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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Commission on Virginia Alcohol Safety Action Program (VASAP)
Virginia Administrative Code (VAC) citation(s)	24 VAC35-70
Regulation title(s)	Remote Alcohol Monitoring Device Regulations
Action title	New regulations covering remote alcohol monitoring devices
Date this document prepared	March 27, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This is a new regulation covering remote alcohol monitoring devices required by court order upon the request of certain convicted offenders.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

“ASAP” means one of the 24 local Alcohol Safety Action Programs in the VASAP system located throughout the Commonwealth.

“Remote Alcohol Monitoring Device” means an unsupervised mobile testing device with the ability to confirm the location and presence of alcohol in a person and that is capable of scheduled, random, and on-demand tests that provide immediate, or as-requested results. A testing device may be worn or used by persons ordered by the court to provide measurements of the presence of alcohol in their blood via breath or bodily fluid.

“VASAP” means the Commission on the Virginia Alcohol Safety Action Program (VASAP)

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Senate Bill 439 (2020 General Assembly Session). See “Legal Basis” below.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Senate Bill 439 was passed by the general assembly and signed by the governor. This bill incorporated SB 154 and SB 520 and made changes and additions to §§18.2-270.1, 18.2-270.2, 18.2-271.1 and 18.2-272 of the Code of Virginia. Section 18.2-270.2 directs the Executive Director of the Commission on VASAP or his designee, pursuant to approval by the Commission, to certify remote alcohol monitoring devices for use in the Commonwealth and adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

Offenders, who are eligible for an ignition interlock, are usually subject to a number of additional restrictions such as limiting the locations and times of driving. New laws permit courts, upon request of offenders, to eliminate these additional driving restrictions when remote

alcohol monitoring devices are used in combination with an ignition interlock device. Unlike ignition interlock devices, which are designed to prevent attempts to drive under the influence, remote alcohol monitoring devices only provide a notification that someone has a prohibited alcohol concentration at a certain time and location. Remote alcohol monitoring devices do not prevent someone from driving under the influence.

New legislation requires the Commission on VASAP to develop regulations regarding remote alcohol monitoring devices. These regulations will likely have similarities to Virginia’s ignition interlock regulations, but will require a separate chapter in order to address the wide variety of remote alcohol monitoring devices on the market that use different technologies.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The bill provides that in the case of an adult offender's first conviction of driving under the influence when the offender's blood alcohol content was less than 0.15, upon motion of the offender, the sole restriction of the offender's restricted driver's license shall be the prohibition of the offender from operating any motor vehicle not equipped with a functioning, certified ignition interlock system for one year without any violation of the ignition interlock system requirements. The bill provides that if a person is ineligible to receive a restricted license, a court may instead authorize such person to use a remote alcohol monitoring device, refrain from alcohol consumption, and participate in an alcohol safety action program; such provisions of the bill shall become effective on July 1, 2021. The bill provides that tampering with a remote alcohol monitoring device is a Class 1 misdemeanor.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Creation of these regulations is required by the Code of Virginia. There is no viable alternative.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The Commission on VASAP is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Christopher Morris, Commission on VASAP, 701 E. Franklin St., Suite 1110, Richmond, VA 23236; (804) 786-5895 (office); (804) 786-6286 (fax) or cmorris@vasap.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.