

The statutory authority for this rulemaking is in Sections 3805 and 6103 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa C.S. §§ 3805 and 6103).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulations? If yes, cite the specific law, case or regulation, and any deadlines for action.

The rulemaking is mandated by Section 20 of the Act of September 30, 2003, P.L. _____, No.24.

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

Section 3805 of the Vehicle Code, 75 Pa. C.S. § 3805 requires, as a condition for the restoration of the driving privilege of certain persons with DUI related convictions, the installation of an ignition interlock system on every vehicle owned by or registered to the person. This rulemaking provides standards and procedures for the application and enforcement of those statutory provisions.

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

Non regulation leaves ambiguity in the application and enforcement of the statutory provisions relating to the installation of ignition interlock systems.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Anyone required to obtain an ignition interlock system will benefit from the guidance provided in the rulemaking. The precise number of individuals who will benefit cannot be determined.

(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.)

There should be no adverse impact on any individuals from this rulemaking.

(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.)

It is not known precisely how many individuals will be required to obtain an ignition interlock system and will be expected to comply with this rulemaking.

(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.

This proposed rulemaking is required by law and reflects the direction of the General Assembly provided in that law.

(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.

The costs and/or savings to the regulated community resulting from this rulemaking cannot be calculated with any precision. Some savings to individuals who qualify for a financial hardship exemption may be expected.

(18) Provide a 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.

There should be no costs and/or savings to local governments resulting from this rulemaking.

(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.

There should be no costs and/or savings to state government resulting from this rulemaking.

(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 + 1 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community:	N/A					
Local Government:	N/A					
State Government:	N/A					
Total Savings	N/A					
COSTS:	N/A					
Regulated Community	N/A					

Local Government	N/A					
State Government	N/A					
Total Costs	N/A					
REVENUE LOSSES:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Revenue Losses	N/A					

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

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

Program	FY-3	FY-2	FY-1	Current FY
Appropriation 183	\$106,182,000	\$119,141,000	\$118,299,000	\$130,529,000

(21) Using 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.

There were no nonregulatory alternatives considered. The rulemaking is required by the terms

of statutory enactment.

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

No alternative regulatory schemes were considered. Pursuant to the terms of the enabling legislation, this rulemaking follows publication of a statement of policy initially establishing the provisions now incorporated into the rulemaking.

(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.

There are no applicable federal standards governing ignition interlock.

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

This rulemaking will not put Pennsylvania at a competitive disadvantage vis a vis 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.

The rulemaking will not affect other Department regulations or the regulations of any other Commonwealth agency.

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

No public hearings on this rulemaking are scheduled at this time. Should public comment on these proposed rulemaking warrant, public hearings may be held.

(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.

The rulemaking will change existing reporting, record keeping, or other paperwork requirements for providers. Providers will be required to report on compliance to the Department.

(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.

This rulemaking contains no special provisions.

(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 rulemaking will become effective upon approval in final form by the Independent Regulatory Review Commission, the House and Senate Transportation Committees, and the Office of Attorney General and publication in the *Pennsylvania Bulletin*.

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

The Department will review the effectiveness of this rulemaking periodically as data on the ignition interlock program is collected.

<p>FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p>(Pursuant to Commonwealth Documents Law)</p> <p># 2427</p>	<p>2004 AUG 24 PM 1:09</p> <p>REVIEW COMMISSION</p> <p>DO NOT WRITE IN THIS SPACE</p>
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Copy below is hereby approved as to form and legality. ~~Attorney General~~

By: *Angela E. Elliott*
(Deputy Attorney General)

AUG 19 2004

Date of Approval _____

Check if applicable
Copy not approved. Objections attached.

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

Department
of
Transportation

DOCUMENT/FISCAL NOTE NO.18395

DATE OF ADOPTION _____

BY: *Alba D. Buckler*
Secretary of Transportation

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

BY: *Tanya C. Gable*

Date of Approval 6-30-04
Asst.
(~~Deputy~~ General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike Inapplicable Title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

Title 67. Transportation

Part I. Department Of Transportation

Subpart A. Vehicle Code Provisions

Article IV. Licensing

Chapter 88. Ignition Interlock

Proposed Rulemaking

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 88 — IGNITION INTERLOCK

Notice of Proposed Rulemaking

Preamble

The Department of Transportation, pursuant to the authority contained in Sections 3805 and 6103 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa. C.S. §§ 3805 and 6103), proposes to amend Title 67 of the Department of Transportation regulations by establishing Chapter 88, Ignition Interlock, as set forth in Annex A to this Notice.

Purpose of this Chapter

The purpose of this rulemaking is to provide standards and procedures for compliance with the provisions of Section 3805 of the Vehicle Code, 75 Pa. C.S. § 3805, relating to the installation of ignition interlock systems on vehicles as a condition for the restoration of the driving privilege after serving suspension for DUI convictions.

Significant Provisions of this Rulemaking

Section 88.102 of this rulemaking provides that persons subject to 75 Pa. C.S. § 3805 must engage a provider to install the ignition interlock system(s) and identify all vehicles owned by or registered to the person. The provider is required to verify the information, install an interlock system on all vehicles owned by or registered to the

person and certify to the Department that the installation has been completed. This section also describes the circumstances under which installation of an ignition interlock system is not required. The section also establishes requirements for securing a financial hardship exemption to permit installation of the ignition interlock system on only one vehicle.

Section 88.103 requires that vehicles in which an ignition interlock system has been installed be made available for regularly scheduled maintenance and requires the provider to verify that the person has acquired no additional vehicles and that the person remains in compliance with 75 Pa. C.S. § 3805 and this regulation.

Section 88.104 outlines when an ignition interlock system may be removed from a vehicle. Section 88.105 provides that, upon notification of a person's noncompliance, the Department may recall the person's ignition interlock restricted license. Section 88.106 provides the parameters for the issuance of an unrestricted license following the completion of ignition interlock restricted license period, and the cancellation of that unrestricted license for subsequent violation.

Sections 88.107 and 88.108 provide for the administration of the ignition interlock provisions with regard to out of state drivers and nonresidents.

Persons and Entities Affected

This rulemaking will affect drivers required to install an ignition interlock system on one or more of their vehicles under 75 Pa. C.S. § 3805.

Fiscal Impact

This rulemaking will not require the expenditure of any significant additional funds by the Commonwealth. Providers of ignition interlock systems may incur

additional costs in the maintenance of the system(s) and in monitoring and reporting driver compliance with the regulation. These costs will be recouped in the installation and maintenance fee charged to the individual vehicle owners or lessees on whose vehicles an ignition interlock system is installed.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. § 745.5(a), the agency submitted a copy of these proposed regulations, on August 24, 2004 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendations, or objections.

Sunset Date

The Department of Transportation is not establishing a sunset for these regulations, since the regulations are needed to administer provisions required by the

Vehicle Code (75 Pa. C.S. 101, *et seq.*). The Department of Transportation, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Rebecca L. Bickley, Director, Bureau of Driver Licensing, 4th floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, Pennsylvania 17104, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this regulation is Anne P. Titler, Acting Manager, Driver Safety Division, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, Pennsylvania 17104, telephone number: (717) 783-4737.

Allen D. Biehler,

Secretary of Transportation

ANNEX A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 88 — IGNITION INTERLOCK

Proposed Rulemaking

§ 88.1 [Definitions.] (Reserved).

§ 88.2 [Installation of Ignition Interlock System.] (Reserved).

§ 88.3 [Maintenance of Ignition Interlock System.] (Reserved).

§ 88.4 [Removal of Ignition Interlock System.] (Reserved).

§ 88.5 [Recall and Reissuance of Ignition Interlock Restricted License.] (Reserved).

§ 88.6 [Issuance of Unrestricted License.] (Reserved).

§ 88.7 [Issuance of License to a Person Restricted by Another State.] (Reserved).

§ 88.8 [Ignition Interlock for Nonresidents.] (Reserved).

§ 88.101 Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

Provider — A vendor or person who installs and monitors ignition interlock equipment and who has the authority to verify vehicle ownership through access to the Department's vehicle records system.

Unrestricted license — A replacement license issued under 75 Pa. C.S. §1951(d) that does not contain the ignition interlock restriction.

§ 88.102 Installation of Ignition Interlock System.

(a) General rule. Any person subject to 75 Pa. C.S. § 3805 who seeks a restoration of operating privileges shall engage a provider, at the person's own expense, to install all ignition interlock system(s) required under § 3805, and otherwise ensure compliance with this chapter.

(b) Identification of owned vehicles. The person seeking a restoration of operating privilege under § 3805 shall submit to the provider a certification, on a form provided by the Department, that identifies each motor vehicle owned by the person or registered to the person. A vehicle is considered registered to a person under this chapter if Department records reflect that the vehicle is registered to a person or the person is otherwise designated as the registrant of the vehicle or named as the lessee of the vehicle under 75 Pa. C.S. § 1305. The provider shall verify the accuracy of the facts in the person's certification through an inquiry to the Department's motor vehicle records system.

(c) Installation and certification. The provider shall install an ignition interlock system on each motor vehicle owned by the person or registered to the person and shall certify to the Department that the installation has been completed.

(d) Installation not required. Installation of an ignition interlock system shall not be required in the following situations:

(1) No motor vehicles owned or registered. If the person certifies to the provider, on a form provided by the Department, that there are no motor vehicles owned by the person or registered to the person, installation is not required on any motor vehicle.

(2) Inoperable vehicles. If the person certifies to the provider, on a form provided by the Department, that a motor vehicle owned or registered to the person is inoperable, installation is not required on the inoperable vehicle.

(3) The provider shall verify the accuracy of a certification submitted under (1) or (2) of this subsection through an inquiry to the Department's motor vehicle records system and shall certify to the Department that the person is in compliance with this subsection.

(e) Economic hardship exemption. A person will be exempt from the requirement to install an ignition interlock system on each of the person's motor vehicles if the person demonstrates that the requirement will result in undue financial hardship.

(1) Undue financial hardship shall be demonstrated only by one of the following:

(i) Evidence on the person's most recently filed federal income tax return showing an adjusted gross income below 200 percent of the poverty guidelines issued for that tax year by the United States Department of Health and Human Services for the person's family size.

(ii) Documentation of participation in a governmental assistance program included on a list of applicable programs published by the Department in the *Pennsylvania Bulletin*.

(2) The person shall submit to the provider an application for a hardship exemption on a form provided by the Department along with the required documentation.

(3) The provider shall review the required documentation to confirm that it meets the requirements of subsection (1) of this section.

(4) The provider shall then install an ignition interlock system on only one vehicle owned by the person or registered to the person, forward the application to the Department, and certify to the Department that the person has complied with this section.

§ 88.103 Maintenance of Ignition Interlock System.

(a) *General rule.* The person shall make any vehicle(s) on which an ignition interlock system is installed available for regularly scheduled maintenance by the provider.

(b) *Additional vehicles.* As part of each regularly scheduled maintenance check of the ignition interlock system, the provider shall, through an inquiry to the Department's motor vehicle record's system, verify that no additional vehicles are owned by or registered to the person. Unless the person has been granted an economic hardship exemption under § 88.102(e), if any additional vehicle(s) is(are) owned by or registered to the person, the provider shall, at the person's expense, install and maintain an ignition interlock system on the vehicle(s).

(c) *Notification of noncompliance.* If the person fails to comply with any provision of this section, the provider shall notify the Department of the person's noncompliance.

§ 88.104 Removal of Ignition Interlock System.

(a) General rule. An ignition interlock system installed in a motor vehicle pursuant to this chapter shall not be removed from the vehicle unless one of the following occurs:

(1) The motor vehicle is no longer owned by or registered to the person who engaged the provider to install the ignition interlock system.

(2) The person has been issued an unrestricted license by the Department pursuant to Section 3805(c) of the Vehicle Code, 75 Pa. C.S. § 3805(c).

(3) The provider has certified compliance with Section 88.102(e) to the Department and the provider has installed an ignition interlock system on another motor vehicle owned by the person or registered to the person.

(4) The person is no longer a resident of Pennsylvania and has been issued a valid license from the state of current residency.

(b) Unauthorized removal. If a person removes an ignition interlock system, or directs a provider to remove an ignition interlock system, under circumstances not provided for in this section, the provider shall notify the Department of the person's noncompliance.

§ 88.105 Recall and Reissuance of Ignition Interlock Restricted License.

(a) Recall. Upon receipt of notification from a provider of a person's noncompliance with any provision of this chapter, the Department may recall the person's ignition interlock restricted license.

(b) Reissuance. After receiving a new certification from a provider of compliance with this chapter by the person, the Department may reissue an ignition interlock

restricted license to the person, and the person shall complete the balance of the ignition interlock restricted license period previously imposed before an unrestricted license will be issued.

§ 88.106 Issuance of Unrestricted License.

(a) General rule. Upon completion of the ignition interlock restricted license period, a person who has been issued an ignition interlock restricted license may apply to the Department for issuance of an unrestricted license on a form provided by the Department.

(b) Pending charges. A person applying for an unrestricted license shall notify the Department on the application of any convictions and pending charges of illegally operating a motor vehicle not equipped with an ignition interlock, including all convictions and charges of tampering with an ignition interlock system, in violation of 75 Pa. C.S. § 3808, for a violation within the preceding 12 months. If the person notifies the Department of a pending charge, or of a conviction that has not yet been reported to and processed by the Department, the Department shall deny the application.

(c) Cancellation of unrestricted license. If the Department receives or processes a record of a person's first conviction of violating 75 Pa. C.S. § 3808 after issuing an unrestricted license to the person, the Department shall cancel the person's unrestricted license and shall issue an ignition interlock restricted license to the person after receiving a new certification from a provider of the person's compliance with this chapter.

§ 88.107 Issuance of License to a Person Restricted by Another State.

A person who has been issued a license with an ignition interlock restriction by another state, and who is otherwise eligible for issuance of a license pursuant to 75 Pa. C.S. §1508(b), may apply for an ignition interlock restricted license from the Department in accordance with this chapter. The person shall become eligible for issuance of an unrestricted license only after serving an ignition interlock restricted license period of one year. If the person can provide documentation from the state that initially imposed the ignition interlock restriction satisfactory to the Department showing the amount of time that the person has been subject to the ignition interlock restriction, the person shall be given credit against the ignition interlock restricted license period imposed with the Pennsylvania license.

§ 88.108 Ignition Interlock for Nonresidents.

A person who is required to comply with 75 Pa. C.S. §3805, but is not a resident of Pennsylvania at the time when the person seeks a restoration of operating privileges, shall submit an affidavit and supporting documents to the Department indicating the person's state of residence. If the Department determines that the person is not a resident of Pennsylvania and the person has met all other restoration requirements, the person's driving privilege may be restored. If, however, the person should become a resident of Pennsylvania during the ignition interlock restricted license period, the person will not be issued an unrestricted license until the person complies with 75 Pa. C.S. §3805 and this chapter.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

www.dot.state.pa.us



Office of Chief Counsel
P.O. Box 8212
Harrisburg, Pennsylvania 17105-8212
(717) 787-6485

August 24, 2004

Robert E. Nyce
Executive Director
14th Floor Harrisstown 2
333 Market Street
Harrisburg, PA 17101

**Re: Proposed Rulemaking
Regulation #18-395: 67 Pa. Code, Chapter 88 —
Ignition Interlock**

Dear Mr. Nyce:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form for a new regulatory chapter which the Department of Transportation intends to adopt following proposed rulemaking in accordance with the provisions of Section 204 of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, 45 P.S. § 1204.

Copies of these materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees and to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

The Department of Transportation will provide you with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. F. J. Martin". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Stephen F. J. Martin
Regulatory Counsel

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

I.D. NUMBER: #18-395
 SUBJECT: Ignition Interlock, 67 Pa. Code, Chapter 88
 AGENCY: Department of Transportation

TYPE OF REGULATION

2427

- 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

RECEIVED
 2004 AUG 24 PM 1:09
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
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<u>8/24/04</u>	<u><i>Kimberly J. Workless</i></u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
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<u>8-24-04</u>	<u><i>Kate McMullen</i></u> for Minority Chair	
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<u>8-24-04</u>	<u><i>Betty Rude</i></u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
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<u>8-24-04</u>	<u><i>Michelle A.</i></u> for Minority Chair	
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<u>8/24/04</u>	<u><i>[Signature]</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
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<u>8/24/04</u>	<u><i>[Signature]</i></u>	LEGISLATIVE REFERENCE BUREAU
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Date: August 24, 2004