

ARTICLE V. GENERAL PROCEDURES

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CHAPTER 491. ADMINISTRATIVE PRACTICE AND PROCEDURE

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Authority

The provisions of this Chapter 491 issued under the Administrative Agency Law (71 P. S. § 1710.35) (Reserved), unless otherwise noted.

Source

The provisions of this Chapter 491 adopted July 25, 1975, effective July 26, 1975, 5 Pa.B. 1922, unless otherwise noted.

Notes of Decisions

Exhaustion

Petitioner’s action for declaratory judgment and injunctive relief, in which he asserts his operating privileges were restored by operation of law, should be dismissed for failure to exhaust his administrative remedies. *Meade v. Department of Transportation*, 813 A.2d 937 (Pa. Cmwlth. 2002).

Waiver

It would be anomalous to conclude that a party, having “waived . . . all objections to the proposed report,” under this regulation, and, indeed, “irrevocably waived objections,” 67 Pa. Code Chapter 491, may bypass review by the Secretary of Transportation, thereby preventing the Department of Transportation from correcting any potential errors, and subsequently revive its objections on appeal to the Commonwealth Court. To the contrary, the waiver rule and the applicable regulations compel the conclusion that plaintiff waived the argument which plaintiff sought to make on the merits of the hearing officer’s decision because plaintiff failed to file exceptions within the 30-day period and presented no indication of due cause for the delay. *Niles v. Department of Transportation*, 674 A.2d 739 (Pa. Cmwlth. 1995).

Cross References

This chapter cited in 67 Pa. Code § 94.11 (relating to suspension or revocation of certification); 67 Pa. Code § 177.691 (relating to Registration Recall Committee); 67 Pa. Code § 179.8 (relating to permit application procedure); 67 Pa. Code § 178.691 (relating to Registration Recall Committee); 67 Pa. Code § 231.8 (relating to additions or modifications to 49 CFR); 67 Pa. Code § 457.14 (relating to debarment appeals procedure); and 67 Pa. Code § 476.52 (relating to appeal).

§ 491.1. Applicability of General Rules.

This chapter supplements and supersedes inconsistent provisions in the General Rules.

(1) This chapter applies 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.

Authority

The provisions of this § 491.1 amended under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.1 adopted July 25, 1975, effective July 26, 1975, 5 Pa.B. 1922; amended December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (235394).

§ 491.2. Definitions.

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

Date of filing—The date a legal document is received at the office of the Department.

Date of receipt at the office of the Department—The date on which a legal document is received and docketed by the appropriate Department docket clerk.

Department—The Department of Transportation of the Commonwealth.

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 (relating to the Administrative Agency Law).

Party—Any appellant, appellee, complainant, intervener, petitioner or respondent in a matter brought before a Department hearing officer.

Secretary—The Secretary of the Department.

Authority

The provisions of this § 491.2 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.2 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (235394).

§ 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, if exceptions are 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 employee 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 employee with respect to an administrative hearing matter with which that employee 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.

Authority

The provisions of this § 491.2a issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.2a adopted July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089.

§ 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.

(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).

Authority

The provisions of this § 491.3 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.3 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial pages (235394) to (235395).

(Editor's Note: Section 3 of the act of October 27, 2006 (P.L. 1182, No. 122) abrogated § 491.3(b)(2)).

Cross References

This section cited in 67 Pa. Code § 457.14 (relating to debarment appeals procedure); and 67 Pa. Code § 491.4 (relating to institution of proceedings).

§ 491.4. Institution of proceedings.

(a) *Approval and docketing.* Upon approval, under § 491.3(b) (relating to request for 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 (relat-

ing 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, 3rd Floor, Harrisburg, Pennsylvania 17104-2516 (or other address that may be designated by the Department) 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 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 other address that may be specified by the Department), for all matters not specified in paragraph (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 a 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 § 35.121 (relating to the initiation of hearings).

Authority

The provisions of this § 491.4 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.4 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial pages (229775) to (229776).

Cross References

This section cited in 67 Pa. Code § 491.5 (relating to filing fee).

§ 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*.

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

(3) Information regarding filing fees may be obtained from the appropriate docket clerk at the addresses provided in § 491.4(d) (relating to institution of proceedings).

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

(c) *Fee not received with filing*. If a written request for a hearing is received without the required filing fee, the 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).

Authority

The provisions of this § 491.5 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.5 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (229776).

§ 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 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 1 Pa. Code §§ 35.27—35.36.

(e) *Continuances.*

(1) The Department hearing officer will consider 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 shall 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 § 35.123 (relating to the conduct of hearings).

Authority

The provisions of this § 491.6 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.6 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (219675).

§ 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).

Authority

The provisions of this § 491.7 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.7 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial pages (219675) to (219676).

§ 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.

Authority

The provisions of this § 491.8 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.8 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (219676).

Cross References

This section cited in 67 Pa. Code § 491.7 (relating to filing requirements).

§ 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).

Authority

The provisions of this § 491.9 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.9 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial pages (219676) to (219677).

Cross References

This section cited in 67 Pa. Code § 491.4 (relating to institution of proceedings).

§ 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).

Authority

The provisions of this § 491.10 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.10 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial pages (219677) to (219678).

§ 491.11. Proposed report.

(a) *General.* Following the hearing and the timely submission of any post-hearing 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).

Authority

The provisions of this § 491.11 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.11 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial pages (219678) and (261441).

Notes of Decisions

Notification

The administrative docket clerk's act of mailing the proposed decision to the address listed on counsel's praecipe for appearance was proper even though counsel had moved his office and even though he had sent letters to the Department of Transportation and to the Department's counsel with the new address at the top of the page and he had received letters from the Department's counsel at

the new address, where the record showed that counsel never sent a letter to the administrative docket clerk specifically informing her that he had relocated to the new address and directing the clerk to send all future correspondence to that address. *Media v. Department of Transportation*, 727 A.2d 140 (Pa. Cmwlth. 1999).

§ 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).

Authority

The provisions of this § 491.12 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.12 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (261441).

§ 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.

Authority

The provisions of this § 491.13 issued under the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704.

Source

The provisions of this § 491.13 adopted December 20, 1991, effective December 21, 1991, 21 Pa.B. 5825; amended July 27, 2001, effective July 28, 2001, 31 Pa.B. 4089. Immediately preceding text appears at serial page (216442).

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