



Virginia Department of Planning and Budget **Economic Impact Analysis**

24 VAC 35-60 Ignition Interlock Regulations
Commission on the Virginia Alcohol Safety Action Program
Town Hall Action/Stage: 5454 / 8911
August 8, 2020

Summary of the Proposed Amendments to Regulation

The Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to:

- 1) amend the timing of initial ignition interlock rolling retests and subsequent random tests, 2) require an additional photograph of the vehicle's driver seat area, 3) add additional grounds for which ignition interlock service providers and technicians may be disciplined, 4) require ignition interlock service providers to notify VASAP only when they receive a negative adjudication instead of notification of any and all pending lawsuits, 5) prevent offenders from transferring from one interlock vendor to another, 6) prohibit device installation by a new vendor if the offender owes another vendor more than \$250, 7) introduce a \$2,500 fee to the vendors for application of a new device certification, 8) allow the VASAP to receive the monthly administrative fee for local offices and then distribute it to the local ASAP offices, 9) grant VASAP power to suspend service related requirements of this regulation in applicable geographical areas when there exists a federal or state disaster or declaration of emergency, 10) allow temporary codes to persons that would allow them to unlock their locked ignition interlock devices for a longer period, 11) prohibit use of a single vehicle that is equipped with an ignition interlock in order to meet the probationary requirements of multiple offenders, and 12) add language permitting VASAP to approve light sources other than the vehicle headlights for the required flashing lights when a rolling retest is failed or skipped.

Background

This regulation establishes rules for installation, maintenance, and certification of ignition interlock systems. According to VASAP, ignition interlock devices protect the public from convicted DUI offenders who may attempt to drink and drive again prior to completing

substance abuse education, treatment, and probation. The ignition interlock requires that an alcohol-free breath sample be provided in order for a vehicle to start. After the initial startup test, rolling retests are required at prescribed intervals for as long as the motor vehicle is in operation. By monitoring photographs captured by the ignition interlock system, it has become apparent that a large number of offenders are circumventing the interlock either by tampering with the equipment or having other persons submit breath samples for them. Circumventing the ignition interlock is a Class 1 misdemeanor offense.

In response to these concerns, at its December 13, 2019 meeting VASAP members expressed a desire to improve their ability to effectively deter, detect, and prosecute probationers who attempt to circumvent the ignition interlock devices on their vehicles and approved the amendments being proposed to achieve the intended goal.

Estimated Benefits and Costs

Changes to improve compliance

The proposal would require the ignition interlock's first rolling retest to occur randomly but not less than ten minutes after the start of the motor vehicle, instead of within five minutes. Subsequent rolling retests would then occur randomly thereafter at least once every 60 minutes, instead of every 45 to 60 minutes, for as long as the motor vehicle is in operation. According to VASAP, when offenders know that the first retest would be conducted in the first five minutes they can easily undermine that test by having a sober person on standby for five minutes to blow in to the ignition interlock in their stead. VASAP reports that there are approximately 60 outstanding cases involving such violations. Also, since under the current language the subsequent retests do not occur for at least the next 45-60 minutes, an offender may travel quite a few miles before the subsequent retests are initiated. The change to have the subsequent retests occur at least once every 60 minutes instead of during the first 45-60 minutes would add more uncertainty. For example, under the proposal a subsequent retest could start at any point during the first 60 minutes instead of definitely not occurring until 45 minutes have passed.

These changes would therefore improve compliance by making the retests more difficult to circumvent. More specifically, the proposed changes would make it more inconvenient for sober persons to conduct the first rolling retest for offenders and also enable VASAP to alter the

interval times between the subsequent rolling retests to prevent offenders from determining when breath samples are required in an attempt to circumvent the device.

The proposal would also require an additional photograph of the vehicle's driver seat area at some point after the initial engine start-up. Currently, the system is more predictable because a photograph of the person submitting a breath sample is taken at the time of the breath test. This provision would enable VASAP to look at the additional photograph and thereby more easily detect when someone is circumventing the device by having a sober person provide a breath sample on their behalf.

The proposal adds additional grounds for which ignition interlock service providers and technicians may have their certification denied, suspended, or revoked to include material misstatements and omissions in an application and defrauding any customer or other person or entity during the conduct of the licensee's business. This change should strengthen the VASAP's power to enforce the regulation.

The proposal would require ignition interlock service providers to notify VASAP only when they receive a negative adjudication related to the ignition interlock device or provision of ignition interlock services. Previously, VASAP had to be notified of any and all pending lawsuits. The change would narrow the types of cases where a notification is required and should reduce the vendor's administrative costs by a small amount.

Changes to address outstanding balances with vendors

The proposal would prevent offenders from transferring from one interlock vendor to another without VASAP's permission, unless the request to transfer is based on equipment malfunction or a legitimate customer service issue. According to VASAP, offenders with outstanding balances try to avoid paying the fees due to their vendor by switching vendors. The proposal would prohibit this practice unless the offender's reason to transfer to another interlock service provider is based upon a malfunctioning device or a legitimate customer service issue. This would help vendors collect the fees due to them by offenders.

The proposal adds that offenders may not have an ignition interlock device installed by a new vendor if they owe another vendor in excess of \$250. Responses to a recent inquiry by VASAP from the four vendors operating in Virginia indicate that these vendors have five, 41, 83,

and 331 delinquent accounts, respectively, that have balances in excess of \$250. This change should also help to deter offenders from changing service providers in order to avoid paying owed fees and benefit the vendors in terms of their ability collect their fees from the offenders.

Changes to fees

The proposal adds to the fees that service providers must pay to VASAP. A \$2,500 fee is proposed for when an ignition interlock service provider requests that VASAP certify a new device model that has not been previously certified for use in the Commonwealth. For certification, VASAP reviews independent lab reports of device models ensuring that the specifications meet Virginia standards and field tests new devices to ensure they are accurate and reliable. The proposed fee is intended to cover the costs associated with such reviews. VASAP notes that applications for device certifications occur very infrequently.

The proposal would combine two \$10 administrative fees into a single \$20 fee and change how fees are collected. These fees cover expenses associated with the local offices' monitoring of the ignition interlock calibration reports and photographs, writing related court and reports, and the state office's administrative costs. Presently, vendors have to send separate \$10 monthly fees for each offender to both the responsible local ASAP office and to the state VASAP office. The proposal would require vendors to send both fees to VASAP, which will distribute the fees to the local ASAP offices. With this change it would be easier for the interlock vendors to send one check to VASAP per month rather than 25 separate checks, and also provide some administrative savings for the vendors as well as local VASAP offices.

Changes to address emergency situations

The proposal would add a new section that would give VASAP the power to suspend service-related requirements of this regulation in applicable geographical areas when there exists a federal or state disaster or declaration of emergency. The intent of this change is to maintain flexibility in administering the provisions of this regulation when unforeseen events occur. Relatedly, VASAP proposes to amend existing language that allows a permanently locked device to be temporarily unlocked for three hours, to allow a longer time limit than is currently allowed. A device may be permanently locked if an offender fails to appear for a scheduled monitoring appointment. The use of a temporary code only unlocks the interlock device but does not disable any of the other interlock features. This is for the purpose of emergency situations, such as

during a hurricane evacuation, and should be beneficial to the offenders during such emergencies.

Changes to address use of single vehicle by multiple offenders

The proposal would prohibit the use of a single vehicle with an ignition interlock to meet the probationary requirements of multiple offenders. In cases where there are multiple offenders that have a single vehicle available for their use, they are not currently able to use that vehicle concurrently to satisfy the probationary requirements. For example, a husband and a wife who are both offenders have to stagger the duration of their probation such that only one of them uses the vehicle equipped with the ignition interlock. That does not mean they cannot drive it at the same time. It means that they cannot use the same vehicle to satisfy the terms of their probation at the same time.

This prohibition results from several technical and compliance related reasons. First, vendors assign only one interlock serial number per offender. This assignment is needed to allow the nightly automatic download to the Department of Motor Vehicles to be associated with the correct offender, and to ensure accurate accounting of the monthly fees for use of the interlock. Second, devices must be assigned to a single offender to prevent an offender from requesting to be assigned to another person's interlock and thereby get credit for that person's completion. Third, single assignment prevents the incentives that would otherwise exist to share the same device among as many people as possible, thereby undermining the objective of ensuring compliance by each individual offender. VASAP reports that this change incorporates current practice, and thus it should not have a negative impact on such offenders.

Additional light sources

The proposal adds language permitting VASAP to approve light sources other than the vehicle headlights for the required activation of flashing lights when a rolling retest is failed or skipped. A vehicle with an ignition interlock is wired to flash its headlights and horn when a rolling test is failed or skipped in order to draw attention to the vehicle. However, for some vehicle models the headlight wiring is either technically not possible or is prohibitively expensive. VASAP proposes to allow other light sources such as portable lights that can be fitted to the vehicle to achieve the same goal. VASAP has already approved some alternative warning light sources, other than the vehicle's headlights, provided they accomplish the same purpose.

Thus this proposed change also incorporates existing practice and should not create any significant impact.

Businesses and Other Entities Affected

There are four ignition interlock vendors contracted by the Commission that operate in approximately 90 locations throughout Virginia, and there are approximately 6,200 offenders using vehicles equipped with interlock devices.¹ It must be noted that the recent counts are affected by COVID-19 and do not reflect more typical count of offenders which is normally about 7,800.

The proposed changes would introduce additional costs for both vendors and offenders. As noted above, the proposals would introduce a \$2,500 application fee to vendors seeking certification for a new device, but would also help vendors collect the fees owed to them, reduce the notification burden when there is an adjudication involving them, and restrict options available to the offenders with delinquent vendor accounts. The proposals would also add additional grounds for which ignition interlock service providers and technicians may be disciplined. Thus, adverse economic impacts² both on vendors seeking certification for a new device and on offenders are indicated. All of the vendors and offenders are subject to the same rules. Thus, no vendors or offenders appear to be disproportionately affected.

Although the proposal introduces additional costs, the proposed changes would prevent economic externalities by ensuring the persons who generate the costs pay for them, thereby supporting the free market dynamics working toward an efficient allocation of economic resources.

Small Businesses³ Affected:

The proposed changes would mainly affect the four contracted ignition interlock providers. According to VASAP, all four providers are large corporations and have operations in other states or even in other countries. Thus, they may not be considered to be small businesses.

¹ Data source: VASAP

² Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

³ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Localities⁴ Affected⁵

The regulation applies throughout the Commonwealth. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The main effect of the proposed changes on the vendors appear to be the additional incentives provided to the offenders to pay their delinquent accounts which would help the vendors. This may have a positive impact on vendor revenues and have a positive impact on their asset values. The proposed amendments do not appear to affect real estate development costs.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁴ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁵ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.