

<h1>Regulatory Analysis Form</h1>		This space for use by IRRC 201 OCT -1 AM 11:59 RECEIVED IRRC Number: 2357
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Real Estate Commission		
(2) I.D. Number (Governor's Office Use) 16A-561		
(3) Short Title Education		
(4) PA Code Cite 49 Pa. Code §§35.201, 35.203, 35.228, 35.229, 35.252-35.254, 35.271-35.273, 35.275, 35.341-35.344, 35.351-35.363, 35.381-35.392.	(5) Agency Contacts & Telephone Numbers Primary Contact: Judith Pachter Schulder, Counsel State Real Estate Commission 783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State 783-7200	
(6) Type of Rulemaking (check one) Proposed Rulemaking Final Order Adopting Regulation <input checked="" type="checkbox"/> X Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? No <input checked="" type="checkbox"/> X Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>The regulation amends and adds provisions concerning the death or injury of a broker/broker of record and consolidates and revises current provisions for prelicensure and continuing education.</p>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>The amendments are authorized under Sections 402, 404 and 404.1 of the Real Estate Licensing and Registration Act (63 P.S. §§ 455.402, 455.404 and 455.404a).</p>		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments address the following:

- **Formation requirements.** The current regulations permit only the deceased broker's estate to notify the Commission of the broker's death and require that all pending agreements of sale or lease be terminated if not consummated within 90 days from the death. The amendments permit a designated attorney to notify the Commission of the broker's death. In addition, it permits *pending* agreements of sale or lease to consummate after the 90-day wrap-up period. The amendments also address the situation where the broker or broker of record needs to be temporarily replaced due to illness or injury.
- **Educational provider requirements.** The current regulations impose onerous and unnecessary facility, administration and paperwork requirements on educational providers. The amendments delete the requirement that providers send in copies of school transcripts, student enrollment agreements and statements of prerequisites for admission (§ 35.341), floor and airspace requirements (§ 35.352), the point system to evaluate instructors (§ 35.353), documentation that instructors must provide the Commission (§ 35.353(c)) and signage requirements (§ 35.354).

(Continued on Page 9)

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no identifiable public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulated community as a whole (including nonresidents who also hold licenses in the Commonwealth), educational providers and applicants for licensure will benefit from the proposed regulations. Currently, there are approximately 49,000 licensees. There are currently 31 approved real estate schools (excluding colleges and universities). In that continuing education providers are not registered, the Commission does not have a quantifiable number of continuing education providers.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There are no perceived people or groups of people who will be adversely affected by the proposed regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All licensees of the Commission are required to comply with the continuing education provisions. Currently, there are approximately 49,000 licensees of the Commission. Educational providers of prelicensure or continuing education programs will also have to comply with the education provisions. Currently there are 31 approved real estate schools (excluding colleges and universities). The Commission does not have a quantifiable number of continuing education providers.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Notice of proposed rulemaking was published at 33 Pa. B. 4571 (September 13, 2003). Publication was followed by a 30-day public comment period during which the Commission received public comments from several public commentators: Corinne Shearer, Pennsylvania Association of Realtors; James Skinzer, Career Growth Academy; Hugo Weber, Polley Associates; and P. Timothy Quintrell, Schlicher-Kratz Institute. Following the close of the public comment period, the Commission received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There is no cost to the regulated community associated with compliance with the regulation. Current education providers and licensees will continue to pay existing fees for approvals. No new groups have been identified to pay fees.

Savings are not specifically quantifiable, but licensees save costs associated with less burdensome continuing education requirements. Similarly, educational providers also save due to the less restrictive facility, administration and paperwork requirements.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Education providers who provide prelicensure education, except colleges and universities and other exempt entities, will continue to pay the existing fees for approval of providers and instructors. Those who offer continuing education courses and are not colleges and universities will continue to pay the fees for course approval.

Similarly, licensees continue to pay existing fees for the Commission's review of biennial renewal applications to assure compliance with the continuing education requirements. This proposal merely changes the processing procedures. Instead of reviewing the continuing education information at the time of biennial renewal, continuing education information will be continually forwarded to the Commission for processing. Therefore, no additional costs or savings to state government are associated with the implementation of this regulation.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State Real Estate Commission	\$2,155,891.51	\$2,400,136.82	\$1,873,008.90	\$2,223,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects and costs associated with compliance with the regulation. Current education providers and licensees continue to pay existing fees for approvals. No new groups have been identified to pay fees.

Both education providers and licensees benefit from the streamlined approval processes for both precicensure and continuing education.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered because policy statements on any of the issues covered by the amendments would not have the force or effect of law.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The educational and continuing education requirements are established in the RELRA. Other than New Jersey, each state requires some form of continuing education. Thirty-four states permit distance education and authorize ARELLO review and approval of the delivery system: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maine, Mississippi, Nebraska, New Hampshire, New Mexico, New York North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Washington.

The proposed regulation will not put Pennsylvania at a competitive disadvantage as it also allows Pennsylvania licensees to obtain their real estate education through distance education.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation amends and updates existing regulations of the Commission. The regulation does not affect regulations of other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Commission reviews its regulatory proposals at regularly scheduled public meetings each month.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. Prior to renewing any real estate license, the Commission confirms that the licensee has completed the required continuing education. Each licensee is required to submit the continuing education certificates along with the renewal application. This regulation will streamline the renewal process and lessen the burden on both licensees and staff because education providers will provide the Commission with a roster of the licensees who completed the courses following each course.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Commission is aware of no special needs of any subset or group which should be excepted.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as an Order of Final Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.

(31) Provide the schedule for continual review of the regulation.

The rules and regulations committee of the Commission continuously reviews its regulations.

(Continued from No. 11)

- ***Distance education.*** Current regulations only permit licensees to fulfill their prelicensure and continuing education requirements via traditional classroom methods. The amendments permit licensees to fulfill their requirements by traditional and distance education methods. Under the regulation, the Association of Real Estate License Law Officials would review and approve the delivery system and the Commission would review and approve the course content (§ 35.384).
- ***Consolidation.*** Current regulations contain provisions for prelicensure education in Subchapter F and continuing education in Subchapter H. Because many of the provisions are duplicative, the amendments consolidate similar provisions.
- ***Continuing education.*** Current regulations require licensees to complete both required and elective courses in order to biennially renew their licenses. The amendment removes the requirement that licensees take required courses unless the Commission advises licensees prior to the beginning of the renewal period that a required course must be taken. In addition, the amendment permits licensees to complete their continuing education requirement in 3½-hour increments rather than 7-hour increments.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Real Estate Commission
(AGENCY)

BY:

DOCUMENT/FISCAL NOTE NO. 16A-561

DATE OF ADOPTION:

BY: Joseph J. McGettigan

DATE OF APPROVAL

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

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
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Objections attached.

[] Check if
applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE REAL ESTATE COMMISSION
49 Pa. Code, Chapter 35
Education

The State Real Estate Commission (Commission) hereby amends Chapter 35 to read as set forth in Annex A. These amendments address practice when the broker or broker of record dies or is incapacitated, liberalize the delivery system for real estate prelicensure and continuing education courses, consolidate duplicative prelicensure and continuing education provisions and revise real estate education provider requirements.

Statutory Authority

The amendments are authorized under the authority of sections 402, 404, 404.1 and 513 of the Real Estate Licensing and Registration Act (RELRA) (63 P.S. §§ 455.402, 455.404, 455.404a and 455.513).

Response to Public Comments and Regulatory Review and Amendments in Final Form Rulemaking

Notice of the proposed rulemaking was published at 33 Pa. B. 4571 (September 13, 2003). Publication was followed by a 30-day public comment period during which the Commission received comments from four real estate education providers. Following the close of the public comment period, the Commission received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

Administration of Real Estate Education Providers

The HPLC questioned the mechanism by which the Commission will ensure compliance with the provider requirements by providers outside of the Commonwealth. Real estate education providers outside of this Commonwealth must be approved by the real estate licensing authority from the jurisdiction where the provider is located. The Commission relies upon those licensing authorities to police those real estate education providers. Compliance with Commission regulations concerning schools and continuing education is answered through applications and renewal procedures and processes irrespective of where the provider is located. In addition, the Commission investigates matters when complaints are filed by students and licensees. Such investigations are conducted by the Bureau of Enforcement and Investigation in cooperation with the licensing authority of the jurisdiction where the provider does business.

Use of "real estate education provider" generally.

IRRC recommended that the Commission use the term "real estate education provider" throughout instead of "real estate education provider" "education provider" or "provider." The Commission believes that this recommendation is reasonable and has changed "education provider" or "provider" to "real estate education provider" throughout the regulations.

Section 35.341--Approval of real estate education provider.

In proposed form, the Commission deleted the requirements that someone over the age of 21 own the real estate education provider. The HPLC questioned why the Commission deleted this requirement. In response, the Commission believes that age is not a relevant factor in light of the other requirements, such as having a director of operations with a minimum experience level and a custodian of records, as well as the financial security requirements.

Paragraph (4) requires a real estate education provider to designate a person or entity to serve as custodian of records if the provider were to terminate operations. The HPLC questioned why the Commission has removed the requirement that the custodian be located within the Commonwealth. The Commission understands that applicants and licensees obtain their prelicensure and continuing education from providers within and outside of this Commonwealth. Sections 35.271(b)(3)(iii), 35.272(b)(2)(ii), 35.273(b)(4)(ii), 35.275(b)(3)(ii) and 35.388(3) (49 Pa. Code §§ 35.271(b)(iii), 35.272(b)(2)(ii), 35.273(b)(4)(ii), 35.275(b)(3)(ii) and 35.385(e) specifically allow real estate education providers outside of this Commonwealth to provide education in this Commonwealth provided that the provider is approved by the real estate education licensing in the jurisdiction where the provider is located. Because licensees will be able to obtain their education from providers outside of the Commonwealth, the Commission believes that the custodian of records could be located within or outside of the Commonwealth.

Paragraph (5) directs real estate education providers to post a \$10,000 surety bond to the Commonwealth for the protection of the contractual rights of the students. The HPLC and IRRC asked the Commission to explain how the \$10,000 would be sufficient in the event a real estate education provider fails to perform. Since the surety bond requirement was placed in the regulations, no real estate education providers have gone bankrupt or closed taking student monies. Based upon this prior experience combined with the relatively low cost of real estate courses, the Commission believes that the \$10,000 bond is sufficient to protect students in the event the provider abruptly terminates its services and does not reimburse students.

Paragraph (6) delineates the documents that must accompany a real estate education provider's application. In proposed form, the Commission deleted the requirement in paragraph (i)(C) that required real estate education providers to provide a notarized pro forma profit and loss statement and balance sheet. The HPLC questioned why this documentation was removed. Pro forma profit and loss statements and balance sheets do not contain actual profit and loss figures. As projections, the Commission believes that these documents are unnecessary—especially in light of the surety bond.

In proposed form, the Commission also deleted the requirement in subparagraph (vi) that the real estate education provider provide the Commission with copies of the student enrollment agreement, the school transcript, a statement of the prerequisites for

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admission, a statement of policy regarding refund of tuition and a sketch or photograph of the sign for each location. A public commentator suggested that the Board continue to require these documents. Additionally, IRRC suggested that the Commission retain the requirement of a student enrollment agreement. The Commission believes that these suggestions are reasonable and has reinserted these requirements on final form.

The Commission also retained subparagraphs (viii)-(ix) in final form. One commentator suggested that this list be retained, even in a separate document, as guidance for inspectors and real estate education providers. Rather than creating another regulatory document, the Commission reinserted these provisions as well.

Section 35.344—Withdrawal of Real Estate Education Provider or Director Approval.

Paragraph 35.344(b)(5) authorizes the Commission to withdraw a real estate education provider's approval for having been convicted of, pled guilty or nolo contendere to a misdemeanor related to the practice of real estate, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense. The HPLC questioned why the Commission replaced "moral turpitude" with enumerated offenses. The Commission modified this provision to parallel the language in Section 604(a)(14) of the RELRA (63 P.S. § 455.604(a)(14)), regarding convictions.

Section 35.351a--Assistant school director.

In this amendment, the Commission has deleted all references to assistant school directors. One commentator suggested that by removing this provision, a program director would be prohibited from delegating responsibilities to assistant directors. The Commission does not agree that this amendment dilutes the authority of the director. As the Commission explained in its Preamble on proposed, the sole reason the Commission has eliminated this provision was because the RELRA does not contain provisions delineating the qualifications or responsibilities for assistant directors. Under the RELRA, the director has the ultimate responsibility for the real estate education provider and has the discretion to delegate responsibilities to an assistant director.

Section 35.352--Location and facilities.

Paragraph (b)(2) prohibits a real estate education provider from sharing office space, instruction space or common space with a real estate franchise, network or organization. IRRC and several commentator questioned whether this provision conflicts with the Commission's June 3, 2003 Guideline regarding the relationship between real estate education providers and real estate companies.

In its Guideline, the Commission explained that a real estate company/broker or group of companies/brokers may contract with a real estate education provider to provide an approved continuing education course at the provider's location or any other location that complies with § 35.352. Courses which are not approved for continuing education

under § 35.384 (relating to qualifying courses) such as specific company policies or documents, may also be provided but will not receive continuing education credit.

The Commission does believe that the regulation and the Guideline conflict with one another. However, in order to clarify the Commission's position, in final form, the Commission has added another exclusion to paragraph (b)(2) that would allow real estate licensees to contract with real estate education providers to provide continuing education courses. As is currently the rule, where an approved course would be presented at a location other than the real estate education provider's main location, the real estate education provider would have to obtain approval for a satellite location.

The Commission has chosen not to eliminate paragraph (b)(2) as suggested by one commentator because it believes that the separation between real estate education providers and real estate companies is appropriate. At the same time, the Commission believes that allowing real estate companies to contract with real estate education providers for continuing education courses does not breach that separation.

Current paragraphs (b)(4)-(b)(6) delineate illumination, floor space and airspace requirements. In proposed form the Commission recommended removing these provisions. The HPLC requested an explanation for the deletion of these provisions. Paragraph (3) requires conformance with applicable building, fire safety and sanitary standards. The Commission believes that the requirements in subsection (b)(4) through (b)(6) fall within the gamut of paragraph (3) and as such, are redundant.

Current subsection (c) requires that where a real estate education provider rents facilities for a main or satellite location, the lease shall be in effect for the period when the real estate education provider is in session. The Commission has removed this provision. One commentator questioned whether deleting this provision conflicted with the requirement in § 35.360(a)(2)(ii) which requires that the lease be retained. The Commission does not believe that this revision creates a conflict. Former subsection (c) addressed the time frame when the lease was in effect. Section 35.360 (relating to records) addresses what documents a real estate education provider must retain.

Section 35.353--Selection of instructors.

In proposed form, subsection (a)(2) decreased the number of years of experience an instructor must have from 5 to 3. One commentator suggested that instead of permitting "practical or teaching" experience for the reduced number of years, the requirement should be "practical and teaching experience." In addition, the commentator suggested that instructors be required to take a Commission-developed training course each biennium. Another commentator suggested that the Commission should develop additional instructor approval standards for use by directors.

The Commission has declined to implement any of the suggestions. The Commission believes that 3 years of practical *and* teaching experience is unnecessary to teach real estate courses. Further, decisions regarding instructors' capabilities rest with

the director based upon the director's observations and student comments. Because the Commission does not license instructors, the Commission lacks the enforcement mechanism to assure that all instructors attend training. Nonetheless, directors may impose this requirement on their staff.

Section 35.357--Student enrollment agreements.

In proposed form, the Commission recommended eliminating the student enrollment agreement because it wanted to avoid involving itself in contractual matters between real estate education providers and students and because the agreement was exemplary and not mandatory. IRRC agreed that the form agreement should be removed from the regulation; however, it suggested that the requirement for an agreement as well as minimum provisions be added to the regulation. The Commission finds this suggestion warranted and has reinserted these provisions accordingly.

Section 35.358--Administration of curriculum.

Current subsection (a)(3) delineates course hour credit for Real Estate Fundamentals and Real Estate Practice. In proposed form, the Commission moved this provision to new subsection (b). One commentator questioned if the Commission was changing its position regarding the course hour credit in the revision. The sole reason for the change was to segregate provisions that apply to prelicensure and continuing education from those that apply only to prelicensure. No other change is contemplated by this revision.

New subsection (a)(4) permits prelicensure and continuing education courses to be taught by distance education. As in 34 other states, the Commission retains authority over course content under § 35.384 (relating to qualifying courses). Distance education courses require additional review and approval of the delivery method by the Association of Real Estate License Law Officials (ARELLO) or another certifying body deemed acceptable to the Commission.

The HPLC and several commentators questioned the mechanics of ARELLO approval. Prior to submitting a prelicensure or continuing education course taught by distance education to the Commission for content approval, either the primary provider (the author of the course) or the secondary provider (the actual provider of the course) must obtain approval of the delivery method for courses from ARELLO.

The provider must provide ARELLO with a detailed description and implementation plan for the course and meet standards set forth in ARELLO's Distance Education Standards Manual. (The ARELLO approval process as well as a list of states requiring ARELLO approval can be obtained from ARELLO's web page at www.arello.org.) The delivery method may be, for example, the Internet, satellite, video, computer disc, audiotape or other remote instruction. Once approved, ARELLO issues an approval number which the provider must report to the Commission.

Several commentators also questioned the cost of ARELLO approval. Because the Commission is not requiring both primary and secondary ARELLO approval, the cost to the real estate education providers will be significantly reduced. Nonetheless, the Commission believes that the cost associated with ARELLO approval is necessary in order to assure that the delivery method is sufficient.

Subsection (b)(2) requires that prelicensure courses be graded by written examination. One commentator suggested that all examinations be proctored. After reviewing the distance examination requirements for other states' prelicensure courses, the Commission believes that this suggestion is worthwhile and has amended this provision to require that the prelicensure examinations be proctored.

Section 35.361--Display of documents and approved name.

Subsections (a) and (c) require that real estate education providers prominently display the certificate of approval and letter of approval at the main location and any satellite locations. One commentator suggested that the Commission eliminate subsection (c) and modify (a) since the Commission acknowledged in the Preamble in proposed form that instruction occurs in multiple locations. The Commission concurs with this suggestion and has deleted subsection (c) and amended subsection (a) to reflect that the certificate of approval only be displayed at the main location. Because real estate education providers will still be required to register satellite locations, investigators will still be able to determine where all of the courses are being taught.

Section 35.381--Purposes and goals.

Section 35.381 sets out the three goals of continuing education. In proposed form, the Commission eliminated this provision. One commentator suggested that these goals be maintained. While the Commission agrees with the commentator that these goals are appropriate, the Commission does not believe that the goals should be placed in regulations. Accordingly, the Commission has not reinserted this provision.

Section 35.383--Waiver of continuing education requirement.

New subsection (b) requires licensees seeking a waiver of the continuing education requirement to file such request by March 31 of the renewal year unless it is impracticable to do. One commentator suggested that the deadline for requests be set back to February 15th in order to give the Commission additional time to review the requests. For many years, licensees have been advised on the renewal form that waiver requests must be filed by March 31st. During that time, the Commission has not had any difficulty in reviewing these requests as the March 31st deadline gives the Commission two meetings to accomplish this task. As such, the Commission has not amended this provision.

Section 35.384--Qualifying courses.

Subsection (a) instructs licensees that they may complete their 14-hour continuing education requirement in acceptable topics. Rather than referring to "acceptable courses," in proposed form, the Commission referred to "acceptable topics." In final form, the Commission implemented the suggestion of a commentator who recommended that the word "courses" be substituted for "topics." Also in final form the Commission reduced the minimum hour increment from 3 ½ to 2 hours. The Commission believes that reducing the numbers of hours for each course will provide licensees with more flexibility in their course selection without eroding the educational content of the courses. Additionally, because two hour courses are standard in other states, Pennsylvania licensees will be also able to avail themselves of these courses.

Current subsection (b) requires licensees to complete a required course each biennium. In proposed form, the Commission removed this requirement in all but pre-notified instances. Two commentators suggested that by eliminating the required course, licensees would not receive sufficient training in fair housing.

In determining whether to retain the required course, the Commission considered the frequency of amendments to the RELRA and the regulations as well as the number of fair housing disciplinary cases. The Commission determined that except in cases where the RELRA or regulations are substantially modified or where, in the Commission's view, licensees require specific Commission-guidance, licensees should be able to take continuing education in subjects that directly benefit their practice or interest. As part of its on-going review of its regulations, however, the Commission intends to monitor trends in disciplinary proceedings. Where the Commission finds an increase in specific violations, it will consider reinstituting a required course. As in the past, if a required course becomes necessary, the Commission will notify all licensees and real estate education providers at least 6 months prior to the end of the renewal period.

Subsection (c) lists acceptable topics for continuing education credit. New paragraph (19) adds "management of real estate brokerage operations." The HPLC opined that this paragraph conflicts with Subsection (d) which precludes office management courses that do not have a bearing on the public interest. The course contemplated in paragraph (19) tracks the exclusion in section 404.1(c) of the RELRA (63 P.S. § 455.404a(c)) for a broker's continuing education course involving the deposit and maintenance of escrow accounts, document preparation and retention, recordkeeping, conflicts of interest, disclosures to prospective sellers and buyers and the general ethical responsibilities of licensees.

Section 35.385. Continuing education providers.

Section 35.385 contains a list of providers that may offer continuing education courses: accredited colleges, universities and institutes of higher learning and real estate education providers in this Commonwealth and outside of the Commonwealth. One commentator suggested that this list of real estate education providers should apply to

prelicensure as well as continuing education. The definition of "school" in Section 201 of the RELRA (63 P.S. § 455.201) specifically excludes colleges, universities or institutes of higher learning accredited by the Middle States Association of Colleges and Secondary Schools or equivalent accreditation. As such, the Commission does not have jurisdiction over these prelicensure programs. Conversely, the Commission's authority over continuing education instruction is broad.

The commentator also suggested that in-state and out-of-state providers should be treated the same. The Commission concurs and requires approval for both in-state and out-of-state providers. In both the prelicensure and continuing education realm, all providers, other than those specifically exempted, must be approved either by this Commission or the appropriate licensing/regulatory authority in another jurisdiction where the provider is located. In addition, both must electronically transfer their continuing education rosters to the Commission.

Finally, another commentator questioned whether in-state providers would be given processing preference over out-of-state providers. The Commission does not anticipate that this regulation will cause a backlog in processing. The Commission staff will continue to process applications in the order in which they are received.

Sections 35.386 through 35.392

In proposed form, the Commission deleted each of the above sections. One commentator suggested that these provisions should be amended instead of deleted. In the preamble on proposed form, the Commission explained that these provisions are being deleted because they mirror existing provisions. Former § 35.387 has been consolidated into § 35.358 (relating to administration of curriculum), former § 35.388 has been consolidated into § 35.352 (relating to location and facilities). Former § 35.390 has been consolidated into §§ 35.354 and 35.355 (relating to prohibited forms of advertising and solicitation; and prospectus material). Former § 35.391 has been consolidated into § 35.359 (relating to course transcripts) and former § 35.392 has been consolidated into § 35.362 (relating to inspection of real estate education providers). Accordingly, the Commission has not amended these provisions.

Fiscal Impact and Paperwork Requirements

The amendments should have no fiscal impact on the Commonwealth, its political subdivisions or the public. The amendments should have a positive fiscal impact on the regulated community because the amendments reduce the legal, accounting, reporting or other paperwork requirements on the regulated community.

Sunset Date

The Commission continually monitors the effectiveness of its regulations through communication with the regulated population; accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 13, 2003, the Commission submitted a copy of the notice of proposed rulemaking, published at 33 *Pa. B.* 4571, to IRRC, and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Deborah Sopko, Administrative Assistant, State Real Estate Commission, P.O. Box 2649, Harrisburg, PA 17105-2649, www.state.pa.us/bpoa/recomm/mainpage.

Findings

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 33 *Pa. B.* 4571 on September 13, 2003.

(4) The final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in this Preamble.

Order

The Commission, acting under its authorizing statutes, orders that:

(a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Joseph J. McGettigan, Chairman
State Real Estate Commission

ANNEX A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 35. STATE REAL ESTATE COMMISSION

SUBCHAPTER B. GENERAL PROVISIONS

§35.201. Definitions.

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

* * * * *

Distance education—Real estate instruction delivered in an independent or instructor-led format during which the student and the instruction are separated by distance and sometimes time.

* * * * *

Independent learning—An interactive educational program, including computer-based technology courses, that provides no contact with an instructor.

* * * * *

Instructor-led learning—An interactive educational program, including a classroom or simulated classroom, that provides significant ongoing contact from the instructor to the participant during the learning process.

* * * * *

Real estate [school] education provider—[An individual or entity that conducts classes in] A person or institution who offers real estate [subjects. The term does not include a college, university or institute] education regardless of whether the learning is instructor-led or independent, excluding colleges, universities or institutes of higher learning accredited by the Middle States Association of Colleges and Secondary Schools or equivalent accreditation.

* * * * *

§35.203. Fees.

The following fees are charged by the Commission:

* * * * *

Approval of real estate [school] education provider.....\$120
Reinspection of real estate [school] education provider after first failure.....\$65
Annual renewal of approval of real estate [school] education provider.....\$250 plus
\$10 for each satellite location, course and instructor

* * * * *

Change of ownership or directorship of real estate [school] education provider.....\$75
Change of name of real estate [school] education provider.....\$45
Change of location of real estate [school] education provider.....\$70
Addition of satellite location or instructor for real estate [school]
education provider.....\$20
Addition of course for real estate [school] education provider.....\$25

* * * * *

SUBCHAPTER C. LICENSURE

LICENSURE REQUIREMENTS

§35.228. Licensure as campground membership salesperson.

(a) An individual who wants to obtain a Pennsylvania campground membership salesperson's license shall:

* * * * *

(2) Have successfully completed the one-credit (15 hours), Commission-developed course titled Campground Membership Sales, provided the following conditions are met:

* * * * *

(ii) The course was taught at an accredited college, university or institute of higher learning in this Commonwealth or a real estate [school] education provider in this Commonwealth approved by the Commission.

* * * * *

§35.229. Licensure as time-share salesperson.

(a) An individual who wants to obtain a Pennsylvania time-share salesperson's license shall:

* * * * *

(2) Have successfully completed the two-credit (30 hours), Commission-developed course titled Time Share Sales, provided the following conditions are met:

* * * * *

(ii) The course was taught at an accredited college, university or institute of higher learning in this Commonwealth or a real estate [school] education

provider in this Commonwealth approved by the Commission.

* * * * *

STATUS OF LICENSURE

§35.252. Termination of business of deceased broker with sole proprietorship.

(a) Within 15 days following the death of a broker with a sole proprietorship, the deceased broker's estate [may] shall notify the Commission that [it] the estate has appointed another licensed broker to supervise the termination of the deceased broker's business [for 90 days following the appointment]. The appointment is subject to verification that the appointed broker has a current license.

(b) The appointed broker shall observe the following rules during the [90-day] termination period:

* * * * *

(2) Unexpired listing agreements may be promoted unless the seller or lessor elects to cancel the agreement. Unexpired listings will expire automatically [at the conclusion of the 90-day termination period] 90 days after the broker dies and may not be renewed.

* * * * *

§35.253. Replacement of broker of record due to death.

Within 15 days following the death of a broker of record, a partner or corporate officer

shall file an application with the Commission designating another individual to serve as broker of record.

§35.254. Substitution of broker or broker of record due to illness or injury.

If a broker with a sole proprietorship or broker of record is unable to act as a broker/broker of record due to illness or injury, the broker's attorney or another with power of attorney for the broker in a sole proprietorship, a corporate officer or partner shall notify the Commission within 15 days that it has appointed another licensed broker to act as the interim broker/broker of record for the corporation, partnership or sole proprietorship until the broker/broker of record is able to resume his responsibilities.

SUBCHAPTER D. LICENSING EXAMINATIONS

§35.271. Examination for broker's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

* * * * *

(3) To be counted toward the education requirement, a real estate course shall have been offered by :

* * * * *

(ii) A real estate [school] education provider in this Commonwealth

approved by the Commission.

(iii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] REAL ESTATE EDUCATION provider is located. The course transcript or certificate of completion shall state that the course is approved by the licensing authority of the jurisdiction where the [school] REAL ESTATE EDUCATION provider is located.

* * * * *

(6) Two credits will be allowed for each year of active practice the candidate has had as a licensed broker in another jurisdiction during the 10-year period immediately preceding the submission of the examination application.

§35.272. Examination for salesperson's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(2):

* * * * *

(2) Credits will be allowed for each of the Commission-developed real estate courses—Real Estate Fundamentals and Real Estate Practice—when offered by:

* * * * *

(ii) A real estate [school] education provider in this Commonwealth

approved by the Commission.

(3) Credits will be allowed for acceptable basic real estate courses when offered by:

* * * * *

(ii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] REAL ESTATE EDUCATION provider is located.

§35.273. Examination for cemetery broker's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(3):

* * * * *

(2) Credits will be allowed for each of the Commission-developed real estate courses—Real Estate Fundamentals and Real Estate Practice—when offered by:

* * * * *

(ii) A real estate [school] education provider approved by the Commission in this Commonwealth.

(3) Credits will be allowed for cemetery courses when offered by:

* * * * *

(ii) A real estate [school] education provider in this Commonwealth

approved by the Commission.

(4) Credits will be allowed for acceptable basic real estate courses when offered
by:

* * * * *

(ii) A real estate [school] education provider outside this Commonwealth
that has been approved by the real estate licensing authority of the jurisdiction
where the [school] REAL ESTATE EDUCATION provider is located.

* * * * *

§35.275. Examination for rental listing referral agent's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an
examination candidate has met the education requirement of subsection (a)(2):

* * * * *

(2) Credits will be allowed for each of the Commission-developed real estate
courses—Real Estate Fundamentals and Real Estate Practice—when offered by:

* * * * *

(ii) A real estate [school] education provider in this Commonwealth
approved by the Commission.

(3) Credits will be allowed for acceptable basic real estate courses when offered
by:

* * * * *

(ii) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] REAL ESTATE EDUCATION provider is located.

* * *

Subchapter F. REAL ESTATE [SCHOOL] EDUCATION PROVIDERS
APPROVAL OF [SCHOOLS AND SCHOOL DIRECTORS] REAL ESTATE
EDUCATION PROVIDERS

§35.341. Approval of real estate [school] education provider.

A real estate [school] education provider shall obtain the Commission's approval before commencing operations in this Commonwealth. To obtain approval from the Commission, the [school] REAL ESTATE EDUCATION provider shall:

(1) Be owned by persons who [are 21 years of age or older and] possess [a] good moral character, or, if the owner is a corporation, have officers and directors who meet [these requirements] this requirement.

* * * * *

(3) Have a director of [school] operations who meets the requirements of §35.342 (relating to approval of [school] director).

(4) Designate a person or entity [located in this Commonwealth] to serve as custodian of [school] records if the [school] REAL ESTATE EDUCATION provider were to terminate operations.

(5) Post a surety bond of \$10,000 to the Commonwealth for the protection of the contractual rights of the [school] REAL ESTATE EDUCATION provider's students[, the amount of which shall be the greater of \$10,000 or the maximum number of students expected to be enrolled at any one day in the first year of operation times the amount of the tuition].

(6) Submit a completed [school] REAL ESTATE EDUCATION provider approval application to the Commission with:

(i) A completed [school] REAL ESTATE EDUCATION provider owner application with:

(A) A resume of the applicant's experience in owning, administrating or teaching in, a college[, or university or as a real estate [school] education provider.

* * * * *

(C) [A notarized pro forma profit and loss statement and balance sheet.

(D) Complete details] Certified copies of court documents related to a conviction of, or plea of guilty or nolo contendere to, a felony or misdemeanor and the sentence imposed.

(ii) A completed [school] REAL ESTATE EDUCATION provider director application with:

* * * * *

(B) [Complete details of] Certified copies of court documents

related to conviction of, or plea of guilty or nolo contendere to, a felony or misdemeanor and the sentence imposed.

(iii) A fictitious name registration, if the [school] REAL ESTATE EDUCATION provider has a fictitious name.

(iv) A certificate of incorporation, if the [school] REAL ESTATE EDUCATION provider is a corporation.

* * * * *

(vi) {A copy of the student enrollment agreement.

(vii) A copy of the school transcript.

(viii) A statement of the prerequisites for admission.

(ix)} A statement of policy regarding refund of tuition and other fees.

~~{(x)}~~ ~~(vii)~~ * * *

{(xi) For the main school location and each proposed satellite location, a sketch or photograph of the school REAL ESTATE EDUCATION PROVIDER'S sign.}

§35.342. Approval of [school] REAL ESTATE educational director.

(a) A real estate [school] education provider shall obtain the Commission's approval of its director before commencing operations in this Commonwealth. The applicant for director shall have a combination of experience in teaching, supervision and educational administration [to be able] which, in the opinion of the Commission, will enable the applicant to competently

administer a real estate education program in areas that include, but are not limited to, the following: evaluation of instructor performance; evaluation of curriculum and specific course content; analysis of course examinations; and management of [school] records and [school] facilities.

* * * * *

(c) An approved [school] REAL ESTATE education provider shall obtain the Commission's approval before changing directors. The prospective director shall submit to the Commission the information required by §35.341(6)(ii) (relating to approval of real estate [school] education provider).

(d) If the director dies, withdraws or is terminated, an approved REAL ESTATE education provider will not lose its approved status, nor will it be required to terminate operations within the Commonwealth provided that:

(1) The REAL ESTATE EDUCATION provider shall submit the name of an interim director to the Commission within 15 days of the death, withdrawal or termination of the director.

(2) The interim director is authorized to operate for up to 90 days following the death, withdrawal or termination of the director. Thereafter, continued operation is contingent upon approval of a director under subsection (a) or (b).

(3) No changes may be made to the curriculum, testing or facilities until the new director is approved by the Commission.

§35.343. Renewal of [school] REAL ESTATE education provider approval.

An approved real estate [school] education provider shall renew its approval annually. To obtain renewal of approval, [a school] ~~an~~ A REAL ESTATE education provider shall submit a completed renewal of approval application to the Commission with:

(1) A notarized certification of compliance with this chapter signed by the [school] director.

(2) A copy of the \$10,000 surety bond showing coverage for the upcoming renewal period [, the amount of which shall be the greater of \$10,000 or the maximum number of students enrolled at any one day during the previous year times the amount of the tuition].

* * * * *

§35.344. Withdrawal of [school] REAL ESTATE education provider or director approval.

(a) The Commission may, following notice and hearing under 2 Pa. C.S. §§501-508 (relating to practice and procedure of Commonwealth agencies), withdraw the approval of a real estate [school] education provider that it finds guilty of:

* * * * *

(2) Failing to maintain compliance with §35.341 (relating to approval of real estate [school] education provider).

(3) Violating a requirement of §§35.351-35.363 (relating to administration of [schools] REAL ESTATE education providers).

(b) The Commission may, following notice and hearing under 2 Pa. C.S. §§501-508, withdraw the approval of a [school] director that it finds guilty of:

(1) [Incompetency] Any conduct in connection with the administration of ~~an~~
A REAL ESTATE education provider which demonstrates bad faith, dishonesty,

untrustworthiness or incompetency.

(2) Failing to [ensure the schools] maintain compliance with [the requirements of §§ 35.351-35.363] §35.341 (relating to approval of real estate education provider).

* * * * *

(4) Having been convicted of, or having pled guilty or nolo contendere to [,] a felony [or].

(5) Having been convicted of, or having pled guilty or nolo contendere to a misdemeanor [involving moral turpitude] related to the practice of real estate, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense.

ADMINISTRATION OF [SCHOOLS] REAL ESTATE EDUCATION PROVIDERS

§35.351. Duty of [school] director.

The director [of] for a real estate [school] education provider is responsible for [the] day-to-day administration [of the school], including [the school's] evaluation of instructor performance, evaluation of curriculum and specific course content, analysis of course examinations, management of records and facilities and otherwise assuring compliance with §§ 35.352-35.363.

§35.351a. [Assistant school director] (Reserved).

[(a) A school may, upon notification to the Commission, appoint an approved instructor under § 35.353 (relating to selection of instructors) to serve as assistant school director.

(b) An assistant school director may not become a school director without the Commission's approval under §35.342 (relating to approval of school director).]

§35.352. Location and facilities.

(a) A real estate [school] education provider shall have a main location [within this Commonwealth] that contains its [administration] administrative offices, its records, and a telephone with a listed number for the [school's] REAL ESTATE EDUCATION provider's exclusive use. [Classes may be taught at the main location or at satellite locations.]

(b) The [main] location [and each satellite location] where classes are taught shall:

(1) Be [designed primarily for classroom purposes or, in the case of a meeting hall, convention hall or motel/hotel facility, be] suitable for classroom space.

(2) Not share office space, [classroom] instruction space or a common [entrance] space with a real estate franchise, network or organization. This paragraph does not apply to a real estate trade association OR TO A CONTRACTUAL ARRANGEMENT BETWEEN A REAL ESTATE LICENSEE AND A REAL ESTATE EDUCATION PROVIDER TO PROVIDE CONTINUING EDUCATION COURSES.

* * * * *

[(4) Have adequate illumination on horizontal work surfaces in each classroom.

(5) Have 15 square feet of floor space per student in each classroom.

(6) Have 150 cubic feet of airspace per student in each classroom.

(c) If the school rents facilities for its main or satellite location, the lease agreement shall be in effect for the period when the school is in session at that location.]

§35.353. Selection of instructors.

(a) *Qualified instructors.*

[(1)] A real estate [school] education provider shall employ instructors who are qualified to teach the [curriculum] courses for which the instructors have been hired. The [school] REAL ESTATE EDUCATION provider may consider an individual qualified to teach a course if the individual satisfies one of the following criteria:

(i) Has accumulated a minimum of 75 total points under the points system in subsection (b), with a minimum of 30 education points (including points in both formal and continuing education), three industry experience points and 20 teaching experience points.

(ii) Has accumulated a minimum of 53 total points under the points system in subsection (b), with a minimum of 30 education points (including points in both formal and continuing education) and three industry experience points.

(iii) (1) Possesses an undergraduate, graduate or postgraduate degree [and has 2 years of practical experience] in the subject matter of the course to be taught. [The experience requirement does not apply when the individual holds a

teaching certificate in the subject matter of the course to be taught.]

[(iv)] (2) Has [5] 3 years of [full-time] practical or teaching experience in a profession, trade or occupation directly related to the subject matter of the course to be taught.

[(2) If the school determines that an individual is qualified as an instructor under paragraph (1)(ii), the school shall require the individual to acquire at least 20 teaching experience points within 3 years after commencing employment as an instructor for the school.

(b) Point system. A school shall award points for education, industry experience and teaching experience as follows:

(1) Education. Education requirements are as follows:

(i) Formal education.

(A) High school or general equivalency diploma - five points.

(B) Degrees - only one degree may be considered for points:

(I) Associate's degree, or its equivalent, in any area - five points.

(II) Bachelor's or master's degree in any area - 10 points.

(III) Bachelor's or master's degree in real estate - 15 points.

(IV) Doctorate degree in any area - 15 points.

(ii) *Industry designations.* Ten points for each industry-awarded designation earned in the area of study to be taught, up to a maximum of 30 points.

(iii) *Continuing education programs.* One point for each Continuing Education Unit/Program (CEUP) in the area of study to be taught. For purposes of this clause, a CEUP is defined as 10 hours of classroom participation as a student.

(iv) *Continuing education courses.* One point for each Continuing Education Unit/Course (CEUC) earned in the area of study to be taught. For purposes of this clause, a CEUC is defined as 10 hours of classroom participation as a student.

(2) *Industry experience.* One point for each year of industry-related experience in the area of study to be taught, up to a maximum of 15 years.

(3) *Teaching experience.* One point for each Continuing Teaching Unit (CTU) earned in the area of study to be taught. For purposes of this paragraph, a CTU is defined as 10 hours of classroom participation as an instructor in an industry-related curriculum.

(c)] (b) Proof of qualifications. [A school] ~~An~~ A REAL ESTATE education provider shall [require an instructor applicant to prove qualifications by the submission of:] maintain documentation substantiating the instructor's education and experience.

[(1) Certified documents from educational institutions and real estate organizations attesting to the applicant's acquisition of diplomas, degrees and industry designations and completion of continuing education programs and courses.

(2) Letters from teaching supervisors certifying the applicant's past satisfactory performance as an instructor.]

§35.354. Prohibited forms of advertising and solicitation.

(a) A real estate [school] education provider may not:

(1) Hold itself out under a name other than the name approved for it by the Commission under §35.341 (relating to approval of real estate [school] education provider).

(2) Hold itself out as being recommended or endorsed by the Commission, the Department of Education or other agency of the Commonwealth, except that the [school] REAL ESTATE education provider may advertise that it has been approved by the Commission to provide instruction in real estate courses and that credits earned in certain named courses will be accepted by the Commission toward fulfillment of the professional education prerequisite for taking the Pennsylvania real estate licensing examinations.

(3) Hold itself out to be an educational institution that conforms to the standards and requirements prescribed for colleges and universities by the Department of Education, unless the [school] REAL ESTATE education provider meets those standards and requirements.

* * * * *

(9) Permit an instructor or guest lecturer while on [school] the REAL ESTATE EDUCATION provider's premises to wear any identification relating to the name of the real estate licensee or a real estate organization, franchise or network.

* * * * *

(b) A [school] real estate education provider may not allow its main or satellite

locations to be used by others for the solicitation or recruitment of students for employment or affiliation with a real estate licensee or a real estate organization, franchise or network. [The following sign] Students shall be informed of this prohibition through a written statement which shall [be conspicuously displayed in each classroom whenever a class is in session] contain the following:

* * * * *

§35.355. Prospectus materials.

(a) A real estate [school] education provider shall provide copies of catalogs, bulletins, pamphlets and other prospectus materials to the Commission upon request. Prospectus materials shall state the following in clear and unambiguous terms:

* * * * *

§35.356. Tuition and other fees.

A real estate [school] education provider shall charge tuition that bears a reasonable relationship to the quality and quantity of instructional services rendered. If additional fees are charged for books, supplies and other materials needed for coursework, the [school] REAL ESTATE EDUCATION provider shall itemize the fees and the books, supplies and materials, upon payment therefor, shall become the property of the student.

§35.357. {Student enrollment agreements} ~~(Reserved).~~

[(a)] A real estate ~~school~~ EDUCATION PROVIDER shall require each of its students

to enter into a student enrollment agreement ~~that has been approved by the Commission~~. The agreement shall:

(A) ~~Itemize~~ the tuition and other fees and the services and materials to be received from them.

~~[The agreement also shall]~~

(B) ~~s~~State the ~~school's~~ REAL ESTATE EDUCATION PROVIDER'S policy regarding the refund of tuition and fees if the student were to withdraw or be dismissed or if the school were to terminate operations before the end of the academic year. ~~The agreement also shall~~

(C) ~~e~~Contain the Bureau's toll-free telephone number, 1(800) 822-2113, that the student may call to obtain information about filing a complaint against the ~~school~~ REAL ESTATE EDUCATION PROVIDER.

[(b) The following real estate school enrollment agreement is exemplary of the requirements of subsection (a):

REAL ESTATE SCHOOL STUDENT ENROLLMENT AGREEMENT

In consideration of *(Name of School)* (hereinafter the "School") accepting me as a student and giving me the instruction specified in its *(Name of Course)* *(Fall or Spring Session)* *(Day or Evening Class)* *(Year)* according to the curriculum of the School, I, *(Name of Student)* (hereinafter the "Student"), agree to pay the School tuition in the amount of \$____, \$____ of which shall be paid at the signing and execution of this agreement and the balance paid in *(Weekly or Monthly)* installments of \$____.

The School and the Student agree that the portion of the tuition paid at the time of the

signing and execution of this agreement is nonrefundable. The Student agrees to acquire all books, tools and supplies required for the course, according to the current catalog, for which a fee of \$_____ shall be paid at the signing and execution of this agreement.

The Student agrees to abide by the rules and regulations of the School as may be established from time to time in connection with the course.

The School shall have the right to cancel this agreement at any time if the student shall (i) violate a rule or regulation established by the School in connection with course; (ii) fail to advance satisfactorily in the course; or (iii) refuse to take the instruction offered. In the event of cancellation, the School shall refund the unearned portion of the tuition paid, in accordance with the refund schedule in the current catalog.

The School shall have the right to substitute any study or laboratory work in connection with the course when changing conditions in the field of study require such substitution in the School's judgment.

The School shall not be bound by any agreement or representation other than those specified in this contract and the current catalog.

IN WITNESS WHEREOF, I (We) have hereunto set my (our) hand(s) and seal(s) this
(Date) day of (Month)(Year)

(Witness)

(Name of Student)

(Date)

(Parents or Guardian, if

Student is a minor)

The *(Name of School)* herewith agrees to enroll *(Name of Student)* for the *(Name of Course)* *(Fall or Spring Session)* *(Day or Evening Class)* *(Year)*.

(School Director)]

§35.358. Administration of curriculum.

(a) [A real] Real estate [school] education providers shall observe the following standards in the administration of [its] pre-licensure and continuing education curriculum:

(1) [No day of the academic year] Instructor-led learning may not exceed 7½ clock hours of instruction per day. For purposes of this section, a clock hour is defined as a 60-minute period comprising 50 minutes of [inspection] instruction and a 10-minute break. A student may not be required to attend class for more than 90 consecutive minutes without a break.

(2) [A correspondence or home study course may be offered to students whom the Commission certifies as being unable to attend classes.

(3) A course shall be assigned one credit for 15 clock hours, two credits for 30 clock hours, three credits for 45 clock hours or, if the course is a combination of Real Estate Fundamentals and Real Estate Practice, four credits for 60 clock hours.

(4)] The substantive content of the course, as evidenced by the course outline, text and other instructional materials, shall adequately reflect the stated purpose of the course, as evidenced by the course title and course description. [If the course purports to offer instruction] Instruction in a Commission [-developed] required course [, the course outline] shall [be substantially the same as] conform to the content or the outline developed by the Commission for the course.

[(5) If copyrighted test materials are to be used in a course that purports to be a review for a Pennsylvania real estate licensing examination, the school shall obtain permission to use the materials from the Commission and the testing service that administers the examination.

(6) A course shall be graded by written examination, except when a student's handicap or disability would make grading by written examination impractical. In the case of a home study course, at least 50% of the student's grade shall be determined by the proctored written examination.

(7)] (3) Unless [enrolled in a correspondence or home study course] the course is taught by means of distance education, a student shall be physically present during at least 80% of the classroom instruction for a [pre-licensure] prelicensure course and during at least 90% of the classroom instruction for a continuing education course, [in order] to receive [a passing grade] credit. [A sign-in/sign-out attendance roster shall be maintained for each class session.] The REAL ESTATE EDUCATION provider shall be responsible for verifying student attendance.

[(8) Each class shall be taught via live presentation by the instructor. An

instructor's live presentation may be augmented by the use of an audiotape, videotape or other audio/visual aid.]

(4) Courses delivered by distance education, in addition to meeting the content requirements in §35.384(relating to qualifying courses), shall HAVE THE DELIVERY METHOD be approved by the Association of Real Estate License Law Officials or another certifying body with similar approval standards approved by the Commission.

(b) In addition to the requirements in subsection (a), an A REAL ESTATE education provider shall observe the following standards in the administration of its prelicensure curriculum:

(1) A prelicensure course shall be assigned one credit for every 15 clock hours of instruction.

(2) A prelicensure course shall be graded by PROCTORED ~~written~~ examination, except when a student's handicap or disability would make grading by ~~written~~ examination impractical.

§35.359. Course Transcripts.

(a) *Prelicensure.* Within 30 days after a course has been taught, a real estate [school] education provider shall provide each student in the course with an official course transcript that contains the information in §35.360(a)(5) (relating to records) and is signed by the [school] director.

(b) Continuing education. Effective with the renewal period commencing June 1, 2004, within 30 days after a continuing education course has ended, the continuing education provider

shall provide the Commission with a roster in a format approved by the Commission, listing each licensee who satisfactorily completed/taught the course. Continuing education providers shall be required to issue course transcripts/certificates of instruction to students only upon request.

§35.360. Records.

(a) A real estate [school] education provider shall maintain complete and accurate records in the following areas:

(1) *Financial.* The [school's] REAL ESTATE EDUCATION provider's assets and liabilities and the sources and amounts of its income.

(2) *Physical plant.* For the main location and for each satellite location, the following:

(i) [A detailed floor plan depicting offices, classrooms, restrooms, entrances, halls, doors and windows, including the size and seating capacity of each classroom.

(ii) A certificate of occupancy issued by the Department of Labor and Industry under the act of April 27, 1927 (P.L. 465, No. 299), known as the Fire and Panic Act (35 P.S. §§1221-1235) or, if the location is in Philadelphia, Pittsburgh or Scranton, proof that the building being used by the school has been approved for fire safety by that city's Bureau of Fire Inspections.] Copies of documentation showing compliance with applicable building, fire safety and sanitary requirements imposed by state, county or municipal governments.

~~[(iii)]~~ (ii) A copy of the lease or rental agreement, if the [school]

REAL ESTATE EDUCATION provider does not own the building being used.

(3) *Personnel.* The [point] qualifications of each instructor and the documentary evidence of those qualifications. See §35.353 (relating to selection of instructors).

(4) *Curriculum.* For each course the [school] REAL ESTATE EDUCATION provider has offered, the following:

* * * * *

(5) *Scholastic.* An academic transcript for each student [that includes the following information for each course taken by the student] which shall contain:

(i) The [school] REAL ESTATE EDUCATION provider's name and Commission approval number.

* * * * *

(v) [The semester in which the course was taught.

(vi)] The date that the student completed the course.

[(vii)] (vi) * * *

[(viii) The number of sessions that the student was present and the number that he was absent, except for a home study course.]

[(ix)] (vii) The student's final grade in the course, if an examination is required for the course.

[(x)] (viii) * * *

[(xi)] (ix) * * *

[(xii) The fact that the course will be accepted by the Commission

towards fulfillment of the education requirement for either the real estate broker's examination or real estate salesperson's examination, as the case may be.]

(6) *Attendance.* [A daily attendance record for each student.]

(b) [A school] ~~An~~ A REAL ESTATE education provider shall store its records at its main location. Upon termination of operations, a [school] REAL ESTATE EDUCATION provider shall transfer its records to the designated custodian of records. The [school] REAL ESTATE EDUCATION provider shall notify the Commission whenever it changes the custodian of records.

(c) [A school] ~~An~~ A REAL ESTATE education provider shall produce its records for examination by the Commission or its representatives upon written request or pursuant to an inspection under §35.362 (relating to inspection of [schools] REAL ESTATE education providers).

(d) [A school] ~~An~~ A REAL ESTATE education provider shall make copies of a student's scholastic and attendance records available to the student upon request.

(e) [A school] ~~An~~ A REAL ESTATE education provider shall retain attendance and scholastic records [pertaining to continuing] as follows:

(1) Continuing education records shall be maintained for 4 years [and all].

(2) All other [attendance and scholastic] records shall be retained for 10 years.

§35.361. Display of documents and approved name.

(a) A real estate [school's] education provider's certificate of approval shall be displayed prominently at the [school's] REAL ESTATE EDUCATION provider's main location. ~~A copy~~

~~of the certificate shall be displayed prominently at each satellite location.~~

(b) [A school's] ~~An~~ A REAL ESTATE education provider's approved name shall be displayed prominently [outside] at each [school] location where courses are taught.

(c) ~~The [school director's] education provider's letter of approval shall be displayed prominently at the [school's] provider's main location. A copy of the letter shall be displayed prominently at each satellite location.~~

(d) [An alphabetical list of all courses currently offered by the school, together with their instructors, shall be displayed prominently at each school location.

(e)] An alphabetical list of the [school's] REAL ESTATE education provider's satellite locations shall be displayed prominently at the [school's] REAL ESTATE EDUCATION provider's main location.

§35.362. [Inspection of school] ~~Inspections.~~ INSPECTION OF REAL ESTATE EDUCATION PROVIDERS.

(a) *Routine Inspections.* No more than [4] four times a year while classes are in session, the Commission or those authorized representatives may conduct a routine inspection of the main location or satellite location of a real estate [school] education provider for the purpose of determining whether the [school] REAL ESTATE EDUCATION provider is in compliance with §§35.351-35.363 (relating to administration of [schools] REAL ESTATE education providers).

(b) *Special inspections.* In addition to the routine inspections authorized by subsection (a), the Commission or its authorized representatives may conduct a special inspection of [a school's] ~~an~~ A REAL ESTATE education provider's main location or satellite location:

(1) Upon a complaint or reasonable belief that the [school] REAL ESTATE EDUCATION provider is not in compliance with §§35.351-35.363.

(2) As a follow-up to a previous inspection that revealed the [school's] REAL ESTATE EDUCATION provider's noncompliance with §§35.351-35.363.

(c) *Scope of inspection.* Prior to the start of a routine or special inspection, the Commission or its authorized representatives will advise the [school owner] REAL ESTATE education provider, [school] director or other person in charge at the time of the inspection that the inspection is being made under this section and is limited in scope by this section.

(d) During the course of a routine or special inspection or investigation, the Commission or its authorized representatives will be permitted to:

(1) Examine [school] REAL ESTATE EDUCATION provider records.

(2) Inspect all areas of the [school] REAL ESTATE EDUCATION provider's premises.

* * * * *

(4) Interview the [school owner] REAL ESTATE EDUCATION provider, [school] director and other administrative personnel, instructors and students.

§35.363. Termination of operations.

A real estate [school] education provider that desires to terminate operations shall submit to the Commission, within 60 days of the planned termination, a termination plan that includes the following:

* * * * *

(2) The date that [school] REAL ESTATE EDUCATION provider records will be transferred to the designated records custodian.

* * * * *

SUBCHAPTER H. CONTINUING EDUCATION

§35.381. [Purposes and goals] (Reserved).

[The purposes and goals of continuing education are to provide an education_program through which a licensee may obtain the knowledge and skills to:

- (1) Maintain and Increase competency to engage in licensed real estate activities.
- (2) Keep a licensee abreast of changes in laws, regulations, practices and procedures that affect the real estate business.
- (3) Better ensure that the public is protected from incompetent practice by licensees.]

§35.382. Requirement.

(a) *Condition precedent to renewal of current license.* [Beginning with the 1994-1996 biennial license period and continuing with each biennial license period thereafter, a] A broker or salesperson who desires to renew a current license shall, as a condition precedent to renewal, complete 14 hours of Commission-approved continuing education during the preceding license period. The continuing education shall be completed by the May 31 renewal deadline.

(b) *Condition precedent to reactivation and renewal of noncurrent license.*
[Effective March 1, 1994, a] A broker or salesperson who desires to reactivate and renew a

noncurrent license shall, as a condition precedent to reactivation and renewal, complete 14 hours of Commission-approved continuing education during the 2-year period preceding the date of submission of the reactivation application. A broker or salesperson may not use the same continuing education coursework to satisfy the requirements of this subsection and subsection (a).

* * * * *

(d) Documentation. A licensee shall provide the Commission with information necessary to establish the licensee's compliance with this subchapter.

§35.383. Waiver of continuing education requirement.

(a) The Commission may waive all or part of the continuing education requirement of §35.382 (relating to requirement) upon proof that the licensee seeking the waiver is unable to fulfill the requirement because of illness, emergency or hardship. [Subsections (b) - (d)] The following are examples of situations in which hardship waivers will be granted [. Hardship waivers will be granted in other situations for good cause shown.]:

[(b)] (1) * * *

[(c)] (2) * * *

[(d)] (3) A licensee who is a qualified continuing education instructor will be deemed eligible [, on the basis of hardship,] for the waiver of 1 hour of continuing education for each hour of actual classroom instruction in an approved continuing education topic [that the instructor is qualified to teach]. Duplicate hours of instruction in the same topic during the same biennial license period will not be considered for waiver

purposes.

(b) Requests to waive the continuing education requirement shall be filed with the Commission on or before March 31 of the renewal year unless the applicant proves to the satisfaction of the Commission that it was impracticable to do so.

§35.384. Qualifying courses[; required and elective topics].

(a) [*Qualifying courses.* A] Except as provided in subsection (b), a licensee [may satisfy the continuing education requirement by doing one of the following:] shall complete 14 hours of continuing education in acceptable topics COURSES in a minimum of 2-hour increments.

[(1)Completing a 14-hour continuing education course comprising 5-to-8 hours in required topics and 6-to-9 hours in elective topics

(2) Completing a 5-to-8 hour continuing education course in required topics and one of the following courses:

(i) A 6-to-9 hour continuing education course in elective topics

(ii) A course approved by the Commission for broker licensure if 6-to-9 hours are in elective topics.]

(b) [*Required topics.* A minimum of 5 and a maximum of 8 hours shall be in required topics. A minimum of 2 hours shall be in the act and this chapter and a minimum of 3 hours shall be in fair housing laws and practices.] The Commission may, for a given biennial license period and with adequate notice to licensees, require [up to 3 hours] that all or part of the 14 hours be completed in [a topic that address a critical issue of current relevance to licensees] required topics.

(c) *[Elective topics]*. The balance of the 14 hours shall be in elective topics that have significant intellectual and practical content to increase the competency of licensees. A minimum of 2 hours shall be in each elective topic. The elective topics may address either real estate specialties or matters of general interest to licensees.

(1) Acceptable *[elective] topics* COURSES include:

[(i)] (1) * * *

[(ii)] New laws] (2) Laws affecting real estate.

[(iii)] (3) Real estate financing and mathematics.

[(iv)] (4) * * *

[(v)] (5) * * *

[(vi)] (6) * * *

[(vii)] (7) * * *

[(viii)] (8) * * *

[(ix)] (9) * * *

[(x)] (10) * * *

[(xi)] (11) * * *

[(xii)] (12) * * *

[(xiii)] (13) * * *

[(xiv)] (14) * * *

[(xv)] (15) * * *

[(xvi)] (16) * * *

[(xvii)] (17) * * *

(18) Real estate investment analysis.

(19) Management of real estate brokerage operations.

(20) Property development.

(21) Real Estate securities and syndication.

(22) Real property exchange.

(23) Broker courses encompassing supervisory duties and standards of conduct and practice contained in Subchapter E (relating to standards of conduct and practice).

(24) Marketing promotion and advertising of real estate inventory.

(25) Use of technology in delivering real estate services.

[(2)] (d) Unacceptable ~~elective topics~~ COURSES include:

[(i) Mechanical] mechanical office and business skills; for example, typing, speed writing, preparation of advertising copy, development of sales promotional devices, word processing, calculator and computer operation[.

[(ii) Office] and office management and related internal operations procedures that do not have a bearing on the public interest.

[(iii) Real estate mathematics.]

§35.385. [Approved continuing] Continuing education providers.

The following providers [are approved to] may offer instruction for continuing education:

* * * * *

(2) A real estate [school] education provider in this Commonwealth approved by the Commission.

(3) A real estate [school] education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the [school] REAL ESTATE EDUCATION provider is located.

[(4) A real estate industry organization outside this Commonwealth, if the Commission has given its prior approval to the industry organization's continuing education curriculum].

§35.386. [Course content outlines and course titles] (Reserved).

[(a) *Course outlines.* The Commission will develop content outlines for the required continuing education topics and make them available to continuing education providers within a reasonable time prior to the biennial license period during which the required topics are taught. Each continuing education provider is responsible for developing content outlines for the elective continuing education topics.

(b) *Course titles.* The Commission will specify the titles for continuing education courses authorized under §35.384(a)(1) and (2)(i)(relating to qualifying courses; required and elective topics).]

§ 35.387. [Administration of curriculum] (Reserved).

[A continuing education provider, shall comply with the requirements of §35.358 (relating to administration of curriculum) except for paragraphs (3), (5) and (6).]

§ 35.388. [Facilities] (Reserved).

[A continuing education course shall be taught at a facility that conforms to §35.352(b)(relating to location and facilities).]

§ 35.389. [Instructors] (Reserved).

[A continuing education course shall be taught by an instructor who meets the requirements of § 35.353 (relating to selection of instructors).]

§ 35.390. [Advertising, solicitation and promotion] (Reserved).

[A continuing education provider shall comply with the requirements in §§35.354 and 35.355 (relating to prohibited forms of advertising and solicitation; and prospectus materials).]

§ 35.391. [Course transcripts and certificates of instruction] (Reserved).

[(a) Within 30 days after a continuing education course has ended, the continuing education provider shall issue a course transcript to each licensee who satisfactorily completed the course and a certificate of instruction to the course instructor if the instructor is also a licensee. The course transcript and certificate of instruction shall contain, to the extent applicable, the information in §35.360(a)(5)(relating to records), as well as the licensee's license numbers.

(b) A continuing education provider shall retain attendance rosters, course transcripts and certificates of instruction for 4 years and shall issue a duplicate transcript or certificate to the licensee or the Commission upon request.

(c) A licensee shall provide the Commission with information necessary to establish the licensee's compliance with this subchapter.]

§35.392. [Investigations and inspections] (Reserved).

[(a) *Investigations.* Continuing education providers and licensees shall cooperate with investigations conducted by the Commission or its authorized representatives to ensure compliance with this subchapter.

(b) *Routine and special inspections.* No more than 4 times a year while classes are in session, the Commission or its authorized representatives may conduct a routine inspection of the facilities of a continuing education provider for the purpose of determining whether the provider or a licensee is in compliance with this subchapter. In addition to the routine inspections, the Commission or its authorized representatives may conduct a special inspection of the facilities of a provider upon a complaint or reasonable belief that the provider is not in compliance with this chapter or as a follow-up to a previous inspection that revealed the provider's noncompliance with this subchapter.

(c) *Scope of inspection.* Prior to the start of a routine or special inspection, the Commission or its authorized representatives will advise the person in charge at the time of the inspection that the inspection is being made under this section and is limited in scope by this section. During the course of a routine or special inspection, the Commission or its authorized representatives will be permitted to:

- (1) Examine continuing education records.
- (2) Inspect all areas of the facility where continuing education courses are

taught.

(3) Monitor the performance of continuing education instructors in classrooms.

(4) Interview the director of the continuing education program, the instructors and the students.

(d) *Combined inspections.* The Commission or its authorized representatives may combine an inspection under this section with an inspection under § 35.362 (relating to inspection of school).]



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE REAL ESTATE COMMISSION**

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October 1, 2004

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Real Estate Commission
16A-561: Education

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Real Estate Commission pertaining to Education.

The Commission will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. McGettigan, Sr.".

Joseph P. McGettigan, Sr., Chairperson
State Real Estate Commission

JJM/JPS/apm

Enclosure

c: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Linda C. Barrett, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Gerald S. Smith, Senior Counsel in Charge
Department of State
Judith Pachter Schulder, Counsel
State Real Estate Commission
State Real Estate Commission

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

I.D. NUMBER: 16A-561
SUBJECT: Education
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

Proposed Regulation
X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/1/04	<i>Sandra J. Hays</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
10/1/04	<i>Mary Kralmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
10/1/04	<i>Stephen J. Hoffman</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

June 25, 2004