEPARTMENT OF TRANSPORTATION

OFFICE OF CHIEF COUNSEL

67 Pa. CODE 491

ADMINISTRATIVE PRACTICE AND PROCEDURE

§491.1 Applicability of General Rules.

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

(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 of law.

(2) To the extent this chapter does not supplement nor supersede the general rules of administrative practice

practice and procedure will apply to activities and proceedings before the Department.

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§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.

General rules of administrative practice and procedure--The rules found at 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.

Secretary--The Secretary of the Department.

§491.3. Separation of Adjudicatory Function From Representation
of the Department.

The adjudicatory function performed in accordance with these regulations and the General Rules of Administrative Practice and Procedure must be separated from the function of representing the Department in administrative hearing matters.

The regulations prescribe 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. Under no circumstances, should any Department attorney representing the Department in an administrative hearing matter, or any Department employee involved in such a matter, discuss the case ex parte with the Administrative Hearing Officer, the Chief Counsel, or the Secretary. Likewise, the Administrative Hearing Officer, the

Chief Counsel and the Secretary shall not discuss with, or
exercise any supervisory responsibility over, any employee with
respect to an administrative hearing matter with which that
employee is involved. Should it become 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 designate appropriate individuals to exercise their
functions.

§[491.3] 491.4. Request for a 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 the appeal.

(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:

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

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

(c) Determination of insufficiency. The Department
Hearing Officer [hearing officer] may determine that a
request for a hearing is insufficient or improper under 1
Pa. Code Part II (relating to general rules of
administrative practice and procedure) 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.

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

§[491.4] 491.5. Institution of proceedings.

(a) Approval and docketing. Upon approval, under §491.[3]4(c) (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 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 office of the agency/timely filings. For purposes of 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 of 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 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

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).

(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

555 Walnut Street, 9th Floor

Harrisburg, Pennsylvania 17101-1900

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.

(vi) Public 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.

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

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

§[491.5] 491.6. 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 a filing fee is not required.

(1) The schedule of filing fees will be reviewed and revised periodically by the Department [and revised annually by the Department as necessitated by the increasing costs of adjudication] and will be published in the Pennsylvania Bulletin.

(2) The filing fee shall be payable by check, certified check or money order which shall be made payable to the "Department of Transportation."

(3) Information regarding filing fees may be obtained from the [administrative] appropriate docket clerk at the [address] addresses provided in §491. [4(c)]5 (d) relating to address for filing [institution of proceedings].

(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 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] 491.7. 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] Hearing Officer for scheduling.

(b) *Scheduling.* The Department [hearing officer] 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] Hearing Officer.* [After referral of the matter, the] The Department [hearing officer] Hearing Officer will have the authority to decide all motions, petitions, requests for

supersedeas, discovery requests or other matters presented by the parties to 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 must 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. A petition for intervention may be refused if the moving party has unduly delayed in making application for intervention or the intervention will unduly delay or prejudice the hearing or the adjudication of the rights of the

parties. This rule supplements the provisions of 1

Pa. Code §§ 35.27-35.36.

(e) Continuances.

(1) A request for a continuance will be considered if
the docket clerk is notified in writing of the grounds
at least ten (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) A request for continuance made less than ten (10)
days prior to the date of the hearing will not be
considered unless the Department Hearing Officer is
satisfied that circumstances relating to the requested
continuance occurred within ten (10) calendar days of
the hearing date.

(3) The requesting party must seek the agreement of any 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 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 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 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 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) 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 order. Unless otherwise provided by this chapter, any appeal from an order rendered by the Hearing Officer must be filed [appealed] with the

appropriate docket clerk within thirty 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] 491.8. 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]9 (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] 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] 491.9. 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 proceeding. Service shall be accomplished in accordance with 1 Pa. Code §§33.31--33.36.

§[491.9] 491.10. 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] 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] 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 application to the
Department [hearing officer] Hearing Officer.

(f) Scheduling of hearing. The Department [hearing
officer] 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] 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 deemed approved.

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

§[491.10] 491.11. 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 intervenor challenging the Department's actions, the intervenor shall proceed first with the presentation of evidence at the hearing.

(c) Authority of Department [hearing officer] Hearing Officer. The Department [hearing officer] 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] 491.12. Proposed report.

(a) General. Following the hearing and the timely submission of any post-hearing filings, the Department [hearing officer] 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] 491.13. **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] 491.14. 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.

ANNEX A

Part I. DEPARTMENT OF TRANSPORTATION

Subpart B. Non-Vehicle Code Provisions

Article III. Highways

67 Pa. Code, Chapter 445

Outdoor Advertising Devices

* * *

§445.9. Erection, maintenance and repair of signs.

* * *

(f) Hearings. 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 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.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Office of Chief Counsel
555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
(717) 787-5473

October 6, 1999

The Honorable Roger Madigan, Majority Chairman
Senate Transportation Committee
Room 286
Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: 67 Pennsylvania Code
Chapter 491, Administrative Practice and Procedures
Chapter 445, Outdoor Advertising Devices
#18-349

Dear Senator Madigan:

Attached for review by your committee, pursuant to the Regulatory Review Act (71 P.S. 745, et seq.), is a copy of notice of proposed rulemaking. Section 5(b.2) of the Act provides that standing committees should review notice of proposed rulemakings within 20 calendar days from the closing date of the public comment period. The regulation will be published in the Pennsylvania Bulletin on October 16, 1999.

The Department of Transportation will provide your committee with any assistance you require to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew S. Gordon".

Andrew S. Gordon
Chief Counsel

220/ASG/JM/mls

Attachment

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Office of Chief Counsel
555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
(717) 787-5473

October 6, 1999

The Honorable J. Barry Stout, Minority Chairman
Senate Transportation Committee
Room 10E-East Wing
Main Capitol Building
Harrisburg, Pennsylvania 17120

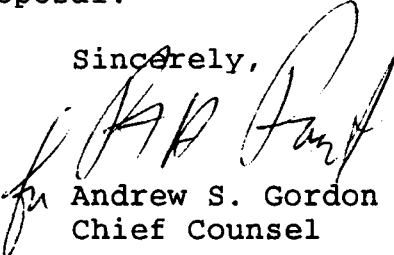
Re: 67 Pennsylvania Code
Chapter 491, Administrative Practice and Procedures
Chapter 445, Outdoor Advertising Devices
#18-349

Dear Senator Stout:

Attached for review by your committee, pursuant to the Regulatory Review Act (71 P.S. 745, et seq.), is a copy of notice of proposed rulemaking. Section 5(b.2) of the Act provides that standing committees should review notice of proposed rulemakings within 20 calendar days from the closing date of the public comment period. The regulation will be published in the Pennsylvania Bulletin on October 16, 1999.

The Department of Transportation will provide your committee with any assistance you require to facilitate a thorough review of this proposal.

Sincerely,


for Andrew S. Gordon
Chief Counsel

220/ASG/JM/mls

Attachment

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Office of Chief Counsel
555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
(717) 787-5473

October 6, 1999

The Honorable Richard A. Geist, Majority Chairman
House Transportation Committee
Room 144
Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: 67 Pennsylvania Code
Chapter 491, Administrative Practice and Procedures
Chapter 445, Outdoor Advertising Devices
#18-349

Dear Mr. Geist:

Attached for review by your committee, pursuant to the Regulatory Review Act (71 P.S. 745, et seq.), is a copy of notice of proposed rulemaking. Section 5(b.2) of the Act provides that standing committees should review notice of proposed rulemakings within 20 calendar days from the closing date of the public comment period. The regulation will be published in the Pennsylvania Bulletin on October 16, 1999.

The Department of Transportation will provide your committee with any assistance you require to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. S. Gordon', is written over the typed name and title.

Andrew S. Gordon
Chief Counsel

220/ASG/JM/mls

Attachment

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Office of Chief Counsel
555 Walnut Street - 9th Floor
Harrisburg, Pennsylvania 17101-1900
(717) 787-5473

October 6, 1999

The Honorable Joseph Battisto, Minority Chairman
House Transportation Committee
Room 324
Main Capitol Building
Harrisburg, Pennsylvania 17120

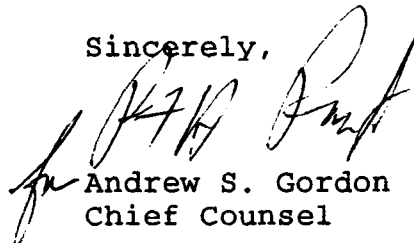
Re: 67 Pennsylvania Code
Chapter 491, Administrative Practice and Procedures
Chapter 445, Outdoor Advertising Devices
#18-349

Dear Mr. Battisto:

Attached for review by your committee, pursuant to the Regulatory Review Act (71 P.S. 745, et seq.), is a copy of notice of proposed rulemaking. Section 5(b.2) of the Act provides that standing committees should review notice of proposed rulemakings within 20 calendar days from the closing date of the public comment period. The regulation will be published in the Pennsylvania Bulletin on October 16, 1999.

The Department of Transportation will provide your committee with any assistance you require to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew S. Gordon".

Andrew S. Gordon
Chief Counsel

220/ASG/JM/mls

Attachment

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 18-349
SUBJECT: Administrative Practice & Procedures; Outdoor Advertising Devices
AGENCY: DEPARTMENT OF TRANSPORTATION

1999 OCT -6 AM 11:40

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|---------|------------------------|--|
| 10/6/99 | <i>Hudene Caber</i> | HOUSE COMMITTEE ON TRANSPORTATION |
| 10/6/99 | <i>Linda F. Suttle</i> | |
| 10/6/99 | <i>Marilyn Stute</i> | SENATE COMMITTEE ON TRANSPORTATION |
| 10/6/99 | <i>Kanase Stover</i> | |
| 10/6/99 | <i>Kim C. Larson</i> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL |
| 10/6/99 | <i>C. Lee</i> | LEGISLATIVE REFERENCE BUREAU |

October 1, 1999