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

September 20, 2006

Honorable Stephen M. Schmerin, Secretary
Department of Labor and Industry
1700 Labor and Industry Building
Harrisburg, PA 17120

Re: Regulation #12-71 (IRRC #2556)
Department of Labor and Industry
Registration of Sign Language Interpreters and Transliterators

Dear Secretary Schmerin:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Joseph B. Scarnati, III, Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee
Honorable Bob Allen, Majority Chairman, House Labor Relations Committee
Honorable Robert E. Belfanti, Jr., Democratic Chairman, House Labor Relations Committee

Comments of the Independent Regulatory Review Commission

on

Department of Labor and Industry Regulation #12-71 (IRRC #2556)

Registration of Sign Language Interpreters and Transliterators

September 20, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the July 22, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Labor and Industry (Department) to respond to all comments received from us or any other source.

1. Section 501.1. Definitions. – Clarity.

NAD

Commentators have noted that the address listed for the National Association of the Deaf (NAD) in this definition is incorrect. There is no need to include specific addresses in the definition of NAD and also RID (Registry of Interpreters of the Deaf). An alternative is for the Department to distribute this information upon request or to include current links on its website. If an address is retained, the Department should ensure that the correct address is included in the final-form regulation.

NAD National Interpreter Certification Test and RID Generalist examination

The Department has indicated that the NAD and RID formed the National Counsel of Interpreters to develop one testing instrument to replace the other tests under both the NAD and RID. This testing instrument is the NAD-RID NIC. We recommend that the Department amend the definitions of “NAD National Interpreter Certification Test” and “RID Generalist examination” to reflect the fact that those former examinations are no longer given, but certifications obtained from passing those examinations are still valid.

2. Section 501.3. Examination. – Clarity.

Subsection (a) lists three examinations that are approved to test knowledge and proficiency under section 5(a)(1)(iii) of the Act (63 P.S. §1725(a)(1)(iii)). The three examinations are the NAD National Interpreter Certification, the RID Generalist Examination and the NAD-RID NIC. As discussed above, the NAD-RID NIC has replaced the other two examinations. Therefore, we recommend that the reference to the NAD National Interpreter Certification and the RID Generalist Examination be deleted. Section 501.4(a)(1) should also be amended to reflect the fact that the only examination that an applicant can take to become registered is the NAD-RID NIC. References to the two examinations that have been replaced could remain.

Subsection (b) requires an applicant to obtain applications directly from and pay the required examination fee directly to the examination provider. If one exists, the Department's website should provide a link to the examination provider's website.

3. Section 501.4. Registration. – Clarity.

Subsection (b)

This subsection states the following: "The Office will issue a paper or electronic registration to a registrant if the registrant complies with subsection (c) and meets the requirements of section 5 (a) of the Act (35 P.S. §1725.5(a))." We have four concerns. First, the correct citation is 63 P.S. §1725.5(a). Second, once the Office for the Deaf and Hard of Hearing (Office) receives an application, how long does it have to make a decision? The final-form regulation should identify the time frame within which the Department will issue a paper or electronic registration. Third, Subsection (c) relates to reasons the Office may deny an application for registration. It does not list what an applicant must do to achieve compliance. Therefore, the reference to Subsection (c) should be deleted. Fourth, Section 5 (a) of the Act contains two subsections. Subsection (a)(1) is repeated as Subsection (a)(1) of this section of the rulemaking. However, Section 5(a)(2) of the Act is not included in the regulation. The Department should delete the reference to Section 5(a) of the Act and include all provisions of that section in the regulation.

Subsection (c)

This subsection lists three reasons why the Office may deny an application for registration. One of the reasons listed under Subsection (c)(3) is if the applicant committed a violation enumerated in section 8(a) of the act (63 P.S. 1525.8(a)(8)). We have two concerns. First, the correct citation is 63 P.S. §1725.8(a). Second, since a reference to section 8(a) of the Act is also found in §501.8 of the regulation, we recommend listing the violations in a separate section of the final-form regulation. This would allow the regulated community to know what constitutes a violation without having to reference the Act.

4. Section 501.5. Exemptions. – Consistency with Statute; Implementation procedures; Clarity.

The Act lists eight exemptions. This rulemaking only lists five of the eight exemptions. We recommend that all eight exemptions be included in the section.

Subsection (a)

This subsection provides an exemption for individuals engaged in interpreting or transliterating services in a religious setting. Subsection (a)(2) uses phrase "religious-study purposes" instead of "educational purposes," which is found in the corresponding section of the Act. The Preamble to the final-form regulation should explain why the phrase "religious-study purposes" is used instead of "educational purposes."

Subsection (b)

Under (b)(3), how soon before an interpreting service is provided by an out-of state-resident must the Office be notified of that service? Will a form be provided by Office to allow interpreters to file for the exemption? The regulation should be amended to clarify the requirements in these areas.

Subsection (d)

This subsection provides an exemption for interpreting or transliterating services provided in “school related activities.” Act 92 of 2006 amended Section 4(b)(7) of the Act, which pertains to exemptions for “school related activities” and also deleted the definition of “EIPA.” This subsection should be amended to reflect the requirements of Act 92 of 2006.

Subsection (e)

This subsection pertains to exemptions in a physician’s office. Under Subsection (e)(3), how long must the physician’s office keep a copy of the patient’s signed statement? The final-form regulation should provide time period for how long the statement must be kept.

5. Section 501.7. Hearings/appeals. – Implementation procedures; Clarity.

Subsection (a) references sections 8 and 9 of the Act. To improve clarity, the subject matter of section 8 (registration violations) and section 9 (suspension, denial, nonrenewal or revocation of State registration) should also be referenced.

Under Subsection (e), the presiding officer is required to prepare and issue a proposed report and order. How long does the presiding officer have to issue the proposed report and order? This should be included in the final-form regulation.

Under Subsection (f)(1), a party desiring to appeal to the Secretary shall file exceptions to the proposed report and order within 20 days of service. 1 Pa. Code §35.211 allows 30 days. This discrepancy should be corrected in the final-form regulation.

6. Section 501.8. Request for reconsideration or registration denial. – Implementation procedures; Clarity.

Under Subsections (a) and (b), the Office can deny an application for registration and an applicant can file a request for reconsideration. We have three questions. First, if the Office rejects an applicant for registration under Subsection (a), how will the applicant be notified of the denial? Second, will the notice specify why the applicant was rejected? Third, if an application for registration is denied, how long will an applicant have to file a request for reconsideration? The final-form regulation should address these areas.

Subsection (f) references sections 10 and 11 of the Act. To improve clarity, the subject matter of section 10 (appeals) and section 11 (effect of an order) should also be referenced.

7. Section 501.10. Reactivation of registration. – Clarity.

This section states that an individual may reactivate a suspended registration under section 9(c) of the Act (63 P.S. § 1725.9(c)). Section 9(c)(1) of the Act pertains to reactivation of suspended registrations. Section 9(c)(2) of the Act pertains to reactivation of revoked registrations. We have two concerns. First, the reference included in this section of the regulation should be section 9(c)(1) of the Act to reflect the fact that this section pertains to suspended registrations. Second, why are the procedures for reactivation of a revoked registration not included in the regulation? We recommend that those procedures also be included in the regulation.

8. Section 501.11. Change of address/name/information. – Consistency with Statute; Need; Clarity.

This section states the following: “A registrant shall notify the Office of any change of name, mailing address or other personal or professional information within 15 days of making the change.” Section (6) of the Act provides that the office be notified of a change in name or mailing address within ten days of the change. The Department has explained that “other personal or professional information” includes updated information included in the initial registration application and information pertaining to disciplinary or administrative action taken in other states. The details of this other information should be included in the final-form regulation.

In addition, the time frame for reporting changes should be amended to reflect the ten-day requirement of the Act.

9. Miscellaneous Clarity

Index

- The numbering for the Index is incorrect. All sections should be changed from “50” to “501.”
- As currently numbered, §§ 50.3, 50.4 and 50.6 lack periods after the names of the sections.
- As currently numbered, the title of § 50.8 should be amended to add the word “denial” after the word “registration.” This would make it consistent with the title as it appears in the main body of the regulation.

Section 7 of the Act

- This Section pertains to the disclosure of confidential communications by sign language interpreters. The regulation does not include a similar provision or a reference to this section of the Act. To assist members of the regulated community that may use the regulation as a sole reference for complying with the Act, we recommend that a provision on or reference to confidential communications be included in the final-form regulation.

References to the Act and Purdon's citations

- Many sections of this regulation reference both a particular section of the Act and the corresponding *Purdon's* citation. For example, §501.3(a) references “section 5(a)(1)(iii) of the act (63 P.S. § 1725.5(a)(1)(iii)).” Other sections of this regulation only reference a particular section of the Act. For consistency, the Department should add the appropriate *Purdon's* citations to the following sections of the final-form regulation:
 - § 501.5(b)
 - § 501.5(c)
 - § 501.5(d)
 - § 501.5(e)
 - § 501.8(c)(3)
 - § 501.8(e)

Other

- Paragraph (1) of § 501.10 states the following: “The suspension term certain has fully elapsed.” The word “certain” should be deleted.

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Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
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To: Neil E. Cashman, Jr.
Agency: Department of Labor & Industry
Phone: (717) 787-5087
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Date: September 20, 2006
Pages: 7

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-71 (IRRC #2556). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____

Quinn E. Goff

Date: _____

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