

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

State Board of Education

(2) I.D. Number (Governor's Office Use)

#006-302

IRRC Number: 2548

(3) Short Title

Chapter 36 – Foreign Corporation Standards

(4) PA Code Cite

22 Pa. Code Chapter 36

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jim Buckheit
(717) 787-3787
jbuckheit@state.pa.us

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Chapter 36 addresses requirements for the institutional commitment, governance, curricula, faculty, admissions requirements, resources and facilities, and evaluation and approval of degree-granting post-secondary institutions either operated or owned by a foreign corporation. A foreign corporation is an entity that is registered or chartered by another state or country.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Public School Code of 1949 (24 P.S. §§ 1-101 — 27-2702).

Regulatory Analysis Form

(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.

The proposed amendment to the regulation is not mandated by federal statute or court order. The enabling statute for the State Board of Education requires it to "establish standards governing the educational program of the Commonwealth." (24 P.S. § 26-2603-B(a)).

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

The regulations establish the requirements for the operation of post-secondary degree-granting institutions in this Commonwealth that are chartered in another state or country. The proposed regulations update Chapter 36 to address a statutory change that permits for-profit postsecondary institutions to operate in this Commonwealth and to modernize and align the regulations with other regulations applicable to all post-secondary degree-granting institutions.

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

The regulations protect the interests of students to ensure that in return for payment of their tuition dollars they receive a quality postsecondary education.

(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 regulations directly benefit students who are enrolled or seek enrollment in a postsecondary degree-granting institution chartered by another state or country that operates within this Commonwealth.

Regulatory Analysis Form

(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.)

No individual or entity is expected to be adversely affected by the regulation.

(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.)

The 32 existing college and universities approved as foreign corporations operating within this Commonwealth are required to comply with the regulation. In addition, any out-of-state or out-of-country newly created or existing postsecondary institutions that want to begin to offer postsecondary credit or degrees within the Commonwealth are required to comply with the regulation.

(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.

The State Board of Education committee charged with the responsibility to review and revise this Chapter held public roundtable meetings, hearings and committee meetings. Each of these forums presented opportunities for interested parties and stakeholders to provide input to the committee. The roundtable meetings were advertised in newspapers and on the State Board web pages. Notices of the roundtables were mailed to the president of every postsecondary institution operating within the Commonwealth, including those operating as foreign corporations. The roundtables were held in February 2004 in Philadelphia, Harrisburg and Monroeville. A public hearing was held in Harrisburg on October 8, 2004. Two other hearings were cancelled as fewer than two individuals registered to attend either session. In addition to input received at these meetings, the State Board also sought and received a number of written comments from stakeholders. Members of the Board and staff also met individually or spoke by telephone with stakeholders. In addition, the committee held open public meetings, which adhered to the requirements of the Sunshine Act, on 1/21/04, 7/21/04, 9/15/04, 11/17/04, 1/19/05, 3/16/05, 5/18/05, 6/29/05, 9/14/05 and 11/16/05. In addition, the Council of Higher Education discussed the regulation and offered an opportunity for public comment before the Council took action at its meeting held on November 16, 2005. The State Board of Education also discussed the Chapter and accepted public comment before it approved the regulation on November 17, 2005.

(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.

None

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(18) Provide 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.

None

(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.

None

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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 Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

N.A.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
N.A.				

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

N.A.

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

Nonregulation would place citizens of the Commonwealth at risk of suffering financial and other damages resulting from poor quality or fraudulent programs. These regulations provide standards of quality and recourse to the Department of Education to take action against poor quality or fraudulent programs.

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

No other strategies were considered since only legal authority provided by statute or regulation is needed by the Department of Education to intervene when necessary.

Regulatory Analysis Form

(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.

No

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

These regulations provide proven protection to the citizens of the Commonwealth. The requirements do not place the Commonwealth at a competitive disadvantage with other states.

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

No

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

As outlined in number 16, numerous roundtables, public hearings and public meetings were already held. Therefore additional meetings are not planned.

Regulatory Analysis Form

(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.

No

(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.

None

(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 of the final form regulation in the Pennsylvania Bulletin.

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

It is the policy and practice of the State Board of Education to normally review its regulations every four years.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2548

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

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

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

BY: *Raymond Elliott*
(DEPUTY ATTORNEY GENERAL)

PA State Board of Education
(AGENCY)

BY: *David J. DeVries*
David J. DeVries

JUN 07 2006

DOCUMENT/FISCAL NOTE NO. #006-302

MAY 16 2006

DATE OF APPROVAL

DATE OF ADOPTION: November 17, 2005

DATE OF APPROVAL

BY: *J. Binkley*

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

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

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

PROPOSED REGULATION
COMMONWEALTH OF PENNSYLVANIA

22 PA. CODE, CH. 36
Foreign Corporation Standards

INDEPENDENT REGULATORY
REVIEW COMMISSION
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PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 36]

FOREIGN CORPORATION STANDARDS

The State Board of Education (Board) proposes to amend Chapter 36 (relating to foreign corporation standards) to read as set forth in Annex A. The Board is acting under the authority of section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

Purpose

The purpose of amending Chapter 36 is to update and clarify the regulations that establish requirements for the approval and operation of postsecondary degree-granting institutions in this Commonwealth.

Requirements of the Proposed Rulemaking

The proposed rulemaking addresses requirements for the corporate commitment, governance, curricula, faculty, admissions requirements, resources and facilities, and evaluation and approval of degree-granting post-secondary institutions either operated or owned by a foreign corporation. A foreign corporation is an entity that is registered or chartered by another state or country.

The proposed rulemaking is designed primarily to align the regulations with provisions of 24 P.S. 26-2601-H (relating to power to confer degrees). This provision authorized the operation of for-profit post-secondary degree granting institutions in the Commonwealth.

Affected Parties

The proposed rulemaking affects two-year colleges, college and universities, specialized degree-granting institutions, professional schools and seminaries that are chartered out-of-state or out-of-country that have or seek legal authority to award college credits or grant degrees in this Commonwealth.

Cost and Paperwork Estimates

Since the proposed rulemaking clarifies current requirements, it does not impose any new costs or savings for the Department of Education or to postsecondary institutions.

Effective Date

The proposed rulemaking will become effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by the Board, every 4 years the Board will review the effectiveness of Chapter 36. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on _____, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 or jbuckheit@state.pa.us within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,
Executive Director

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter C. HIGHER EDUCATION

CHAPTER 36. FOREIGN CORPORATION STANDARDS

§ 36.2. [Institutional] Corporate commitment.

[The commitment of a] A foreign corporation [to an off-campus enterprise] having operations in this Commonwealth shall provide adequate support to ensure compliance with the requirements of an accrediting body recognized by the United States Department of Education and acceptable to the Pennsylvania Department of Education, as well as with all applicable Pennsylvania statutes and regulations. The Commonwealth enterprise shall be consistent with [its] the statement of philosophy and objectives and [shall be] equivalent to [its] the commitment to similar programs conducted by the corporation on its main campus or as approved by the Department.

§ 36.3. Governance.

(a) The board of trustees shall have approved [off-campus endeavors] the Commonwealth enterprise of the institution and shall have authorized the request for approval of an educational enterprise in this Commonwealth.

(b) Planning, administration and evaluation of [an off-campus enterprise] the Commonwealth enterprise shall be an integral and continuous part of the [institution's] corporation's normal procedures.

(d) Institutional policies that govern the Commonwealth [off-campus enterprises] endeavor shall be in written form and, when applicable, shall have the approval of the education program advisory committee.

(e) Appropriately qualified, full-time administrative or supervisory personnel or both shall be employed and delegated responsibility for operating [off-campus enterprises] the Commonwealth enterprise in this Commonwealth. The [employees] employees, the number depending on the size of the operation, shall be available on site for academic advisement and consultation with enrollees and prospective enrollees.

§ 36.4. Curricula.

(d) The quality of each program, course or offering shall be evaluated [**annually periodically, and at least once every five years**, by the [institution] **Commonwealth enterprise for compliance with [institutional objectives] Commonwealth approvals and regulations**.

§ 36.5. Faculty.

(c) Full- and part-time faculty shall, in addition to classroom instruction, be available for academic advisement and interaction with students. Graduate programs shall be planned [**jointly**] by [**the students and a faculty members**] and approved by a faculty committee. Guidance of thesis or dissertation studies shall be the responsibility of [**a**] faculty [**member**] **members** with appropriate specialization.

§ 36.6. Admissions requirements.

Admissions standards shall be comparable to the standards for admissions [**to the main campus of the parent institution**] **prescribed by § 31.31 (relating to admissions requirements)**.

§ 36.7. Resources and facilities.

(a) Appropriate physical facilities and instructional equipment shall be adequate to initiate and continue the program, course or offering. [**Teaching space, seminar rooms, computer resources and other facilities shall be provided onsite either by the parent institution or by contract with a Commonwealth-based entity.**]

(b) Library and research resources shall be provided onsite by [**a**] **the [foreign corporation] Commonwealth enterprise** or by contract [**with a Commonwealth-based entity**], or both, for each educational endeavor in accordance with standards of professional associations and learned societies.

(c) [**Books, periodicals, microfilms, microfiche, monographs and other collections**] **Library, learning and research resources** shall be sufficient in quality, number and currency to serve the program, course or offering at the required level of instruction. Records of materials provided and usage statistics shall be maintained to determine the adequacy and accessibility of library resources.

§ 36.8. Evaluation and approval.

(d) During the first **[semester] year** of operation, a site visit shall be conducted by an evaluation committee in accordance with this chapter and this subpart.

(f) Department site visits **[will] may** be conducted **[independently of] jointly with** other accrediting or approving agencies **[and site], but decisions and recommendations must be arrived at independently by the Department evaluation committee.** **Site** visit costs pertinent to the request of the applicant shall be borne by the applicant.

(g) Following submission of the evaluation committee's report to the institution, the institution shall within 60-calendar days of the receipt of the report file its response with the Department. **[Final] Upon receiving a response satisfactory to the Department, the Department shall publish in the *Pennsylvania Bulletin* its intent to approve the enterprise at least 30 days before the date of approval. The decision of the Secretary regarding approval of the enterprise [by the Secretary] will be rendered within [30] 60-calendar days of [receipt of the institution's response to the evaluation committee's report] publication in the *Pennsylvania Bulletin* if no protest or objection has been timely made to the application.**

(i) If an institution is approved to operate an educational enterprise in this Commonwealth, it shall file periodic progress reports as deemed necessary by the Department. The educational enterprise may be evaluated for cause at any time and shall be reevaluated every 5 years in accordance with this subpart and this chapter. If the institution fails to maintain its enterprise according to this subpart and this chapter, authority to operate in this Commonwealth shall be revoked as provided **[in section 312C of the act of May 5, 1933 (P. L. 289, No. 105) (15 P. S. § 7312C)] by 24 Pa. C.S. § 6506(a).**

(j) To withdraw from its approved enterprise in this Commonwealth, a foreign corporation shall have the approval of the Secretary and shall be in compliance with §§ 31.71 and 31.72 (relating to **[institutional closings] major corporate change**).

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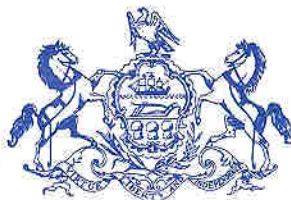
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Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

June 19, 2006

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of proposed regulations for review by your Commission pursuant to section 5(c) of the Regulatory Review Act. The proposed regulations in this submission are 22 Pa. Code, Chapter 36 (Foreign Corporation Standards) #006-302.

In accordance with the Regulatory Review Act the Commission may have 30 days after the expiration of the public comment period to review the regulation and deliver its comments to the agency and the committee's.

The State Board of Education will provide your Commission with any assistance it requires to facilitate a thorough review of this proposed regulation.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jim Buckheit".

Jim Buckheit
Executive Director

Enclosure

cc: Dr. Gerald Zahorchak
Gregory Dunlap, Esq.
Ernie Helling, Esq.

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

I.D. NUMBER: 6-302
 SUBJECT: FOREIGN CORPORATION STANDARDS
 AGENCY: PA STATE BOARD OF EDUCATION

TYPE OF REGULATION

- X Proposed Regulation
 Final Regulation
 Final Regulation with Notice of Proposed Rulemaking Omitted
 120-day Emergency Certification of the Attorney General
 120-day Emergency Certification of the Governor
 Delivery of Tolled Regulation
 a. With Revisions b. Without Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

2006 JUN 19 PM 1:56

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/19		HOUSE COMMITTEE ON EDUCATION
6/19	Deborah A. Bricker	
6/19		SENATE COMMITTEE ON EDUCATION
6/19		
6/19/06	Kathryn L. Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
6/19		LEGISLATIVE REFERENCE BUREAU (for Proposed only)