

UNIFORM PRACTICE AND
PROCEDURE
Before
ADMINISTRATIVE AGENCIES
of the
COMMONWEALTH



A Report of the
JOINT STATE GOVERNMENT COMMISSION
to the GENERAL ASSEMBLY of the
COMMONWEALTH OF PENNSYLVANIA

MARCH 1949

The Joint State Government Commission was created by Act No. 459, Session of 1937, as amended by Act No. 380, Session of 1939, and Act No. 4, Session of 1943, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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LETTER OF TRANSMITTAL

To the Members of the General Assembly of the Commonwealth of Pennsylvania:

Pursuant to House Resolution No. 40, Serial No. 47, Session of 1947, adopted April 15, 1947, we submit herewith a report dealing with the problem of making uniform the practice and procedure before Commonwealth administrative agencies.

In accordance with Act No. 4, Session of 1943, Section 1, the Commission created a subcommittee to facilitate the study.

On behalf of the Commission, the cooperation of the members of the subcommittee is gratefully acknowledged.

WELDON B. HEYBURN, *Chairman.*

*Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
March, 1949*

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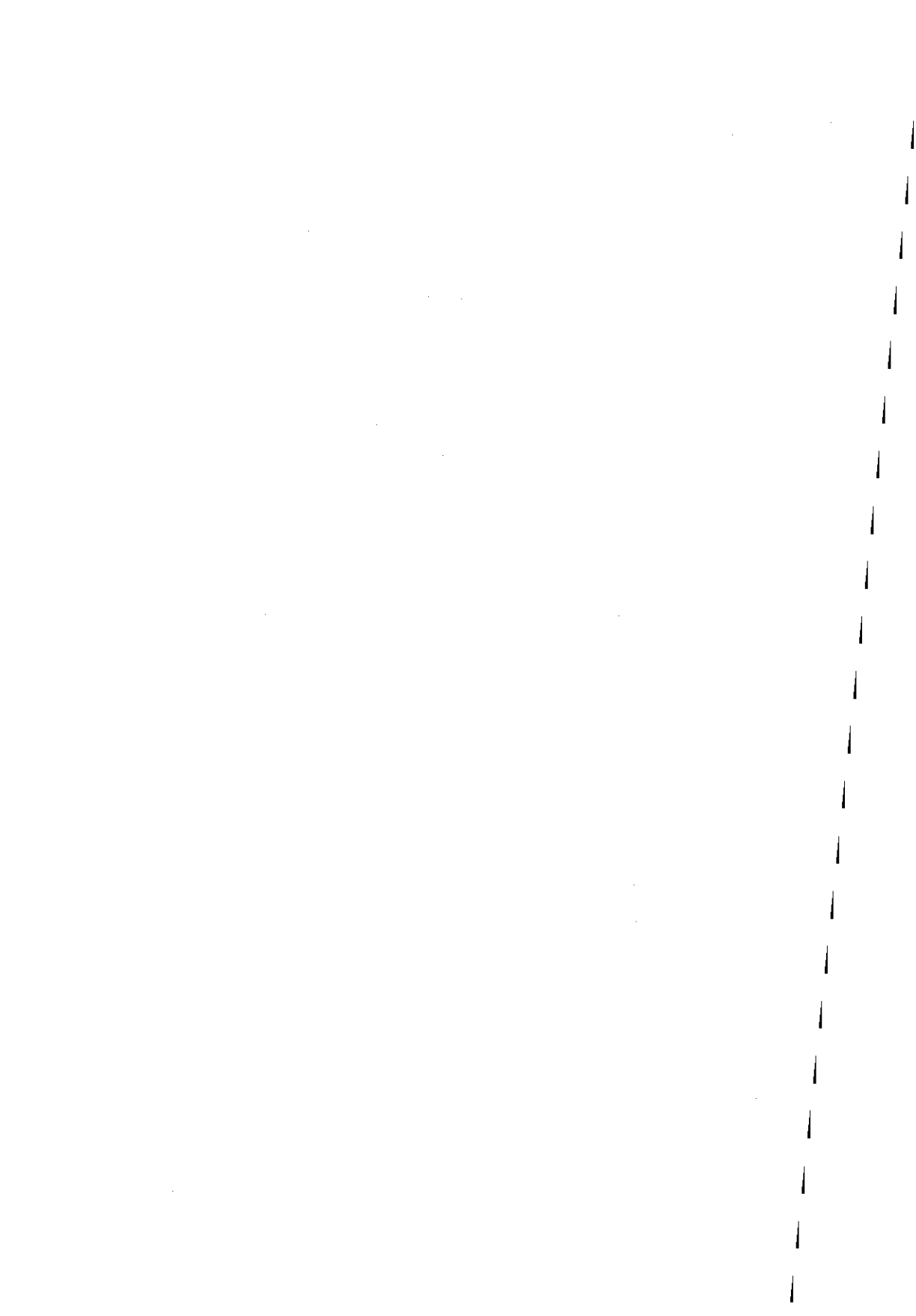
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Section I

INTRODUCTION

House Resolution No. 40, Serial No. 47, Session of 1947, adopted April 15, 1947, directed the Joint State Government Commission "to study the problem of making uniform the practice and procedure before the Administrative Agencies of the State Government and of appeals therefrom as well as the review of regulations promulgated by such agencies and to study the problem of publishing all regulations of State Agencies in one register."

In accordance with the above mandate, the Commission has reviewed the regulations of the administrative agencies of the Commonwealth; has considered the statutes of Pennsylvania and other states as they relate to the filing, review and publication of regulations of state agencies, prepared a summary of such statutes (see Appendix A, page 7); and has conferred with the Section on Administrative Law of the Pennsylvania Bar Association and members of the former Registry Board.



Section II

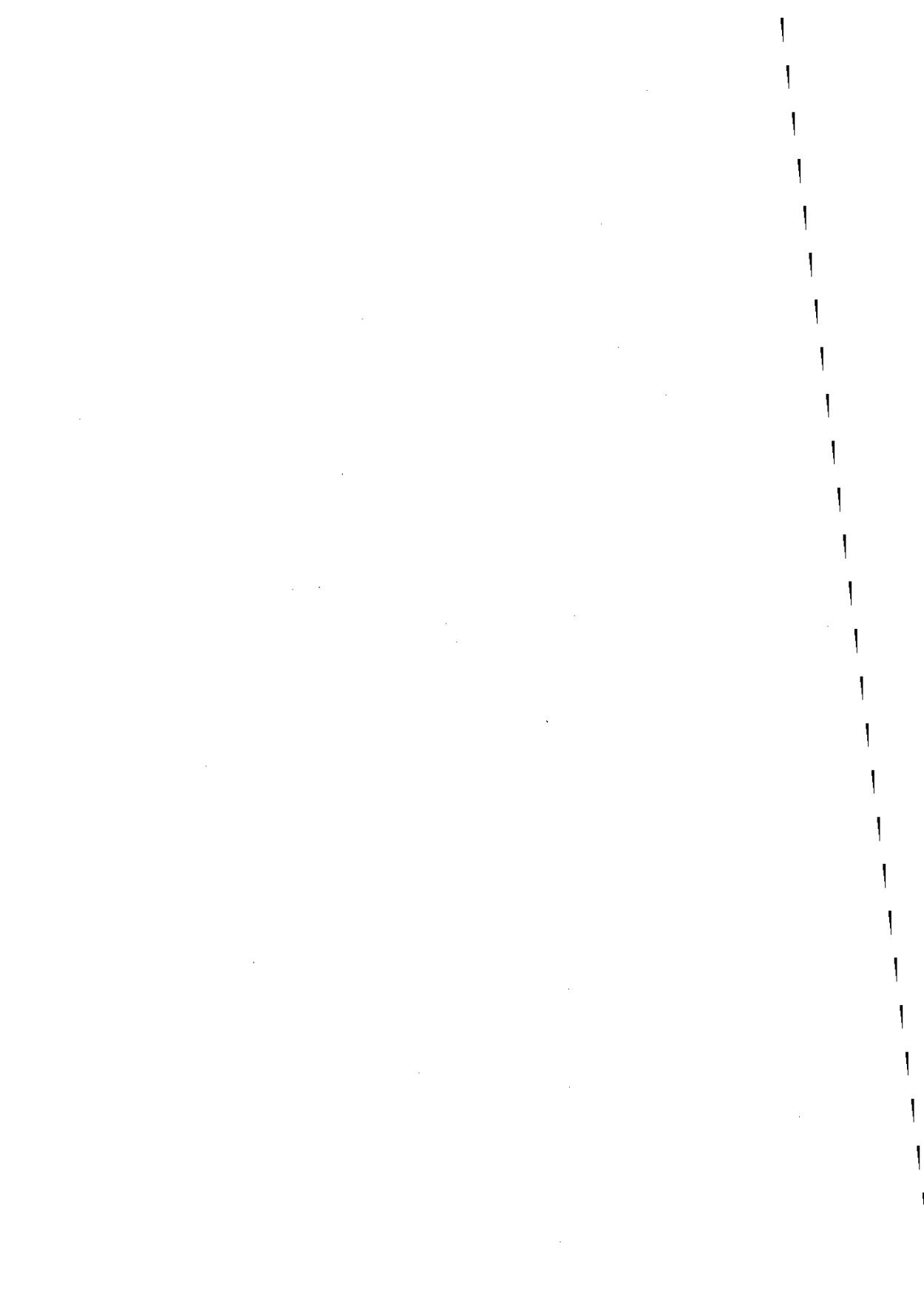
FINDINGS

An ever increasing number of the activities of the citizens of the Commonwealth are directly or indirectly affected by the regulations of the Commonwealth's more than two score administrative agencies. Ready ascertainment of the requirements imposed upon the persons whose affairs come within the jurisdiction of administrative agencies and the regulations governing the practice and procedure before them are of vital concern.

The following standards of procedure, if consistently applied, will tend to safeguard the public interest and expedite the administrative process:

1. Regulations should be formulated in a manner that would give reasonable assurance that they meet the tests of constitutionality, legality and reasonableness.
2. Regulations should be readily accessible at a central depository and conveniently available for information and for use as evidence rather than contained in a single bound volume as formerly required by the Pennsylvania Register Act (repealed 1947).
3. Administrative agencies should have the benefit of legal council in the conduct of their business and their adjudications should be in the form prescribed by law.
4. The jurisdiction of courts upon appeals from such agencies, as well as the appropriate appellate court, should be prescribed by law.

The Joint State Government Commission believes that these standards may be attained by the recommendations hereinafter set out.



Section III

RECOMMENDATIONS

The Joint State Government Commission recommends that Act No. 442, approved June 4, 1945, P. L. 1388, be amended to provide that:

1. The following requirements apply to all regulations of the agencies as listed in Section 51 (see Appendix B, pages 19 and 20).
2. Regulations of each such administrative agency (1) be certified on behalf of the agency, (2) be approved as to legality by the Department of Justice, (3) be filed with the Department of State in the form and size prescribed by the Department of State and (4) copies be made available by the agency free of charge upon request.
3. The Department of State (1) keep a permanent record of all regulations filed with it, (2) prepare and maintain an index of all such regulations to be available for inspection, and (3) furnish certified copies of any regulation upon payment of a proper charge.
4. The adjudications of each such agency shall contain findings of fact, a discussion of the questions of fact and law involved, conclusions of law and an order or decree.
5. Before notice of any hearing leading to an adjudication is given, any such agency shall submit the matter to the Department of Justice to determine the legality of the proposed action or defense.

6. The jurisdiction of the court to which an appeal is taken from any such agency shall be clarified as set forth in Section 44 (see Appendix B, page 18).
7. Appeal from any decision of a court reviewing an agency's adjudication shall be to the Superior Court.

**{ For complete text of Proposed Amendment
to Act No. 442, approved June 4, 1945,
P. L. 1388, see Appendix B, page 15. }**

APPENDIX A

Summary of Statutes of Pennsylvania and Other States Relating to the Filing, Review and Publication of Administrative Rules and Regulations of State Administrative Agencies

The statutory requirements regarding the filing, review and publication of administrative rules and regulations of state agencies of Pennsylvania and other states are shown in the following table.

Column 1 shows the name of the state (states not listed in the table have no statutes governing the filing, review or publication of rules and regulations of agencies); column 2 indicates the central depository, if any, where regulations are required to be filed; column 3 shows the agency, if any, which must review rules and regulations issued by administrative agencies; and column 4 contains information relating to the publication of rules and regulations.

TABLE I

Summary of the Laws of Pennsylvania and Other States Regarding the Filing, Review and Publication of Rules and Regulations of State Administrative Agencies *

<i>State</i>	<i>Central Depository</i>	<i>General Review of Rules</i>	<i>Publication of Rules</i>
(1)	(2)	(3)	(4)
CALIFORNIA	Secretary of State		California Administrative Code. Looseleaf; new and additional amendments supplied by replace- ment sheets.
CONNECTICUT	Secretary of State	Submitted to the legislature at each session for approval or disapproval. A rule so disapproved is void and may not be reissued.	Rules are effective upon publication in the <i>Connecticut Law Journal</i> and amendments and additions are published in the <i>Connecticut Sup- plement</i> .
INDIANA	Secretary of State and Leg- islative Bureau	Reviewed by Governor and Attorney General.	Compiled and published in such form that annual accumulations can be inserted in a back pocket of the edition.

TABLE I (Continued)

<i>State</i>	<i>Central Depository</i>	<i>General Review of Rules</i>	<i>Publication of Rules</i>
(1)	(2)	(3)	(4)
KANSAS	None		1947 act ordered each agency to compile all rules in force but failed to direct publication.
KENTUCKY	Secretary of State		Administrative Code supplemented by an Administrative Register.
MARYLAND	Clerk of Court of Appeal and Department of Legislative Reference		
MASSACHUSETTS			1945 act repealed former requirement that all regulations were to be included in the annual report of each officer. Most of these reports are published.

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TABLE I (Continued)

<i>State</i>	<i>Central Depository</i>	<i>General Review of Rules</i>	<i>Publication of Rules</i>
(1)	(2)	(3)	(4)
MICHIGAN	Secretary of State	Joint Interim Legislative Committee reviews administrative rules upon promulgation by the agency. It may suspend the rule pending action by the legislature. Rules transmitted to legislature for approval or disapproval.	Published in Administrative Code. Supplement every 3 months by an edition called the Register. The Code is to be revised at least every 5 years.
MINNESOTA	Secretary of State	Provision for hearing and notice of hearing to be sent to trade groups and others registered with the Secretary of State prior to the final adoption of any new rule. Interested persons may request reconsideration and public hearing of any rule after its adoption.	Law provides for periodical publication of all rules filed with the Secretary of State. Pending an appropriation each agency is publishing its own rules and regulations.
MISSOURI	Secretary of State		Published compilation to be supplemented monthly. Revision of compilation required <i>every two years</i> .

TABLE I (Continued)

<i>State</i>	<i>Central Depository</i>	<i>General Review of Rules</i>	<i>Publication of Rules</i>
(1)	(2)	(3)	(4)
NEBRASKA	Secretary of State and Clerk of the Legislature	Approval by Attorney General and review by the legislature.	Published and circulated by each agency in such manner as to bring attention of affected persons to the existence and scope of the rules.
NEW YORK	Secretary of State		Published in looseleaf form. Now contains five volumes of 4,000 pages.
NORTH CAROLINA	Secretary of State		
NORTH DAKOTA	Attorney General	Attorney General must give opinion as to validity. The rule and his opinion must be filed with the clerk of courts and with the secretary of the state bar.	
OHIO			Each agency must compile and publish and have available for general distribution in book and pamphlet form all general administrative rules.

TABLE I (Continued)

<i>State</i>	<i>Central Depository</i>	<i>General Review of Rules</i>	<i>Publication of Rules</i>
(1)	(2)	(3)	(4)
OREGON	Secretary of State		Printed as an appendix to the session law.
PENNSYLVANIA			Publication of all rules 30 days after promulgation is the obligation of the promulgating agency. (Act 541, Session of 1947.)
SOUTH CAROLINA	Secretary of State		Printed as an appendix to the session law.
TENNESSEE	Secretary of State		
VIRGINIA ¹	Director of the Division of Statutory Research and Drafting	Public hearing and approval by the Commission on Administrative Agencies.	Publication called the Administrative Code of Virginia. Published in such form that it may be supplemented.

TABLE I (Continued)

<i>State</i>	<i>Central Depository</i>	<i>General Review of Rules</i>	<i>Publication of Rules</i>
(1)	(2)	(3)	(4)
WISCONSIN			Publication in the Wisconsin Red Book to be revised frequently.
13 Model Law of the National Congress of Commissioners on Uniform State Laws	Secretary of State	In judicial review of contested cases, the Model Law restricts consideration to the record from the adjudication of the agency. With the court's permission, new evidence may be heard either by the court or the case may be remanded to the administrative agency.	The Model Law provides that the Secretary of State shall compile, index and publish such rules supplemented by a monthly bulletin.

¹ Refers only to those administrative agencies which are staffed by members of a profession or calling to regulate and/or license members of their professions. Such agencies as the Public Utility Commission are not so regulated nor are their regulations published.

* SOURCE: Carrol C. Moreland: "State Administrative Rules." *The Book of the States*, 1948-49.

APPENDIX B

A Proposed Act Providing Amendments to Act 442, Approved June 4, 1945, P. L. 1388

AN ACT

To amend the act, approved the fourth day of June, one thousand nine hundred forty-five (Pamphlet Laws 1388), entitled, "An act relating to the practice, procedure, regulations and adjudications of departments, departmental administrative boards and commissions, independent administrative boards and commissions, officers and other administrative agencies of this Commonwealth, and judicial review thereof; and preserving equitable jurisdiction in certain cases," by redefining "regulation"; changing provisions governing promulgation of regulations; imposing duties on the Department of State; extending the grounds for refusing to affirm adjudications of agencies; requiring all appeals to be taken to the Superior Court; and enumerating the agencies affected and the extent to which they are affected.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Clause (e) of section two of the act, approved the fourth day of June, one thousand nine hundred forty-five (Pamphlet Laws 1388), entitled "An act relating to the practice, procedure, regulations and adjudications of departments, departmental administrative boards and commissions, independent administrative boards and commissions, officers and other administrative agencies of this Commonwealth, and judicial review thereof; and preserving equitable jurisdiction in certain cases," is hereby amended to read as follows:

Section 2. Definitions.—The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

* * * * *

(e) "Regulation" means any rule, regulation or order [in the nature of a rule or regulation, generally applicable to the public, promulgated by an agency authorized by statute so to do, but shall not be construed to include the name or facts of any adjudication giving rise to such regulation] of general application and future effect, promulgated by an agency under statutory authority, prescribing the practice or procedure before such agency or interpreting or implementing any statute enforced or administered by such agency.

Section 2. Section twenty-one of said act, as amended by the act, approved the seventh day of July, one thousand nine hundred forty-seven (Pamphlet Laws 1367), is hereby further amended to read as follows:

Section 21. Regulations.—[All regulations of any agency which are in effect on the effective date of this act, or which shall be adopted thereafter, shall have no effect, unless they are printed and made available, upon written request, within thirty days after the date of adoption.] All regulations of any agency which are in effect on the effective date of these amendments, or which shall be adopted prior to the first day of December, one thousand nine hundred forty-nine, shall expire on the first day of January, one thousand nine hundred fifty, unless a copy thereof, certified by the executive officer, chairman, or secretary of the agency and approved as to legality by the Department of Justice, is filed in the Department of State, in such form and size as shall be prescribed by the Department of State, and copies thereof are made available by the adopting agency, upon written request, prior to the first day of January, one thousand nine hundred fifty. Regulations adopted after the thirtieth day of November, one thousand nine hundred forty-nine,

shall have no effect unless a copy thereof, certified by the executive officer, chairman, or secretary of the agency and approved as to legality by the Department of Justice, is filed in the Department of State, in such form and size as shall be prescribed by the Department of State, and copies thereof are made available by the adopting agency, upon written request, within thirty days after the date of adoption.

Section 3. Said act is hereby amended by adding, after section twenty-one thereof, a new section to read as follows:

Section 22. Permanent Record of Regulations.—The Department of State shall maintain a permanent record of all regulations filed with it. Such record may be in the form of microfilm or other reproductions, in which event the original certified and approved copies need not be retained. The Department of State shall furnish certified copies of any regulation filed with it, upon the payment of the charges made for certified copies of other records on file in the department. The Department of State shall prepare and publish, in such form and at such time or times as it shall determine, an index of all regulations on file with it and periodic supplements thereto. The Department of State shall have power to adopt and enforce rules governing the physical form and size of regulations to be filed with it, and such other rules as it deems necessary in carrying out its functions under the provisions of this act.

Section 4. Section thirty-four of said act is hereby amended to read as follows:

Section 34. Adjudications; Service.—All adjudications shall be in writing, shall contain findings [and the reasons for the adjudication] of fact, a discussion of the questions

of fact and law involved, conclusions of law, and an order or decree, and shall be served upon all parties or their counsel personally, or by mail. If service is made by mail the date of mailing shall be the date of service.

Section 5. Said act is hereby amended by adding, after section thirty-five thereof, a new section to read as follows:

Section 36. Notice to Department of Justice.—Before notice of any hearing leading to an adjudication is given, the agency shall submit the matter to its representative in the Department of Justice, who shall pass upon the legality of the proposed action or defense.

Section 6. Sections forty-four, forty-five and fifty-one of said act are hereby amended to read as follows:

Section 44. Disposition of Appeal.—The court to which the appeal is taken shall hear the appeal without a jury on the record certified by the agency. After hearing, the court shall affirm the adjudication unless it shall find that the same is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of sections thirty-one to thirty-five inclusive of this act have been violated in the proceeding before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence in view of the record, or that the adjudication is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. If the adjudication is not affirmed, the court may set aside or modify it, in whole, or in part, or may remand the proceeding to the agency for further disposition in accordance with the order of the court.

Section 45. Appellate Review.—The agency, or any party affected by any decision of a court on an appeal from adjudication may, within thirty days of the filing of such de-

cision, appeal to the Superior [or Supreme] Court [as in other cases].

[Exemptions

Section 51. (a) None of the provisions of this act, except sections twenty-one to twenty-three inclusive, shall apply to proceedings before the Department of Revenue, Auditor General, Board of Finance and Revenue or Secretary of the Commonwealth, involving the original settlement, resettlement, review or refund of taxes, bonus, interest or payments made into the State Treasury, or judicial review of such proceedings. The provisions of sections thirty-one to forty-five inclusive shall not apply to an adjudication of an agency from which an appeal to a court is provided by another statute, or to an adjudication of an agency, whose adjudication is provided by another statute as final.]

Application of Act

Section 51. (a) Except as hereinafter provided, the provisions of sections twenty-one and twenty-two shall apply to all agencies of the Commonwealth.

(b) Sections forty-one to forty-five inclusive of this act shall not apply to adjudications of the Banking Board or of the Building and Loan Board.

(c) All of the provisions of this act shall apply to the following agencies: (1) Department of Agriculture; (2) Department of State; (3) Insurance Department (except as hereinafter provided); (4) Board of Property; (5) State Council of Education; (6) State Board of Censors; (7) State Board of Medical Education and Licensure; (8) State Board of Pharmacy; (9) State Dental Council and Examining Board; (10) State Board of Optometrical Ex-

aminers; (11) State Board of Osteopathic Examiners; (12) Osteopathic Surgeons' Examining Board; (13) State Board of Examiners for the Registration of Nurses; (14) State Board of Veterinary Medical Examiners; (15) State Board for the Examination of Public Accountants; (16) State Board of Examiners of Architects; (17) State Registration Board of Professional Engineers; (18) State Real Estate Commission; (19) State Board of Private Business Schools; (20) Pennsylvania Securities Commission; (21) State Soil Conservation Commission; (22) Water and Power Resources Board; (23) Flood Control Commission; (24) Anthracite Mine Inspectors' Examining Board; (25) Mine Inspectors' Examining Board for the Bituminous Coal Mines; (26) State Bridge and Tunnel Commission; (27) Pennsylvania Parkway Commission; (28) Sanitary Water Board; (29) State Board of Undertakers; (30) State Workmen's Insurance Board; (31) Industrial Board; (32) State Board of Vocational Rehabilitation; (33) State Welfare Commission; (34) State Athletic Commission; (35) State Board of Public Assistance; (36) Pennsylvania Aeronautics Commission; (37) State Board of Housing; (38) State Civil Service Commission; (39) State Tax Equalization Board.

[(c)] (d). This act shall not apply to actions of the Secretary of Banking in the taking possession and liquidation of banking institutions, and building and loan associations or to actions of the Insurance Commissioner in the taking possession and liquidation of insurance companies, nor to the Milk Control Commission.

