



Final Regulation Agency Background Document

Agency name	Commission on Virginia Alcohol Safety Action Program (VASAP)
Virginia Administrative Code (VAC) citation	24 VAC 35-60
Regulation title	Ignition Interlock Regulations
Action title	Proposed new regulation (24 VAC 35-60)
Date this document prepared	July 28, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

New regulations are proposed pertaining to the operation of the Virginia ignition interlock program in compliance with the requirements of §18.2-270.2 of the Code of Virginia. Only minor, non-substantive changes were made to the regulations since publication of the proposed regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

Section 18.2-270.2 of the Code of Virginia 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 systems. During its quarterly meeting of December 5, 2008, the Commission on VASAP reviewed the regulations, directed what

changes were to be made and authorized the executive director to proceed with completion of the regulatory process. The title of the regulations is 24VAC35-60 Ignition Interlock Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 18.2-271.2 of the Code of Virginia establishes the Commission on Virginia Alcohol Safety Action Program (VASAP) in the legislative branch of state government. § 18.2-270.2(A) 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 systems.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Presently, there are no existing ignition interlock regulations. These new regulations are required by §18.2-270.2 of the Code of Virginia. §18.2-271.1 of the Code of Virginia requires any person convicted of a first offense DUI (who has a blood alcohol concentration of 0.15 or above), and any person convicted of a second or subsequent DUI, to have an ignition interlock device installed on his vehicle(s) as a condition of issuance of a restricted driver’s license. Ignition interlocks prevent drivers from starting their vehicles if they have been drinking. This protects the safety of the offender, his family, and the public. Interlocks also serve a probationary function by recording the driving actions of probationers on the unit’s data logger. This regulation is designed to ensure that the interlock devices installed in Virginia are reliable, accurate, and properly installed. Furthermore, it ensures that interlock service centers are easily accessible to all Virginia citizens and that quality service is provided in a timely manner.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The new regulations will provide information regarding the certification of ignition interlock devices and ignition interlock service providers in Virginia. Procedures for the installation, maintenance and removal of ignition interlock devices will be outlined as well as requirements for reporting and record keeping.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

These regulations provide detailed information and outline performance standards for the Commonwealth’s ignition interlock program. Information about what interlock companies need to do to conduct business is included so that multiple vendors can operate in the state, thereby giving customers more options. The regulations further ensure that both the public and ignition interlock service providers are aware of the Commission’s performance expectations and the potential consequences of noncompliance. The regulations provide a mechanism for the government to award contracts to qualifying companies and to cancel contracts with companies that do not meet minimum standards. These provisions should result in better service provision to the citizens of the Commonwealth. No apparent disadvantages to the public or the government are noted; however, provisions in the regulations that prohibit interlock companies from subcontracting installations might bar some interested businesses in Virginia from doing contract work for interlock vendors.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
24VAC35-60-20 Definitions	The definition of “service provider” referred to “the” authorized supplier and installer...	The changed language refers to “an” authorized supplier and installer.	The change reflects that there are now multiple service providers operating in Virginia.
24VAC35-60-40 (C) (1)	The language appearing in the proposed regulation addressed certain criminal offenses that would disqualify a person from working as a service provider employee.	The effect of the regulation has not changed. Minor wording and punctuation changes were made to clarify the intent of the proposed language.	The changes were made to clarify the meaning of the passage. This change was made in response to feedback from the Governor’s office during the proposal stage.
24VAC35-60-40 (C) (2) (c)	The proposed language stated that service provider centers must “meet the offender’s physical needs for access” ...	The revised language states the service providers must “comply with all local, state, and federal laws pertaining to the provision of physical access to persons with disabilities.”	This language ensures compliance with applicable laws and was changed in response to a recommendation from the Governor’s office.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

No public comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

This is a new regulation, thus there are no changes to existing sections.

Regulatory flexibility analysis

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.

Integrity of the Ignition Interlock Program is best served by restricting the delivery of interlock client service to the actual provider of the product (device manufacturer or authorized service provider), thereby effectively preventing the extension of subcontracts to local, small business service providers who lack long-term investment, long-term experience, and/or in-depth knowledge of product and service, and a higher likelihood of neglect of duty and/or illegal exchange of funds. Denial of subcontracting of the interlock service to the consumer is an integral part of protecting the chain of evidence for court testimony and evidentiary procedures.

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 cost of the required installment of ignition interlocks on all vehicles owned by, or registered to, an offender can be quite expensive for a family. Other family members can be inconvenienced by having to learn to use the interlock, and it can be embarrassing for offenders and other family drivers to have to give a breath test before being able to operate their vehicle. Nevertheless, the experience is valuable in educating the offender and modifying his behavior. The presence of the device also serves as a learning tool, providing many "teachable moments" for children to observe the hardships associated with being convicted of DUI. Most importantly, the offender and family are protected from being seriously injured or killed in an alcohol-related crash by having an interlock installed. These impacts on the family already exist due to present interlock law. The proposed new regulations will not have any additional impact on the family.