

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302, and 29 Delaware Code, Section 10115 (21
(21 **Del.C.** §302; 29 **Del.C.** 10115)
2 **DE Admin. Code** 2221

FINAL

ORDER

2221 Use of Translators

Proposed Regulation 2221 establishes procedures regarding the use of translators for driver license applicants who cannot read or speak English. The regulation also addresses how a translator may assist an applicant during the Division's written and road tests. The proposed regulation was published in the *Delaware Register of Regulations* on May 1, 2008. The comment period remained open until May 30, 2008. There was no public hearing on proposed Regulation 2221.

Summary of the Evidence and Information Submitted

The Department received essentially the same comments on the proposed regulation from the State Council for Persons with Disabilities, the Council on Deaf and Hard of Hearing and the Governor's Advisory Council for Exceptional Citizens. The comments from these agencies involved how the proposed regulation will apply to customers who are deaf or hard of hearing. The agencies felt the regulation was a change to the Division's current policy of providing sign language interpreters free of charge to customers who are deaf or hard of hearing. This change would have put the Division in violation of Title II of the Americans with Disabilities Act. The agencies also had some concerns with the Division not providing driver license oral and written tests in a variety of languages and how a road test would be performed for customers who are deaf or hard of hearing under the proposed regulation.

The Division has no intention of applying the proposed Administrative Code 2221 to individuals who are deaf or hard of hearing and for whom, when requested, the Division supplies a sign language interpreter. The proposed regulation concerns translators for individuals who cannot read or speak English. The comments indicated there was some confusion concerning who is covered under this regulation. The following sentence shall be added at the end of Section 2.0 to help clarify this concern:

"This regulation does not apply to individuals, who are deaf or hard of hearing, and who are currently provided a sign language interpreter by the Division or who use their own sign language interpreter."

Currently, the Division provides a driver license written test in Spanish and is in the process of providing the written test in three more languages. The Division also has a Spanish driver manual that we are in the process of updating. The above addresses the agencies' concerns about the written tests.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation as amended addresses the comments received on this regulation.
2. The proposed regulation meets the requirements of the Administrative Procedures Act and is not in conflict with Delaware law.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302 and the record in this docket, I hereby adopt Regulation 2221 as amended and as may more fully and at large appear in the version attached hereto to be effective on June 15, 2008.

Text and Citation

IT IS SO ORDERED THIS _____ day of June 2008.

Carolann Wicks, Secretary of Transportation

2221 Use of Translators

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302 and 29 **Del.C.** §10115.

2.0 Purpose

This regulation establishes procedures regarding the use of translators for driver license applicants who cannot read or speak English. This regulation also establishes procedures on how a translator may assist an applicant during the Division's written and road tests.

[This regulation does not apply to individuals, who are deaf or hard of hearing, and who are currently provided a sign language interpreter by the Division or who use their own sign language interpreter.]

3.0 Applicability

This regulation will enable the Division of Motor Vehicles to maintain the integrity of the driver license written and road test process. This regulation also ensures compliance with Delaware law on the written test portion of the driver license application process and federal law on commercial driver license road tests.

4.0 Delaware Law

Delaware Title 21, Section 2707(b)(5), prohibits the Division from issuing an operator's or chauffeur's license to any person who is unable to understand highway warning or directional signs in the English language.

5.0 Substance of Regulation

5.1 Translation services may be provided by any individual the applicant selects.

5.2 Translators may read the questions and answers to the applicant as shown on the Division's automated test system but will not provide any other assistance during the test. The highway warning and directional sign portion of the test on the automated test system must be taken and passed without any assistance from the translator. Those applicants who fail the automated sign test twice on separate occasions shall be given a paper sign test. The signs shall be shown to the applicant who shall explain the answers to the translator who, in turn, shall provide the answers to the DMV technician. This will ensure the applicant is able to understand highway warning and directional signs in English.

5.3 Translators may provide assistance during the road test portion of Class D road tests by providing a brief overview of the road test requirements and by relaying instructions to the applicant from the DMV technician. Translators will sit in the rear of the vehicle and relay instructions to the applicant from the DMV technician but will not provide any other assistance unless directed to do so by the DMV technician. Federal law prohibits translators for commercial driver license road tests. Translators will

provide applicants a brief overview of the parallel parking portion of the road test. The translator will stand next to the DMV technician during the parallel parking portion of the road test and will not provide any other instructions unless directed to do so by the DMV technician.

6.0 Non-compliance

Any applicant whose translator is found speaking during a road test at any time other than when directed by the DMV technician will automatically fail the road test. Translators who assist applicants by providing answers to questions or by pointing out the correct answers will be prohibited from providing translator services in Division facilities.

7.0 Payment of Translator Service Fees

All fees associated with an applicant using a translator shall be the responsibility of the applicant requesting the service and paid for by the applicant.

8.0 Scheduling

An applicant requiring a translator is responsible for scheduling a translator for both the written and road tests.

9.0 Video and Audio Monitoring

The Division may use video and audio devices to monitor translators during the written and road tests. This is done to ensure translators are not providing answers to the applicant.

10.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions of this rule shall remain in full force and effect under Delaware law.

11.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed, and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. §10118(e).

11 DE Reg. 1459 (05/01/08)

12 DE Reg. 77 (07/01/08) (Final)