



townhall.virginia.gov

Final 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 | Revision of existing regulations |
| Date this document prepared | December 21, 2015 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

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, removal and fee collection. 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).

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.

After making changes as a result of feedback received during the public comment period of the proposed stage, the Commission on VASAP took final action on December 11, 2015 to amend the Virginia *Ignition Interlock Regulations*, 24VAC35-60.

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. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

Driving under the influence continues to be the proximate cause of many traffic fatalities in Virginia. Research over the past 20 years has validated the effectiveness of ignition interlocks in preventing impaired driving and reducing DUI recidivism, thereby protecting the health, safety and welfare of the motoring public. As a probationary tool, data obtained from ignition interlocks is used to ensure offenders comply with court orders and receive the most appropriate education/treatment intervention. Ignition interlocks enable offenders to continue to drive to work, keep appointments and meet responsibilities at home, minimizing disruption to families and eliminating the added cost and time of securing alternate transportation.

Virginia's ignition interlock regulations have not been updated in several years. The purpose of the proposed regulations is to ensure that offenders and the public are receiving maximum benefit from the ignition interlock program by incorporating "best practices" that have been learned as a result of new technology, recent research and several years' experience administering the Virginia ignition interlock program.

Substance

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

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.
- an increase in the maximum amount vendors may charge offenders for monthly calibrations.

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.

The proposed regulations specify ignition interlock functional capabilities, and standardize procedures for the installation, calibration, and removal of the devices. Minimum training and certification standards for ignition interlock service provider technicians are included. The proposed regulations will improve safety for the motoring public and enhance the customer experience for offenders. The Commonwealth of Virginia will benefit from better performance by the ignition interlock vendors, thereby reducing the amount of staff time required to train and monitor service center employees and to respond to problems. The only disadvantage to the public or the Commonwealth would be a potential increase in monthly calibration expenses for offenders required to have ignition interlocks installed on their vehicles should vendors raise their service prices as permitted by the changes in these regulations.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 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 (BAIDs) 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.

Family impact

Please assess the impact of this 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 use 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. Also, these regulations permit ignition interlock vendors to charge up to \$15 per month more for calibration fees than presently permitted, thereby potentially impacting offender family budgets and disposable income.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

| Section number | Requirement at proposed stage | What has changed | Rationale for change |
|----------------|-------------------------------|------------------|----------------------|
|----------------|-------------------------------|------------------|----------------------|

| | | | |
|-------------------|--|--|--|
| 24VAC35-60-20 | The definition for “tampering” used the language “without an ignition switch.” | The language “without an ignition switch” has been replaced with “via unconventional means.” | This language change will account for electric vehicles such as Tesla and other future technology that may not require an ignition switch to start a vehicle. |
| 24VAC35-60-20 | The definition for a “violation reset” refers to failing to report for calibration within 35 days. | The time limit of 35 days is changed to 30 days. | This change was made to comply with the Code of Virginia which requires calibrations to be made every 30 days. The current language of “35 days” provides for an unauthorized 5-day grace period. |
| 24VAC35-60-40 A | The current language refers to an RFP (Request for Proposals) being used to solicit contracts with ignition interlock service providers. | More general language is used to require that authorized Commonwealth of Virginia procurement procedures be used. | This language was changed since some process other than an RFP, such as an Invitation for Bids, may be used. |
| 24VAC35-60-40 B | The current language refers to denying subcontracting as an integral part of protecting the chain of evidence for court testimony. | “Offender confidentiality” was added to the language. | These words were added since protection of offender confidentiality is another reason for preventing subcontracting. |
| 24VAC35-60-40 C2b | Ignition interlock technicians are required to testify in court. | Language was added to clarify that ignition interlock technicians are only required to testify if a subpoena has been issued by the court or upon the request of the commission. | Ignition interlock technicians are very busy and may be unnecessarily called to court on a frequent basis by attorneys if these restrictions are not in place. |
| 24VAC35-60-40 C2c | Currently, service provider technicians are not permitted to work until they have been certified by the Commission on VASAP. | Added language permits newly hired technicians to perform ignition interlock services for up to 90 days for training purposes, prior to becoming certified, provided they are directly supervised by a certified technician. | This permits ignition interlock companies the ability to provide hands-on training of new technicians in Virginia service centers, and it gives new employees time to complete the certification requirements and exam. |
| 24VAC35-60-40 C2e | Ignition interlock service providers are required to notify the commission whenever there is a reduction in staff servicing Virginia. | Language was changed to clarify that notification is only required when it involves a reduction of staff actually physically working in Virginia. | It is not the intent of the revised regulations to require reporting of staff reductions of employees located in other states or countries, even if some of their activity involves providing periodic or partial support to |

| | | | |
|-------------------|---|---|---|
| | | | Virginia. |
| 24VAC35-60-40 C3 | Current language requires service center facilities to be inspected at least annually. | Language was added to require service providers to maintain an updated list of service center sites and operational times with the commission. | It is important for the commission to know the operational hours of service centers so that random inspections can be conducted when the service centers are open for business. |
| 24VAC35-60-40 C3c | The proposed regulations required ignition interlock service providers to obtain permission from the commission before electronically storing client files. | Commission approval is no longer required for the electronic storage of offender files. | The technological capabilities of the ignition interlock service providers have expanded to include encrypted storage of data. Electronic storage of information, with the required encryption, provides effective and reliable organization of data for providing client service, analyzing statistical data and safeguarding confidentiality. |
| 24VAC35-60-40 C3e | Ignition interlock service providers are required to replace any closed service facility within 30 days if closure of the facility takes them out of compliance with regulatory requirements for service center availability to clients. Also, clients must be made aware of the address of the new service facility. | The time period for replacing a service center is increased from 30 days to 90 days. The requirement to advise clients of a "new interlock service facility" is changed to read "alternate interlock service facility." | Feedback from ignition interlock service providers indicated that it would be extremely difficult to locate space and open a new service facility within 30 days. Also, a new service facility may not be available immediately, so clients may need to be directed to an alternate facility that is already operational. |
| 24VAC35-60-40 C5 | Interlock service providers are required to submit the name of a permanent state director within 60 days of a position vacancy. | The time period allotted for service providers to name a permanent state director when a vacancy occurs is increased from 60 days to 90 days. | 90 days permits a more reasonable time frame for service providers to screen and hire a qualified employee. |
| 24VAC35-60-50 D2 | Currently a \$130 fee is permitted for complicated installations of ignition interlocks to include vehicles with push button starters and hybrid motor vehicles. | Language is added to permit the \$130 installation fee for any ignition interlock installation requiring more than four hours of labor time when approved by the commission. | Modern vehicles with accessories and equipment such as side air bags make ignition interlocks more time consuming. Most installations should only require about an hour of labor time. Commission approval is required to |

| | | | |
|-------------------|---|---|---|
| | | | charge the higher installation fee due to long labor times since it is conceivable that a technician might take an unreasonable amount of time to make an installation due to inexperience or incompetence. The offender should not be monetarily penalized for this. |
| *24VAC35-60-50 D5 | The maximum allowable fee an ignition interlock service provider may charge an offender for calibration services is \$80. | The maximum allowable fee for calibrations is increased from \$80 to \$95. | Ignition interlock service providers are finding that an increased amount of time is required for installations, calibrations, and removals of ignition interlock devices due to the technology in modern vehicles (e.g.; push button starters, hybrid vehicles, etc.) In addition, photographs will now have to be downloaded at each calibration. Virginia's ignition interlock rates are currently among the lowest in the country, and service provider profitability is reportedly uncertain without a funding increase. |
| 24VAC35-60-50 D6 | Optional insurance to cover theft, loss, or damage to the ignition interlock device must be offered to offenders. | The word "accidental" is being added to clarify the type of damage that is required to be covered by the insurance. Loss of an ignition interlock device is no longer required to be covered by the optional insurance. | Offenders who know that they have recorded violations on the interlock data logger will sometimes "lose" or purposely damage the ignition interlock device. Ignition interlock providers should not be required to replace a device when it is determined that an offender was negligent and lost the device or purposely caused the loss or damage to the unit. |
| 24VAC35-60-50 E | The commission may increase monthly calibration fees by up to | Language was added to permit this fee increase if the technological requirements are | It is very unlikely that this section of the regulations would ever be needed; |

| | | | |
|-------------------|--|---|---|
| | 25% if there is a change in the Code of Virginia requiring the expenditure of additional funds by the service providers to meet new technological requirements. | due to changes in the ignition interlock regulations or the Code of Virginia. | however, such technology as facial recognition, GPS, instant violation reporting, etc. are already on the market, and the service providers would need to be adequately compensated if any new technology was required of them in Virginia by the courts before a law could be changed by the General Assembly. |
| 24VAC35-60-60 B | Current language refers to the suspension or revocation of an ignition interlock device or service facility certification. | Additional clarifying language is added. | The new language is added to clarify that it is the ignition interlock device and/or service center certification that is being suspended or revoked, not the service provider itself. |
| 24VAC35-60-60 C | Current language refers to the suspension or revocation of an ignition interlock device or service facility certification. | Additional clarifying language is added. | The new language is added to clarify that it is the ignition interlock device and/or service center certification that is being suspended or revoked, not the service provider itself. |
| 24VAC35-60-70 F4 | Current language requires a physician's verification of an offender's medical condition when recommending an adjustment to the ignition interlock breath volume requirement. | Language was added to require the physician's documentation to be submitted in a format approved by the commission. | Current medical reports received from physicians often do not provide sufficient details or needed information to make appropriate modifications to the ignition interlock. |
| 24VAC35-60-70 F5 | Current language refers to "ignitions, attempted ignitions, and rolling retests." | For clarification purposes, the current language is replaced with "all completed breath samples." | The replaced language makes allowances for vehicles that do not have traditional ignition systems. |
| 24VAC35-60-70 F9 | Current language permits a 5-day grace period after a required calibration date before the ignition interlock performs a permanent lockout. | The language regarding the 5-day grace period is removed. | The Code of Virginia requires calibrations to be completed every 30 days, and does not provide for a 5-day grace period. |
| 24VAC35-60-70 F11 | Current language requires that ignition interlock devices provide a warning prior to a lockout. | The word "permanent" is added for clarification. | The intent of the requirement is to ensure warnings are provided for impending permanent lockouts, not lockouts due to high blood alcohol |

| | | | |
|-------------------|---|---|---|
| | | | concentrations. |
| 24VAC35-60-70 F13 | Current language requires a lockout warning to be provided at least three days before the required calibration date and a permanent lockout to occur five days after the required calibration date. | The language is changed to require a lockout warning to be provided at least five days prior to a required calibration date, and a permanent lockout to occur on the 31st day after the most recent previous calibration or installation. | The language is changed to comply with the Code of Virginia which does not make provisions for a 5-day grace period after the required calibration date. The change of the warning notice from three days to five days gives offenders greater advanced notice so that they can have more time to schedule a calibration appointment. |
| 24VAC35-60-70 F14 | Current language requires ignition interlock devices to be capable of recording and storing a minimum of 500 interlock events. | The storage capacity requirement is increased from 500 events to 15,000 events. | Some offenders exceed 500 events per month, and modern ignition interlock devices are capable of storing many thousands of events. |
| 24VAC35-60-70 F15 | Current regulatory language refers to “starters” and “starter systems.” | Additional language is added to include “starter relay”. | This additional language more accurately describes the equipment found in modern (push button start) vehicles. |
| 24VAC35-60-70 F19 | Specifications for ignition interlock devices require that they shall not be impacted by such things as dust, smoke, etc. | Language is added to clarify that the ignition interlocks will not be impacted by such things “when used in accordance with manufacturer’s instructions.” | This language is added since some of the listed substances could on rare occasions yield a small positive reading on the ignition interlock if an offender does not operate the ignition interlock as instructed. However, this is very unlikely since all Virginia service providers use alcohol-specific fuel cells in their devices. |
| 24VAC35-60-70 F21 | Current language refers to ignition interlock cameras taking and recording photographs whenever a breath sample is provided. | “Breath samples” is changed to “accepted breath samples” to clarify that photos are only required for breath samples that are actually analyzed by the ignition interlock device. | Photographs are unnecessary if the vehicle is not actually started or operated. |
| 24VAC35-60-80 D2 | Currently, ignition interlock service providers must verify that the offender has valid automobile insurance in effect. | The requirement to verify automobile insurance information is removed. | Virginia law requires offenders to have automobile insurance before operating. The presence of insurance, or lack thereof, does not impact the service provider’s ability to install |

| | | | |
|------------------|--|---|--|
| | | | the ignition interlock, and verifying insurance should not be a responsibility of the ignition interlock company. |
| 24VAC35-60-80 F | Currently, ignition interlock service providers are required to use their own vehicle pre-installation checklist to inspect vehicles. | New language requires the pre-installation and removal inspection checklists to be approved by the commission. | This language was added to ensure that there will be consistency in the way all service providers are inspecting vehicles prior to installation of an ignition interlock and after removal of the device. |
| 24VAC35-60-80 J | Currently, the service provider may determine whether a reported ignition interlock device failure is due to the fault of the offender when emergency towing or roadside assistance is required. | Language is changed to make the Commission on VASAP responsible for investigating and determining the cause of a reported device failure necessitating towing or roadside assistance. | This change ensures a fair process by having a neutral party make the determination of whether device failure is due to the fault of the offender. |
| 24VAC35-60-80 K | Currently, ignition interlock installation fees may not be collected until the work is performed. | The prohibition of collecting the installation fee prior to performing services is removed. | Ignition interlock service providers have reported a growing number of offenders who get an ignition interlock installed before revealing that they do not have sufficient funds to pay for the service. |
| 24VAC35-60-80 K | Optional insurance to cover theft, loss, or damage to the ignition interlock device must be offered to offenders. | The word "accidental" is being added to clarify the type of damage that is required to be covered by the insurance. Loss of an ignition interlock device is no longer required to be covered by the optional insurance. | Offenders who know that they have recorded violations on the interlock data logger will sometimes "lose" or purposely damage the ignition interlock device. Ignition interlock providers should not be required to replace a device when it is determined that an offender was negligent and lost the device or purposely caused the loss or damage to the unit. |
| 24VAC35-60-90 B1 | Currently, service providers are required to offer offenders calibration services every 30 days. | The words "at least" are added in front of "every 30 days." | This clarifies that a service provider must provide calibration services to an offender who desires to calibrate |

| | | | |
|------------------|---|---|---|
| | | | their device at any time prior to the 30-day deadline. |
| 24VAC35-60-90 B6 | Current proposed requirements call for wet bath simulator solutions to be changed prior to every 16th test. | Language was added to require the changing of wet bath solutions either prior to every 30th calibration check (instead of prior to every 16th test) or 30 days, whichever occurs first. Also, the interlock service provider is required to maintain a written or electronic record at every service center facility using wet bath simulators wherein each simulator test is recorded to include the date and result of the test. A sticker, showing the date of the last simulator solution change is also required to be placed on the wet bath simulator. | Changing simulator solutions after 30 tests is consistent with the recommendation of the Association of Ignition Interlock Program Administrators (AIIPA). It is conceivable that an ignition interlock service provider with a low volume of clients would go more than 30 days without performing 30 calibration tests. Wet bath simulator reference solutions contain alcohol which can slowly evaporate over time. Frequent changing of the simulator solution will ensure that ignition interlocks are calibrated accurately. The required logbook or electronic recording of each simulator test and the required sticker on the wet bath simulator will enable inspectors to verify that there is adherence to these requirements. |
| 24VAC35-60-90 B7 | Current language requires dry gas calibration tanks to be maintained at specific temperatures and for elevation reference charts to be kept onsite at the ignition interlock service centers. | The language is changed to require that dry gas tanks be maintained in "a manner consistent with the gas manufacturer's specifications." The requirement to keep elevation charts at service centers is deleted. | The revised language gives more flexibility for the ignition interlock service providers to use different dry gas companies, and allows for changes in dry gas storage protocols. Elevation charts are no longer necessary since the application software now used by ignition interlock service providers compensates for elevation during the calibration process. |
| 24VAC35-60-90 E5 | Current language refers to ignition interlock cameras taking and recording photographs whenever a | "Breath samples" is changed to "accepted breath samples" to clarify that photos are only required for breath samples that | Photographs are unnecessary if the vehicle is not actually started or operated. |

| | | | |
|--------------------|---|---|---|
| | breath sample is provided. | are actually analyzed by the ignition interlock device. | |
| 24VAC35-60-100 D | Currently, ignition interlock service providers are required to use their own vehicle pre-installation checklist to inspect vehicles. | New language requires the pre-installation and removal inspection checklists to be approved by the commission. | This language was added to ensure that there will be consistency in the way all service providers are inspecting vehicles prior to installation of an ignition interlock and after removal of the device. |
| 24VAC35-60-90 E5 | Currently, photographs are required every time an attempt is made to provide a breath sample. | Language has been changed to clarify that photographs are only required for breath tests that are actually analyzed and for missing retests, not for aborted tests. | Photographs are unnecessary if the vehicle is not actually started or operated. |
| 24VAC35-60-100 C | Currently, service providers must verify that all fees have been paid by the offender when submitting a removal report. | The requirement for verification that all fees have been paid by the offender has been removed. | The Commission on VASAP does not need to know this information. The payment of fees is a matter to be resolved between the service provider and the offender. |
| 24VAC35-60-110 B | The current language requires offender information to be kept in locked filing cabinets at the service centers. | The language is changed to clarify that the requirement only applies if confidential offender information is stored temporarily at the service facility. | The language is changed to ensure that any confidential offender information temporarily kept at the service facility is secure. The intent was not to require that all offender files be kept at the service facilities since vendors now send offender files electronically to centralized databases. |
| 24VAC35-60-110 B | The current language specifies a number of items the vendor must provide to the ASAP about the offender vehicle. | The language is modified due to redundancy. | The specific items currently requested such as vehicle make, model, VIN, etc. all appear on the vehicle registration. |
| 24VAC35-60-110 D6 | The current language requires that the vendor provide the make, model, and serial number of installed ignition interlock devices to the ASAP. | New language is added to require that the same information be provided about the camera that is installed with the ignition interlock. | This change is required due to the mandatory installation of cameras with the ignition interlock device. |
| 24VAC35-60-110 D14 | Currently, photographs are required every time an attempt is made to provide a breath sample. | Language has been changed to clarify that photographs are only required for breath tests that are actually analyzed and for missing retests, not for aborted tests. | Photographs are unnecessary if the vehicle is not actually started or operated. |
| 24VAC35- | Currently, all training and | Language has been added for | The intent was for the |

| | | | |
|--------------------|--|---|---|
| 60-120 5 | advertising materials disseminated by the ignition interlock vendors in Virginia must be approved by the Commission on VASAP. | clarification regarding “training” materials. | Commission on VASAP to approve “offender” training materials to be used with program participants, not to require review of training materials that ignition interlock service providers use for training of their own personnel. |
| *24VAC35-60-120 12 | Currently, ignition interlock service providers are not permitted to modify or remove an ignition interlock device that is the subject of an investigation by the Commission on VASAP. | Language is added to allow the Commission on VASAP to have an independent, qualified expert provide an evaluation to determine the cause and cost estimate for vehicle repairs/replacement in the event an offender alleges that his vehicle is damaged as a result of the ignition interlock device or service provider workmanship. | This provision gives offenders an opportunity to be reimbursed for vehicle damages resulting from a malfunctioning ignition interlock device or improper technician workmanship. |
| 24VAC35-60-130 A | Current language requires ignition interlock technicians to be fully certified before performing any ignition interlock services. | Added language permits newly hired technicians to perform ignition interlock services for up to 90 days for training purposes, prior to becoming certified, provided they are directly supervised by a certified technician. | This permits ignition interlock companies the ability to provide hands-on training of new technicians in Virginia service centers, and it gives new employees time to complete the certification requirements and exam. |

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. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

| Commenter | Comment | Agency response |
|--|---|--|
| Draeger Ignition Interlock (via email) | Re: the requirement that state directors and service technicians for all ignition interlock vendors 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. Will the commission disclose its testing validation information? | The content of the written test will be taken directly from the applicable portions of the Code of Virginia and the Commission on VASAP’s Ignition Interlock Process and Procedure Manual. It is expected that all ignition interlock technicians and state directors know this information. |

| | | |
|---|---|---|
| | | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: Currently, there are approximately 60 state directors and technicians in the Commonwealth who will be grandfathered in. In the future no more than 10 certification applications per year are expected. The initial test will be provided free of charge. However, if the applicant fails in his or her first try, any subsequent tests will be provided at a cost of \$250 each. Thus, depending on the outcome of the initial test, state directors and technicians may or may not incur test fees.</p> <p>Draeger’s recommendation would be to remove the cap in this regulation. We suggest planning on approximately 40-50 statewide. Should you deem it best to leave the number at 10, how will you proceed if that amount is exceeded? How will this apply to technicians that service out of state clients?</p> | <p>The reference to 10 certification applications is just an estimate. There is no cap on the number of certification applications that may be submitted per year. This requirement does not apply to out-of-state technicians.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: In addition to the test fee, applicants are likely to incur costs in terms of their time devoted to preparing for and taking the exam. VASAP estimates that it may take approximately 4 hours to study the curriculum and the test itself may take up to 2 hours to complete. Moreover, the test will be offered in Richmond. Since not all of the state directors and technicians perform their services in Richmond area, many applicants will likely incur travel and lodging expenses to obtain this certification. Furthermore, since the certification must be obtained prior to employment, it may introduce some delays and contingencies in the hiring process for providers. Draeger suggests that this is unreasonable. Manufacturers should be allowed to train new employees after hiring before they</p> | <p>The certification examination will only have to be successfully completed once. An exception to this would be if some concern arose about the competency of the technician. In that case, the commission could require the technician to complete the certification test again. An online version of the test will not be permitted in order to ensure the integrity of the certification process and to give the commission staff an opportunity to personally meet new technicians for orientation. The commission agrees that a probationary period prior to obtaining certification is a reasonable policy. Therefore, the final version of the regulations will include the provision for a 90-day probationary period during which newly hired technicians may work under the direct oversight of a certified technician prior to obtaining their own certification.</p> |

| | | |
|---|---|--|
| | <p>are required to pass this certification.</p> <p>What will be the frequency of the administration of these exams? Would an online version be considered? A 90 day probation period is proposed where all new technicians would work under a certified technician.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: The proposed changes will allow providers to charge offenders no more than 10 % over the replacement cost of the ignition interlock device if it is damaged or lost and there is no insurance coverage.</p> <p>How is the replacement cost defined? How is the department verifying? Do we understand it must be at least COGS plus overhead plus 10%? Our client contract defines replacement costs for damaged or lost devices; the actual device cost varies significantly due to a multitude of factors.</p> | <p>The commission does not plan to change this language in the regulations. The replacement cost is being defined as the price of the actual expense incurred by the ignition interlock provider to replace the ignition interlock hardware. The commission recognizes that associated expenses exist when a device is lost, stolen, or damaged, and accordingly permits service providers to charge 10% over the replacement cost of the device.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: Currently, 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 as it will permit more ignition interlock models to be used in Virginia. Some interlock devices can only be calibrated using a wet bath simulator.</p> <p>Draeger doesn't believe that wet-bath standards are safe to be used in the Interlock environment. When Draeger began its Interlock-supplier service in 1996, it was a given that we utilized wet-bath standards in our service stations since Draeger is a manufacturer of wet-bath simulators. However, we soon</p> | <p>Both dry gas and wet bath calibration have advantages and disadvantages. When used properly, wet bath simulators are valid and reliable, industry accepted, and widely used in the calibration of ignition interlock devices. Permitting the use of wet bath simulators may reduce the cost of calibrations for the vendor and make more ignition interlock devices eligible for use in Virginia since some models on the market can only be calibrated using wet bath simulators. The Commission on VASAP recognizes that the environmental conditions in service bays present some challenges for both dry gas and wet bath simulator use. Language is being added in the regulations that requires wet bath simulators to be housed and used in temperature controlled, environmentally stable areas. Also, simulator solutions will be required to be changed after every 30th test or every 30 days, whichever occurs first. A written logbook or electronic database of all simulator tests will be required to be maintained and available onsite. The Commission on VASAP, through its inspection process of ignition interlock</p> |

| | | |
|--|--|--|
| | <p>noticed that some Interlocks returned from the field were not calibrated properly, producing low readings. Our trouble-shooting revealed that the root of the problem was the simulator or rather, the way simulators are handled and operated in Interlock service shops. A simulator's task is it to warm the ethanol/water standard to a precise temperature of 34° Celsius (93.2°F), as this is considered a person's average exhalation temperature. The solution temperature is very critical because the alcohol-vapor concentration changes by 6.58% for every degree Celsius! Furthermore, a simulator is considered a laboratory tool used in an environmentally stable and stationary setting. However, we realized that an Interlock shop is everything but that. The car-bays of most Interlock shops are not air conditioned and the doors are usually open while the Interlock is being serviced. In other stations, the monthly service takes place outside, in the open. The major problem with that is that simulators will overheat as soon as the ambient temperature is 25°C (77°F) or greater. Consequently, the head-space gas has a much higher alcohol concentration than what the solution label says. This resulted in mis-calibrated Interlock units. The other problem is that the simulators are not used in a stationary situation. The motion of carrying the simulator to and from the Interlock (while attached to 110 Volts!) is causing the solution to splash to the metal lid. This lid is however about 10 degrees warmer (heated by the motor) than the solution to prevent condensation, causing a very high alcohol concentration. The opposite in the winter time, when the car-bays are very cold. This causes condensation in the connecting tube and cooling of the glass jar, both resulting in very low alcohol concentrations. Dry-gas cylinders on the other hand are temperature</p> | <p>service centers, will ensure that all wet bath simulators are functioning properly.</p> |
|--|--|--|

| | | |
|---|---|--|
| | <p>tolerant and can easily be moved around. And the dry-gas standard maintains its ethanol concentration from the time the cylinder is full until it is empty. Compared to the solution standard, every time you use the simulator, the alcohol concentration becomes less and less. In short, the simulator and wet-bath standards are not fit for the Interlock application at all. Hence, Draeger suggests this be removed. We feel that by using wet bath, the accuracy of the program will be reduced.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: In the proposed regulations, "technician" means a service provider employee who installs, calibrates, or removes interlock devices in the Commonwealth of Virginia.</p> <p>Draeger recommends that next to the word "removes," add the text "and provides associated services..." Hence, the definition of "Technician" would read, ""Technician" means a service provider employee who installs, calibrates, removes and provides associated services for interlock devices in the Commonwealth of Virginia."</p> | <p>The commission believes the current definition is sufficient and does not plan to change this language.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: A service provider seeking to contract with the commission shall submit... The authorized service provider must be able to ensure that technicians are trained and available to testify in court if required for noncompliance hearings... shall provide expert or other required testimony in any civil, criminal, or administrative proceedings as to the method of manufacturing the device, ignition interlock functionality, and the testing protocol by which the device is calibrated and serviced.</p> <p>Draeger suggests that the verbiage</p> | <p>The Commission on VASAP concurs with this recommendation and has added similar language to the regulations.</p> |

| | | |
|---|--|---|
| | <p>“Upon request from VASAP and/or properly served via a court order,” be added.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: 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 employee performing any ignition interlock services in the Commonwealth of Virginia.</p> <p>Please clarify. Does the VASAP mean 10 business days or calendar days? Also, how quickly will you administer the test after notification?</p> | <p>Reference to “10 days” means calendar days. In situations where business days are required, the time period will be specified as “business days.” The certification test can be administered within 24 hours of notification.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: The service provider shall notify the commission at least five business 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>Does this refer to in-state employees only? Also, would this mean only if we have to change hours due to a technician leaving? Or, is this for any change, even if we maintain the same service?</p> | <p>The word “serving” in the regulations is being changed to “in” to clarify that this requirement refers only to in-state employees. This notification applies to all reductions in staff, even if the same level of service is reportedly maintained.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: Maintain offender records in a manner that complies with federal confidentiality guidelines. All offender files, payment receipts, and other identifying information shall be located in locked filing cabinets in one centralized location in the Richmond, Virginia area. Electronic storage of client files shall be permissible if approved by the commission and, if approved, shall be encrypted and secured to prevent third party access.</p> | <p>The language requiring approval by the commission shall be removed so that the regulation will read, “Electronic storage of client files shall be encrypted and secured to prevent third party access.”</p> |

| | | |
|--|---|---|
| | What will we need to do for approval? | |
| Draeger Ignition Interlock (via email) | <p>RE: Replace an ignition interlock service facility within 30 days whenever the closing of an interlock service facility results in noncompliance with the requirement to possess a facility within a 50-mile radius of every residence in the Commonwealth of Virginia. The service provider is also required to notify offenders of the closure date and the address of the new interlock service facility within 15 days of the closure date.</p> <p>May we suggest 90 days vice 30 due to the need to complete legal processes including, but not limited to leases, business licenses etc.</p> | The Commission on VASAP concurs with this recommendation and has changed the requirement to 90 days. |
| Draeger Ignition Interlock (via email) | <p>RE: Provide the commission a minimum of 20 days' notice prior to the scheduled opening date of a new location. This requirement allows the commission reasonable time to schedule an inspection of the new facility prior to opening services to ASAP offenders.</p> <p>Will VASAP continue to provide the inspection checklist so the requirements are clear?</p> | Yes |
| Draeger Ignition Interlock (via email) | <p>RE: Submit documentation that the service provider will provide a full-time state ignition interlock coordinator director who will...In the event of a state director vacancy, service providers shall submit to the commission the name of an interim state director within 10 days of the vacancy and the name of a permanent state director within 60 days of the vacancy.</p> | The Commission on VASAP agrees that 60 days may not be adequate time to appoint a permanent state director and will increase the time to 90 days. |

| | | |
|---|---|--|
| | <p>Would the Commission consider the submission of the name of a permanent state director within 120 days vice 60? Draeger puts great emphasis on hiring top quality employees to support our partners. With our experience and knowledge, it could potentially be very difficult to find an appropriate individual to serve as the VA state representative within a 60 day turnaround time. The individual named as the interim director would continue to fulfill the requirements during the hiring time.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: 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 ...</p> <p>Draeger suggests adding: “and incorrect answers will be provided after the first exam, to include the correct answers to teach technicians errors made on the initial exam.” Also, suggest to reduce the retest fee to 150.00.</p> | <p>No wording changes are anticipated in this section. The \$250 is only charged for retests. All answers to the certification test may be found in the Code of Virginia or the Commission on VASAP’s Ignition Interlock Process and Procedure Manual.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: A \$10 monthly ignition interlock administrative fee to the Commission on VASAP for each offender with an ignition interlock installed until the device is removed for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the ignition interlock services were provided.</p> <p>Draeger suggests leaving the fee submission due date that accompanies the offender list as it</p> | <p>No change is expected in this section. Most vendors are capable of producing this information in one day.</p> |

| | | |
|---|---|--|
| | <p>is now, on the 15th of each month. This would better allow for the processing time to evaluate the offender list and schedule appropriate payment. Requiring an earlier date could result in an increase in errors due to incomplete data which would increase the workload of both the manufacturers and the state.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: \$0 for an ignition interlock removal.</p> <p>Draeger suggests including this as a \$50.00 - \$65.00 fee.</p> | <p>No change to the fee schedule is anticipated for ignition interlock removals.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: \$80 plus applicable taxes for monthly ignition interlock calibrations or monitoring, inclusive of the monthly administrative fees to be paid to the commission and servicing ASAP.</p> <p>Draeger recommends that if weekend services are requested, an additional 25.00 charge may be implemented onto any fee. This would be disclosed to customers and only utilized at his/her request.</p> | <p>The Commission on VASAP does not plan to add a fee for weekend service.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: \$8.00 per month for optional insurance to cover theft, loss, or damage to the ignition interlock and its components.</p> <p>Draeger requests this fee be \$10.00 vice \$8.00 since cameras are being required.</p> | <p>The Commission on VASAP does not plan to raise this fee.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: \$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls.</p> <p>Draeger suggests no 100 mile limit on this requirement.</p> | <p>The Commission on VASAP does not intend to increase the mileage limit since all vendors are required to have a service facility located within 50 miles of every residence in the Commonwealth.</p> |

| | | |
|---|--|--|
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: \$50 for violation resets, when the violation is determined to be due to the fault of the offender.</p> <p>Draeger would also like to see a \$50.00 fee included for “unlock codes.”</p> | <p>This is already included in the proposed regulations.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: VAC35-60-60. Cancellation, suspension, and suspension or revocation of manufacturers, service providers, and ignition interlock devices ignition interlock device or service facility certification. If such cancellation, a suspension, or revocation of an ignition interlock device or service facility certification occurs, the manufacturer or service provider may request (within 15 days of notification), a hearing with the commission to contest the decision.</p> <p>Would this be business days or calendar days?</p> | <p>Reference to “days” refers to calendar days unless specified otherwise.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: 24VAC35-60-70. Ignition interlock device specifications. D. The manufacturer or service provider shall provide certification from an independent laboratory that its ignition interlock device has been tested in accordance with the most current model specifications published in the Federal Register by the National Highway Traffic Safety Administration (57 FR 11772-11787 (April 7, 1992)), Administration. The manufacturer or service provider is required to provide a certified affidavit that the ignition interlock device model complies with all applicable state standards, including written documentation, current within five years, from either a certified testing laboratory or a National Highway Traffic Safety Administration testing lab...</p> <p>To clarify, is it the affidavit that has to be current within five (5) years? If there have not been modifications</p> | <p>Yes, that is correct.</p> |

| | | |
|--|---|---|
| | to the device, the earlier testing would still be valid in the absence of new requirements. Correct? | |
| Draeger Ignition Interlock (via email) | <p>RE: The internal memory of the ignition interlock device shall be capable of recording and storing a minimum of 500 interlock events and shall enter a service reminder if the memory reaches 90% of capacity.</p> <p>With today's technological advances, requiring a minimum of 500 events seems unnecessarily low. Our experience has illustrated the potential to easily exceed 30,000 events per month. Therefore, Draeger proposes the internal memory being capable of recording and storing a minimum of 30,000 interlock events.</p> | The Commission on VASAP will require ignition interlocks to be capable of recording a minimum of 15,000 events per month. |
| Draeger Ignition Interlock (via email) | <p>RE: 24VAC35-60-70. Ignition interlock device specifications. The ignition interlock device shall be designed and installed in such a manner as to minimize opportunities to be tampered with, altered, bypassed, or circumvented for tampering, alteration, bypass, or circumvention. The ignition interlock device shall not spontaneously bypass the ignition system nor shall it be able to be made operational by any mechanical means of providing air to simulate alveolar breath....</p> <p>Draeger suggests altering this sentence to allow inclusion of alternate vehicle types that may not have traditional ignitions such as electric or hybrid vehicles. For example, rather than using the term "ignition system," possibly use "the starter relay."</p> | The phrase "or starter relay" will be added to supplement the "ignition system" language. |
| Draeger Ignition Interlock (via email) | RE: The readings of the ignition interlock device shall not be affected by humidity, dust, electromagnetic interference, | The functionality described is useful and may be employed by ignition interlock service providers; however, most ignition interlock models in use at this time are not capable of |

| | | |
|---|--|---|
| | <p>smoke, exhaust fumes, food substance, or normal automobile vibration.</p> <p>Draeger recommends the device should also have the capability to detect mouth alcohol. Adding this functionality could decrease the number of positive tests due to the presence of alcohol in the mouth cavity, in turn reducing the workload for the state while improving compliance and satisfaction of the participant.</p> | <p>differentiating alcohol found in deep lung air versus alcohol found in residual (or tidal) mouth alcohol. Therefore, this functionality will not be required at this time.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: The ignition interlock shall be installed with a fully functional camera that is equipped to record the date, time, and photo of all persons providing breath samples to the ignition interlock device; however, this requirement shall not pertain to motorcycles and mopeds. In addition, service providers are required to present a reference photo of the offender to confirm the offender's identity.</p> <p>Draeger suggests that the ignition interlock device contain technology able to limit testing to the driver's seat and that the device can detect a change in the driver of the vehicle from the time of the initial test and the time driving commences.</p> | <p>While such technology exists, most ignition interlock devices in use do not have this capability. Therefore, no changes are anticipated in this part of the regulations.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: The ignition interlock device shall allow the motor vehicle to be restarted within two minutes of the engine being stopped without requiring an additional test to permit a free restart.</p> <p>Please define the time period in which this must be done.</p> | <p>Please refer to the definitions section of the regulations for this information.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: An ignition interlock device shall require a rolling retest within the first five minutes after the start of the motor vehicle and randomly</p> | <p>The Commission on VASAP does not intend to change this language.</p> |

| | | |
|---|--|--|
| | <p>thereafter at least once every 45 to 60 minutes as long as the motor vehicle is in operation.</p> <p>Draeger suggests that the first rolling retest be within 10 minutes.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: A deep lung breath sample at or above the fail point or any 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 breath test is provided.</p> <p>Could the commission provide an example of these light sources?</p> | <p>The Commission on VASAP is open to a number of different types of light sources as long as it is permissible under the Code of Virginia and state motor vehicle inspection requirements. Ignition interlock vendors should bring their ideas to the Commission on VASAP for consideration.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: 24VAC35-60-80. Ignition interlock device installation. G. The installation shall include all of the tamper-resistant features required by the service provider such as unique seals, epoxies, or resins at all openings and exposed ignition interlock electrical connections so as to make evident all attempts to circumvent or otherwise alter the normal functioning of the ignition interlock. At a minimum, the service provider shall ensure that the vehicle starter wire connected to the ignition interlock is secured with uniquely identifiable heat shrink tubing or its equivalent and that all connected wires are wrapped with uniquely labeled service provider tape.</p> <p>Draeger would suggest that soldering is required at install as well as at removal. This will ensure the best quality installation, which is necessary to optimize device performance and ensure proper functionality.</p> | <p>While the Commission on VASAP concurs that soldering is required at removal in order to restore a vehicle to its original state, other methods of connecting wiring have proven to be reliable for the temporary installation of an ignition interlock device, therefore no change in this requirement is anticipated. Vendors, however, may certainly use soldering when making installations if they desire to do so.</p> |

| | | |
|---|---|---|
| | | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: 24VAC35-60-90. Calibration and monitoring visit. Calibrate the ignition interlock device at each service appointment using a dry gas or wet bath reference sample. The service provider shall ensure that dry gas and wet bath reference values are adjusted in a manner approved by the commission.</p> <p>Again, Draeger strongly suggests eliminating wet bath. Please see rational as noted in item #5 above.</p> | <p>Please see the previous comments with regard to wet bath simulators.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: Store dry gas alcohol standard tanks in an environment where the temperature range remains between 10°C and 40°C. The dry gas tanks shall have a label attached that contains the components and concentration of the reference value of the gas, an expiration date that shall not be longer than three years from the date of preparation, and the lot or batch number. Dry gas alcohol standards must be certified to a known reference value and be traceable to the National Institute of Standards and Technology. The reference value shall be adjusted for changes in elevation and pressure. Interlock service facilities using a dry gas standard shall possess an elevation chart used to determine the proper reference value for the elevation where the gas standard is being used and a certificate of analysis from the dry gas standard manufacturer. Dry gas tanks shall be secured in a manner as to prevent harm to the public.</p> <p>Draeger suggests rather than storing the dry gas where the temperature range is from 10° - 40 ° C, change this requirement to read “store within the gas manufacturers’ specifications.” Also, in reference to the above requirement of the service facility having an elevation chart, Draeger suggests to add</p> | <p>The Commission on VASAP concurs with the language change to require that dry gas tanks be stored in compliance with the gas manufacturer’s specifications. The commission also concurs with the requirement that elevation reference values be required in the software used by ignition interlock vendors to calibrate devices. These changes are included in the final version of the regulations.</p> |

| | | |
|---|--|---|
| | <p>verbiage that will allow the service facility to have this elevation chart and corresponding reference value in the PC program used to calibrate the interlock.</p> | |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: 24VAC35-60-90. Calibration and monitoring visit. Collect the monthly monitoring fee from the offender. If an offender who has not been declared to be indigent by the court is three or more months delinquent in payments, the service provider may, in its discretion, refuse to provide calibration services, but shall not remove the ignition interlock device without authorization from the commission.</p> <p>Draeger suggests changing this to two months vice three. Then, create a CL8 form for vendors to give or mail to the client should this occur.</p> | <p>The Commission on VASAP does not intend to change this language.</p> |
| <p>Draeger Ignition Interlock (via email)</p> | <p>RE: Conform to other calibration requirements established by the commission, as applicable.</p> <p>Please clarify and/or expand. Are there other requirements not required herein?</p> | <p>There are no additional requirements. This language is included to allow some flexibility in the case of new technological developments or changes in best practices as a result of scientific research.</p> |
| <p>Smart Start Interlock (via public comment hearing)</p> | <p>RE: Ignition interlock service center subcontracting.</p> <p>Smart Start recommends that subcontracting be permitted for up to 10 locations in the state in order to more efficiently service rural areas. Smart Start believes that effective service can be provided by a subcontractor since the employees would be following the same standards, training and certification requirements. Also, confidentiality would not be an issue since no data is maintained on local hard drives.</p> | <p>Please see the Department of Planning and Budget's Economic Review and the commission's response for VASAP's objection to subcontracting.</p> |
| <p>Smart Start</p> | <p>RE: Elimination of the requirement</p> | <p>State ignition interlock directors should be</p> |

| | | |
|---|---|--|
| <p>Interlock (via public comment hearing)</p> | <p>that the service provider’s state director reside in the Richmond, VA area.</p> <p>Smart Start recommends that the state director still be required to reside in the Richmond area.</p> | <p>permitted to reside in the community of their choice. The only requirement is that they are able to report in person to the commission office or the general assembly within a few hours’ notice.</p> |
| <p>Smart Start Interlock (via public comment hearing)</p> | <p>RE: Ignition interlock fees</p> <p>Smart Start recommends that a fee of \$50 be permitted for ignition interlock removals and a 25% increase in calibration fees be made to cover the added expense of camera installation and maintenance.</p> | <p>No removal fee is being authorized, however a change in the calibration fee from a maximum of \$80 to \$95 is being included in the final regulations.</p> |
| <p>Smart Start Interlock (via email and public comment hearing)</p> | <p>RE: <u>24VAC35-60-40. Approval of manufacturers and service providers</u></p> <p>Section B: Integrity of the Ignition Interlock Program shall be upheld by restricting the delivery of interlock client service to the actual provider of the product (i.e. 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. 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.</p> <p>Smart Start recommends that the Commission of VASAP allows subcontracting in Virginia. The Department of Planning and</p> | <p>Please see the Department of Planning and Budget’s Economic Review and the commission’s response for VASAP’s objection to subcontracting.</p> |

| | | |
|--|---|--|
| | <p>Budget's Economic Impact Analysis stated the "practice of subcontracting which is currently prohibited by regulation appears to have the potential to be a viable alternative to reduce compliance costs"; further they noted that subcontracting is a very common business practice across many industries. We would recommend allowing each vendor have a maximum of 10 subcontractors in the Commonwealth, in addition to their corporate service centers.</p> <p><u>Rationale:</u> The addition of subcontractors would increase client access to service, especially the rural areas, and allow them the convenience of service every day of the week. The use of subcontractors allows these small businesses to invest in the safety of their community. Concerns over reporting chain of custody is protected by secure software driven reporting; data never resides on a computer hard drive, not even temporarily. Rules and regulations developed by VASAP serve as authority of the contractors as well; contractors abide by the same standards as corporate locations; technicians still have to pass a test to qualify. This business model is used throughout the U.S. The concern from other state program administrators are caused by those states not having strong rules and regulations in place. Virginia is not the only state that supervises offenders on probation; Texas and New York are judicially administered programs with large populations, which allow a mix of corporate and sub-contractors and provide evidence with good management that subcontracting</p> | |
|--|---|--|

| | | |
|---|--|---|
| | <p>services does not lower quality. We respectfully request the use of a combination of contractors and corporate location, and believe there will be no compromise of integrity by allowing a subcontracting model.</p> | |
| <p>Smart Start Interlock (via email and public comment hearing)</p> | <p>RE: Section C (5): <u>Submit documentation</u> that the service provider will provide a full time state ignition interlock coordinator <u>director</u> who will work exclusively with the Virginia interlock program and reside in the Richmond, Virginia area program.</p> <p><u>Recommendation:</u> We recommend that the state director reside in the Richmond, VA area. This requirement was in the original Rules and Regulations.</p> <p><u>Rationale:</u> We believe it establishes interest in the program and accessibility to the Commission office and staff.</p> | <p>State ignition interlock directors should be permitted to reside in the community of their choice. The only requirement is that they are able to report in person to the commission office or the general assembly within a few hours' notice.</p> |
| <p>Smart Start Interlock (via email and public comment hearing)</p> | <p><u>RE: 24VAC-35-60-50 Fees:</u></p> <p>Section B (4) <u>A \$10 monthly ignition interlock administrative fee to the Commission on VASAP for each offender with an ignition interlock installed until the device is removed for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later</u></p> | <p>The Commission on VASAP recognizes the increased costs ignition interlock service providers are encountering with technologically advanced automobiles and the installation of cameras. Accordingly, a recommendation to permit an increase in monthly calibration fees from a maximum of \$80 to a maximum of \$95 is included in the final regulations. Whether an ignition interlock provider chooses to raise the monthly calibration fee will be determined partially by market forces.</p> |

| | | |
|-----------------------------------|--|--|
| | <p><u>than the 10th day of the month following the month when the ignition interlock services were provided.</u></p> <p><u>Section C A \$10 monthly ignition interlock administrative fee shall be paid by the service provider directly to the local servicing ASAP for each offender with an ignition interlock device installed until the device is removed-offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the applicable ignition interlock services were provided.</u></p> <p><u>Recommendation:</u> We recommend an increase of 25%, (\$12.50 for monthly monitoring fee, \$12.50 paid to the local ASAP program).</p> <p><u>Rationale:</u> Today, a total of \$20.00 is taken from the Monthly monitoring fee: \$10 paid to the local ASAP program and \$10 going towards the Commission of VASAP. Manufacturers are not allowed to charge additionally for these fees. This 25% increase would apply to the Local ASAP and Commission fees charged to individuals (\$12.50 for monthly monitoring fee, \$12.50 paid to the local ASAP program) due to the expansion of requirements with increased monitoring that picture review and offender compliance bring.</p> | |
| <p>Smart Start Interlock (via</p> | <p>RE: Section D (1) and D (4):</p> | <p>No fee is authorized for removal of the ignition interlock device, however these expenses</p> |

| | | |
|--|--|---|
| <p>email and public comment hearing)</p> | <p>Service providers may charge offenders for ignition interlock services at rates up to, but not to exceed, the following:</p> <p style="padding-left: 40px;"><u>4. \$0.00 for an ignition interlock removal</u></p> <p><u>Recommendation:</u> \$50.00 removal fee.</p> <p><u>Rationale:</u> The removal of the device takes approximately 30 minutes. We are required to restore the vehicle to its preinstall condition, reconnect all severed wires and complete a post inspection checklist documenting the vehicle did not suffer damage, and place a copy in the offender's file. These requirements require technician's time and skill.</p> | <p>should be covered by the recommended increase in calibration fees.</p> |
| <p>Smart Start Interlock (via email)</p> | <p><u>Section D (5): \$80 plus applicable taxes for monthly ignition interlock calibrations or monitoring, inclusive of the monthly administrative fees to be paid to the commission and servicing ASAP.</u></p> <p><u>Recommendation:</u> We recommend the monthly calibration fee: \$100, per month. This total includes camera.</p> <p><u>Rationale:</u> This is an increase of 25% from the previous contract and the reasoning behind this is the commission recognizes that there needs to be a 25% increase for enhanced technological capabilities and camera is an example of enhanced technological capabilities.</p> | <p>The permissible maximum monthly calibration fee is being raised from \$80 to \$95.</p> |

| | | |
|--|---|--|
| <p>Smart Start Interlock (via email)</p> | <p>Section D (6): <u>\$8.00 per month for optional insurance to cover theft, loss, or damage to the ignition interlock and its components.</u></p> <p><u>Recommendation:</u> Revise language to “\$8.00 per month for optional insurance and/or theft protection plan to cover theft, loss, or damage to the ignition interlock and its components.”</p> <p>Consider revising the option of offering insurance for ‘theft of the device only’ or ‘damage to the device’ to offenders to also include theft protection that is already offered by some manufacturers.</p> <p><u>Rationale:</u> The recommended language covers all types of insurance and protection plans offered by vendors. The current proposed language provides an incentive for offenders to be noncompliant to the VASAP program by claiming loss or accidental damage for only \$8 per month. An offender can “accidentally” lose the hand set, or “accidentally” damage the relay and an entire 30 days of data is lost, which might have contained violations that the offender did not want VASAP to be informed of. If manufacturers would like to offer “optional insurance” then it should be optional to the manufacturer to offer it. The rationale is that the proposed “optional insurance” should not be the only type of insurance offered by the manufacturer. Again, the current proposed language provides an incentive for offenders to be noncompliant to the VASAP program by claiming loss or accidental damage to equipment and data, when these certainly should be viewed as tampering and</p> | <p>The word “accidental” is being added to clarify the type of damage that is required to be covered by the insurance. Loss of an ignition interlock device is no longer required to be covered by the optional insurance.</p> |
|--|---|--|

| | | |
|---|---|---|
| | <p>circumvention violations.</p> <p>An offender deliberately destroying a handset, camera, relay, etc. should not be allowed to walk away with only an out of pocket expense of an \$8 fee. This should not be the only consequence to tampering with or destroying equipment.</p> <p>Insurance and theft protections limits and liabilities should be clearly stated on the lease agreement, what it covers and what is does not cover. Responsibilities and requirements of the offender should be transparent on how to maintain equipment in the lease agreement. Therefore, the offender is informed of these responsibilities, and the consequences of not adhering to them. They sign the lease agreement. They therefore cannot legitimately provide the excuse, I did not know, or no one told me.</p> | |
| <p>Smart Start Interlock (via email and public comment hearing)</p> | <p>Section D (7): <u>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.</u></p> <p><u>Recommendation:</u> We do not think it necessary by regulation that VASAP is setting up pricing on replacement costs of ignition interlock devices. It would be helpful if VASAP would clarify the need of this section. Please consider eliminating the requirement.</p> <p><u>Rationale:</u> This provides an additional opportunity to provide an inexpensive incentive for offenders</p> | <p>No changes in the fees for optional insurance are anticipated; however, wording was changed to clarify the scope of the required insurance coverage (see previous comments).</p> |

| | | |
|---|--|--|
| | <p>to lose or damage equipment. The 10% overage does not take into account the lifetime of revenue from a device, or the total cost of repair and replacement. If VASAP is concerned for the offender, we recommend placing a maximum of \$2500 that manufacturers can charge offenders for a total system loss, and require this to be clearly stated on the lease agreement.</p> <p>The combination of manufacturers to provide \$8 insurance when equipment is destroyed and only charging offenders 10% over replacement cost may be detrimental to the long term goals of Virginia returning offenders to healthy driving habits. Damage to equipment is an industry norm, and these two requirements in combination yield a cheap alternative to many offenders who do not welcome product use, and would rather not face a violation report and the consequences there after.</p> | |
| <p>Smart Start Interlock (via email and public comment hearing)</p> | <p><u>Section D (8): \$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls.</u></p> <p><u>Recommendation:</u> \$100 plus mileage.</p> <p><u>Rationale:</u> This revision is to assist in covering all necessary expenses: technician hourly pay, mileage paid to technician, potential loss of business.</p> | <p>No fee change is being made for this service.</p> |
| <p>Smart Start Interlock (via email and public comment hearing)</p> | <p><u>24VAC35-60-70 Ignition Interlock device specifications:</u></p> <p>Section I (1): A rolling retest feature is required for all ignition</p> | <p>No changes are being made to the proposed text. The Commission on VASAP feels the new times for the initial rolling retest and subsequent rolling retests will still accomplish public safety objectives while providing less</p> |

| | | |
|--------------------|--|--|
| | <p>interlock devices. <u>For rolling retests:</u></p> <ol style="list-style-type: none"> 1. An ignition interlock device shall require a rolling retest within the first 10 to 20 <u>five</u> minutes after the start of the motor vehicle and randomly thereafter at least once every 20 45 to 40 60 minutes as long as the motor vehicle is in operation. <p><u>Recommendation:</u> Revert to original language of the first rolling retest occurring 10 to 20 minutes after the engine is started. Consider revising the requirement for the subsequent rolling retests to occur every 30 minutes.</p> <p><u>Rationale:</u> The proposed language allows an offender (who is attempting to circumvent program requirements) to have a bystander provide the initial start-up test, and provide the first rolling retest in 5 minute, and drive away. If the offender is above the legal alcohol limit for driving (0.08), they can drive for up to 40 minutes, due to the fact that the initial test and first rolling retest are so close together, and the subsequent rolling retest does not occur until 45 minutes later. This is a long time to drive without providing any breath samples.</p> <p>If the requirement for subsequent rolling retests is every 30 minutes, then the offender must provide two samples per hour on a long, cross-country drive, instead of only one breath sample per hour.</p> | <p>inconvenience to the offender.</p> |
| <p>Smart Start</p> | <p>Section I (2): The ignition interlock</p> | <p>Increased traffic in some areas of Virginia</p> |

| | | |
|--|---|--|
| <p>Interlock (via email)</p> | <p>device shall produce a visual and audible signal of the need to produce a breath sample for the rolling retest. The offender shall have six 15 minutes in which to provide the required rolling retest breath sample.</p> <p><u>Recommendation:</u> For motor vehicles, we recommend the rolling retest timer at 6 minutes and do not recommend 15 minutes to take a test.</p> <p>For motorcycles, we recommend a 15 minute test window.</p> <p><u>Rationale:</u> In motor vehicles, the client has time to safely provide a sample within 6 minutes. Allowing a driver 15 minutes to provide a sample while driving, if they do not pull off to the side of the road as is recommended, could be a potential public safety issue. A 6-minute window provides ample opportunity to offenders to provide a “good sample” even if an initial breath sample(s) is inadequate, and the device prompts the user for another sample.</p> <p>However, regarding motorcycle safety, a 15 minute test window is appropriate.</p> | <p>makes it difficult for offenders to quickly exit roadways for the purpose of completing a rolling retest. VASAP encourages offenders to pull off the roadway to take the rolling retest since the process of producing a breath sample arguably contributes to distracted driving for some individuals. In the interest of public safety, the time to complete a rolling retest is being increased from six minutes to 15 minutes in order to ensure that motorists can complete a breath test safely while experiencing less stress due to time constraints. Motorcycles will have the same 15-minute time limit to complete the rolling retest.</p> |
| <p>Smart Start Interlock (via email)</p> | <p><u>24VAC35-60-90. Calibration and monitoring visit</u></p> <p>Section A: The offender must present photo identification to the service provider for all required services. <u>Only calibration units (i) found on the current National Highway Traffic Safety Administrations Conforming Products list of Calibrating Units for Breath Alcohol Testers or (ii) approved by the commission shall</u></p> | <p>The current language “or approved by the commission” is sufficient to ensure that all manufacturers who meet required standards for the provision of dry gas can compete in the marketplace. No changes are anticipated to this language.</p> |

| | | |
|--|--|--|
| | <p><u>be used by the service provider to calibration ignition interlock devices.</u></p> <p><u>Recommendation:</u> We recommend the requirement for calibrating units to be NIST (National Institute of Science and Technology) traceable, and purchase from the current NHTSA CPL is not required.</p> <p><u>Rationale:</u> According to NHTSA: Calibrating units provide known concentrations of ethanol vapor for the calibration or calibration checks of instruments that measure breath alcohol (BrAC) [77 FR 64588 October 22, 2012]. If the requirement is that calibrating units are NIST traceable, that would satisfy NHTSA's definition. The manufacture of dry gas calibration standards is a mature industry with known technology and processes. There are tens, if not hundreds, of manufacturers in the USA that can produce and meet this calibration standard requirement (NIST traceability). However, there are only four manufacturers nationwide that produce dry gas calibration standards on NHTSA's <u>current</u> CPL. These companies are included on the CPL simply because they submitted a request to NHTSA, not because NHTSA had a program to find all USA capable manufacturer's that could produce dry gas calibration standards.</p> <p>The NHTSA CPL is not a reflection of product availability. During the many, many years in between NHTSA publishing an updated list, manufacturers cease business operations, and other manufacturers are approved to be on the list, but have to wait until the next publication. Requiring IID service providers to purchase from</p> | |
|--|--|--|

| | | |
|--|---|---|
| | <p>the current NHTSA CPL does not foster competition between dry gas manufacturers, which drives quality. The NHTSA Conforming Products List does not contribute to the process of calibration or to the calibration standard itself. In short, there is no benefit to the State to impose the restriction by using the current NHTSA CPL.</p> | |
| <p>Smart Start Interlock (via email)</p> | <p>Section B(2): Calibrate the ignition interlock device at each service appointment using a dry gas <u>or wet bath</u> reference sample. <u>The service provider shall ensure that dry gas and wet bath reference values are adjusted in a manner approved by the commission.</u></p> <p><u>Recommendation:</u> We recommend only using dry gas as the approved method to run calibration services.</p> <p><u>Rationale:</u> There should be uniformity throughout the state to uphold the integrity of the ignition interlock devices. The calibration standard should be dry gas based on stability. Dry gas is more accurate, repeatable with little deviation, eliminates temperature, moisture, humidity changes, and heater issues. Dry gas reduces failed calibrations by 50%, reduces the number of units that face repair, reduce the need to change solutions and produce a more consistent, stable and accurate calibration for the device. Using a wet bath standard is providing for a sub-standard form of calibration; it depletes with each use, requires the user to track how many calibrations have been conducted with each</p> | <p>Wet bath simulators will be approved for use in the calibration of ignition interlock devices. The limitations and potential concerns regarding the use of wet bath simulators will be addressed through a rigorous service center inspection program.</p> |

| | | |
|--|---|---|
| | <p>solution, expires faster, and is subject to temperature and humidity fluctuations. If wet bath is allowed we recommend that the wet bath is supplied from a 3rd party supplier, and is NIST traceable, that it is subject to the same requirements as a dry gas standard. We also recommend that if wet bath calibration is allowed, it must be in a stable environment and the vendor must use a device that monitors: accuracy, temperature, moisture, humidity and stability of the solution.</p> | |
| <p>Smart Start Interlock (via email)</p> | <p>Section B(5): <u>Perform an accuracy check that will consist of two consecutive reference check with the result of each individual check being within plus or minus 10% or 0.003, whichever is smaller of the alcohol reference value introduced into the ignition interlock device. The time period between the first and second consecutive accuracy check shall not exceed five minutes.</u></p> <p><u>Recommendation:</u> Tolerance level: <i>We recommend utilizing the analytical tolerance ± 0.005 BrAC, and deleting the reference of "± 0.003 BrAC" and "10%".</i></p> <p>Number of reference checks: We also recommend changing the minimum number of "reference checks" from two (2) to one (1). If the first reference check passes the required tolerance level, then that is sufficient for service and calibration. This would eliminate the necessity of a time period requirement of 5 minutes between the first and second accuracy</p> | <p>No change to this language is anticipated.</p> |

| | | |
|--|---|--|
| | <p>check.</p> <p><u>Rationale:</u> Tolerance level: From the NHTSA's publication [Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), FR Vol 78, No. 89, May 8, 2013] including the QAP template, NHTSA recommends a tolerance for the calibrating unit of ± 0.005 BrAC, this is approximately ± 13 ppm. The proposed language cites a tolerance of ± 0.003 BrAC, this is approximately ± 8 ppm. Analytical tolerance of ± 8 ppm is difficult to justify, in lieu of a ± 13 ppm tolerance, since there is no benefit to the State or the driver due to the fail point being set so far below the legal limit. The fail point of 0.02 BrAC (~52 ppm) is well below the legal limit of 0.08 BrAC (~208 ppm), and a difference of 5 ppm for the analytical tolerance of the reference standard (calibrating unit) does not improve quality and therefore is not in the public interest.</p> <p>Number of reference checks: If the first reference check passes the required tolerance level, then that is sufficient for service and calibration. Additionally, there is no benefit to the driver if they are required to wait for an unnecessary additional calibration and there is no gain in accuracy; no benefit to the State since the result of this additional calibration check does not provide a gain in accuracy; and no benefit to the service provider since the result of this additional calibration check does not provide a gain in accuracy yet they must provide material and personnel. Single-</p> | |
|--|---|--|

| | | |
|--|--|---|
| | <p>point calibration is a well understood industry practice, and is utilized when there is little or no concern with the rest of the measurement range. The fail point for Virginia is 0.02 BrAC (~52 ppm), and the legal limit is 0.08 BrAC (~208 ppm) (an order of magnitude in difference when concentration units are compared).</p> <p>NOTE: ppm = parts per million, a measure of concentration.</p> | |
| <p>Smart Start Interlock (via email)</p> | <p>Section B(7): <u>Store dry gas alcohol standard tanks in an environment where the temperature range remains between 10°C and 40°C. The dry gas tanks shall have a label attached that contains the components and concentration of the reference value of the gas, an expiration date that shall not be longer than three years from the date of preparation, and the lot or batch number. Dry gas alcohol standards must be certified to a known reference value and be traceable to the National Institute of Standards and Technology. The reference value shall be adjusted for changes in elevation and pressure. Interlock service facilities using a dry gas standard shall possess an elevation chart used to determine the proper reference value for the elevation where the gas standard is being used and a certificate of analysis from the dry gas standard manufacturer. Dry gas tanks shall be secured in a manner as to prevent harm to the public;</u></p> <p><u>Recommendation:</u> We recommend language for performance</p> | <p>The Commission on VASAP concurs. A change in the language is being made to require that dry gas tanks be stored in compliance with the gas manufacturer's specifications. Elevation charts will no longer be necessary since the application software now used by ignition interlock service providers compensates for elevation during the calibration process.</p> |

| | | |
|--|---|--|
| | <p>requirements, and not design requirements, in line with NHTSA's specification. Please consider revising the requirement that elevation is compensated for when calibration is conducted, and not <u>how</u> the compensation takes place, or the appearance of compensation taking place with an elevation chart available.</p> <p><u>Rationale:</u> Compensation for elevation can be accomplished by the application software during the calibration process. The service facility takes no action on elevation changes; it is preprogrammed based on service center location. There is no need for an elevation chart at a service facility. Please note: If a service technician is required to manually compensate for elevation changes, then a detailed work instruction should be required, in addition to an elevation chart. The lowest point in Virginia is sea level (Atlantic Ocean), and the highest is 5729 ft. above sea level (Mount Rogers).</p> | |
| <p>Smart Start Interlock (via email)</p> | <p>24VAC35-60-100. Ignition interlock device removal.</p> <p>Section D: Whenever an ignition interlock device is removed, all components of the motor vehicle altered by the installation or servicing of the ignition interlock device must <u>shall</u> be restored to their original, pre-installation condition and removed in such a manner <u>so</u> as not to impair the <u>continued safe operation of the vehicle</u> . All severed wires must <u>shall</u> be permanently reconnected (e.g. soldered) and <u>properly insulated with heat shrink tubing or its equivalent</u>. <u>A post- inspection checklist of the vehicle shall be completed after removal of the device, documenting that the</u></p> | <p>The use of industry standard fasteners will be approved for installations of ignition interlock devices; however, during removal, there will be a requirement to solder connections so that the vehicle is returned to its original condition. The Commission on VASAP will design and distribute a standardized vehicle inspection checklist to be used by all installers.</p> |

| | | |
|--|---|---|
| | <p><u>vehicle or vehicles did or did not suffer damage due to interlock services provided by the service provider. A copy of the post-inspection checklist shall be placed in the offender's file.</u></p> <p><u>Recommendation:</u> We recommend that service providers be allowed to use common industry practices for removals which includes, soldering or other mechanical fasteners. We recommend and agree that all connectors should require heat shrink tubing as a minimum.</p> <p>Additionally, we recommend that VASAP create a standardized checklist for all manufacturer's to complete, this will provide consistency across the State for offenders who utilize various manufacturers.</p> <p><u>Rationale:</u> There is no evidence that indicates one method is superior to another for returning vehicles to their original condition (solder versus heat shrink).</p> <p>Standardize Checklist: For the benefit of the driver/offender, if VASAP created a standardize checklist, this would provide consistency between various manufacturers.</p> | |
| <p>Smart Start Interlock (via email)</p> | <p><u>24VAC-35-60-130: Service Provider technician certification</u></p> <p><u>Section C: The commission may revoke, suspend, or terminate a previously issued Virginia Ignition Interlock Certification Letter for a service provider technician or state director for any of the following reasons:</u></p> | <p>The certification test will be required to be taken at the state office in Richmond. This will ensure the integrity of the certification process and give the commission staff an opportunity to personally meet new technicians for orientation. This will be a one-time expenditure in most cases.</p> |

| | | |
|--|--|--|
| | <ol style="list-style-type: none"> 1. <u>The technician or state director is convicted of a felony;</u> 2. <u>The technician or state director is convicted of a misdemeanor potentially punishable by confinement;</u> 3. <u>The technician or state director commits an unethical or dishonest act that negatively impacts the integrity of the ignition interlock program;</u> 4. <u>The technician or state director fails to demonstrate the ability to consistently comply with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or</u> 5. <u>The technician or state director fails to demonstrate possession of the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.</u> <p><u>A service provider technician or state director whose Virginia Ignition Interlock Certification Letter has been suspended or revoked may request, within 15 days of notification, a hearing with the commission to contest the decision. In the event that the decision to suspend or revoke the Virginia Ignition Interlock Certification Letter of a service provider's technician or state director is upheld, the technician or state director shall not perform interlock services in the Commonwealth of Virginia for the entire suspension period, to include any period of contestment, or in the case of a revocation or termination, on a</u></p> | |
|--|--|--|

| | | |
|---|--|--|
| | <p><u>permanent basis. The service provider is required to return the Virginia Ignition Interlock Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated, by the commission.</u></p> <p><u>Recommendation:</u> We recommend that all technicians have the opportunity to take any state administered Virginia Ignition Interlock Certification exam at a local ASAP office.</p> <p><u>Rationale:</u> Travelling to the Richmond VASAP offices may impose a hardship on personnel. Travelling to the Richmond VASAP offices should be optional and the state administered exam should be offered at ASAP locations.</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-40. Approval of manufacturers and service providers.</p> <p>B. The integrity of the Ignition Interlock Program shall be upheld by restricting the delivery of interlock service to the actual provider of the product (i.e. authorized service prover), thereby effectively preventing the extension of subcontracts to other persons or business who lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect or duty 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.</p> <p>LifeSafer Comment: Requiring authorized service providers to own and operate all locations is very costly. A</p> | <p>Please see the Department of Planning and Budget's Economic Review and the commission's response for VASAP's objection to subcontracting.</p> |

| | | |
|---|---|---|
| | <p>successful and powerful oversight authority would make the addition of contract locations reasonable. Allowing contractor locations would increase the ability of service providers to affectively expand locations for better coverage and greater convenience to ignition interlock program participants throughout the state. Virginia requires that interlock service providers have service centers within a 50 mile radius of every residence in the Commonwealth, however not all areas have an interlock market that can support the cost of leased space and employees to cost effectively meet that requirement without losing money given the additional fee restrictions.</p> <p>The proposed regulations provide additional oversight authority requiring all technicians to pass the Virginia Ignition Interlock Certification Exam. Technicians are required to be trained by the manufacturer (service provider) and must also pass a certification exam to ensure they are competent. The exam establishes their knowledge of Virginia's Ignition Interlock Program. The majority of other states allow sub-contracting and providers have requirements for contractors including 12-V experience and meeting all the requirements of regulations (i.e. inability to view the installation, servicing or removal of ignition interlock device, securing all records and materials, and including privacy agreements in the contract).</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-50. Fees. D. Service providers may charge offenders for ignition interlock services at rates up to, but not to exceed, the following: 1. \$65 for a standard ignition interlock installation; 2. \$130 for the installation of an ignition interlock on a hybrid motor vehicle or a motor vehicle with a push button starter;</p> | <p>The Commission on VASAP is recommending a change in the maximum permissible monthly calibration fee from \$80 to \$95. This should adequately cover the additional expenses anticipated by ignition interlock service providers at this time. The Department of Planning and Budget has suggested that all fees be included in the regulations for transparency purposes. Regulations are required to be reviewed periodically. Any necessary increases in fees can be addressed</p> |

| | | |
|--|--|--|
| | <p>3. \$75 for a change of vehicle ignition interlock installation</p> <p>4. \$0 for an ignition interlock removal;</p> <p>5. \$80 plus applicable taxes for monthly ignition interlock calibrations or monitoring, inclusive of the monthly administrative fees to be paid to the commission and servicing ASAP;</p> <p>6. \$8.00 per month for optional insurance to cover theft, loss, or damage to the ignition interlock and its components;</p> <p>7. 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>8. \$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;</p> <p>9. \$50 for violation resets, when the violation is determined to be due to the fault of the offender;</p> <p>10. \$35 for missed appointments;</p> <p>11. An amount permitted by the Code of Virginia at the time for returned checks;</p> <p>12. \$50 for provision of a permanent lockout code, when the lockout is determined to be due to the fault of the offender; and</p> <p>13. \$50 per hour, not to exceed four total hours, for repairs and reinstallation of the ignition interlock when the commission determines that the offender illegally tampered with the device.</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. Proposed regulations now allow for a 25% increase when mandating enhanced technology, but then do NOT allow any increase in fees</p> | <p>in future revisions of the regulations.</p> |
|--|--|--|

| | | |
|---|--|--|
| | <p>when requiring both NHTSA 2013 and camera devices when fees for installation, monthly monitoring and removal have not been increased in years.</p> <p>Proposed regulations allow for a higher fee for hybrid and push button start vehicles, but do not take into account that the installation and servicing of camera ignition interlocks also take longer than standard ignition interlocks. 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 recommends \$60.</p> <p>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.</p> <p>Limiting providers to charge 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 may cover shipping, but it does not take into consideration the lost income that could be generated by that device through lease to another customer.</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>E. In the event of changes to the Code of Virginia mandating enhanced technological capabilities of ignition interlock devices used in the Commonwealth, the commission may increase offender installation and calibration fees up to a maximum of 25%.</p> <p>LifeSafer Comment: This regulation allows for the increase of fees due to mandating enhanced technological capabilities of ignition interlock devices used in the Commonwealth, however even though the new regulations</p> | <p>An increase in calibration fees is being recommended to cover these increased expenses.</p> |

| | | |
|---|--|---|
| | <p>mandate both the requirement of NHTSA 2013 certified devices and the use of camera devices, they have not increased the amount allowed for standard installations, monthly calibrations and monitoring, or removal</p> <p>The research, development, and certification testing required for NHTSA 2013 are costs that can be spread across many jurisdictions, but only if they allow providers to adjust fees appropriately to help cover the costs. Each device also needs to be upgraded which are costs specific to those states requiring NHTSA 2013 devices. The technology costs increases for cameras is a large burden for any manufacturer due to the additional hardware, time for installation, removal and monthly monitoring, as well as the cost of increased data and storage requirements. The state will find that the addition of cameras requires additional oversight for review of photos for tampering and violation situations.</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-70. Ignition interlock device specifications.</p> <p>I. A rolling retest feature is required for all ignition interlock devices. For rolling retests:</p> <ol style="list-style-type: none"> 1. An ignition interlock device shall require a rolling retest within the first five minutes after the start of the motor vehicle and randomly thereafter at least once every 45 to 60 minutes as long as the motor vehicle is in operation. 2. The ignition interlock device shall produce a visual and audible signal of the need to produce a breath sample for the rolling retest. The offender shall have 15 minutes to provide the required rolling retest breath sample. <p>LifeSafer Comment: While lowering the time period for the first rolling retest does guarantees a retest during most short trips, having to schedule it randomly within the 5 minute window can lead to participants</p> | <p>No changes are being made to the proposed text. The Commission on VASAP feels the new times for the initial rolling retest and subsequent rolling retests will still accomplish public safety objectives while providing less inconvenience to the offender.</p> |

| | | |
|---|--|---|
| | <p>having to take a retest almost immediately after starting the vehicle. Most states require the first rolling retest to occur between 5 and 15 minutes after starting the vehicle.</p> <p>LifeSafer does not recommend extending the subsequent retests as far out as 45 to 60 minutes, especially if given 15 minutes to provide a retest. With settings at the proposed intervals, a participant could start the vehicle, quickly have a retest and then drink while driving the vehicle for the next 60 to 75 minutes with no tests. LifeSafer recommends subsequent retests occur randomly every 15 to 45 minutes and allowing no more than 10 minutes for the participant to provide the rolling retest which is more than enough time under any circumstances.</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</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. If no photo identification is available at the time of installation, other adequate proof of identification may be accepted to avoid delay of the installation. However, photo identification must be presented prior to the first calibration appointment; 2. The name and policy number of their automobile insurance;</p> <p>LifeSafer Comment: Service providers can check insurance, however, insurance could expire or be canceled at any time.</p> | <p>The requirement to verify the automobile insurance of the offender prior to installation is being removed.</p> |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-90. Calibration and monitoring visit. B. The service provider shall: 3. Calibrate the ignition interlock device for accuracy by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L; 5. Perform an accuracy check that</p> | <p>The Commission on VASAP does not plan to make any changes to the proposed requirements.</p> |

| | | |
|---|--|--|
| | <p>will consist of two consecutive reference checks with the result of each individual check being within plus or minus 10% or 0.003, whichever is smaller, of the alcohol reference value introduced into the ignition interlock device. The time period between the first and second consecutive accuracy check shall not exceed five minutes;</p> <p>LifeSafer Comment: The current phrasing is confusing. NHTSA 2013 recommends calibration agreement not greater than ± 0.005.</p> <p>Recommended Text: 5. Perform an accuracy check that will consist of two consecutive reference checks with the result of each individual check being not greater than ± 0.005 BrAC. The time period between the first and second consecutive accuracy check shall not exceed five minutes;</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>6. Use a mercury-in-glass thermometer or digital thermometer for wet bath simulators. The thermometers shall read 34°C, plus or minus 0.2°C, during analysis and be certified annually using a National Institute of Standards and Technology traceable digital reference thermometer. In addition, the service provider shall use alcohol reference solutions prepared and tested in a laboratory with reference values traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution shall be tamper proof and labeled with the lot or batch number, value of the reference sample in g/210L, and date of preparation or expiration. Alcohol reference solutions must be used prior to expiration and within one year from the date of preparation. In addition, wet bath simulator solutions shall be replaced prior to every 16th test; Page 5 of 5</p> <p>LifeSafer Comment:</p> | <p>Due to the concerns associated with the use of wet bath simulators in less than ideal environments (e.g., open garage bays), the Commission is imposing a stricter standard for the use of wet bath simulators during calibrations.</p> |

| | | |
|---|---|--|
| | <p>While LifeSafer devices are capable of using dry gas for calibration, it should be noted that generally speaking, wet bath solution maintains stability for 30 to 50 tests. Best practice would be to use the solution for 30 to 50 tests (based on alcohol solution) or 1 day, whichever comes first.</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-100. Ignition interlock device removal. D. Whenever an ignition interlock device is removed, all components of the motor vehicle altered by the installation or servicing of the ignition interlock device shall be restored to their original, preinstallation condition and removed in a manner so as not to impair the continued safe operation of the vehicle. All severed wires shall be permanently reconnected (e.g., soldered) and properly insulated. A post-inspection checklist of the vehicle shall be completed after removal of the device, documenting that the vehicle or vehicles did or did not suffer damage due to interlock services provided by the service provider. A copy of the post-inspection checklist shall be placed in the offender's file.</p> <p>LifeSafer Comment: LifeSafer recommends that the Commission provide the checklist rather than relying on a manufacturer to develop their own. This would promote consistency across providers and minimize any issues caused by a service provider not doing something they were unaware they were expected to do.</p> | <p>The Commission on VASAP will provide a standardized vehicle inspection checklist.</p> |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-110. Records and reporting. D. After performing a monitoring/calibration monitoring and calibration check, the service provider shall submit to the ASAP, within 24 hours, all data generated to include: 14. A photo of all persons who have attempted to provide a breath test sample on the ignition interlock</p> | <p>Language has been changed to clarify that photographs are only required for breath tests that are actually analyzed and for missing retests, not for aborted tests.</p> |

| | | |
|---|---|--|
| | <p>device; and</p> <p>LifeSafer Comment: Will data and images be reported electronically? Images for all breath tests can be substantial. One possible option would be to provide Images only for violations on reports. All images could still be available to view online if necessary.</p> | |
| <p>LifeSafer Interlock (via email and public comment hearing)</p> | <p>24VAC35-60-120. General Service provider requirements. 5. Obtain approval from the commission before disseminating any training or advertising materials used in association with the Virginia interlock program.</p> <p>LifeSafer Comment: Do training materials refer to participant training, technician and employee training or both?</p> | <p>Language has been added to clarify that “training” materials only refers to materials used in participant (offender) training.</p> |
| <p>Alcolock Interlock (via public comment hearing)</p> | <p>RE: The requirement that technicians be fully certified prior to being authorized to perform any ignition interlock services.</p> <p>Alcolock recommends that there be a 30-day training period permitted in which newly hired technicians may work under the supervision of a certified technician prior to becoming certified.</p> | <p>The Commission will approve a 90-day training period in which newly hired technicians may perform ignition interlock services under the direct supervision of a certified technician.</p> |

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Note: The below items represent the major changes that were made to the current regulations for the proposed stage of the regulatory process. Changes made to the regulations subsequent to the conclusion of the proposed stage, that are now found in the final stage regulations (with the associated rationale and consequences), are listed above in the “Changes Made Since the Proposed Stage” section. In addition, a number of minor, insignificant procedural modifications and writing corrections have been made throughout the regulatory process that were too numerous to list.

| Current section | Proposed new section | Current requirement | Proposed change and rationale |
|-----------------|----------------------|---------------------|-------------------------------|
|-----------------|----------------------|---------------------|-------------------------------|

| number | number, if applicable | | |
|---------------|-----------------------|--|--|
| 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. |
| n/a | 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 | n/a | 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 | n/a | 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. |