

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Transportation**
(DLS Control No. 20-086)

Overview and Legal and Fiscal Impact

The regulations add flexibility to the systems that the Maryland Transportation Authority (MDTA) and third-party toll facility operators are authorized to use when managing variably priced toll facilities using dynamic pricing.

The regulations present no legal issues of concern.

There is no immediate fiscal impact on State or local agencies, but the Maryland Transportation Authority's (MDTA's) nonbudgeted revenues could be affected in future years.

Regulations of COMAR Affected

Department of Transportation:

Maryland Transportation Authority: Public Notice of Toll Schedule Revisions: COMAR 11.07.05.02 and .05

Legal Analysis

Background

Established in 1971 as an independent, nonbudgeted State agency, MDTA manages, operates, and maintains the State's toll facilities and provides law enforcement for these facilities. Toll revenues and bonds are used to finance these projects. The Secretary of Transportation serves as the Chairman of MDTA.

MDTA is authorized to set tolls on transportation facilities projects under its supervision. Tolls must provide funds that, when combined with bond proceeds and other available revenues, are sufficient to pay maintenance, repair, and operating costs for transportation facilities projects that are not otherwise paid for; pay the interest and principal of any outstanding bond issues; create reasonable reserves for these purposes; and provide funds for the cost of replacements, renewals, and improvements.

Prior to fixing or revising tolls on any part of any transportation facilities project, MDTA must provide the Senate Budget and Taxation Committee, Senate Finance Committee, House Appropriations Committee, and House Ways and Means Committee information on the proposed toll charges, including the annual revenues generated by the toll charges; the proposed use of the

revenues; and the proposed commuter discount rates. In addition, Chapter 592 of 2012 requires MDTA to implement additional public notification, review, and comment procedures before adopting an increase in tolls, fees, or other charges on any part of a fixed toll transportation facilities project or in mileage rate ranges, pricing periods, toll zones, fees, or other charges on a variably priced project.

Summary of Regulations

Scope and Definitions

The regulations add flexibility to the systems that MDTA and third-party toll facility operators are authorized to use when managing variably priced toll facilities using dynamic pricing. Regulations specific to these facilities were originally implemented in 2019 (see DLS Control No. 19-108 for additional background). The establishment of a toll rate range for the facility is still subject to the provisions established in Transportation Article § 4-312.

The regulations establish new definitions for the terms “operational metrics” and “soft rate cap,” and amend the definition of “tolling algorithm.” Operational metrics are the performance criteria established to monitor real-time traffic conditions and may include, but are not limited to, traffic speed, traffic volume, travel delay durations or distances, or any combination of those criteria. The operational metrics may be utilized as part of a tolling algorithm to set dynamic pricing mileage rates for a facility that uses this model of tolling. A soft rate cap means a maximum toll rate within the approved toll rate range that may only be exceeded when required to achieve established operational metrics.

Procedures for Increases on Variably Priced Toll Facilities Using Dynamic Pricing

Under the regulations, the Executive Director of MDTA is authorized to set or adjust the soft rate cap, the operational metrics, or toll zones at a facility, consistent with the toll rate range established in accordance with § 4-312 of the Transportation Article. MDTA must post notice of any such action by the Executive Director on MDTA’s official website at least 10 days prior to the effective date of a change. Additionally, under the regulations MDTA or a third-party toll facility operator is authorized to utilize a tolling algorithm to set a dynamic pricing mileage rate in real time or in established time increments. If a soft rate cap is established and operational metrics *are* being met, the dynamic pricing mileage rate for the facility must be at or below the soft rate cap. If the established operational metrics are *not* being met, the dynamic mileage pricing rate may exceed the soft rate cap, but it may not exceed the maximum rate allowed by the toll rate range.

Additional Changes

The regulations correct a reference to the “toll *rate* range,” in COMAR 11.07.05.05.B, which is the approved minimum and maximum toll rates for the facility as approved by MDTA.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 4-205, 4-312, 21-1401, 21-1414, and 27-110 of the Transportation Article as statutory authority for the regulations. Section 4-205 generally authorizes MDTA to adopt rules and regulations to carry out the requirements of provisions of law related to revenue facilities. Section 4-312(a)(2)(i) authorizes MDTA, as to all or any part of any transportation facilities project, to fix, revise, charge, and collect rentals, rates, fees, tolls, and other charges and revenues for the use or services. In addition, § 4-312 (a)(2)(ii) authorizes MDTA to “contract with any person who desires [use of a transportation facilities project] for any purpose and [to] fix the terms, conditions, rental, rates, fees, tolls, or other charges or revenues for this use.” Section 4-312(a)(3) through (6) requires MDTA to comply with certain public comment and notification processes before MDTA may increase certain tolls or charges.

The remaining cited authority is not relevant to these regulations. The Department of Legislative Services notes that § 27-110 was repealed by Chapter 55 of 2017 and was consolidated into § 21-1414.

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

Fiscal Analysis

There is no immediate fiscal impact on State or local agencies, but the Maryland Transportation Authority’s (MDTA’s) nonbudgeted revenues could be affected in future years.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services generally concurs, but notes that the implementation of dynamic pricing by MDTA, as altered by the regulations, could affect MDTA’s nonbudgeted revenues. Before dynamic pricing can be implemented, MDTA must (1) finalize and implement its new electronic tolling system (which is scheduled for completion in fiscal 2021) and (2) alter the existing tolls through the process required by State law (which involves both legislative and public input); the regulations alone do not change current tolling practices or rates. To the extent that dynamic pricing is adopted by MDTA in accordance with the regulations, its revenues may be affected; however, any such impact depends on the formulas used by MDTA and cannot be estimated at this time.

Impact on Budget

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

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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