

Original: 2070

## IRRC

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**From:** JMTtor@aol.com  
**Sent:** Monday, March 19, 2001 9:55 AM  
**To:** irrc@irrc.state.pa.us  
**Cc:** maryh@irrc.state.pa.us; maryw@irrc.state.pa.us  
**Subject:** marked copy - #18-349



ADMIN regs.doc

Here is the marked copy, typos corrected, of the administrative practice and procedure regs.

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 representation 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 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, 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, 3<sup>rd</sup> 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.
- (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.
- (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.

## IRRC

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**From:** JMTtor@aol.com  
**Sent:** Monday, March 19, 2001 9:53 AM  
**To:** irrc@irrc.state.pa.us  
**Cc:** maryh@irrc.state.pa.us; maryw@irrc.state.pa.us  
**Subject:** #18=349 - clean copy



ADMIN regs -  
clean.doc

Attached is a clean copy of the Department's administrative practice and procedure regs, OGC #18-349, for ease of reading. I am also sending a marked copy of the regs, with corrections to the typos as specified in your recent message. You understand that the typos noted in numbers 1, 3, 4, 5, and 10 of your comments are of no impact to the final regulation, as the regulation is published without change notations.

We have already discussed the fact that the change made in Section 491.4(c) from "of" to "by" (noted in your comment #5) was done to correct a typo which existed in every version back to the original Pa. Bulletin publication of the proposed regulations in October of 1999. As it read previously, the language made no sense (though it's interesting to note that all of us - the Department, IRRC, and the outside commenters over looked this one until our last reading - guess it proves that we all see what we're accustomed to seeing, whether it's there or not).

And keeping with that thought...the changes noted in your numbers 2,6,7,and 9 (which along with the change noted in your number 5 are the only changes which would appear in the final publication) are all corrections to typos made by this office when we had to recreate the entire package from a scanned hard copy, compliments of both our mainframe unit and the backup on the hard drive of my PC losing the file in our move to the Commonwealth Keystone Building in mid December. None of these changes is substantive in nature; even the change made in response to your comment #7 merely restores the missing Roman numeral line to the enumerations in the list. As this list is merely a courtesy list for those outside the Department who may wish to file requests for administrative hearings in any of these matters, but the list does not in any way limit the ability of petitioners and complainants to file with the Department, whether or not this line item is included has no substantive im!

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however, eliminate the confusion which would otherwise be engendered by having a list which goes from Roman numeral (v) to (vii), omitting item (vi).

Gary Hoffman, Pa. Code and Bulletin director, has agreed that each of these changes are merely corrections of typographical errors and may be made as a matter of form. If you have any questions, please contact me at 787-6485. Thank you for your assistance in this matter.

Jan Tamanini, Regulatory Counsel  
Pennsylvania Department of Transportation

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Jan Tamanini, Regulatory Counsel  
Pennsylvania Department of Transportation



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**ARTICLE V. GENERAL PROCEDURES**

**CHAPTER 491. ADMINISTRATIVE PRACTICE AND PROCEDURE**

**§ 491.1. Applicability of General Rules.**

This chapter supplements and supersedes inconsistent provisions in the 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, the 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.* The rules found 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 representation 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. 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 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.* The Administrative Hearing Officer, the Chief Counsel and the Secretary 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 shall designate appropriate individuals to exercise their adjudicatory functions.

**§ 491.3. Request for hearing.**

(a) *Content.* 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 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 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 the General Rules or this chapter, and may direct the docket clerk to mark the matter closed and to return the request, with notice of the deficiency, to the initiating party.

(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 appeal.

(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 docket clerk will assign the matter a caption, including a docket number, and will enter the matter into the docket.

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

(c) *Docket clerks as 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 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 shall determine time of filing.

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

(1) Secretary of Transportation, Driver Licensing Docket Clerk, 1101 South Front Street, 3<sup>rd</sup> 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, 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.

(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.

(xii) Matters pertaining to reasonable access for tractor-trailer vehicle combinations.

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

(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, 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 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 docket



clerk will immediately provide the requesting party with written notice that the fee shall be forwarded to and received by the 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, the 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 parties.* Upon docketing a written request for a hearing, the docket clerk will provide written notification to all parties 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 parties.

(c) *Authority of Department hearing officer.* 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 this action 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 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 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) *Supplementation.* This subsection supplements the provisions of 1 Pa. Code §§ 35.27-35.36.

(e) *Continuances.* A request for continuance 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 request for continuance made less than 10 days prior to the date of the hearing 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 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 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 the requesting party can demonstrate 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 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 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, as required in 491.8 (relating to service), shall be filed with the 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, shall be served by 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 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 issuance of an order to show cause by the Department hearing officer, the docket clerk will forward a copy of the order to the respondent, 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 30 days of the date the notice was mailed. A respondent who fails to file an answer within 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 parties.* Upon timely filing of an answer to an order to show cause, the docket clerk will notify all parties 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 docket clerk to issue notice to all parties of the time and place of the hearing.

(g) *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 docket clerk to send to all parties 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 docket clerk will arrange for a stenographer to record the testimony presented at the hearing.

(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 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, together with a brief or memorandum discussing the applicable law and relevant facts of record.



(e) *Filing of hearing transcript.* Upon the filing of the transcript of the hearing, the 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 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 order.

(c) *Notification.* The docket clerk will forward copies of the proposed report to all parties 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 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 docket clerk.

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

(c) *Record*. When timely exceptions are filed, the docket clerk 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 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 docket clerk will prepare and forward the certified record to the clerk of Commonwealth Court.

Original: #2070

## IRRC

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**From:** JMTtor@aol.com  
**Sent:** Monday, March 19, 2001 9:53 AM  
**To:** irrc@irrc.state.pa.us  
**Cc:** maryh@irrc.state.pa.us; maryw@irrc.state.pa.us  
**Subject:** #18=349 - clean copy



ADMIN regs -  
clean.doc

Attached is a clean copy of the Department's administrative practice and procedure regs, OGC #18-349, for ease of reading. I am also sending a marked copy of the regs, with corrections to the typos as specified in your recent message. You understand that the typos noted in numbers 1, 3, 4, 5, and 10 of your comments are of no impact to the final regulation, as the regulation is published without change notations.

We have already discussed the fact that the change made in Section 491.4(c) from "of" to "by" (noted in your comment #5) was done to correct a typo which existed in every version back to the original Pa. Bulletin publication of the proposed regulations in October of 1999. As it read previously, the language made no sense (though it's interesting to note that all of us - the Department, IRRC, and the outside commenters over looked this one until our last reading - guess it proves that we all see what we're accustomed to seeing, whether it's there or not).

And keeping with that thought...the changes noted in your numbers 2,6,7,and 9 (which along with the change noted in your number 5 are the only changes which would appear in the final publication) are all corrections to typos made by this office when we had to recreate the entire package from a scanned hard copy, compliments of both our mainframe unit and the backup on the hard drive of my PC losing the file in our move to the Commonwealth Keystone Building in mid December. None of these changes is substantive in nature; even the change made in response to your comment #7 merely restores the missing Roman numeral line to the enumerations in the list. As this list is merely a courtesy list for those outside the Department who may wish to file requests for administrative hearings in any of these matters, but the list does not in any way limit the ability of petitioners and complainants to file with the Department, whether or not this line item is included has no substantive im!

fact on the regulation. It does,

however, eliminate the confusion which would otherwise be engendered by having a list which goes from Roman numeral (v) to (vii), omitting item (vi).

Gary Hoffman, Pa. Code and Bulletin director, has agreed that each of these changes are merely corrections of typographical errors and may be made as a matter of form. If you have any questions, please contact me at 787-6485. Thank you for your assistance in this matter.

Jan Tamanini, Regulatory Counsel  
Pennsylvania Department of Transportation

		<b>This space for use by IRRC</b> RECEIVED	
(1) Agency Department of Transportation		2000 NOV -8 PM 4: 33 STATUTORY REVIEW COMMISSION	
(2) I.D. Number (Governor's Office Use) #18-349		IRRC Number: 2070	
(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: Jan Matthew Tamanini 787-5079 Secondary Contact: Robert H. Raymond, Jr., 787-2111	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" 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. <i>These regulations provide a clearer, more comprehensive version of the existing rules governing administrative proceedings before Department hearing officers. This modification specifies the necessary steps to request an administrative hearing and addresses the concerns of persons seeking redress under the Department's authority.</i>			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <i>The statutory authority for these regulations is 2 Pa. C.S. §§501-508 and 701-704.</i>			
(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. <i>No, these regulations are not mandated by federal or state law, court order, or federal regulations.</i>			
(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses? <i>The compelling public interest that justifies these regulations is making the existing regulations governing administrative hearings more "user-friendly." This effort is the culmination of a substantial effort to draft clear, precise, and effective provisions to facilitate the speedy and just resolution of matters brought before the Department's hearing officers.</i>			

(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. However, non-regulation would be contrary to the general welfare, since these rules help facilitate the swift and fair resolution of Departmental administrative matters important to the public.*

(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 all persons seeking an administrative review of Department decisions by clearly setting forth the Department's rules related to requests for hearings, continuances, intervention of parties, and depositions. The rules also divide the Department's administrative docket, formally establishing separate hearing officers, each having 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.)

*The Department does not foresee any adverse effects from these regulations.*

(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 requesting administrative review of Department matters 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.

*Due to the intensely legal nature of these regulations, the Department's Office of Chief Counsel did an in-house evaluation of the existing administrative rules in the initial stages, collectively developing proposed amendments. These proposed changes were then published as a notice of proposed rulemaking with a thirty-day public comment period. The regulations have also been reviewed in proposed form by the Office of Attorney General, the Pennsylvania 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 do not impose any added costs on the affected persons. By clearly and concisely stating the administrative requirements, the rules may result in savings to those who use the Department's administrative process, because the amendments are designed to expedite the process and reduce the opportunity for dilatory tactics. The expected savings, however, are not readily quantifiable.*

(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 to local governments; the possible savings, as mentioned in Number 17 above, are not readily quantifiable.*

(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.

*There are no new costs to the Department or state government. The possible savings, as mentioned in Number 17 above, are not quantifiable, though the regulations will result in some savings to the Department by reducing the amount of time spent working on administrative cases.*

(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 + 2 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community:	No hard estimate	No hard estimate	No hard estimate	No hard estimate	No hard estimate	No hard estimate
Local Government:	None	None	None	None	None	
State Government:	No hard estimate	No hard estimate	No hard estimate	No hard estimate	No hard estimate	No hard estimate
<b>Total Savings</b>	No hard estimate	No hard estimate	No hard estimate	No hard estimate	No hard estimate	No hard estimate
<b>COSTS:</b>						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
<b>Total Costs</b>	None	None	None	None	None	None
<b>REVENUE LOSSES:</b>						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
<b>Total Revenue Losses</b>	None	None	None	None	None	None

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

The Department is unable to estimate savings from these amendments, though we anticipate some savings from the speedier resolution of administrative matters.

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

Program	FY-3 (96-97)	FY-2 (97-98)	FY-1 (98-99)	Current* FY (99-00)
Administrative Docket	\$ 53,900	\$ 79,000	\$ 92,000	\$110,000
				*(most recent completed year)

(21) Using cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

*Since these regulations impose no costs, the benefits clearly outweigh costs and adverse effects.*

(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. Due to the legal requirements of the administrative process, the only way the Department could amend these rules was by amending the existing regulations.*

(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. These regulations are a matter of required legal process, leading at times to appeals through the Commonwealth judicial system.*

(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?

*Because the legal requirements for administrative hearings and appeals are different in each state and dependent upon the laws of the state involved, Pennsylvania is not at a competitive disadvantage with other states. The regulations have no applicability beyond the borders of the Commonwealth.*

(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 specifically amend and replace the existing Departmental administrative practice and procedure regulations found in Chapters 445 and 491 of Pennsylvania Code Title 67.*

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

*No public hearings or informal meetings were scheduled. These regulations, however, were published for notice and comment, going through the initial regulatory review process. Comments received from the IRRC, and the two commenting attorneys were considered and addressed in the development of the final regulations.*

(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 the regulations found in 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?

*These regulations will become effective immediately upon publication of the final adoption order in the Pennsylvania Bulletin. Parties filing administrative actions will be required to follow the new procedures immediately; in anticipation of the adoption of the regulations, the Department has revised its forms and paperwork dealing with administrative matters to facilitate this implementation. These revised papers will be available to the public immediately upon publication.*

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

*By virtue of the hands-on nature of the administrative process, the impact of these regulations will be continuously monitored by the Department.*



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE  
LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

12070

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (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><b>Department of Transportation</b> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>18-349</u></p> <p>DATE OF ADOPTION <u>11/6/00</u></p> <p>BY <u>[Signature]</u> Chief Counsel</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY <u>[Signature]</u></p> <p><u>11/7/00</u> Date of Approval</p> <p>(Deputy General Counsel) <del>(Chief Counsel, Independent Agency)</del> (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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**FINAL ADOPTION AFTER 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 445. OUTDOOR ADVERTISING DEVICES  
AND  
CHAPTER 491. ADMINISTRATIVE PRACTICE & PROCEDURE**

**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 445. Outdoor Advertising Devices**  
**and**  
**Chapter 491. Administrative Practice and Procedures**  
**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 agency in compliance with Executive Order 1996-1, "Regulatory Review and

**Final Adoption After Rulemaking**

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 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 has prepared a comment and response document to address these comments; copies of this document are available upon request.

The final text of the regulations contains modifications, deletions, and additions from the text of the October 1999 publication, none of which would enlarge the scope of the regulations as previously proposed. The following represents a general summary of the changes contained in the final publication:

- ◆ 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 refine the definition of "office of the agency" to include matters under 2 Pa. C.S. §§501-508 and 701-704. A definition for "date of receipt at the office of the agency" has been added.
- ◆ Section 491.2a, *Separation of adjudictory function from representation before the Department*, has been amended at the request of the IRRC for verb consistency, clarity, 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 amended at the request of the IRRC by adding a new paragraph (4) under

§491.3(a), directing the party requesting a hearing to include an address where documents and pleadings may be served, and amending § 491.3(b)(2) and (d) for clarity.

- ◆ Section 491.4 was amended to specify an additional type of case which is brought before the Department.
- ◆ Section 491.5 was amended for clarity.
- ◆ 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.
- ◆ 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 procedures)] 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.

Secretary. The Secretary of the Department.

§ 491.2a. Separation of adjudicatory function from representation 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) [Exparte] 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 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~~ 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.

(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.

(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 a 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 unless~~ 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 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.* 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.

**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**  
**Comments and Responses After Proposed Rulemaking**

The Department of Transportation published a notice of proposed rulemaking for Chapters 491 and 445 of Title 67 Pa. Code at 29 Pa. B. 5515 (October 23, 1999), proposing to amend its regulations dealing with administrative practice and procedure in Departmental matters, with an invitation to submit written comments within thirty days of publication. Two private sector attorneys responded to the request for comments. In addition, the Independent Regulatory Review Commission's initial review produced several comments. This document summarizes all comments received as well as the Department's responses.

**Outside attorney comments and Department responses**

Attorney David Hershey praised the Department's articulation within the regulations of the separation of the adjudicatory function from the Office of Chief Counsel's representation of the Department; he also complimented the Department for its formal establishment of a separate docket limited to driver license administration matters. Mr. Hershey, however, expressed concern that the sheer volume of cases proceeding through the driver license docket might require more than one hearing officer for that docket.

The number of hearing officers needed for the driver license docket is an administrative question to be examined and resolved within the Department. The hearing officer now handling that docket regards the existing case load as manageable without difficulty. The proposal does

not prevent the Department from appointing additional hearing officers should the docket, in the Department's estimation, grow beyond the abilities of one officer to handle those cases.

Mr. Hershey also expressed concern about the proposed 30-day time limit in Section 491.3(b)(ii) to petition for a credit hearing after the person requesting the hearing either knew, or should have known, that the person did not receive credit. Although Mr. Hershey attributes his concern to the National Driver Registry's implementation, the Registry is not a new creation, having been in existence for over 30 years.

Mr. Hershey's concerns appear to actually be caused by the new Problem Driver Point System (PDPS) implemented recently as the result of a Federal mandate. Before PDPS, state governments could issue a driver's license without cross-checking other states' driver records. Now, however, the Federal government requires the states to cross-check a driver's status in other jurisdictions before issuing a license. Prior to this required cross-check, a driver who defied an order to surrender a suspended operator's license in one state could repeatedly renew a license in another state without any threat of suspension or loss of driving privileges. The implementation of this Federal mandate has led to an increase in the number of drivers interested in receiving "credit" for time served under a suspension, because a driver who has not have completed a Pennsylvania suspension period cannot now be licensed by another state.

Mr. Hershey's concern does not enumerate any compelling reason to extend the appeal period for credit cases beyond 30 days. When drivers discover that their operating privileges are suspended in Pennsylvania, they know, or should know, that they have not received credit for past suspensions. This 30 day period from that discovery to petition for credit is consistent with other appeal periods in Pennsylvania for court and administrative agency matters. For this reason, the Department elects to retain the 30 day appeal period.

The other attorney commenter, Lawrence R. Wieder, expressed concern with portions of our proposed Section 491.6(d)(2)(i):

\* \* \*

**(2) Refusal**

(i) Delay. A petition for intervention may be refused 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.

\* \* \*

Mr. Wieder alleges this provision deprives an intervenor of due process rights.

The Department does not agree. The proposed rule, §491.6(d)(2) (29 Pa. B. 5519, October 23, 1999), is derived virtually verbatim from Rule 2329(3) of the Pennsylvania Rules of Civil Procedure:

**RULE 2329. Action of Court on Petition**

...an application for intervention may be refused, if

\* \* \*

(3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

\* \* \*

Compare the Department's proposed language:

**§491.6(d)(2) Refusal.**

(i) Delay. The Department may refuse a petition for intervention 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.

We chose this language because it is broad enough to cover a wide range of petition shortcomings to the petitioner's benefit while giving the Department hearing officer sufficient discretion to dispose of frivolous requests.

For example, if the Department hearing officer determines that a petitioner to intervene does not have a protectable interest (standing), the hearing officer may deny the request. If a petitioner has standing to intervene and has not unduly delayed filing, and if the hearing process has not yet concluded, intervention may be allowed.

If the hearing were already concluded or a permit already issued, then there would be no basis for intervention. In this instance, the remedy would be to file an action with the Administrative Docket Clerk pursuant to 67 Pa. Code 491.3, Request for Hearing. The Commonwealth Court has addressed this issue, supporting the Department hearing officer's decision.

*- end of Department responses to outside attorney comments*

#### **IRRC Comments and Department responses**

The Independent Regulatory Review Commission (IRRC) commented on several sections of our proposed rules. These comments, and the Department's responses, follow:

**1. General. – Clarity.**

*Interested parties and other participants and party[ies]*

*Comment:* In several sections, the phrase "interested parties and other participants" has been replaced with the term "parties." Other sections retain this phrase. With respect to notice requirements, why has the scope of the regulations been reduced to "parties"? How will this change affect the Department's current practices? Also, will this change result in a person with an interest in a proceeding not receiving notice of that proceeding?

*Response:* The Department's original intention was to eliminate all existing references to "interested parties and other participants" in the proposed regulations; however, the Department inadvertently overlooked this phrase in some parts of the proposed rulemaking. The Department has corrected the oversight. As all participants in the action, including intervenors and third party defendants, are parties, the original phrase added no meaning to the term "parties" and was thus eliminated. This purely semantic change has no effect on existing practice.

**2. Section 491.2. Definitions. – Clarity.**

*Office of the Agency*

*Comment:* The phrase “upon which commencement of process is made upon the Secretary” is unclear. The Department should incorporate the first sentence of Section 491.4(c) in this definition.

*Response:* The Department has incorporated a portion of the requested sentence from Section 491.4(c) into its definition of “office of the agency.”

**3. Section 491.2a. Separation of adjudicatory function from representation of the Department. – Need; Clarity.**

*Subsection (b) Ex Parte discussions*

*Subsection (c) Prohibited discussions with employees*

*Comment:* Both of these subsections convey prohibitions, but do so with inconsistent verbs. Subsection (b) uses “not” in conjunction with “may,” and Subsection (c) uses “will not.” For conformity with the Legislative Reference Bureau’s Style Manual, both sections should use “may not.”

*Response:* The Department agrees with the IRRC’s comment and has amended the provision.

**4. Section 491.3 Request for hearing. – Reasonableness; Clarity**

*Subsection (a) Content*

*Comment:* We have two concerns with this subsection. First, it does not require that the party requesting the hearing provide and address at which documents may be served. This requirement should be added to the final-form regulation.

Second, Paragraph (3) uses the phrase “gives rise for the occasion of the appeal.” For clarity, the Department should consider more direct language, such as “is the subject of the appeal.”

*Response:* The Department has complied with the IRRC’s requests by adding a new paragraph (4) to §491.3(a) and revising the language of paragraph (3) to make the provision less awkward.

*Subsection (b) Timeliness of petition for hearing*

*Comment:* We have two concerns with this subsection. First, the beginning point of the 30-day period referenced in Paragraph (b)(1) is unclear. That period begins with the Department's "determination." However, the period referenced in Subparagraph (2)(i) begins on the mailing date of the Department's letter. The beginning of the time period referenced in these paragraphs should be consistent and should begin on the date of mailing (which is the date of service under the General Rules, found at 1 Pa. Code §33.34) of the Department's determination.

Second, Subparagraph (2)(ii) should only become operative in instances where the Department's notice was either not mailed or misdirected, so that the party did not receive it. Only in that case, should the date of actual or constructive notice begin the 30-day period.

*Response:* The Department's determination is the document by which the moving party begins the appeal process; the Department dates this document with its mailing date, so this date is both clear and consistent with the Commission's suggestion. The Department disagrees with the Commission's suggestion that the beginning of the appeal period in §491.3(b) paragraphs (1) and (2) should be consistent, because the paragraphs addresses two distinct types of appeals.

Paragraph (1) states the general rule (which applies to most appeals); paragraph (2) applies only to requests for credit. Because credit appeals frequently turn on the question of when a person either receives notice or should have known that the Department did not give an expected credit, we sought to devise a fair method for all circumstances where a person could request credit toward serving a suspension. Accordingly, we will not apply the general rule in paragraph (1) to requests for credit appeals.

*Subsection (c) Determination of insufficiency*

*Comment:* Subsection (c) does not explain what kind of deficiency will lead to a matter being closed, thereby depriving the filing party of any opportunity for relief. Also, it does not provide any opportunity for a party to correct a deficiency. We recommend that the Department clarify



what type of deficiencies are correctable and consider allowing a filing party a period of time to correct deficiency.

*Response:* The Department does not agree that further amendment to §491.3(c) is warranted. The essential elements for a request for hearing are enumerated in §491.3(a). The Department hearing officer has the discretion to determine whether a request for a hearing is clear or unclear, predicated upon the language of the document requesting the hearing. Because individual fact situations differ, the Department will factor these differences into determining the appropriate amount of time to correct any defect appearing in the request for a hearing. It would be impossible to predetermine a complete list of scenarios with corresponding appropriate correction times; these determinations are best made on a case-by-case basis.

When a petitioner disagrees with the Department's determination, the remedy is to appeal the decision.

*Subsection (d) Department's request for clarification of the issues*

*Comment:* Subsection (d) allows the Department to request clarification of the issue giving rise to the appeal, but does not specify the time period within which clarification must be provided. The final-form regulation should provide how long a party has to respond to a request for clarification of the issues.

*Response:* For reasons similar to those specified in the response to the Commission's comment on Subsection (c), the Department's hearing officers retain discretion to analyze specific fact situations on a case-by-case basis.

**5. Section 491.4 Institution of proceedings. – Clarity.**

*Subsection (c) Docket clerks designated office of the agency/timely filings*

*Comment:* The last sentence of this subsection provides that the date of receipt at the office of the agency – not the date of deposit in the mails – is determinative for timely filing purposes. This sentence should be relocated to the preceding section as a new Paragraph (c). Alternatively, "date of filing" could be defined as the date of receipt at the office of the agency in Section 491.2 (relating to definitions).

*Response:* In Section 491.2 (relating to definitions), the Department has defined the phrase “date of filing” as the date of receipt at the office of the agency.

**6. Section 491.6. Notice and conduct of hearing. – Clarity.**

*Subsection (a) Written notification to parties*

*Comment:* The Department should explain how the interest of a person entitled to notice under 67 Pa. Code Chapter 441 [sic] will be protected if notice is not given. In the final-form regulation, the Department should clarify whether notice to a party in interest will be effective from the time the party receives actual notice of the matter, or from the time the party should have known of the matter.

*Response:* (note: this comment apparently refers to notice under Chapter 491) Everyone entitled to notice according to the Department’s record will receive notice. The amendments to Chapter 491 have been designed to clarify and streamline the administrative process and reduce the time between filing and adjudication. The nature of appeals from Department decisions generally dictates that the affected parties are well aware of the complained-of Department action or behavior.

*Subsection (d) Intervention*

*Comment:* The underlying premise of the Subsection (d)(1) rule is that a person knows or should have known about the hearing matter, but unduly delayed beyond the deadline in filing their petition to intervene. However, the regulation does not indicate what the time frame for intervention is, or when the deadline for intervention occurs. Under 1 Pa. Code Section 35.30, the deadline for intervention is published in the *Pennsylvania Bulletin*. The Rules of Civil Procedure provide that intervention is allowed during the pendency of a matter (Pa. R.C.P. 2327). The Department should examine both approaches and establish an allotment of time or deadline. Without any indication of the allowable window for intervention, it is not possible to determine if a petition to intervene has been unduly delayed.

*Response:* Because of the varied nature of the appeals the Department entertains, it is not practicable to impose a set time frame for intervention. As long as a hearing is pending, the

Department will entertain requests for intervention and judge each situation on its merits. This is similar to Rule 2327 of the Pennsylvania Rules of Civil Procedure, which permits intervention “[a]t any time during the pendency of any action....”

*Comment:* Is Subparagraph (2)(ii) properly titled “Supersedeas,” or should it be titled “Supplementation”? It appears that “Supplementation” is the appropriate heading.

*Response:* The Department has changed the title of the subparagraph.

*Subsection (g) Request for a stay or supersedeas*

*Comment:* The caption of this subsection implies that there is a difference between the terms “stay” and “supersedeas.” Black’s Law Dictionary indicates that these terms are used synonymously. If there is a difference between these two terms within the context of the Department’s procedures, the Department should indicate what that difference is. Otherwise, the Department should use one term consistently and define that term in Section 491.2 (relating to definitions).

*Response:* The Department included both terms – stay and supersedeas – to encompass the filings of petitioners who use either term.

**7. Section 491.7. Filing requirements. – reasonableness; Clarity.**

*Subsection (b) Telefacsimile and electronic transmission  
not accepted*

*Comment:* This subsection adds a prohibition on electronic filing of documents to the existing prohibition on telefacsimile filings. Why does the Department prohibit the telefacsimile and electronic transmission of documents?

*Response:* In the Department’s work environment, a number of individuals share the fax machine and electronic equipment, including many who have no connection with the administrative docket. The shared fax machine is located in a common area. This relatively open access to the Department’s equipment results in a significant risk that documents transmitted via fax or electronic means could be lost or misdirected. As the Department is

unable to exclusively control the security of these devices, we are constrained to prohibit filings using these means.

**Section 491.9. Order to show cause. – Clarity.**

*Subsection (b) Notification to respondent*

*Comment:* Subsection (b) states in part: “the docket clerk will forward a copy of the order to the respondent.” The term “forward” is vague and potentially confusing. For greater clarity, the Department should replace “forward” with the term “serve.”

*Response:* The Department does not agree that the use of the terms “forward” is vague or confusing. The use of “forward” meaning “to send” appears in the dictionary and is routinely used by business and government entities in connection with the mailing of documents. Further, in commonly understood legal terminology, the term “serve” is used to define a specific action by parties to a legal action who “serve” documents on other parties; the term “serve” is not used in connection with the adjudicatory function in legal proceedings.

*Subsection (e) Notification to parties*

*Subsection (f) Scheduling of hearing*

*Subsection (g) Waiver*

*Comment:* These subsections refer to “parties.” In a proceeding on an order to show cause, what other parties are involved besides the respondent? If there are none, the term “parties” should be replaced with “respondent.”

*Response:* The Department elects to retain the term parties in subsections (e), (f) and (g) because there may be multiple parties involved in any given action. Further, a third party may elect to intervene.

*- end of Commission comments and Department responses -*

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

RECEIVED

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REVIEW COMMISSION

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

**TYPE OF REGULATION**

- 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
11-8-00	<i>[Signature]</i>	HOUSE COMMITTEE ON TRANSPORTATION
11-8-00	<i>[Signature]</i>	
11-8-00	<i>[Signature]</i>	SENATE COMMITTEE ON TRANSPORTATION
11-8-00	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU