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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Commission on Virginia Alcohol Safety Action Program (VASAP)
<b>Virginia Administrative Code (VAC) citation(s)</b>	24 VAC35-60
<b>Regulation title(s)</b>	Ignition Interlock Regulations
<b>Action title</b>	Amendments to Virginia's Ignition Interlock Regulations regarding GPS installation
<b>Date this document prepared</b>	12/20/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

These amendments to existing regulations provide for the installation of GPS technology in ignition interlocks. Other changes include adding additional grounds for which ignition interlock service providers and technicians may have their certification suspended or revoked. Several minor changes with regard to ignition interlock device operation, installation, and calibration are included as well.

### Acronyms and Definitions

*Please define all acronyms or technical definitions used in the Agency Background Document.*

"GPS" means Global Positioning System which is a satellite navigation system used to determine the ground position of an object.

“VASAP” means the Commission on the Virginia Alcohol Safety Action Program (VASAP)

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

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

The Commission on VASAP, at its December 13, 2019 meeting, approved the amendments being proposed. A desire was expressed to introduce new technology to more effectively detect and prosecute probationers who attempt to circumvent the ignition interlock devices on their vehicles.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.*

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

### Purpose

*Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

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. From monitoring photographs captured by the ignition interlock system, it has become apparent that a large number of offenders are circumventing the interlock by tampering with the equipment or having other persons submit breath samples for them. Circumventing the ignition interlock is a Class 1 misdemeanor offense; however, this offense cannot be prosecuted if the jurisdiction in which the offense occurs is unknown. Use of GPS technology would enable case managers to know the location where violations occurs so that prosecution can take place in the proper venue.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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Section 24VAC35-60-20 adds a definition for “GPS.”

Section 24VAC35-60-40 requires ignition interlock service providers to notify the Commission on VASAP whenever they are the subject of an active lawsuit.

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

This section also authorizes the Commission on VASAP to receive the \$10 monthly interlock administrative fee (that normally goes to the local ASAP program) whenever the Commission office assumes responsibility for the monitoring function normally conducted by the local ASAP.

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

The section also allows the Commission to approve temporary codes to persons that will allow them to unlock their locked ignition interlock devices for a longer period than the three-hour time limit currently allowed. This is for the purpose of emergency situations, such as during a hurricane evacuation.

A section is added that requires that all ignition interlocks be installed with a fully functional GPS that records the date, time, and location of the interlock device at all times. A sticker advising the driver that the ignition interlock is equipped with a GPS is required to be affixed to the device handset.

Section 24VAC35-60-70 adjusts the times and intervals that rolling retests are requested by the ignition interlock.

Section 24VAC35-60-80 prohibits using a single vehicle that is equipped with an ignition interlock in order to meet the probationary requirements of multiple offenders.

Language is added to prevent offenders from transferring from one interlock vendor to another without permission of the Commission, unless the request to transfer is based on equipment malfunction or a legitimate customer service issue.

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

This section also requires that a photo of the driver and GPS coordinates be captured after every vehicle ignition start.

Section 24VAC35-60-110 requires that each offender read and sign an ASAP Ignition Interlock Agreement and that a copy of the agreement be given to the offender.

Section 24VAC35-60-130 expands the reasons ignition interlock certification can be denied, revoked, suspended or terminated 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. The language clarifies that appeals will be handled in compliance with the Administrative Process Act and that any prohibition to provide ignition interlock services will remain be effect during the time the action is being contested.

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

Proposed changes to the regulations are necessary to ensure the integrity of Virginia’s Ignition Interlock Program. No alternative solutions to effect these needed changes have been identified.

The current regulations permit the Commission to allow ignition interlock vendors to charge higher service fees to offenders if new technology is required to be implemented. It is conceivable that some ignition interlock service providers will encounter higher expenses in order to implement and maintain the required GPS technology. This may impact the profit level of the service providers, or customer fee levels if any expense increases are passed on to the offenders. Since most of the ignition interlock units being used in Virginia already have GPS capability, simple activation of this function may be all that is necessary. Thus, in most cases, there would be a very small fiscal impact, if any.

### Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

The Commission on Virginia Alcohol Safety Action Program (VASAP) is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to [Richard L. Foy, Commission on VASAP, 701 E. Franklin St., Suite, 1110, Richmond, VA 23219, (804) 786-5895, 804) 786-6286 (fax) or [rfoy@vasap.virginia.gov](mailto:rfoy@vasap.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

No panel will not be used, and a public hearing will not be held following the publication of the proposed stage of this regulatory action.