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DEPARTMENT OF STATE
Office of Information Services

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NEW YORK STATE
REGISTER

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State agencies must specify in each notice the last date on which they will accept public comment. Agencies always accept public comment for a minimum of 45 days following publication in the *Register* of a Notice of Proposed Rule Making, and for 30 days after publication of a Notice of Revised Rule Making. When a public hearing is required by statute, the hearing cannot be held until 45 days after publication of the notice; and comment must be accepted for at least five days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies accept comment through close of business on the next succeeding workday.

For notices published in this issue:

- the 45-day period expires Saturday, February 21, 1997
- the 30-day period expires on Friday, February 6, 1997

ADJUDICATORY REPORTS

Department of State

Administrative Adjudication Plan Biennial Report for December 1, 1994 to December 1, 1996

The Office of Administrative Hearings (OAH) conducts quasi-judicial administrative hearings for 15 of the occupations regulated by the Department of State (DOS). All adjudication are governed by applicable licensing statutes; the State Administrative Procedure Act; Part 400 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); Executive Order No. 3 (9 NYCRR Section 5.3) and Executive Order No. 131 (9 NYCRR Section 4.131); and the Administrative Adjudication Plan submitted by the Department in compliance with these Executive Orders.

Provisions of 19 NYCRR Part 400 create the OAH as an independent unit in New York City that is physically separate from the offices of other Department of State divisions that appear as parties in adjudicatory matters before the OAH; govern communications with and discipline of administrative law judges (ALJs); and establish the procedure under which administrative law judges issue final determinations. Effective on July 24, 1996, ALJs were given authority by Part 400 to issue final determinations without prior review or approval by the Secretary of State or his/her designee. These final determinations are appealable either to (1) the Secretary of State by any party to an action (applicant, licensee or a division of the Department of State), or (2) the New York State Supreme Court under provisions of Article 78 of the Civil Practice Law and Rules (CPLR) by either an applicant or licensee who appeared as a party to an action. An appeal from a decision of the Secretary of State rendered pursuant to (1) above is also governed by the provisions of Article 78 of the CPLR. ALJs report to the Secretary of State or his/her designee.

Attorneys assigned as prosecutors for the Department are located in Albany and report to the General Counsel. Review of the merits of a case and the decision whether to prosecute takes place in a consultative process that involves attorneys and program staff. Prosecuting attorneys and ALJs of the Department of State are forbidden by regulation to engage in *ex parte* communications about the merits of a matter being adjudicated.

The Department has simplified its procedure for the adjudication of less complex cases. In such cases, non-lawyer supervisory employees represent the Division of Licensing Services before the OAH. Licensees usually represent themselves in this process. This process quickly

and fairly disposes of many cases that involve minor violations of the licensing laws.

During the reporting period, the OAH held 804 hearings. The decisions in those cases resulted in six Article 78 proceedings. Of those, two have been decided, both in the Department's favor.

Department of Social Services

Pursuant to Executive Order No. 131 that was issued on December 4, 1989, each agency is required to publish a report that sets forth the steps taken by the agency to comply with the Order. The report for the period ending November 30, 1990, detailed the initial steps taken to comply with the Order, including changes in organizational structure, Department regulations and practices, and in hearing procedures. Those provisions remain in effect.

The Order (Section V) requires that the report include "statistics on Article 78 proceedings brought against the agency, including the outcome of such proceedings and the reasons for any reversal or modification of an agency determination." The following statistics on Article 78 proceedings are from the period commencing July 1, 1994 through June 30, 1996:

Cases Opened:	724
Cases Closed:	214

The closed cases resulted in the following outcomes:

Stipulations of settlement:	102
Decisions favorable to the Department:	66
Withdrawn or abandoned by petitioner:	29
Decisions adverse to the Department:	17

Reasons for adverse decisions:

Mistake of law as applied to facts:	8
Record deficient:	9