

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Transportation**
(DLS Control No. 16-113)

Overview and Legal and Fiscal Impact

The regulations modify rules relating to the Motor Vehicle Administration's Ignition Interlock System Program (IISP). The regulations implement changes to the administrative consequences of drunk driving and the administrative process of the IISP that were made by Chapter 512 of 2016 (Noah's Law). The regulations also make conforming technical changes.

The regulations present no legal issues of concern.

There is no material fiscal impact on the State or local governments.

Regulations of COMAR Affected

Department of Transportation:

Motor Vehicle Administration – Administrative Procedures: Summary Suspensions for Alcohol and Drug-Related Offenses: COMAR 11.11.03.03, .09, .11 and .12
Ignition Interlock Program: COMAR 11.11.13.02, .03, .04, .05 and .09

Legal Analysis

Background

Maryland Drunk Driving Laws

Because of the threat posed by drunk drivers to highway safety, the administration is authorized to adjudicate many drunk driving offenses administratively, using administrative law judges from the Office of Administrative Hearings. Administrative *per se* offenses include (1) taking a test of blood or breath with a result of a blood alcohol concentration (BAC) of at least 0.08 but less than 0.15 BAC; (2) taking a test of blood or breath with a result of at least 0.15 BAC; or (3) refusing to take a test of blood or breath. A driver who commits an administrative *per se* offense is subject to license suspension. The administration is also authorized to impose administrative sanctions, including suspensions and revocations, on a person's license as a result of a criminal conviction for an offense relating to driving under the influence or driving while impaired. However, the administration may modify a suspension for an administrative *per se* offense or as a result of a criminal conviction and issue a restricted license to a driver who has limited prior interaction with the administration or who agrees to participate in the administration's IISP.

Ignition Interlock System Program

An ignition interlock device connects a motor vehicle's ignition system to a breath analyzer that measures a driver's BAC and prevents the car from starting if the BAC exceeds a certain level. The device also periodically requires retesting of a driver after the motor vehicle is started. According to the National Conference of State Legislatures, all 50 states and the District of Columbia authorize the use of ignition interlock devices for at least some alcohol offenders.

Noah's Law

Chapter 512 of 2016 (Noah's Law) made significant changes to the administrative consequences of drunk driving. Among other things, Noah's Law (1) increases the suspension terms for an administrative *per se* offense; (2) removes certain limitations on who may participate in the IISP; (3) requires participation in the IISP for any person convicted of a violation of § 21-902(a) of the Transportation Article ("driving under the influence of alcohol"); (4) creates new requirements for successful completion of the IISP; and (5) establishes a criminal sentencing requirement that a person participate in IISP if convicted of a violation of § 21-902(b) or (c) of the Transportation Article under specified circumstances.

Summary of Regulations

The regulations implement changes that Noah's Law made to the administrative process that controls the consequences of drunk driving. The new regulations repeal regulations adopted on March 28, 2016, that (1) limited when a person is able to opt-in to the IISP after registering a BAC of at least 0.08 but less than 0.15 and (2) granted the administration the authority to modify a license suspension of a person who is issued an order of suspension and opts-in to the IISP for one year rather than requesting a hearing. The regulations also (1) repeal a prohibition on participation in the IISP by a person after an administrative hearing if the person's application to participate in the IISP is based on a request to reconsider the suspension or revocation imposed in the administrative hearing and (2) repeal and alter circumstances under which an administrative law judge may modify a suspension or issue a restricted license.

The regulations change the requirements for successful completion of the IISP. The regulations define a "Service Provider Certification" that the administration must receive in order for the participant to successfully complete the IISP. The participant's approved service provider must certify that in the three consecutive months prior to the participant's completion date, the participant did not commit any specified violations of the IISP. The changes add that a participant is in violation of the IISP if the participant receives an order of suspension under § 16-205.1 of the Transportation Article for a *per se* administrative violation participation.

The regulations establish that successful completion of the IISP occurs when (1) a participant satisfactorily fulfilled all the conditions for participation in the program and (2) the administration receives the Service Provider Certification. A participant who successfully completes the IISP receives credit towards future participation arising from the same incident but a participant who fails to successfully complete the program receives no credit.

Additionally, the regulations increase (1) the suspension periods for certain administrative *per se* offenses and (2) the time within which a person may make a second attempt to start a motor vehicle equipped with an ignition interlock device without the initial reading being considered as a violation of the IISP. The regulations also make technical changes to statutory references and language.

Though not addressed in Noah's Law, the regulations also repeal the ability of a person to deliver a written request for an administrative hearing on an administrative *per se* offense to any administration branch during regular office hours.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 12-104(b), 12-108, 12-201 through 12-209, 16-117, 16-205.1, 16-404.1, and 27-107 of the Transportation Article and §§ 9-1604(b) and 10-201 through 10-222 of the State Government Article as statutory authority for the regulations. Many of these statutes describe the administration's general powers with respect to administrative hearings, the maintenance of driving records, and the promulgation of regulations, and are therefore only indirectly related to the regulations. The most relevant statements of authority appear in §§ 12-104(b), 16-205.1, 16-404.1, and 27-107 of the Transportation Article.

Section 12-104(b) of the Transportation Article gives the administration broad authority to adopt rules and regulations to carry out provisions of the Maryland Vehicle Law as well as any other law that the administration is authorized to administer and enforce. Section 16-205.1 requires the administration to impose certain administrative sanctions, including mandatory license suspensions, for certain alcohol-related offenses. Subsection (g) of this section allows certain individuals who receive any administrative *per se* suspension to request to participate in the IISP in lieu of requesting an administrative hearing. Subsection (o) of this section allows the administration to modify suspensions and issue a restricted license to certain drivers who agree to participate in the IISP for a full year. Section 16-404.1 authorizes the administration to adopt regulations establishing the IISP. As amended by Noah's law, subsection (m) of this section provides that an individual who participates in IISP under § 16-205.1 of the Transportation Article will receive credit toward the length of participation in the program arising out of the same incident, and subsection (n) of this section states the requirements for successful completion of the IISP. Section 27-107 authorizes a court to require participation in the IISP in addition to any other penalty provided in law for alcohol related offenses.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The regulations establish Regulation .09 under COMAR 11.11.13, outlining the requirements for successful completion of the IISP. The Department of Legislative Services did note and bring to the administration's attention that even though each element of Regulation .09 controls the same person, *i.e.*, the driver participating in the IISP, section A refers to an "individual", section A(1) refers to the "participant," and section B refers to a "person." For clarity and consistency, one noun should be used to reference the person participating in the program. The Department of Legislative Services also recommended that the administration include § 16-404.1 of the Transportation Article in the citation of statutory authority listed before the text of the regulations.

Fiscal Analysis

There is no material fiscal impact on the State or local governments.

Agency Estimate of Projected Fiscal Impact

The regulations primarily implement Chapter 512 of 2016 (Senate Bill 945), which alters participation standards for the Motor Vehicle Administration's (MVA) Ignition Interlock System Program (IISP). MVA advises that Transportation Trust Fund (TTF) expenditures increase by \$508,733 in fiscal 2017 for additional personnel, computer programming, and revision of forms. Additionally, according to MVA, TTF revenues increase by \$225,282 in fiscal 2017 as a result of additional fee revenue from an estimated 6,391 new IISP participants. The Department of Legislative Services (DLS) disagrees as the fiscal impact of that legislation has already been accounted for in the fiscal and policy note for Senate Bill 945 of 2016. DLS noted in its fiscal estimate of that legislation that fiscal 2017 TTF revenues increase by \$307,832 and expenditures increase by \$538,565 as a result of 6,126 new IISP participants. The fiscal 2017 impact reflects the legislation being in effect for only three-quarters of that year; the impact on TTF revenues and expenditures in future years is greater. The variance between the DLS and the MVA estimates is a result of different assumptions regarding the number of additional positions needed (DLS estimate of 6.5 versus MVA estimate of 6.0) and new IISP participants (DLS projection of 6,126 versus MVA projection of 6,391). The DLS revenue estimate also includes revenue from a \$20 corrected license fee (to add the IISP restriction); that revenue source is not factored into the MVA estimate. DLS advises that, if participation in IISP is closer to the MVA estimate, then minimal additional revenues accrue to TTF.

As noted in the Legal Analysis, the regulations also repeal the ability of a person to deliver a written request for an administrative hearing on an administrative *per se* offense to any branch office of MVA. This provision is pursuant to the department's general rulemaking authority as opposed to Chapter 512. MVA advises there is no fiscal impact associated with this provision; DLS concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

MVA advises that the regulations have minimal or no economic impact on small businesses in the State. DLS concurs as the impact on small business certified ignition interlock service providers has already been accounted for in the fiscal and policy note for Senate Bill 945, which recognized a potential meaningful impact on them. These regulations do not have any additional impact on small businesses.

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