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Proposed Regulation Agency Background Document

Agency name	Commission on Virginia Alcohol Safety Action Program (VASAP)
Virginia Administrative Code (VAC) citation(s)	24 VAC35-60
Regulation title(s)	Ignition Interlock Regulations
Action title	Amendments to Virginia's Ignition Interlock Regulations
Date this document prepared	March 13, 2020 (Updated August 10, 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 VAC7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to amend its ignition interlock regulations. Changes include:

- 1) adjusting the timing of initial ignition interlock rolling retests and subsequent random tests;
- 2) requiring additional photographs of the vehicle's driver seat area;
- 3) adding additional grounds for which ignition interlock service providers and technicians may be disciplined;
- 4) requiring ignition interlock service providers to notify VASAP only when they receive a negative adjudication instead of notification of any and all pending lawsuits;
- 5) preventing offenders from transferring from one interlock vendor to another;

- 6) prohibiting device installation by a new vendor if the offender owes another vendor more than \$250;
- 7) introducing a \$2,500 fee to the vendors for application of a new device certification;
- 8) allowing the Commission on VASAP to receive the monthly administrative fee for local offices and then distribute it to the local ASAP offices;
- 9) granting the Commission on VASAP to authority to suspend service-related requirements of this regulation in applicable geographical areas when there exists a federal or state disaster or declaration of emergency;
- 10) allowing temporary codes to persons that would allow them to unlock their locked ignition interlock devices for a longer period than currently permitted;
- 11) prohibiting use of a single vehicle that is equipped with an ignition interlock in order to meet the probationary requirements of multiple offenders; and
- 12) adding language permitting VASAP to approve light sources other than the vehicle headlights for the required flashing lights when a rolling retest is failed or skipped.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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

"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."

The Commission on VASAP, at its December 13, 2019 meeting, approved the amendments being proposed.

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.

The Commission on Virginia Alcohol Safety Action Program (VASAP) is authorized by the Code of Virginia, § 18.2-270.2, to “certify ignition interlock systems for use in the Commonwealth and adopt regulations and forms for the installation, maintenance, and certification of such ignition interlock systems.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Ignition interlock devices protect the public from offenders who may attempt to drink and drive subsequent to a DUI conviction while they are completing substance abuse education, treatment, and probation. An ignition interlock is required to be installed in many cases as a condition of receiving a restricted driver's license. The ignition interlock requires drivers, operating vehicles so equipped to submit alcohol-free breath samples in order to start and operate the vehicle. The proposed regulatory changes implement enhanced technology and identified best practices in the industry.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Section 24VAC35-60-40(C)(5) authorizes ignition interlock state directors to also oversee remote alcohol monitoring systems for manufacturers of devices approved for use in Virginia.

Section 24VAC35-60-40(C)(9) requires ignition interlock service providers to notify the Commission on VASAP whenever they receive a negative adjudication related to the ignition interlock device or provision of ignition interlock services. Previously, the commission had to be notified of any and all pending lawsuits.

Section 24VAC35-60-50(B)(4) changes the amount of the administrative fee paid to the state office by the ignition interlock vendors from \$10 to \$20. Currently, \$10 is being submitted to the Commission on VASAP state office and \$10 is being submitted directly to the local ASAPs. The \$10 being submitted directly to the local ASAPs would now be sent to the state office instead, and then routed to the local ASAPs.

Section 24VAC35-60-50(B)(5) requires ignition interlock service providers to pay a one-time \$2,500 fee whenever a new ignition interlock model is introduced. This fee will cover the cost of performance testing by VASAP.

Section 24VAC35-60-50(C) as currently in effect is deleted to indicate that the \$10 administrative fee previously submitted directly to the local ASAPs by the ignition interlock vendors will now be sent to the Commission on VASAP instead, who will then distribute the funds to the local ASAPs. The amount of the total administrative fee paid by the ignition interlock companies is not changed, just the routing of the fees is changed. Subsequent paragraph letters of this section are modified to reflect the deletion of this paragraph.

Section 24VAC35-60-50(C)(5) strikes the language referring to administrative fees being paid directly to local ASAPs since the fees will now be routed via the Commission on VASAP state office.

Section 24VAC35-60-60(B) changes the procedures ignition interlock service providers follow in order to contest a suspension or revocation of an interlock device or service facility in order to be consistent with the procedures outlined in the Administrative Process Act.

Section 24VAC35-60-70(F)(3) removes the reference to ignition interlocks being “alcohol specific” to prevent the public from assuming the device only detects ethanol to the exclusion of other types of alcohol.

Section 24VAC35-60-70(F)(8) adds language permitting the commission to approve light sources other than the vehicle headlights for required activation when a rolling retest is failed or skipped.

Section 24VAC35-60-70(F)(9) allows the Commission to approve temporary codes to persons that will allow them to unlock their locked ignition interlock devices for a longer period than the three-hour time limit currently allowed. This is for the purpose of emergency situations, such as during a hurricane evacuation.

Section 24VAC35-60-70(G) is added to clarify that the required warning sticker, regarding tampering and circumvention of the interlock, be located on the ignition interlock handset.

Section 24VAC35-60-70(I)(1) requires that a rolling retest occurs within the first 10 minutes after the start of the motor vehicle. Previously the initial rolling retest had to occur within five minutes of the engine start.

Section 24VAC35-60-80(N) is added to prohibit using a single vehicle that is equipped with an ignition interlock to simultaneously meet the probationary requirements of multiple offenders.

Section 24VAC35-60-80(O) is added to prevent offenders from transferring from one interlock vendor to another without permission of the commission, unless the request to transfer is based on equipment malfunction or a legitimate customer service issue.

Section 24VAC35-60-90(B)(11) prohibits offenders from changing interlock service providers if an outstanding balance in excess of \$250 is owed to another interlock service provider.

Section 24VAC35-60-90(E)(7) is added to require that a photo of the driver be captured after every vehicle ignition start.

Section 24VAC35-60-110(D)(16) is added to require that a photo of the vehicle driver’s seat be taken after every initial start-up at a time established by the commission.

Section 24VAC35-60-110(H) is added to require that each offender read and sign an ASAP Ignition Interlock Agreement and that a copy of the agreement be given to the offender.

Section 24VAC35-60-130(C)(6) expands the reasons ignition interlock certification can be denied, revoked, suspended or terminated to include material misstatements and omissions in an application.

Section 24VAC35-60-130(C)(7) expands the reasons ignition interlock certification can be denied, revoked, suspended or terminated to include defrauding any customer or other person or entity during the conduct of the licensee’s business.

Section 24VAC35-60-130(C)(7) clarifies that appeals will be handled in compliance with the Administrative Process Act and that any prohibition to provide ignition interlock services will remain in effect during the time the action is being contested.

Section 24VAC35-60-140 is added to give the Commission on VASAP flexibility to suspend service-related requirements during federal or state disasters and declarations of emergency.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The proposed changes to this regulation will improve transportation safety in the Commonwealth. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements, or requirements that exceed applicable federal requirements in this proposal. The proposed changes in these regulations are consistent for the most part with model ignition interlock specifications recommended by the National Highway Traffic Safety Administration as published in the Federal Register.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the

regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected by these proposed regulations.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	No changes from existing regulations.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	No changes from existing regulations.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	24VAC35-60-50 requires the ignition interlock service providers to pay a \$2500 fee for certification of new devices in Virginia. This will be a very infrequent event. 24VAC35-60-90 (B)(11) prohibits offenders from switching to a new interlock vendor if they owe another vendor in excess of \$250. This will likely produce a very slight increase in revenue for the ignition interlock service providers; however, this does not occur frequently.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	No changes from existing regulations.
Benefits the regulatory change is designed to produce.	Improved statewide highway safety.

Impact on Other Entities

It is not anticipated that any other entities will be affected by the proposed regulatory changes.

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.

When the NOIRA stage draft of the regulations was issued, VASAP was calling for the installation of GPS technology on all ignition interlocks for the purpose of establishing the jurisdiction in which illegal circumvention of the interlocks was occurring. VASAP pursued an alternative strategy to a regulatory change by introducing a bill that would establish the jurisdiction of the circumvention offense when the location was unknown. This bill passed and was signed by the governor. For this reason, the original pursued regulatory change to require GPS technology has been removed in the draft of the regulations submitted in this Proposed Stage.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

VASAP’s proposed changes should not be burdensome to the ignition interlock service providers. VASAP did not adopt all of the recommended changes it received from vendors during the NOIRA public comment period because it was felt that some of these recommended changes would adversely impact the ability of certain companies to operate in Virginia.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation;

and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

n/a

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
David Hites	Requests a public hearing to voice concerns about proposed changes.	No public hearing will be scheduled. Written comments are invited and appreciated.
Cynthia Hites	Opposed to use of GPS technology due to privacy concerns.	Due to legislative changes to the Code of Virginia, GPS will not be required to establish jurisdiction in ignition interlock circumvention cases. VASAP is no longer proposing that GPS be required with ignition interlocks.
Intoxalock	The requirement to report all active lawsuits against interlock companies to the Commission on VASAP is too broad since any person can file a lawsuit, and lawsuits filed against companies are often not related to the delivery of ignition interlock services. Language is recommended to require reporting only legal judgments entered against service providers when they relate to the delivery of ignition interlock services.	VASAP concurs and has modified language in the proposed regulations.
Intoxalock	The Commission on VASAP has the authority to increase ignition interlock installation and calibration fees by up to 25% when the Code of Virginia requires new technology, such as GPS, to be used. It is suggested that this increase in fees be at the discretion of the service providers instead of the Commission, commencing on	Since GPS will not be required, no fee increases for interlock installation and calibration are proposed.

	the date when all ignition interlocks are required to have GPS.	The setting of maximum fees for ignition interlock services will continue to be at the discretion of VASAP.
Intoxalock	If real-time GPS reporting is required, a lot of changes would be required in the administrative code. Intoxalock can assist with drafting of these changes. There are advantages to real-time reporting.	This is no longer applicable.
Intoxalock	If real-time reporting of violations and other data is required or permitted, Intoxalock would also recommend that service providers have the ability to do a remote reset in addition to the ability to do a time extension for customers whose device is in a permanent lockout due to a violation.	This is no longer applicable.
Intoxalock	Provide a certain date when all new ignition interlock installations will be required to have a GPS. Allow ignition interlocks that have already been installed to complete the addition of a GPS during either of the next two calibration appointments.	This is no longer applicable.
Intoxalock	What is the purpose of removing the 45-60 minute window for subsequent rolling retests and replacing it with "in a manner established by the commission?"	Permitting VASAP to establish the rolling retest time intervals helps to deter circumvention of the ignition interlock. It may become necessary to modify rolling retest times if offenders become aware of testing patterns.
Intoxalock	Requiring the GPS to log the coordinates of the driver's location "at all times" raises concerns about privacy for persons subject to an ignition interlock requirement.	This is no longer applicable.
Intoxalock	Clarify that service providers may make GPS coordinates available to authorized persons when there is a lawfully issued subpoena or court order.	This is no longer applicable.

Intoxalock	Clarify what a customer or the service provider is supposed to do with the ASAP Ignition Interlock Agreement after it is signed by the offender.	VASAP concurs with this recommendation and has added proposed language.
Intoxalock	Language needs to be added to clarify that service providers may continue to operate if a court stays an agency decision to deny, suspend, revoke or terminate an ignition interlock service provider's ability to operate in Virginia.	Current law already permits this. VASAP will follow procedures in the Virginia Administrative Process Act.
Intoxalock	Intoxalock is supportive of changes that will prohibit an ignition interlock device from being used by multiple offenders to fulfill an interlock requirement.	Proposed language covers this.
Intoxalock	There is no need for there to be a photo taken after the initial start-up of a vehicle within a time frame established by the commission as proposed. Our device already is programmed to log a photo every time a breath sample is requested, and after every valid breath sample is provided. Since a photo is taken at the first rolling retest, this should suffice for determining if the driver had someone submit a breath sample to start the vehicle.	Photos taken a few minutes after a vehicle start-up, but prior to rolling retest photos, will enable additional circumvention violations to be detected.
Intoxalock	Do not require that a GPS serial number be provided if the GPS is an integral or internal part of the ignition interlock device.	This is no longer applicable.
Smart Start	Modify the definition of "GPS" to recognize that the system's ability to determine the ground position of an object is dependent upon good satellite reception.	This is no longer applicable.
Smart Start	Modify the definition of "Manufacturer" to mean the organization that designs, constructs, produces and	The current definition is sufficient.

	distributes ignition interlock devices.	
Smart Start	Modify the definition of “Service Provider” to mean the manufacturer of an approved ignition interlock device.	The current definition is sufficient. To limit the definition of “service provider” to only manufacturers is not business friendly and would exclude future qualified vendor applicants.
Smart Start	Eliminate the requirement that the service provider’s state ignition interlock program director work “exclusively” in Virginia.	Virginia’s current requirement provides for rapid response to issues in the field. State directors with additional duties outside of Virginia will impact customer service.
Smart Start	The requirement to report all active lawsuits against interlock companies to the Commission on VASAP is too broad since any person can file a lawsuit, and lawsuits filed against companies are often not related to the delivery of ignition interlock services. Language is recommended to require reporting only final judgments entered against service providers when they relate to the ignition interlock device or delivery of ignition interlock services.	VASAP concurs and has modified language in the proposed regulations.
Smart Start	Mandate standard charges for all ignition interlock services. Increase the fees charged for ignition interlock installation and calibration. Charge a fee for ignition interlock removal. Prohibit the charging of any other additional fees related to the ignition interlock device or provision of ignition interlock services.	Mandating standard charges is not conducive to market competition. No fee increases are proposed since GPS technology is not going to be required. Charging a removal fee encourages devices not being returned or removed improperly by offenders. VASAP does concur with the recommendation to prohibit additional fees not enumerated in the regulations. Language is being added to this effect.
Smart Start	Require that manufacturers or service providers provide certification from an International Organization for Standardization (ISO) 17025 certified independent laboratory to show that the ignition interlock device meets current NHTSA model specifications.	VASAP does not plan to require these standards which may disqualify otherwise qualified vendor applicants.

Smart Start	Require written documentation of the manufacturer's ISO 9001 Quality Management System (QMS) certification for aspects related to construction, production and repair of ignition interlock devices.	VASAP does not plan to require these standards which may disqualify otherwise qualified vendor applicants.
Smart Start	Require manufacturers to submit a copy of their Quality Assurance Plan (QAP) for checking the accuracy of the calibration of ignition interlock devices.	VASAP will not require this. Accurate calibration of ignition interlock devices is a service center inspection item monitored by VASAP.
Smart Start	Limit the lowest level to which the Commission can approve a reduction in the required breath sample volume from 1.0L to 1.2L.	VASAP recognizes that some accuracy of the BAC reading may occur (in favor of the offender) if a 1.0L breath sample size is required; however, we have numerous offenders who have difficulty providing a 1.5L or 1.2L breath sample. VASAP requires a physician's report before lowering the breath sample size requirement. For transportation safety purposes, having an interlock installed with a lower breath volume requirement is better than not having an interlock at all.
Smart Start	Permit the use of a light source other than the vehicle's headlights to activate when a required rolling retest is missed or failed.	VASAP concurs and permits this practice already. Language has been added to address this.
Smart Start	Prohibit the required ignition interlock camera from being located inside the device handset.	No language will be added to address this. VASAP is not aware of ignition interlocks with a camera in the handset, but would not be opposed to this if all other camera requirements with regard to timing and photo quality can be met. This prohibition could possibly limit certain interlock models from being considered for use in Virginia.
Smart Start	Clarify that the ignition interlock GPS will only be required to record the date, time and location of the device at the time a photo is captured, not all the time.	This is no longer applicable.
Smart Start	Require the interval times at which a rolling retest occurs to be the same for all offenders.	This is the current practice and will continue to be; however, VASAP may designate what the interval times will be.

Smart Start	Remove the use of wet bath simulators in Virginia for providing a reference sample during ignition interlock calibrations.	The use of wet bath simulators is proven technology provided proper procedures are followed and the simulators are maintained well. VASAP inspects service centers to ensure this occurs. To ban the use of wet bath simulators would exclude certain ignition interlock companies from providing service in the Commonwealth.
Smart Start	Prohibit offenders from changing to another service provider when they owe any balance to their current service provider (not a balance in excess of \$250 as proposed).	This dollar figure is what was approved by the Commission on VASAP at its last quarterly meeting.
Smart Start	Permit the service provider to make GPS coordinates available to any named entity or person in a properly served subpoena.	This is no longer applicable.
Smart Start	Designate and standardize the look-back period for background checks on ignition interlock technicians to the preceding three years.	VASAP believes that three years is an insufficient amount of time to cover in a background investigation. No changes are proposed.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the Commission on VASAP is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the commission is 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) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of 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://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 Richard Foy, Commission on VASAP, 701 E. Franklin Street, Suite 1110, Richmond, VA 23219, (804) 786-5895, FAX (804) 786-6286, rfoy@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 not be held following the publication of this stage of this regulatory action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
	24VAC35-60-40 (C)(5)	None	Permits ignition interlock state directors to also oversee remote alcohol monitoring device programs that are approved in Virginia. This authority is in anticipation of legislation that goes into effect in 2021 that establishes remote alcohol monitoring programs in Virginia.
	24VAC35-60-40 (C)(9)	The current regulations require service providers to report disciplinary action taken against them by other states or political entities that might have an impact on Virginia's ignition interlock program.	The proposed regulations add language to require service providers to also report any court decisions against the service provider in other states/countries that might be relevant to their ignition interlock device and provision of services in Virginia. This is needed to ensure the integrity of the interlock program and the continued qualifications of the vendor to provide services. It also will enable VASAP to identify and prevent similar problems that could potentially occur in the Commonwealth.
	24VAC35-60-50 (B)(5)	n/a	This section adds to the fees that service providers must pay to the commission. A \$2,500 fee is proposed whenever an ignition interlock service provider introduces a new device model that has not been previously certified for use in the Commonwealth. VASAP reviews independent lab reports of device models ensuring that the specifications meet Virginia standards. VASAP also field tests new devices to ensure they are accurate and reliable.

			The proposed \$2,500 fee would cover the expense of testing new devices.
24VAC35-60-50 (B) (4)		The Commission on VASAP and the local ASAPs both currently receive a \$10 monthly administrative fee from the service providers' ignition interlock calibration revenue collected from each offender. This covers expenses associated with the state administration of the ignition interlock program and the local ASAP's monitoring of the ignition interlock calibration reports and photographs, writing related court reports, etc.	The proposed change to the regulations will permit the Commission on VASAP to collect the administrative fee currently being submitted directly to the local ASAPs by the ignition interlock vendors. The state office will then distribute the funds to the local ASAPs. This will enable the vendors to send one monthly check to the Commission on VASAP instead of 24 individual checks to the local programs.
24VAC35-60-50 (C)		Same as above	Paragraph C is deleted as it no longer applies.
24VAC35-60-50 (D)(5)		Same as above	Language referring to local ASAP receipt of ignition interlock administrative fees is deleted since it no longer applies.
24VAC35-60-60 (B)		The current regulations permit a service provider whose ignition interlock device or service facility has been suspended or revoked to contest the decision in a hearing with the Commission within 15 days of notification.	The proposed regulations eliminate the language with regard to the 15 days and simply states that the service provider may seek judicial review of a suspension or revocation in accordance with the provisions of the Administrative Process Act (Section 2.2-4000 et seq. of the Code of Virginia.) Using this language to conform to the APA provides standardization for appeal processes and more detail.
24VAC35-60-70 (F) (3)		The current regulations state that ignition interlock devices must use "alcohol specific" fuel cells.	The proposed regulations no longer include the words "alcohol specific" since ignition interlocks detect various forms of alcohol in addition to drinking alcohol (ethanol) and the current regulations and the Code of Virginia define "alcohol" as being ethanol. This has caused confusion to the public.
24VAC35-60-70 (F)(8)		The current regulations require that when a driver fails or misses a required	Due to the difficulty of wiring some vehicle lights to meet this requirement, the Commission already is approving some alternative warning light sources,

		rolling retest, that vehicle's lights and horn sound.	other than the vehicle's headlights, provided they accomplish the same purpose. This proposed additional wording just reflects this practice that is already in effect.
24VAC35-60-70 (F)(9)		The service provider can currently provide an unlock code to offenders whose vehicles have entered a permanent lockout status. The unlock code is only valid for three hours.	The proposed changes would allow the service providers, with the approval of the Commission, to deviate from the three-hour limitation if it is necessary for certain circumstances, such as when the vehicle has to be moved during a hurricane evacuation.
24VAC35-60-70 (G)		Currently, warning labels prohibiting the tampering or circumvention of the ignition interlock device are required to be affixed to the device. No specific location on the device is required.	The proposed change would require the warning label to be affixed to the handset of the ignition interlock. This provides a standardized placement location for the sticker where it is most likely to be seen by the driver.
24VAC35-60-70 (I)(1)		Currently, the rolling retest feature of the ignition interlock requires that a rolling retest occur within the first five minutes after the start of the engine and randomly thereafter at least every 45-60 minutes.	The proposed change requires the ignition interlock's initial rolling retest to occur within the first 10 minutes after the engine starts, instead of the first five minutes. This change will deter any impaired offender from circumventing the device by getting a sober person to activate the unit for both the engine start-up and for the first rolling retest (five minutes later) prior to driving away. When the random retest does not occur until 45-60 minutes later, this enables an offender to conceivably drive quite a few miles prior to a retest. The proposed language would make it more inconvenient for sober persons to conduct the first rolling retest for offenders and it will enable VASAP to alter the interval times between rolling retests to prevent offenders from figuring out when breath samples are required in their attempts to circumvent the device.
	24VAC35-60-80 (N)	n/a	Proposed language is added to clarify that a single ignition interlock device may not be used by multiple offenders to comply with a Virginia ignition interlock requirement.

	24VAC35-60-80 (O)	n/a	Proposed language prohibits offenders from switching service providers without permission of the Commission. The Commission shall not unreasonably deny permission to change service providers when there is a legitimate customer service issue or a malfunctioning interlock device. This policy provides some assurance to the offender that they will receive acceptable service and valid concerns will be addressed while ensuring that offenders do not “vendor hop” in order to avoid paying owed fees.
24VAC35-60-90 (B)(11)		Currently, service providers may refuse to calibrate an ignition interlock device whenever an offender is three or more months delinquent with payments. In these circumstances, the service provider may also remove the device from the offender’s vehicle with permission from the Commission.	Proposed language adds that offenders may not have an ignition interlock device installed by a new vendor if they owe another vendor in excess of \$250. This provision is the dollar amount approved by the Commission. This policy will help to deter offenders from changing service providers in order to avoid paying owed fees.
	24VAC35-60-90 (E)(7)	Currently, a photograph of the person submitting a breath sample must be taken at the time of the breath test.	New proposed language requires additional photographs of the vehicle’s driver seat area at some point after the initial engine start-up. This provision will enable VASAP to establish who the actual driver is and detect when someone is circumventing the device by having a sober person provide a breath sample on their behalf.
	24VAC35-60-110 (D)(16)	Same as above	Same as above
	24VAC35-60-110 (H)	n/a	Language is added to clarify that the service provider has an obligation to provide a copy of the “ASAP Ignition Interlock Agreement” to each offender at the interlock installation appointment and ensure that the offender reads and signs the agreement. This provision ensures that the offender has been advised of the probationary

			requirements and expectations of their ignition interlock program participation.
24VAC35-60-130 (A) (4)		Current language reads that “The commission reserves the right to deny a certification letter to an interlock service provider technician or state director due to concerns identified in the application to include, but not limited to, criminal history background and driver’s transcript issues.”	The proposed regulation deletes this language which is somewhat vague and replaces it with more specific language in later paragraphs.
	24VAC35-60-130 (C)(6)	n/a	Proposed language adds “material misstatement or omission in an application” to the list of reasons the Commission may deny, revoke, suspend or terminate a Virginia Ignition Interlock Certification Letter.
	24VAC35-60-130 (C)(7)	n/a	Proposed language adds “defrauding any client, service provider, or other person or entity in the conduct of the licensee’s business” to the list of reasons the Commission may deny, revoke, suspend or terminate a Virginia Ignition Interlock Certification Letter.
24VAC35-60-130 (C) (7)		The current regulations permit a service provider whose Virginia Ignition Interlock Certification Letter has been denied, revoked, suspended or terminated to contest the decision in a hearing with the Commission within 15 days of notification.	The proposed regulations eliminate the language with regard to the 15 days and simply state that the service provider may seek judicial review of a suspension or revocation in accordance with the provisions of the Administrative Process Act (Section 2.2-4000 et seq. of the Code of Virginia.) Using this language to conform to the APA provides standardization for appeal processes consistent with current law.
24VAC35-60-130 (C) (7)		n/a	Language is added to clarify that the prohibition to conduct ignition interlock services after having the Virginia Ignition Interlock Certification Letter denied, revoked, suspended or terminated applies during any period of contestment.

24VAC35-60-140		n/a	This section is added to give the Commission on VASAP flexibility to temporarily suspend service-related requirements due to federal or state disasters or declarations of emergency, such as experienced during the COVID-19 situation and hurricanes.
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