



Proposed Regulation Agency Background Document

Agency name	Commission on Virginia Alcohol Safety Action Program (VASAP)
Virginia Administrative Code (VAC) citation	24 VAC35-60
Regulation title	Ignition Interlock Regulations
Action title	Revision of existing regulations
Date this document prepared	September 17, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed revision of (24 VAC35-60) covers the process for certifying ignition interlock devices and vendors in Virginia to include procedures for device installation, maintenance and removal. Technological advancements, and experience gained during several years' administration of the ignition interlock program in Virginia, have led to these proposed revisions that strengthen and clarify the regulations in several areas.

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.

"Commission" means Commission on Virginia Alcohol Safety Action Program (state office).

"Commission on VASAP" means Commission on Virginia Alcohol Safety Action Program (state office).

“ASAP” means Alcohol Safety Action Program (one of 24 local programs that are overseen by the Commission on VASAP state office).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

§ 18.2-271.2 of the Code of Virginia establishes the Commission on VASAP in the legislative branch of state government. § 18.2-270.2 directs the Executive Director of the Commission on VASAP or his designee to certify ignition interlock systems in the Commonwealth and to adopt regulations and forms for the installation, maintenance and certification of such ignition interlock devices.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The ignition interlock regulations have not been updated in several years. Over the years, changes in technology, research, and experience in the administration of ignition interlock programs have led to a number of identified “best practices” that are incorporated into the proposed regulations.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

A number of requirements have been added to the regulations in order to conform to the latest technology in the ignition interlock industry. Major changes in the regulations include:

- the requirement that all ignition interlocks be equipped with cameras
- the requirement that all ignition interlock vendors’ state directors and service technicians pass a written test to demonstrate their knowledge of applicable state laws and regulations prior to being permitted to install ignition interlock devices in Virginia.
- the inclusion of wet bath simulators for use in the calibration of ignition interlock devices.
- the alteration of the length of time for motorists to complete a “rolling retest” when prompted.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulations will improve traffic safety, promote improved customer service to offenders, and help to ensure that ignition interlocks are installed properly in motor vehicles. No disadvantages to the public or the Commonwealth are anticipated.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulations generally follow ignition interlock industry standards as recommended by the National Highway Traffic Safety Administration (NHTSA) in their "Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs) as published in the Federal Register (Vol. 78, No. 89, May 8, 2013). There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No particular locality should bear a disproportionate material impact as a result of the proposed regulatory changes.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

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 may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to [Richard L. Foy; Commission on VASAP, 701 E. Franklin St., Suite 1110, Richmond, VA 23219; (804) 786-5895; (804) 786-6286 (fax);

rfoy.vasap@state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	Ignition interlock service providers.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	Four current ignition interlock service providers operating in Virginia.
Benefits expected as a result of this regulatory proposal.	No changes to the status quo.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	No changes to the status quo.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	No changes to the status quo.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	Ignition interlock service providers will now be required to install cameras with the interlock device. This will result in increased expenses for the service providers as they provide new equipment, updated technician training, and additional labor time for each device installation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

Cameras are already being required by many courts in Virginia. Installation of cameras will ensure that offenders are not circumventing legal requirements by having other persons provide breath samples to start their automobiles. The proposed regulations provide for a small permissible increase in the monthly amount service providers may charge for optional ignition interlock device insurance to cover the cameras. No fee changes are proposed for monthly device calibration since the current regulations permit an installation fee that service providers may charge to offenders, but are not presently charging.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

One alternative method that is used in some other states by ignition interlock service providers is to permit subcontractors to make ignition interlock installations. This reduces costs for the ignition interlock vendors and provides opportunities for small businesses to profit from participation in the installation of ignition interlock devices. The Commission on VASAP strongly believes that the integrity of the ignition interlock program in Virginia can best be upheld by restricting the delivery of interlock service to the actual provider of the product (authorized service provider), thereby effectively preventing the extension of subcontracts to other persons or businesses who lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect of duty or illegal exchange of funds. Since ignition interlock monitoring is tied to probationary services and legal sanctions, as well as education and treatment of persons convicted of DUI in the Commonwealth, denial of interlock service subcontracting to the consumer is an integral part of protecting the chain of evidence for court testimony and evidentiary procedures.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Smart Start	“ Since this structure is regulatory in nature, any change will necessitate many months before a change can actually be implemented. For instance, the fee and cost structure is very specific.”	The Department of Planning and Budget recommended that specific fees be included in the regulations.

<p>Smart Start</p>	<p>“Further, the detailed fee structure and technology requirements of the units may preclude newer technologies from being offered in the future or for program innovations to be timely implemented by VASAP..... We recommend that VASAP staff have flexibility in approving newer technology, approving add-on services and that the fees and costs be handled by a general fee and cost limit range, with specific fees and costs to be set by contract between VASAP and the service providers under procurement.”</p>	<p>The proposed regulations permit the Commission, in the event of changes to the Code of Virginia mandating enhanced technological capabilities of ignition interlock devices used in the Commonwealth, to increase offender installation and calibration fees up to a maximum of 25%.</p>
<p>Smart Start</p>	<p>“Under proposed changes to 24 VAC 35-60-40(C)(3) and 24 VAC 35-60-40(C)(3)(e), VASAP continues by regulation the current contractual requirement that service providers maintain direct control and ownership of service centers within a 50 mile radius of every residence in the Commonwealth. This policy - the only one of two of its kind in the country - is unduly burdensome on the service providers, who bear the cost of directly leasing or owning space throughout the Commonwealth in order to provide this service. Because the contract with VASAP is short in term, the cost of such space is higher than necessary so that the service provider can limit risk of leasing space not necessary to do business if VASAP ended the program or terminated a provider’s contract. Moreover, this policy has the effect of limiting small businesses in Virginia from participation as a contractor in the ignition interlock program. We recommend that the service providers have the opportunity to contract with service centers, which would be supportive of Governor McAuliffe’s Executive</p>	<p>This issue has been considered carefully in the past. Due to the nature of the VASAP program, with its integration of offender monitoring, sanctions, education and treatment of DUI offenders, it is believed that subcontracting will compromise the integrity of the ignition interlock program. Denial of interlock service subcontracting to the consumer is an integral part of protecting the chain of evidence for court testimony and evidentiary procedures. The Commission on VASAP strongly believes that the integrity of the ignition interlock program in Virginia can best be upheld by restricting the delivery of interlock service to the actual provider of the product (authorized service provider), thereby effectively preventing the extension of subcontracts to other persons or businesses who lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect of duty or illegal exchange of funds. Through consultation with interlock program administrators in other states, the Commission is aware of many instances of problems associated with subcontracting. Permitting subcontracting would also require more VASAP personnel and additional staff time to inspect added installation sites. Ignition interlock providers are already permitted to rent service bay space from existing gas stations, automobile repair shops, etc. They are, however, required to employ their own</p>

	<p>Order 20, “Advancing Equity for Small, Women and Minority Owned Businesses”, issued July 22, 2014.</p> <p>Service providers operate under contract and strict regulatory requirements. The risk to enrollees or VASAP seems unlikely to change under a contractual operation of service centers, as compared to direct operation, by service providers. With this in mind, we urge staff to consider offering small businesses the opportunity to contract with service providers, rather than continue the requirement that all service centers be owned and operated directly by service providers.”</p>	<p>personnel.</p>
<p>Smart Start</p>	<p>“24VAC-35-60-40(C)(2)(b): Approval of manufacturers of service providers <input type="checkbox"/> The service provider must be able to shall ensure that technicians are trained and available to testify in court if required for noncompliance hearings.</p> <p>We recommend the following change to the proposed language as follows: The authorized service provider shall provide expert or other required testimony in any civil or criminal proceedings or administrative hearings as to the method of manufacturing the device, how said device functions, and the testing protocol by which the device is calibrated and serviced and the interpretations of any data stored or records transmitted.”</p>	<p>Language similar to this suggestion was included in the proposed regulation.</p>
<p>Smart Start</p>	<p>“24VAC-35-60-40(C)(2)(e) <input type="checkbox"/> The service provider shall notify the commission at least 30 days in advance of a reduction in staffing levels of key personnel at the local or district offices serving the Commonwealth of Virginia.</p>	<p>Language similar to this suggestion was included in the proposed regulation.</p>

	<p>We recommend the following change to the proposed language as follows: The service provider is</p> <p>required to provide the Commission of VASAP with a list of key employees and notify the Commission of VASAP of any personnel decision involving those key employees within five business days of the company or employee's decision."</p>	
Smart Start	<p>"24VAC-35-60-50(D)(6): Fees <input type="checkbox"/> An amount of 10% over the actual replacement cost of the ignition interlock and its components when theft, loss or damage occurs and the offender has not purchased the optional insurance;</p> <p>We do not think it necessary by regulation that VASAP is setting pricing on replacement costs of ignition interlock devices. It would be helpful if VASAP would clarify the need of this section."</p>	<p>The language in the proposed regulations remains the same. Permitting a charge of 10% over the actual replacement cost of the ignition interlock and its components prevents an offender from being charged a high retail price for a device, yet compensates the service provider for its loss and associated expenses for postage, handling, processing, etc.</p>
Smart Start	<p>"24VAC-35-60-70(I)(4): Ignition Interlock Specifications We recommend the proposed language be rephrased as follows: Any A deep lung breath sample at or above the fail point or any a failure to provide a rolling retest deep lung breath sample within the required time, shall activate the motor vehicle's horn and cause the motor vehicle's headlights, parking lights, or emergency lights, or other light source approved by the commission to flash until the engine is shut off by the offender or a passing test is provided."</p>	<p>The Commission concurs with this recommended language and has incorporated it into the proposed regulations.</p>
Smart Start	<p>"24VAC-35-60-80(G): Ignition Interlock Installation We recommend that service providers be allowed to use common industry practices for installations which includes, soldering or other mechanical</p>	<p>The language in the proposed regulations permits some flexibility as to how the installation is made as long as the starter wire is well secured with uniquely identifiable heat shrink tubing or its equivalent, and that all connected wires are wrapped with uniquely labeled service provider tape to prevent</p>

	<p>fasteners. There is no evidence that indicates one method is superior to another.</p> <p>We recommend and agree that all connectors should require heat shrink tubing.”</p>	<p>tampering.</p>
Smart Start	<p>“24VAC-35-60-100(D): Ignition Interlock Device Removal We recommend that service providers be allowed to use common industry practices for removals which includes, soldering or other mechanical fasteners. There is no evidence that indicates one method is superior to another. We recommend and agree that all connectors should require heat shrink tubing.”</p>	<p>The proposed regulations continue to require that alterations made to the vehicle wiring as a result of the ignition interlock installation be returned to the original, pre-installation condition. This will require permanently reconnecting (soldering) and properly insulating all severed wires.</p>
Smart Start	<p>“24VAC-35-130(C): Service Provider Technician Certification We recommend the following: Service Providers should be given the opportunity to correct or cure the area of concern. Such corrective actions could include a process for suspension, probation, appeal and decertification.”</p>	<p>The proposed regulations adequately outline the process for service provider technician certification and the reasons technicians may become ineligible to be certified to perform interlock work in Virginia. If circumstances dictate, the proposed regulations permit the Commission to allow a suspended technician the opportunity to reapply for certification.</p>
Lifesafes	<p>“This definition of “motor vehicle” seems to include motorcycles and mopeds. Is that the intent? If so, LifeSafer recommends that the unique nature of these vehicles be taken into consideration to develop motorcycle specific regulations as certain functions such as running retest may not be completed safely.”</p>	<p>Yes; the Code of Virginia requires the ignition interlock to be installed on motorcycles and mopeds. The time permitted in which to provide a “rolling retest” is being increased from six minutes to 15 minutes in the proposed regulations in order to give all motorists, including motorcycle operators, sufficient time to safely pull to the roadside before giving a breath sample. Installation of a camera will not be required on motorcycles or mopeds. Also, service providers may require operators to provide a saddle bag or similar waterproof container in which to store the device components as a condition for eligibility for the optional device insurance.</p>
	<p>“Virginia Ignition Interlock Certification Exam means an exam administered by the commission to service provider employees that must be</p>	<p>The certification exam applies only to state directors and technicians, not administrative staff. The language in the proposed regulations has been modified to clarify this. Personnel staffing levels should remain fairly</p>

<p>Lifesafes</p>	<p>successfully completed and submitted as a component of an application for a Virginia Ignition Interlock Certification Letter. LifeSafer Comment: While LifeSafer supports the concept of the Ignition Interlock Certification Exam, please clarify if this requirement is for State Directors and/ or technicians only or if this includes administrative staff. Additionally, please note that this also will create a hardship and limit provider’s ability to bring on additional staff quickly or staff from other states to handle increases in demands or shortfalls in manpower.”</p>	<p>stable with only minor changes required from time to time. However, in the event of a need to boost manpower quickly, the certification test can usually be taken immediately upon request. It is expected that personnel that are already certified in Virginia could temporarily cover emergency needs in other localities while awaiting for new employees or employees from other states to take the certification exam.</p>
<p>Lifesafes</p>	<p>“24VAC35-60-40. Approval of manufacturers and service providers. 2.c. The service provider shall provide a completed application for state certification to the commission to perform ignition interlock services for all technicians and state directors seeking to work in the Commonwealth of Virginia. The application shall be submitted at least 10 days prior to the employment start date. LifeSafer Comment: Please note that this adds 10 days to the hiring timeline and creates additional contingencies before employment can be finalized. This delays a provider’s ability to quickly adjust to the demands of the marketplace or even fill open positions should an employee leave the company and ultimately affects the ability to maintain turnaround times.”</p>	<p>The 10-day requirement is necessary in many cases to conduct required testing, review background information, and process paperwork. The Commission will consider authorizing employees to commence work sooner if these tasks can be completed prior to the passage of 10 days.</p>
<p>Lifesafes</p>	<p>“2.e. The service provider shall notify the commission at least 30 days in advance of a reduction in staffing levels of key personnel at the local or district offices serving the Commonwealth of Virginia.</p>	<p>The language in the proposed regulations has been changed from “30 days” to “five business days.”</p>

	<p>LifeSafer Comment: Please note that 30-days notice is not always possible. Recommend changing to “at least 30 days in advance of a planned reduction in staffing levels...”</p>	
Lifesafes	<p>“2.f. The service provider shall ensure, and provide proof that technicians and the state director are trained and available to testify in court, if required by a court or Commonwealth’s Attorney, or upon reasonable request of the ASAP in that court’s jurisdiction, regardless of whether a subpoena is issued. LifeSafer Comment: Please define what proof must be provided above required certifications. If no subpoena, how much notice will be provided?”</p>	<p>The language in the proposed regulations has been modified to read, “The service provider shall ensure that technicians and the state director are trained and available to testify in court if required by a court or Commonwealth’s Attorney, or upon a 10 business-day notice by the ASAP in that court’s jurisdiction, regardless of whether a subpoena is issued.”</p>
Lifesafes	<p>“3.h. Provide the commission a minimum of 20 days notice prior to the scheduled opening date of a new location. This requirement will allow the commission reasonable time to schedule an inspection of the new facility prior to opening services to ASAP offenders. LifeSafer Comment: Please note that could add to the timeline of establishing new locations and create delays in our ability to quickly respond to the demands of the marketplace.”</p>	<p>This language remains the same. It is believed that the 20-day notice is a reasonable requirement.</p>
Lifesafes	<p>“24VAC35-60-50. Fees. B.3. A \$250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Ignition Interlock Certification Exam due to an unsuccessful attempt on the first exam; and LifeSafer Comment: While other jurisdictions have a technician certification process, no other state or jurisdiction requires a \$250 certification fee per technician.</p>	<p>Technicians and directors will only be required to take the certification exam once unless they either fail the exam or demonstrate lack of knowledge or incompetence while performing services. There is no fee to take the initial test, and technicians and directors hired prior to June 30, 2015 will not be required to take the test. The \$250 fee only applies to retests. Having this fee will encourage applicants to study the training material and be well prepared for the exam.</p>

	<p>The fee seems excessive. Recommend that the fee be charged for Certification not per test, especially if the Commission wants to require retesting of already certified technicians (see 24 VAC35-60-130 G)”</p>	
<p>Lifesafer</p>	<p>“LifeSafer Comment: Service providers agree to specific maximum fees as part of the RFP process. Including fee limitations in the regulations makes them law and much harder to change should circumstances demand adjustment. LifeSafer recommends removing any service provider fee specifics from the regulations. If the state wants to set fee maximums it can be done as part of the RFP process, however with multiple providers in the jurisdiction and a limited client base, competitive pricing and the market keep fees inline. While vehicles have become more complex (hybrids, push button starts, computer systems etc.) leading to more complicated installations and longer install times, Virginia has not increased the interlock fees for installation and do not allow for additional charges on these specific vehicles. If the state wants to set maximum fees, especially as law, this needs to be addressed as it is becoming a significant financial issue for service providers. If fees must be set, LifeSafer recommends defining terms of a complex installation (for example hybrid and push-button start vehicles) and allowing \$85 for these “high end” vehicles plus a \$60/ per hour additional charge for anything taking over one hour. Removal of a device also takes time which service providers are not being allowed to charge for. Is there a reason providers are we not allowed to charge for work done? LifeSafer recommends the allowance of a removal fee. If a maximum must be set, LifeSafer</p>	<p>The Department of Planning and Budget has recommended that maximum fees be included in the regulations. Current regulations permit charging \$65 for installation, a fee that is not being charged by vendors currently. This is a potential source of additional revenue that may be assessed. Until an installation fee is being charged by vendors, there is no reason to assess a removal fee or charge higher fees for additional services. The permissible charge for optional ignition interlock insurance is proposed to be raised from \$6.00 to \$8.00 per month to cover cameras.</p>

	<p>recommends \$60. A swap of a vehicle, requires a removal from one vehicle and an installation into a different vehicle, and the \$75 allowable fee does not cover the amount of work required, especially if it involves a complex vehicle. LifeSafer recommends this be set at the removal price plus the install price (including applicable charges for complex or “high end” vehicle installations). If a maximum must be set on the loss protection (insurance), LifeSafer recommends this be set at \$8 to cover the additional cost of camera ignition interlock devices. Installation of camera interlocks versus standard interlocks also takes additional time. Monitoring of camera devices takes longer due to the image information that must also be downloaded. If the \$80 plus applicable monthly ignition interlock calibrations and monitoring includes the \$10 ASAP and \$10 VASAP fees, then LifeSafer again believes the maximums should be increased to address these changes. The camera ignition interlock requirement also puts an increased demand on provider data systems demanding more bandwidth and system speeds to deal with the additional data as well as increased storage capacity.”</p>	
<p>Lifesafef</p>	<p>“CE. All service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by the commission. LifeSafer Comment: LifeSafer’s also recommend providers not be permitted to turn away or refuse indigent clients unless they are at a maximum percentage of business, for example 5%.”</p>	<p>Language has been added to the proposed regulations stating that service providers shall not deny service to any offender for whom there has been a declaration of unaffordability by the court and approval by the Commission.</p>
	<p>“24VAC35-60-60. Cancellation,</p>	<p>The Commission concurs with this</p>

<p>Lifesafes</p>	<p>suspension, and revocation of manufacturers, service providers, ignition interlock service facilities, and ignition interlock devices.</p> <p>B. If such a cancellation, suspension, or revocation occurs, the manufacturer or service provider may request (within 15 days of notification) a hearing with the commission to contest the decision. Should the cancellation, suspension, or revocation be upheld, the manufacturer or service provider shall remain be responsible for removal of all devices from all vehicles of currently installed offenders serviced by the service provider who is subject to the cancellation, suspension, or revocation customers' motor vehicles, and will bear the costs associated with the required removal and installation of a new approved device. In addition, the manufacturer or service provider subject to the cancellation, suspension, or revocation shall continue to provide services for currently installed ASAP offenders for a time to be determined by the commission, but no longer than 90 days.</p> <p>LifeSafer Comment: LifeSafer recommends that providers not be required to remove devices for a suspension as it is very disruptive to clients and can lead to increased non-compliance with the program. While cancellations and revocations refer to a complete removal of a provider, suspensions are generally a suspension of new installations for a short time so that specific issues can be addressed before return to services. Having clients switch providers under these circumstances would be unnecessarily disruptive to the clients and program.”</p>	<p>recommendation and has modified the language in the proposed regulations.</p>
	<p>“24VAC35-60-70. Ignition interlock device specifications. 4. The ignition interlock device</p>	<p>While NHTSA has recommended a maximum breath volume of 1.2L, it has indicated its</p>

<p>Lifesafes</p>	<p>shall indicate when a sufficient sample of breath breath, as established by the commission, has been collected and shall indicate this by audible or visual means. The commission may authorize service providers to adjust the breath volume requirement to as low as 1.0 liter upon receipt of documentation from a licensed physician verifying the existence of an applicable medical condition. The physician’s documentation shall be submitted on a commission approved form. LifeSafer Comment: To be consistent with NHTSA 2013 we recommend a maximum breath volume of 1.2L”</p>	<p>support for states wishing to maintain the current volume as is required in Virginia (1.5L), provided the device can be lowered to 1.2L to accommodate individuals with medical issues. The proposed regulations have been modified to require a 1.5L breath sample, with breath volume reductions being made to 1.2L or 1.0L upon written documentation from a physician on a commission-approved form. Full medical waivers of the ignition interlock requirement will only be granted in extreme cases upon the presentation of medical documentation and approval of the court and the Commission on VASAP.</p>
<p>Lifesafes</p>	<p>“H. For initial startup of the motor vehicle: 1. The ignition interlock device shall enable the ignition relay after the successful completion of a breath alcohol test. LifeSafer Comment: Recommend rewording to “1. The ignition interlock device shall enable the starter relay after the successful completion of a breath alcohol test.”</p>	<p>The Commission concurs with this suggested change of wording and has modified the proposed regulations accordingly.</p>
<p>Lifesafes</p>	<p>“24VAC35-60-80. Ignition interlock device installation. D. Prior to installation of the ignition interlock device, offenders shall provide to the service provider: 1. Photo identification; LifeSafer Comment: Many clients struggle with this as they do not have a photo ID since their driver’s license was taken from when they got their DUI. Can their photo be added to their temporary license?”</p>	<p>The proposed regulations have been modified to permit installation without a photo identification in order to prevent delays; however, a photo identification must be obtained and presented to the service provider prior to the first calibration.</p>
	<p>“K. At the time of device installation, a service provider may charge an installation fee. The maximum permissible cost</p>	<p>The Commission does not see any advantage of using “loss protection plan” over the more commonly understood term, “insurance.”</p>

<p>Lifesafes</p>	<p>for installation shall be set by the Commission on VASAP commission through contract, and service providers will not be permitted to exceed the maximum fee established by the commission. No installation fees shall be collected from the user until services have been provided. A portion of these fees shall include costs for offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device loss, theft or damage. No installation fees shall be collected from the user until such services have been provided. Optional insurance shall be offered by the service provider, and a written copy of the insurance policy stating clearly the applicable coverages, coverage amounts, conditions, and exclusions, shall be given to offenders who purchase the insurance.</p> <p>LifeSafer Comment: Recommend using the term “loss protection plan” instead of insurance. All other requirements for policy, coverages, conditions and exclusions still apply.”</p>	
<p>Lifesafes</p>	<p>“24VAC35-60-90. Calibration and monitoring visit. D. A certified technician shall be available at the service center during specified hours to answer questions and to deal with any mechanical concerns that may arise with a motor vehicle as a result of the ignition interlock device.</p> <p>LifeSafer Comment: Please note that while certified technicians can answer questions concerning the ignition interlock device in the vehicle, they are not mechanics and cannot be responsible for resolving mechanical issues with the vehicles.”</p>	<p>While technicians may not be mechanics, they do perform pre-installation checks of the vehicles, and in many cases should be able to provide assistance if an installation has an adverse effect on the operability of a motor vehicle. When an improper installation is causing a malfunction, it is expected that a technician can diagnose and correct the situation.</p>

<p>Lifesafer</p>	<p>“24VAC35-60-130. Service Provider Technician Certification.</p> <p>C. The commission may revoke, suspend, or terminate a prior issued Virginia Ignition Interlock Certification Letter for a service provider technician or state director for any of the following reasons:</p> <ol style="list-style-type: none"> 1. The technician or state director has been convicted of a felony; 2. The technician or state director has been convicted of a misdemeanor potentially punishable by confinement within five years prior to the application date or at a time after the application date; 3. The technician or state director fails to demonstrate character and general fitness to warrant a belief by the commission that the duties of a technician will be conducted honestly, ethically, and efficiently in the performance of providing ignition interlock services in the Commonwealth of Virginia; 4. The technician or state director demonstrates the inability to consistently comply with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or 5. The technician or state director fail to demonstrate that they possess the knowledge required to perform ignition interlock services in the Commonwealth of Virginia. <p>LifeSafer Comment: Please define how number 3 above would be determined.”</p>	<p>The regulations are purposely non-specific on this matter since it is impossible to include every circumstance in which a technician or state director might demonstrate they are unfit for duty. A host of scenarios may apply to include both illegal activities and legal, but inappropriate, behavior. Sexual harassment of customers, overcharging offenders, drinking or drug use on the job, public profanity towards the public, etc. are some examples that might qualify. The totality of the circumstances and context of actions will be taken into account.</p>
<p>Lifesafer</p>	<p>“G. In addition to the successful completion of the Virginia Ignition Interlock Certification Exam required for application, the commission may order that a technician or state director performing ignition interlock services in the Commonwealth of Virginia take the state</p>	<p>This suggested language has been incorporated into the proposed regulations.</p>

	<p>certification exam as a refresher course to demonstrate that the technician or state director possesses the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.</p> <p>LifeSafer Comment: The phrase “as a refresher course” implies that there is a state provided course to be taken prior to the certification exam. LifeSafer recommends changing the wording to: “In addition to the successful completion of the Virginia Ignition Interlock Certification Exam required for application, the commission may order that a technician or state director performing ignition interlock services in the Commonwealth of Virginia review requirements and retake the state certification exam to demonstrate that the technician or state director possesses the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.”</p>	
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The nature of VASAP’s work (i.e., transportation safety, alcohol/drug offender education and probation, etc.) has a positive impact on the family. The debilitating effect of alcohol and drug abuse on individuals and the family is well documented. Ignition interlock devices offer protection to the public and family members from alcohol abusers who attempt to drive while impaired. Family members who drive the same vehicle as the offender will be inconvenienced to some degree since they will have to activate the device in the same manner as the offender. However, no family impact changes are expected from the proposed revised regulations other than what already exist.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is 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 action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
24VAC35-60-70	n/a	Currently, ignition interlock devices are not required to be equipped with a camera.	The proposed regulations require all ignition interlock devices to be equipped with a camera (with the exception of those devices installed on motorcycles or mopeds). All interlock vendors serving Virginia have this capability, and many Virginia courts are now requiring the installation of a camera in order to ensure that breath tests are being submitted by the probationer and not someone else.
	24VAC35-60-120	Currently there are no pre-employment testing or certification requirements for state ignition interlock directors or service technicians working in Virginia.	The proposed regulations require that state ignition interlock directors and service technicians obtain a "Virginia Ignition Interlock Certification Letter" from the Commission on VASAP prior to working in the Commonwealth. Part of this process is the requirement that a written test that measures knowledge of Virginia laws and interlock regulations be successfully completed. This requirement should improve the regulatory compliance of the service providers.
24VAC35-60-90		Ignition interlocks must be calibrated using a dry gas reference sample.	The proposed regulations will permit vendors to use either a dry gas or wet bath reference sample when calibrating ignition interlocks. This may reduce the cost of calibration for service providers, and it will permit more ignition interlock models to be used in Virginia since some interlock devices can only be calibrated using a wet

			bath simulator.
24VAC35-60-70		A rolling retest feature is required for all ignition interlock devices. Presently, a rolling retest is required within the first 10-20 minutes after the vehicle is started and then again at random intervals every 20 to 40 minutes. The offender has six minutes in which to submit a breath sample before the vehicle lights and horn activate.	The proposed regulations still require an initial rolling retest within 10-20 minutes of the vehicle starting, however the subsequent random rolling retests will now be less often (every 45-60 minutes). Also, the operator will be given 15 minutes instead of six minutes to provide a breath sample before the vehicle lights and horn activate. This change is in keeping with the Commission's interest in preventing distracted driving. Having fewer rolling retests and permitting extra time to complete the retest will give drivers ample time to pull to the roadside prior to submitting a breath sample.

Note: The above items represent the major changes to the regulations. In addition, there are a number of minor proposed changes in other sections of the regulations that are too numerous to list, however most are of a housekeeping nature or represent insignificant procedural modifications.