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COMMONWEALTH OF PENNSYLVANIA  
HUMAN RELATIONS COMMISSION

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Reply to:

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

Original: 2045

Harbison

cc: All Commissioners  
Harris  
Markham  
Nanorta  
Wilmarth  
Sandusky, Legal

April 3, 2000

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
333 Market Street  
Harrisburg, PA 17101

Dear Mr. Nyce:

The Independent Regulatory Review Commission (IRRC) has suggested revisions to sections of the final form regulation #52-10 (originally submitted in error as #52-12), relating to Housing Advertisements. At the IRRC's request we are requesting that the time for review of the regulations be tolled to review and, if appropriate, revise \$45.161, \$45.182, \$45.192, and \$45.193. IRRC has expressed concerns that \$45.161, \$45.192, and \$45.193 are inconsistent with the preamble and that the preamble does not reflect IRRC's comment regarding \$45.182. IRRC has also requested that deletions and additions be in accordance with IRRC regulations.

The PHRC will be immediately reviewing and appropriately modifying the above sections. The PHRC will also be indicating additions and deletions in the appropriate format.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy L. Gippert".

Nancy L. Gippert  
Assistant Chief Counsel

cc: Homer C. Floyd, Executive Director  
The Honorable Paul I. Clymer  
The Honorable Michael C. Gruitza  
The Honorable Gibson E. Armstrong  
The Honorable Albert V. Belan

RECEIVED  
2000 APR -3 PM 3:32  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

# 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.

## PART I: IDENTIFYING INFORMATION

REVIEW COMMISSION

(1) Agency PA Human Relations Commission	(2) ID No. (Use Task Force No.) 52-10 RL	Date Received by IRRC: Hardison
(3) Short Title Housing Accommodations/Commercial Property		#2045
(4) Pa. Code Cite 16 PA Code 45	(5) Agency Contact & Phone Number 717-783-8132 Nancy L. Gippert, Assistant Chief Counsel	
(6) Type (check one) <input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final-Omitted Regulation		(7) Is a 120 day Emergency Certification Attached: <input type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) APPROVALS (Name & Date) 3/5/2008 Agency Head <i>[Signature]</i>		(Executive Agencies Only) Task Force _____

## PART II: BASIC ANALYSIS MATERIAL (Required by Sec. 5(a) of the Regulatory Review Act)

### (9) Briefly explain the proposed regulation.

The purpose of these Final regulations is to advise the public of words, phrases, symbols and the like that are impermissible under the PHRA when used in housing advertisements. In addition, they are to inform advertisers and publishers as to what language is a violation of the PHRA in any housing advertisements published or caused to be published by them. These regulations also define conduct that constitutes reasonable efforts to comply with the advertising provisions of the Act such that a finding of a knowing and willful violation of those portions of the Act by the advertiser or publisher is precluded.

### (10) How does this regulation reduce costs of state and local government or private entities (business, consumers, etc.) within the Commonwealth?

By providing an explanation of existing law, possible respondents and complainants will not be required to expend as much time and possibly funds to gain an understanding of the law. In addition, there will be less risk of inadvertent violations of the law, which can result in costly legal expenses and possible monetary judgments.

**(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 34 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 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 required in implementation of the proposed regulation.)**

None

**(15) What is the suggested timetable for public comment, hearings, implementation, and what are various conformity deadlines (i.e. permits, licenses, etc.)?**

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 advertisements.

**(17) What other regulations and State agencies will be affected by the regulation?**

None

**PART III: REGULATORY FISCAL IMPACT (Required by Sec. 612 of the Administrative Code)**

**(18) Generally describe the costs imposed by this regulation upon state and local government.**

The regulations are explanatory of existing law and will require no additional costs.

**(19) Are there Revenue Losses? Yes/No**

(Attach Statement of method used to estimate)

State ( ) Local ( ) \_\_\_\_\_ ( )

	FY	FY	FY	FY	FY	FY

**(20) Are there increased program costs? Yes/No**

(Attach Statement of method used to estimate)

State ( ) Local ( ) \_\_\_\_\_ ( )

	FY	FY	FY	FY	FY	FY

**(21) What is the three-year expenditure history for programs affected by the regulation?**

(Attach statement of method used to estimate)

State ( ) Local ( ) \_\_\_\_\_ ( )


**(22) Has any increased cost been included in the current budget? Yes/No**

If no, how will funds be obtained?

N/A

**(23) Generally describe the costs imposed by this regulation on private entities. (e.g. consumers, business, etc.)**

Because these final regulations are merely explanations of existing law, there will be no additional costs to private entities.

**(24) What is the amount of reasonably measurable private costs?** N/A

	FY	FY	FY	FY	FY	FY

**(25) Explain the types of benefits which arise from the regulations, and who receives these benefits.**

Consumers of Housing Advertisements as well as those who publish housing advertisements will be better able to understand the law as it exists.

**(26) If any of these benefits are measurable, what are their estimated value?** Not measurable

	FY	FY	FY	FY	FY	FY

**(27) Will the potential benefits outweigh the potential costs imposed? Explain.**

N/A

**(28) Has the regulation been drafted in a manner which maximized the difference between potential benefits and potential costs? Explain.**

N/A

**(29) List the alternative regulatory approaches which were considered and reasons for rejecting these alternatives.**

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?**

The final regulations will be reviewed on an ongoing basis and updated as experience shows the need.

**PART IV: OTHER INFORMATION (Required by Sec. 5(a) of the Regulatory Review Act and Executive Order 1982-2.)**

**(33) Is there a deadline for action? Why? If there is no deadline, when should the regulation be adopted and what are the consequences of delay. (Attach copies of documents supporting the need for a deadline.)**

The final regulations are to be promulgated within two years of the effective date of Act 34.



**(34) Is this regulation mandated by federal law or court order? Yes/No (Attach copies of orders, consent decrees, settlement memos, federal regulations, letter or agreement, etc.)**

No

**(35) Upon what information is the need for this regulation based? What studies, hearings, or other research has been conducted?**

N/A

**(36) What steps, if any, were taken in the development of this regulation to provide public and legislative participation?**

N/A

**(37) Will current litigation be affected by this regulation? Yes/No If so cite cases and explain.**

No

CDL-1

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**  
(Pursuant to Commonwealth Documents Law)

RECEIVED  
2000 MAR 23 AM 10:33  
REVIEW COMMISSION

#2045  
DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality Attorney General

BY \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

☐ 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

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 52-012

DATE OF ADOPTION January 24, 2000

BY Homer C. Floyd

TITLE Homer C. Floyd, Executive Director  
(EXECUTIVE OFFICER CHAIRMAN OR SECRETARY)

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

BY Elizabeth Shuster

Mar 15 2000  
DATE OF APPROVAL

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

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

**RULES AND REGULATIONS**

**Title 16 - COMMUNITY AFFAIRS**

**Part 2 - GOVERNOR'S OFFICE**

**Subpart A - HUMAN RELATIONS COMMISSION**

16 PA Code CH. 45.

**HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY**

The Pennsylvania Human Relations Commission (PHRC) has adopted the following final rule, relating to advertising, as set forth in Annex A. In compliance with and pursuant to the authority of Act 34 of 1997, guidelines and statement of policy were published earlier.

**Purpose and Background**

The purpose of these regulations is to advise the public of words, phrases, symbols and the like which are impermissible under the Pennsylvania Human Relations Act (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. The list of words in 45.182 (relating to words to be avoided) does not contain every possible word and phrase that may violate the act. 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. The list will provide guidance on how to recognize the type of language that may be violative of the act. When the context of the word or phrase is key to its possible unlawful meaning that will be noted.

These regulations also contain examples of types of conduct which constitute reasonable efforts to comply with the advertising provisions of the PHRA such that a finding of knowing and willful violation of the those portions of the PHRA is precluded.

#### Notice, Comments and Commission Responses

Notice of the proposed rulemaking was published at 29 Pa.B. 3895 (July 24, 1999) with a 60 day public review and comment period. As a result of this publication, the Commission received two public comments, one from the Pennsylvania Association of Realtors(PAR) and one from the Pennsylvania Newspaper's Association (PNA). In addition to the public comments, the Independent Regulatory Review Commission (IRRC) and the House State Government Committee made a number of comments. The Senate Labor and Industry Committee allowed its 20-day comment period to pass without comment or objection to the regulations. The comments from IRRC and the House State Government Committee involved some of the same areas of concern raised by PAR and PNA. The Commission's responses to the various comments, from all sources, are set forth as follows.

1. Section 45.171 - Race/Color/National Origin.

a) IRRC and PNA requested further clarification whether a reference to a property located in an area recognized as a community landmark, e.g., "Chinatown" or "Little Italy" is prohibited. The Commission believes that as long as the named area is in fact a recognized broad geographical landmark, and not simply a term being used for exclusionary purposes, its use is not unlawful. This has been added to the appropriate section.

b) IRRC and PNA questioned whether ethnic terms can be used to describe a property's unique features, such as Oriental garden and Kosher restaurant. If the description is used in connection with the property that is being sold and not as a landmark for other property, such description is acceptable. This has been included in the final regulations.

c) IRRC and PNA requested guidance on the term "code words". While it is a difficult term to further define as codes are by definition unique to each usage, further definition has been added to the appropriate section.

2. Section 45.172 - Familial Status/Age

IRRC suggested that a typographical error existed in Subsection (a)(3), in that the word "The" which appears before "listing" needed to be deleted. This has been done. Further review indicated that the second use of the word "against" in the first sentence was confusing and was removed.

3. Section 45.181. List.

IRRC commented that the language in this section was non regulatory, and should either be changed or placed in the purpose section. The language has been moved to the purpose section.

4. Section 45.182 - Words to be Avoided

a) IRRC commented that information is repeated from section 45.181 and should be removed. This was done.

b) IRRC also commented that the explanatory language after "senior" is confusing and should mirror the structure of the explanatory language that follows "Adult". This has been done.

5. Section 45.191 - Advertisements

IRRC and PNA sought clarification as to the legality of advertisements for out of state property published in PA newspapers. Section 45.191(c) was added to the regulations to make it clear that the advertisements in PA newspapers are covered by the act, regardless of where the property advertised is located.

6. Section 45.192 - Affirmative Defenses.

a) IRRC commented that the term housing advertiser should be replaced with advertiser since this was the defined term. This has been done.

b) IRRC commented that the affirmative defense, and the good faith effort provision at 45.193, should be clarified by outlining the process by which advertising advisories are obtained. This has been done.

7. Section 45.193 - Good Faith Efforts

IRRC suggested cross referencing the housing for older persons exemption to the Federal Fair Housing Act. This has been done.

8. Both IRRC and the House State Government Committee commented that Act 34 of 1997 nullified Sections 45.8(a)(relating to advertisements) and 45.13(f)(relating to exemptions) of the current regulations. PHRC has thus deleted both sections in this final-form regulations.

9. PNA commented that the word student has been determined to be a word to avoid because it could indicate a preference for young persons to the exclusion of older persons or families with children. PHRC believes that the use of the word student is not

discriminatory in that students come in all protected classes. If a realtor or landlord is discriminating against a protected class, that action will be unlawful even though the advertisement itself may not be. Therefore, we have not added the word student to the list.

10. PNA and the House State Government Committee recommended that the word list be updated on a regular basis or on a six month basis. PHRC does not believe that it will be necessary to do a formal review of the list every six months. We have done and continue to do internal reviews, and over the past two years, we have not found any significant changes. Should PHRC find that new phrases or words are being used that should be included on our list, we would immediately begin the regulatory process to add these words to the current list.

11. PNA and the House State Government Committee both commented on the need for clarification of shared housing advertisements. PNA stated that it was unclear whether an advertiser may lawfully describe the circumstances of the shared housing arrangement. For example, "female and child looking for female roommate", "female and son looking for"female roommate" and "female and teenager looking for roommate" have all been approved by the PHRC. With respect to discrimination based on sex, the advertising provisions of the PHRA do not apply to one's personal residence. The advertisements above focus primarily on the sex of the head of household. Any possible discriminatory effect on the basis of familial status or age is de minimis. The PHRC therefore believes that the advertising phrases cited above do not violate the PHRA. Thus, we have chosen to leave the section as originally proposed.

12. PNA commented that there should be a regulation on human model advertisements. This has been added at section 45.191(c).

13. PNA commented that the right of advertisers to note a preference in an ad for a nonsmoker or non-pet owner should be included in the regulations. They also comment that the PHRC should state whether an ad might discriminate on the basis of a non-protected classification. The regulations are intended as a basis for determining unlawful advertisements. PHRC believes that to begin to include words and phrases that are legal would create a document more cumbersome than already exists and has therefore chosen to maintain current language.

14. PAR has commented that it supports the rulemaking if "after a written advisory of approval by the PHRC is received, the advertisement is found in violation of the proposed rule, the Relator is not liable and therefore not subject to any penalty." First, it must be pointed out that our regulations only bind the PHRC and have no effect whatsoever on The Department of Housing and Urban Development's (HUD) enforcement of federal fair housing law. Title VIII of the Federal Fair Housing Act covers the same areas as the PHRA and HUD may enforce the federal act as it sees fit. It is correct that compliance with a written advisory of the PHRC will preclude a finding by PHRC of a knowing and willful violation of the advertising provisions of the Act.

#### Paperwork Requirements:

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

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.A. §745.5(a)), copies of the proposed regulations were submitted to the IRRC and the designated Standing committees of the House and Senate for review and comments. In addition to the proposed regulations the IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the PHRC. In compliance with section 5(b.1) of the Regulatory Review Act, the

PHRC also provided the Independent Regulatory Review Commission and the Committees with a copy of the comments received.

In preparing these final form regulations, the PHRC considered all comments received from the public, IRRC and the House State Government Committee. No comments or objections were received from the Senate Labor and Industry Committee.

Fiscal Impact:

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

Effective Date:

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

Homer C. Floyd,  
Executive Director



Annex A

TITLE 16. COMMUNITY AFFAIRS

PART II. GOVERNORS OFFICE

Subpart A. HUMAN RELATIONS COMMISSION

CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY

(Editors Note: As part of this proposal, the Commission is proposing to delete the existing text of the statement of policy in 16 Pa. Code Chapter 45, Subchapter B, and replace it with the regulations as proposed in Annex A.)

ADVERTISEMENTS

45.8(a). (Deletion)

EXEMPTIONS

45.13(f). (Deletion)

RESERVED

45.101 45.103. (Reserved).

45.121 45.126. (Reserved).

45.141. (Reserved).

45.142. (Reserved).

45.151 45.154. (Reserved).

GENERAL

Sec.

45.161.

Purpose.

45.162.

Definitions.

45.163.

General rules.

#### PROHIBITED USAGES

45.171.

Race/color/national origin.

45.172

Familial status/age.

45.173.

Disability.

45.174.

Religion.

45.175.

Sex.

#### LIST OF WORDS OR PHRASES TO AVOID

45.181. (Reserved).

45.182.

Words to be avoided.

#### ADDITIONAL REQUIREMENTS

45.191.

Advertisements.

45.192.

Affirmative defenses.

45.193.

Good faith efforts.

45.194.

Federal regulations.

## ADVERTISEMENTS

45.8(a). [It is unlawful to: advertise, publish, circulate, cause to be published or circulated or cause to be made known a statement which expresses directly or indirectly a preference, limitation or discrimination relating to the selling or leasing of a housing accommodation or commercial property based upon a protected class. For example the use of language such as "church nearby" or "restricted" and similar expressions constitutes a violation of the act.]

## EXEMPTIONS

45.13(f). [In determining whether housing qualifies for the exemption for housing for older persons which is intended and operated for occupancy by at least one person 55 years of age or older per unit, the Commission's requirements include the following:

(1) Significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of these facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons.

(i) Significant facilities and services specifically designed to meet the physical or social needs of older persons include social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services and services designed to encourage and assist residents to use the services and facilities available to them.

(ii) The housing facility need not have all of these features to qualify for the exemption under this paragraph.

(2) If it is not practicable to provide the significant facilities and services in paragraph (1) and the housing facility is necessary to provide important housing opportunities for older persons in the relevant geographic area, the housing facility may meet the requirements for the exemption by showing:

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that the services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of the services is not practicable.

(ii) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(iii) The income range of the residents of the housing facility.

(iv) The demand for housing for older persons in the relevant geographic area.

(v) The range of housing choices for older persons within the relevant geographic area.

(vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area the housing facility does not meet the requirements of this section.

(vii) The vacancy rate of the housing facility.

(3) At least 80% of the units are occupied by at least one person 55 years of age or older per unit.

(4) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with this section:

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.]

## GENERAL

### 45.161. Purpose.

(a) The purpose of this subchapter 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 45.192 (relating to affirmative defenses) contains affirmative defenses which will preclude a finding of a willful and knowing violation of the advertising provisions of the act.

(c) This subchapter implements the statutory mandate of section 9.1(b) of the act (43 P.S. §959.1(b)).

### 45.162. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, which are identical to those found in section 4 of the act (43 P.S. §954): The Pennsylvania Human Relations Act (43 P.S. §951-963).

Advertisement or advertising See 43 P.S. §954(3).

Advertiser See 43 P.S. §954(aa).

Housing accommodation See 43 P.S. §954(i).

Housing for older persons See 43 P.S. §954(w).

Person See 43 P.S. §954(a).

Personal residence See 43 P.S. §954(k). This term applies to any person as defined in this section.

#### 45.163. General rules.

The prohibited words and phrases in 45.182 (relating to words to be avoided) are unlawful when used in housing advertisements. In addition to those words and phrases, any word or phrase that is commonly understood to be offensive to a group of people in a protected class also violates the act.

#### PROHIBITED USAGES

##### 45.171. Race/color/national origin.

It is unlawful to advertise a limitation, preference or discrimination on account of race, color or national origin. Examples include the use of:

(1) Any color to describe a group of people for example, white, brown, red, black or yellow.

(2) Any nationality or race to describe a group of people for example, Caucasian, Negroid, Chinese, Asian Immigrant, French Hawaiian, Arab, Oriental, African-American, Irish, and the like.

(3) Landmarks or organizational locations which are indicative of a particular nationality or race, unless all of the landmarks in the area are noted for example, 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.

(4) Code words which are recognizable in a particular neighborhood as connoting neighborhoods that restrict certain races or ethnic groups. Code words are facially neutral words and phrases which are used in a particular circumstance which are understood to mean an illegal preference.

(5) Neighborhood and geographical landmarks such as Chinatown and Little Italy are acceptable terms if the description is used in connection with the property being sold or rented and not for exclusionary purposes.

(6) Phrases such as Oriental garden and Kosher restaurant are acceptable when used as a description of the property being sold or rented, not as a landmark for other property.

45.172. Familial status/age.

(a) It is unlawful to advertise a preference, limitation or discrimination against families with children in the household or persons 40 years of age or older. Examples include, the following:

(1) The use of any phrase which notes a preference, limitation or discrimination for adults, couples or singles or families without children; for example, "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" or "suitable for one or two adults".

(2) The use of any colloquialisms which imply the same as those in paragraph for example, paragraph (1) empty nesters, honeymooners or swinging singles.

(3) Listing the number of children allowed.

(b) Notwithstanding the prohibitions in subsection (a), 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 as defined in section 4 of the act (43 P.S. §954). A publisher may rely on the advertisers written representations of such, unless the publisher has reason to believe otherwise.

(3) To advertise a preference against children and advertise age restrictions when the housing accommodations qualifies as housing for older persons as defined in section 4 of the act.

45.173. 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.

45.174. Religion.

(a) It is unlawful to advertise a preference, limitation or discrimination on the basis of religion. Examples include:

(1) The use of any religious denomination for example, Christian, Jew, Muslim or Buddhist.

(2) Phrases such as "surround yourself with Christians".

(3) The use of a particular landmark or location which is indicative of a particular religion.

(b) Notwithstanding the prohibitions in subsection (a), 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 the private or fraternal organization.

(2) Advertise that the making of the selection is calculated by the organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.

#### 45.175. Sex.

(a) It is unlawful to advertise any preference, limitation or discrimination on the basis of sex. Examples include "males only need apply", "professional male preferred" or "perfect for single female".

(b) Notwithstanding the prohibitions in subsection (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

45.181. (Reserved)

45.182. 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". 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 (42 U.S.C. §§ 3601, 3619 and 3631) and the act, it is appropriate to say so.

(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.

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 persons)

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

Latino/Latina

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

If the housing is housing for older persons as defined by the Federal Fair Housing Act (42 U.S.C.A. 3601 3619 and 3631) and the act, it is appropriate to say so.

(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.

Suitable for

Synagogue, near

Temple, near

White

Young

Youthful

(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, and the like, are permissible.

#### ADDITIONAL REQUIREMENTS

##### 45.191. Advertisements.

(a) Advertisements published within the Commonwealth of Pennsylvania are covered by these regulations regardless of the locality of the property or financial institution.

(b) Except to the extent allowed by sections 45.172(b), 45.174(b) and 45.175(b), it is unlawful to advertise any discriminatory preference or limitation, even if the property is otherwise exempt from coverage under the act.

(c) When an advertising campaign includes pictures of individuals or families, the advertiser has the responsibility to alternate the picture from time to time to include a variety of protected classes in the advertisement.

##### 45.192. Affirmative defenses.

It shall be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated the act and this subchapter if the housing advertiser has complied with one of the following:

(1) Attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in this subchapter.

(2) Complied with a written advisory of the Commission concerning what constitutes appropriate housing advertisements. The Commission will maintain the written advisory on file and provide a copy of the advisory to the advertiser. In order to obtain such an advisory the advertiser shall:

(a) Telephone the PHRC housing division at (717) 787-4055 or write to PHRC, 101 S. Second St., Suite 300, P.O. Box 3145, Hbg. PA 17105-3145, ATT: Housing Division, and indicate the language of the advertisement in question. Appropriate PHRC Housing staff will inform the advertiser of its decision on the ad and follow-up with a written advisory within 10 working days.

(3) Made reasonable efforts in good faith to comply with the act.

#### 45.193. Good faith efforts.

An advertiser will 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 the exemption. The housing for older persons exemption is modeled on the exemption found in the Federal Fair Housing Act at 42 U.S.C. §3607.

(2) If the word or phrase complained of is in compliance with the list in 45.182 (relating to words to be avoided) and is not, on its face, discriminatory within the context of the advertisement.

(3) If the advertiser produces a written Commission advisory that the language complained of is legal, within the same context in which the advertiser requested the opinion from the Commission.

#### 45.194. Federal regulations.

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 this subchapter.

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  
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CARL E. DENSON  
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ELIZABETH C. UMSTATTD  
SYLVIA A. WATERS  
DANIEL D. YUN

Reply to:

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

March 21, 2000

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

Dear Sir/Madam;

Enclosed please find a copy of PHRC Final-form Regulation 52-<sup>10 RL</sup>~~012~~  
and our response to comments. If you have any questions, please  
give me a call at 783-8132.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy L. Gippert".

Nancy L. Gippert  
Assistant Chief Counsel  
Housing Division

RECEIVED

2000 MAR 23 AM 10:33

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

INDEPENDENT REGULATORY  
REVIEW COMMISSION

*10 Rd*  
I.D. NUMBER: 52-012

SUBJECT: Housing Accomadations/Commercial Property

AGENCY: Pennsylvania Human Relations Commission

*#2045*

TYPE OF REGULATION

- ☐ Proposed Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☒ Final Regulation
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>2/23/00</i>	<i>Eileen Kruck</i>	<u>HOUSE COMMITTEE</u>
<i>3/23/00</i>	<i>R. Sampa</i>	State Government
<i>3-23-00</i>	<i>Rachel Dutcher</i>	<u>SENATE COMMITTEE</u>
	<i>Betty Lou Cain</i>	Labor & Industry
<i>3.23.00</i>	<i>Kirsten M. Sharp</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

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JOHN F. MIZNER, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 31, 2000

Honorable Homer C. Floyd, Executive Director  
Pennsylvania Human Relations Commission (PHRC)  
Suite 300, 101 South Second Street  
Harrisburg, PA 17101

Re: Regulation #52-10 (#2045)  
Housing Accommodations/Commercial Property

Dear Mr. Floyd:

We spoke with Nancy Gippert of your staff today, to review the final-form version of this regulation. We identified several items that could be corrected or clarified by "tolling." We recommend that you consider making the following revisions:

- 1. Section 45.161. Purpose. – Inconsistency with Preamble.**  
The preamble states that the language in Section 45.181 was moved to the Section 45.161 (relating to purpose). It was deleted from Section 45.181, but not incorporated into Section 45.161.
- 2. Section 45.182. Words to be avoided. – Change not made.**  
The preamble does not respond to our comment that in this section, the term, "Retired persons, retirees" should be revised to mirror the explanatory language that follows "adult." Furthermore, this change was not made in Paragraph (a)(iii).
- 3. Section 45.192. Affirmative defenses. – Inconsistency with Preamble.**  
The preamble states that the term "housing advertiser" would be replaced with the word "advertiser." This was not done in one instance - the introductory language of Section 45.192.
- 4. Section 45.193. Good faith efforts. – Inconsistency with Preamble.**  
The preamble states that a provision was added to this section and Section 45.192, outlining the process by which the advisory is requested and received,

including a time frame. This was done in Section 45.192(2)(a). However, the text of Section 45.193 does not include the new language incorporated in, or a cross-reference to, Section 45.192(2)(a).

Additionally, all deletions and additions must be indicated in accordance with the Commission's regulations, 1 Pa. Code § 307.2(c)(6)(iii) and (iv), by strikeouts and capital letters, respectively.

If the PHRC chooses to toll the review period, it must deliver written notice to both the Standing Committees and the Commission on the same day. The written notice must be delivered prior to any Standing Committee action on the regulation, or before the end of the Standing Committee's review period on April 12, 2000, whichever occurs first.

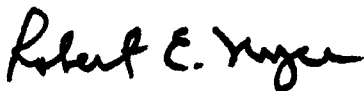
As required by 1 Pa. Code Section 307.5 of our regulations, written notice must include:

1. A citation to the section(s) the Department is considering revising,
2. A description of the revisions being contemplated, and
3. An explanation of how the revisions will satisfy our concerns.

If the Commission objects to tolling the review period, we will notify you and the Standing Committees within two business days after receipt of your tolling notice. In the event the Commission objects to your tolling notice, the review period will not be tolled and the Commission will consider your regulation at our public meeting on April 13, 2000. If the Commission does not object, the review period is tolled for up to 30 days beginning with receipt of your letter and ending on the day you resubmit the revised regulation.

If you have any questions, please call me at 783-5506.

Sincerely,



Robert E. Nyce  
Executive Director

cc: Hon. Paul I. Clymer  
Hon. Michael C. Gruitza  
Hon. Gibson E. Armstrong  
Hon. Albert V. Belan  
Thomas A. Hutton, Esq.  
David J. DeVries, Esq.  
Nancy L Gippert, Esq.



JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
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ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 5, 2000

Homer C. Floyd, Executive Director  
Pennsylvania Human Relations Commission (PHRC)  
Suite 300, 101 South Second St.  
Harrisburg, PA 17101

Re: IRRC Regulation # 2045 (#52-10)  
Housing Accomodations/Commercial Property

Dear Mr. Floyd:

The Commission does not object to tolling the review of the subject regulation.

Therefore, the tolling period began on April 3, 2000, when we received the request to toll. By May 3, 2000, the PHRC must deliver to the Commission and the Committees either the revised regulation or written notification that the regulation will not be revised. The revised regulation or notification must be accompanied by a transmittal sheet (copy enclosed) confirming delivery to the Committees and the Commission on the same date. The regulation will be deemed withdrawn, if the PHRC does not return the regulation or provide the required notification by May 3, 2000.

If you have any questions, please call me at 783-5506.

Sincerely,

Robert E. Nyce  
Executive Director

wbg

Enclosure

cc: Honorable Gibson E. Armstrong  
Honorable Albert V. Belan  
Honorable Paul I. Clymer  
Honorable Michael C. Gruitza  
Jane Demko, Office of General Counsel  
David J. DeVries, Esq., Office of Attorney General  
Nancy L. Gippert

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

**I.D. NUMBER:**

**SUBJECT:**

**AGENCY:**

---

**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**

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**FILING OF REGULATION**

**DATE**

**SIGNATURE**

**DESIGNATION**

\_\_\_\_\_ **HOUSE COMMITTEE ON**

\_\_\_\_\_ **SENATE COMMITTEE ON**

\_\_\_\_\_ **INDEPENDENT REGULATORY REVIEW  
COMMISSION**

\_\_\_\_\_ **ATTORNEY GENERAL**

\_\_\_\_\_ **LEGISLATIVE REFERENCE BUREAU**