REGULATORY ANALYSIS FORM

For use in providing information to the Independent Regulatory Review Commission pursuant to Section 5 of the Regulatory Review Act and for providing information to the Governor's Task Force on Regulatory Relief pursuant to Executive Order 1982-2 and Section 612 of the Administrative Code.

(1) Agency		والمراوعة فالمراجع والمستجوب والمراجع والمراجع والمراجع والمراجع والمراجع	
· · ·	(2) ID No. (Use	Task Force No.)	Date Received by
PA Human Relations Commissio	10 Pic	# IRRC:	
(3) Short Title			⊘ 043
Housing Accommodations/Comme	rcial Property		
4) Pa. Code Cite (5) Agency Con		tact & Phone Number	
16 PA. Code 45	, , , ,		Counsel 717-783-813
(6) Type (check one) (x) Proposed () Final Order Adopting Regulation () Final-Omitted Regulation		(7) Is a 120 day Emergency Certification Attached: () No () Yes: By the Attorney General () Yes: By the Governor	
(8) APPROVALS (Name & Date		(Executive Agencies Only)	
Agency Head		Task Force	
PART II: BASIC ANALYSIS M. Act)	ATERIAL (Requi	red by Sec. 5(a) of the	Regulatory Review
(9) Briefly explain the proposed of the purpose of the public of words, phrasible under the PHRA addition, they are to	at are impermis- sements. In		
what language is a vi- tisements published o proposed regulations reasonable efforts to the Act such that a f those portions of the precluded.	r caused to b also define comply with inding of a k act by the a	e PHRA in any he published by conduct that co the advertising nowing and will dvertiser or pu	ousing adver- them. These nstitutes provisions off ful violation of blisher is
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(11) What is the statutory or other authority under which the regulation is proposed? (For state law cite Act and P.S. for federal law cite Act and U.S.C. For federal regulations cite C.F.R. or Federal Register. Be sure to cite court decisions, or consent decrees or attach copies of unpublished documents.)
The PHRC's statutory authority for rulemaking is found at Section 7(d) and 9)(g) of the PHRA, 43 P.S. \$\$957(d) and 959)(g) These regulations are published pursuant to the mandate of Act 3 of 1997. Under that authority, the guidelines and statement of policy currently in effect, were not subject to review pursuant to section 205 of the Act of July 31, 1968 and are effective for a period not to exceed two (2) years from the effective date of Act 34, which was August 24, 1997, and serve as proposed rulemaking. After the two year period, the guidelines and statement of policy expire. They are to be replaced by regulations which are now being promulgated, adopted and published as provided by law.
(12) Why is this regulation needed?
The proposed regulations are mandated by Act 34 of 1997.
(13) What legal, accounting or consultant procedure will be required by the proposed regulation and who must comply with these procedures?
None

(14) What additional reporting, record keeping and other paperwork will be required by the proposed regulation? (Attach copies of any available forms or reports which will be require implementation of the proposed regulation.)	
None	
•	
(15) What is the suggested timetable for public comment, hearings, implementation, and who are various conformity deadlines (i.e. permits, licenses, etc.)?)ŧ
N/A	
(16) What types of persons, businesses and organizations will be affected by the regulation?	
Advertisers, Publishers and members of the public reading housing advertisement	s.
•	
(17) What other regulations and State agencies will be affected by the regulation?	
None	
	İ

18) General	ly describe th	ne costs impo	sed by this reg	ulation upon	tate and loss	l
The propose no addition	ed regulation	ons are exp	lanatory of	existing law	and will re	quire
19) Are then	Revenue Lo	sses? Yes N	<u>.)</u>			
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4) What is th	e amount o	f reasonably m	easurable pri	vate costs?	N/A	
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nefits. onsumers of dvertisemen	Housing Ats will be	dvertisements better able	s as well as to understa	those who pand the law a	oublish housi is it exists.	ing easurabl

(27)Will the p	otential benefits o	outweigh the p	otential costs in	nposed? Exp	lain.	
N/A						
•					•	
·						
(28) Has the repotential bene	egulation been dra fits and potential	afted in a man costs? Explain	ner which max	imized the dif	ference betwee	
N/A						
				•		
(29) List the althese alternative	ternative regulato ves.	ry approaches	which were co	nsidered and	reasons for rej	ecting
N/A						•
•						

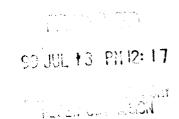
(30) How will this regulation reduce or minimize paperwork, legal accounting, reporting or paperwork requirements?
N/A
(31) What provisions are included in the regulation to meet the special needs of affected groups or persons? If no such provisions are included, explain why.
N/A
,
(32) What plan has been developed to evaluate the effectiveness of the regulation after its
implementation? What sunset date, if any, has been assigned?
implementation? What sunset date, if any, has been assigned? The proposed regulations will be reviewed on an ongoing basis and updated as
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orders, consent	ation mandated by federal decrees, settlement memos,	law or court order? Yes federal regulations, lette	No (Attach copies of
No			and the mean; etc.)
	•		
•			
(35) Upon what in other research has	formation is the need for to been conducted?	his regulation based? W	hat studies, hearings, or
N/A			
	(
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	any, were taken in the deve tion?	or the regulatio	n to provide public and
/A			
) Will current litig	gation be affected by this re	egulation? Yes/No If se	Cite cases and explain
	gation be affected by this re	egulation? Yes/No If se	cite cases and explain.
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FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)



#2045

DO NOT WRITE IN THIS SPACE

Copy	below	is	hereby	approved	83	to
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Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

fennsylvania Human Relations Commission

(AGENCY

DOCUMENT/FISCAL NOTE NO. 52-010

ATE OF ADDRESS May 24, 1999

DATE OF ADOPTION: HBy 24, 1999

Homer C. Floyd

TITLE EXECUTIVE DIRECTOR / EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

Elisabeth S. Shuster Chief Counsel

5-25-99

(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED REGULATIONS

Title 16 -COMMUNITY AFFAIRS

Part 2 - GOVERNOR'S OFFICE

Subpart A - HUMAN RELATIONS COMMISSION

16 PA CODE CH. 45.

HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY

Notice is given hereby that the Pennsylvania Human Relations Commission (PHRC), which earlier adopted the guidelines and statement of policy relating to advertising, now presents those guidelines and statement of policy in the form of proposed regulations. (See Annex "A") The guidelines and statement of policy were published in Volume 27, Number 42, page 5485 of the Pennsylvania Bulletin on October 18, 1997. An amendment to the guidelines and statement of policy was published in Volume 28, Number 45, page 5578 of the Pennsylvania Bulletin on November 7, 1998. In compliance with and pursuant to the authority of Act 34

of 1997, the guidelines and statement of policy were not subject to review pursuant to section 205 of the Act of July 31, 1968 and are effective for a period not to exceed two (2) years from the effective date of Act 34, which was August 24, 1997. The guidelines and statement of policy as amended were to serve as proposed rulemaking. On or before the expiration of the two year period, the advertising guidelines and statement of policy as amended expire and are to be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

This publication is to serve as those proposed regulations. Pursuant to the publication of the guidelines and statement of policy as amended the PHRC sought input from interested and affected groups and requested comments from the readers. The guidelines and statement of policy as amended have been published in numerous newsletters and widely circulated by the PHRC. They have been favorably received by the affected organizations and groups. Since publication, the PHRC has received many inquiries regarding advertisements and has successfully developed and followed the procedures spelled out in the guidelines and statement of policy as amended.

The purpose of these proposed regulations is to inform the public of words, phrases, symbols and the like which are unlawful under the PHRA when used in housing advertisements. In addition, they are a guide to advertisers and publishers in their efforts to insure that any housing advertisements published or caused to be published by them do not violate the PHRA. These regulations also contain rules which if followed will constitute reasonable efforts to comply with the advertising provisions of the PHRA such that a finding of knowing and willful violation of those portions of the PHRA is precluded.

Fiscal Impact:

The Commission believes that the regulations will result in no additional cost to the Commission or to the general public. Any additional costs which arise were created by the Act and not the proposed regulations.

Paperwork Requirements:

No additional, routine paperwork will be required by the new regulations.

Effective Date:

The proposed regulations shall take effect upon final publication in the Pennsylvania Bulletin.

Contact Person/Public Comments:

Interested persons are invited to submit written comments regarding the proposed regulations in writing to Nancy L. Gippert, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 101 South Second Street, Suite 300, P.O. Box 3145, Harrisburg, PA 17101. Such comments should submitted within 60 days of publication.

Homer C. Floyd, Executive Director

Annex A

Title 16. Community Affairs

PART 2. Governor's Office

Subpart A. Human Relations Commission

CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY PROPOSED REGULATIONS

Sec.

45.	1	01	Purpose.

- 45.102. Definitions.
- 45.103. General Rules.
- 45.122. Prohibited Usages: Race/color/national origin.
- 45.123 Prohibited Usages: Familial status/age
- 45.124. Prohibited Usages: Disability
- 45.125 Prohibited Usages: Religion
- 45.126 Prohibited Usages: Sex

List of Words or Phrases to Avoid.

- 45.141. List
- 45.142. Words to be avoided.
- 45.152. Advertisements.
- 45.153. Affirmative Defenses.
- 45.154. Good Faith Efforts.
- 45.155. Federal Regulations

\$45.101 PURPOSE

- (a) The purpose of these regulations is to insure that advertisements for housing and commercial property do not include words, phrases, symbols and the like which violate the advertising provisions of the Act.
- (b) Section 45.153 contains affirmative defenses which will preclude a finding of a willful and knowing violation of the advertising provisions of the Act.
- (c) These regulations implement the statutory mandate of 43 P.S. \$959.1(b).

§ 45.102. Definitions

The following words and terms, when used in this chapter, have the following meanings, which are identical to those found in the Pennsylvania Human Relations Act, 43 P.S. \$954.

(a) housing accommodation -

The term "housing accommodation" includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building; structure, mobile home site or facility. The term "housing accommodation" shall not include any personal residence offered for rent by the owner or lessee thereof or by his or her broker, salesperson, agent or employee.43 P.S. \$954(i)

(b) personal residence

- a building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups or two families living independently of each other and used by the owner or lessee thereof as a bona fide residence for himself and any members of his family forming his household. 43 P.S. §954(k)

This provision applies to any "person"

- (c) person -
 - One or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employe, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.

 43 P.S. §954 (a)
- (d) advertising or advertisement -

any advertisement and any similar written, printed, taped or broadcast communication, notice statement or the like which is disseminated (whether published, printed, circulated, issued, displayed, posted or mailed for the purpose of promoting housing activity, including, but not limited to, rentals, leases and sales. 43 P.S. §954 (z)

(e) advertiser -

any person who places, publishes, broadcasts or similarly causes to be disseminated by any other means an advertisement or advertising as defined in clause (z). 43 P.S. \$954 (aa)

(f) housing for older persons means housing:

provided under any Federal or State program that the Pennsylvania Human Relations Commission determines is specifically designed and operated to assist elderly persons as defined in the Federal or State program;

is intended for and solely occupied by persons sixty two years of age or older; or,

is intended and operated for occupancy by at least one person fifty-five years of age or older per units.

In determining whether housing qualifies as housing for older persons under this clause,

the Pennsylvania Human Relations Commissions's requirements shall include but not be limited to, the following:

at least eighty percent of the units are occupied by at least one person fifty five years of age or older per unit.

there is publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

The housing complies with regulations promulgated by the Pennsylvania Human Relations Commission for verification of occupancy. Regulations under this paragraph shall include all of the following:

Provide for verification by reliable surveys and affidavits. Surveys and affidavits under this subparagraph shall be admissible in administrative and judicial proceedings for the purpose of verification under this paragraph.

Include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of paragraph (iii).

43 P.S. \$954(w)

§45.103 General Rules

(a) The prohibited words & phrases set forth in sections 45.142.are unlawful when used in housing advertisements. In addition to those, any word or phrase that is commonly understood to be offensive to a group of people in a protected class also violates the Act.

§45.122 PROHIBITED USAGES: RACE/COLOR/NATIONAL ORIGIN

It is unlawful to advertise a limitation, preference or discrimination on account of race, color or national origin. Examples include but are not limited to:

- (a) Use of any color to describe a group of people, eg White, Brown, Red, Black, Yellow.
- (b) Use of any nationality or race to describe a group of people, eg. Caucasian, Negroid, Chinese, Asian Immigrant, French Hawaiian, Arab, Oriental, African American, Irish, etc.
- (c) Use of landmarks or organizational locations which are indicative of a particular nationality or race, unless all such landmarks in the area are noted, eg. if proximity to a specific place associated with a particular ethnic group is noted as a directional landmark, reference should be made to all other nearby comparable facilities of interest to other groups.
- (d) Use of code words which are recognizable in a particular neighborhood as connoting neighborhoods that restrict certain races or ethnic groups.

§45.123 PROHIBITED USAGES: FAMILIAL STATUS/AGE

- (a) It is unlawful to advertise a preference, limitation or discrimination against families with children in the household or against persons 40 or older. Examples include but are not limited to:
 - (1) use of any phrase which notes a preference, limitation or discrimination for adults, couples or singles or families without children eg. "adult atmosphere", "mature adults preferred", "great for retired couple or couple just starting out", "adult/family sections", "no kids/pets okay", "couples only", "ideal for singles", "adult community", "suitable for one or two adults".
 - (2) use of any colloquialisms which imply the same as
 (a)(1), eg. "empty nesters", "honeymooners", "swinging
 singles"
 - (3) listing the number of children allowed.
- (b) Not withstanding the prohibitions in Section (a) above, It is not unlawful to:
 - (1) List the size and number of rooms or bedrooms
 - (2) Indicate that the housing meets the requirements for "housing for older persons". A publisher may rely on the advertisers written representations of such, unless he or she has reason to believe otherwise.
 - (3) To advertise a preference against children and advertise age restrictions where the housing accommodations qualifies as Housing for Older Persons as defined by \$45.102(f).

§45.124 PROHIBITED USAGES: DISABILITY

- (a) It is unlawful to advertise a preference, limitation or discrimination against persons with disabilities or to advertise that the property is not accessible.
- (b) It is not unlawful to describe housing as accessible to persons with disabilities.

§45.125 PROHIBITED USAGES: RELIGION

It is unlawful to advertise a preference, limitation or discrimination on the basis of religion. Examples include but are not limited to:

- (a) use of any religious denomination e.g. Christian, Jew, Muslim, Buddhist.
 - (b) phrases such as "surround yourself with Christians"
- (c) use of a particular landmark or location which is indicative of a particular religion.
- (d) Notwithstanding the prohibitions in sections (a),(b) & (c), it is not unlawful for any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization to:
- (1) advertise a preference to persons of the same religion or denomination or to members of such private or fraternal organization.
- (2) advertise that the making of such selection is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.

§45.126 PROHIBITED USAGES: SEX

- (a) It is unlawful to advertise any preference, limitation or discrimination on the basis of sex . Examples include but are not limited to; "males only need apply", professional male preferred", "perfect for single female"
- (b) Notwithstanding the prohibitions in Section (a), it is not unlawful to:
- (1) advertise a preference based on sex in the rental or leasing of housing accommodations in single-sex dormitory.

(2) Advertise a preference based on sex in the rental or leasing of housing accommodations for rooms in one's personal residence in which common living areas are shared.

List of Words or Phrases to Avoid.

§45.141. List.

The list does not contain every possible word and phrase that may violate the PHRA. Its purpose is to provide as complete a list as possible. For example, while many nationalities, types of disabilities and races are mentioned, the list is not inclusive. Any word indicating ancestry, race, color, religion or disability is equally prohibited in the context of real estate advertisements. This list will provide guidance on how to recognize the type of language that may be violative of the PHRA. (When the context of the word or phrase is key to its possible unlawful meaning that will be noted.)

§45.142. WORDS TO BE AVOIDED.

(a) It is unlawful to use the following words or phrases in housing advertisements unless used in a clearly nondiscriminatory context such as "white cabinets" or "french doors". The list is neither intended nor reasonably able to be all inclusive. It is also unlawful to use words or phrases not appearing on the list, but which are used in a context which may reasonably be interpreted as indicating an unlawful discriminatory intent.

Able bodied

- ADULT If the housing is "housing for older persons" as defined by the Federal Fair Housing Act (Title VIII, Civil Rights Act of 1968, as amended, Act of 4-11-68, P.L. 90-284, as amended by P.L. 1988, P.L. 100-430, eff. 3-12-89; 42 U.S.C. §§3601-3619, 3631.) and the act, it is appropriate to say
 - (i) A newspaper/publisher may publish an advertisement for housing, and be held harmless for liability for an advertisement which uses the terms "senior housing", "senior community", "retirement community", if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons as defined in the act.
 - (ii) Equivalent phrases referring to persons 55 and 62 and older such as "adult community, 55 and over", "adult community, 62 and over", "adult 55+", "adult 62+" to describe housing for older persons, will also be acceptable.

(iii) The term "adult" alone or with terms that do not meet housing for older persons requirements will remain unlawful terms as a description of housing for older persons.

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African-American
Asian
American
Ancestry (any)
Black
blind
Buddhist
Catholic
Caucasian
Chicano/Chicana
child/children - restrictions -unless "housing for older persons"
Chinese
Christian
church, near
color, (any when used to describe person(s)
colored
couple
crippled
deaf
disability (any) (It is acceptable to describe housing as
accessible to persons with disabilities. It is not acceptable to
attempt to limit the housing to certain persons by stating that
it is not accessible.)
disabled
empty nester
ethnic neighborhood
ethnic group (any)
foreigners
handicapped
Hindi
Hispanic
ideal for .. (a type of person)
immigrants
independently, capable of living
Indian
integrated
interracial
Irish
Jew/Jewish
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Latino/Latina

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mentally handicapped, ill, retarded
Mexican-American
Middle Eastern(er)
minority
mixed community
Mormon
Moslem
mosque, near
Muslim
Nationality (any)
newlyweds
parish, near
perfect for (a type of person)
Polish
prefer
Protestant
Puerto Rican
race (any, when used to describe a person)
religion (any, when used to describe persons)
retarded
retired persons, retirees(if it is "housing for older persons",
     use that phrase, as many people who are retired may not
     qualify for housing for older persons while many people
     still working may in fact be eligible for housing for older
     persons)
segregated
senior (use "housing for older persons"- see note under adult and
     retired persons - many people who do not consider
     themselves senior may be eligible for housing for older
     persons)
suitable for
synagogue, near
temple, near
White
young
youthful
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(b) Any of the words in subsection (a) may be used if they are part of an address. For example, Poplar Church Road, Lutheran Street, Churchville, Black Ridge, or Indian Hills, etc. are permissible.

§ 45.152. ADVERTISEMENTS

It is unlawful to advertise any discriminatory preference or limitation, even if the property is otherwise exempt from coverage under the Act.

§ 45.153. AFFIRMATIVE DEFENSES

- (a) It shall be an affirmative defense precluding a finding that a housing advertiser has knowingly and wilfully violated the Act and these regulations if the housing advertiser has:
 - (1) attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in subsection (b); or
 - (2) complied with a written advisory of the Commission concerning what constitutes appropriate housing advertisements. The Commission shall maintain the written advisory on file and provide a copy of the advisory to the advertiser.
 - (3) made reasonable efforts in good faith to comply with this act.

§ 45.154. GOOD FAITH EFFORTS

- (a) An advertiser shall be deemed to have acted in good faith if the advertiser complies with one or more of the following:
 - (1) As to an advertisement for "housing for older persons", if the advertiser produces a signed written statement by a housing provider which states that the facility or community complies with the requirements of the housing for older persons exemption and the advertiser has no actual knowledge that the facility or community is not actually eligible for such exemption.
 - (2) If the word or phrase complained of is in compliance with the list set forth in §45.142. and is not, on its face, discriminatory within the context of the advertisement.
 - (3) If the advertiser produces a written PHRC advisory that the language complained of is legal, within the same context in which the advertiser requested the opinion from the PHRC.

§45.145. FEDERAL REGULATIONS

All federal regulations published by the Department of Housing and Urban Development, regarding housing advertisements in areas of concurrent jurisdiction, shall preempt anything to the contrary in these regulations. Chairperson
ROBERT JOHNSON SMITH
Vice-Chairperson
RAQUEL OTERO de YIENGST
Secretary
GREGORY J. CELIA, JR.
Executive Director
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION

101 South Second Street, Suite 300 P.O. Box 3145 Harrisburg, PA 17105-3145 (717) 787-4410 (Voice) (717) 787-4087 (TT) COMMISSIONERS
M. JOEL BOLSTEIN
JOSEPH J. BORGIA
THEOTIS W. BRADDY
CARL E. DENSON
RUSSELL S. HOWELL
ELIZABETH C. UMSTATTD
SYLVIA A. WATERS
DANIEL D. YUN

Reply to:

P.O. Box 3145 Harrisburg, PA 17105-3145

July 13, 1999

Independent Regulatory Review Commission 14th Floor, Harristown 2 333 Market Street Harrisburg, PA 17101

Dear Sir/Madam;

Enclosed please find PHRC Proposed Regulation 52-010 and the completed transmittal form. Publication date in the Pennsylvania Bulletin should occur on July 24th, 1999. We look forward to meeting with you to discuss this regulation. If you have any questions, please give me a call at 783-8132.

Sincerely,

Nancy L. Gippert

Assistant Chief Counsel

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Housing Division

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE

	ROULEJONI REVIEW AC	" \$3 JUL 13 PH12: 17			
I.D. NUMBER:	52-010				
Subject:	Housing Accommodations/Commercial Prop	erty Calabo Oct. 20501			
AGENCY:	Pennsylvania Human Relations Commissio	on.			
	TYPE OF REGULATION				
X Pro	posed Regulation				
Fin	al Regulation				
Fin	al Regulation with Notice of Proposed Rul	emaking Omitted			
120	-day Emergency Certification of the Attor	mey General			
120	-day Emergency Certification of the Gover	mor			
a.	ivery of Tolled Regulation With Revisions				
b.	Without Revisions				
	FILING OF REGULATION	ON			
DATE	SIGNATURE	DESIGNATION			
<u>1/13/99</u>	Wheel Chule	HOUSE COMMITTEE ON			
7.13.99	Aljan Sempin	State Government			
7-13 Cachel the SENATE COMMITTEE ON					
1-13	Dorean Il Minich	Labor & Industry			
7//13/99	Kim & Sarner	INDEPENDENT RECULATORY REVIEW COMMISSION			

7/13 GAL: LEGISLATIVE REPERENCE BUREAU

ATTORNEY GENERAL