



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

24 VAC 35-70 Remote Alcohol Monitoring Device Regulations
Commission on the Virginia Alcohol Safety Action Program
Town Hall Action/Stage: 5506 / 9070
December 8, 2020

Summary of the Proposed Amendments to Regulation

As required by Chapter 1007 of the 2020 Acts of Assembly (Chapter 1007),¹ the Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to adopt a regulation for the installation, maintenance, and certification of remote alcohol monitoring devices.

Background

Ignition Interlock

Code of Virginia Section 18.2-270.1 states that an offender, convicted of driving under the influence in Virginia, shall be required to have an ignition interlock device installed on his or her vehicle as a condition of a restricted license or license restoration. An ignition interlock is a device that is installed in a motor vehicle to prevent alcohol-impaired individuals from driving. Before starting the vehicle, the offender is required to blow into the ignition interlock's mouthpiece to provide a breath sample for analysis. If the blood alcohol concentration is above the pre-set limit of 0.02%, the vehicle will not start. Once the vehicle is started, the offender may be required to submit additional breath samples at random times while the engine is running.

Chapter 1007

Offenders who have an ignition interlock are usually subject to a number of additional driving restrictions such as limiting the permissible purposes for which they can drive.² Chapter

¹ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1007>

² See Code of Virginia Section 18.2-271.1 E for the list of limited driving purposes:
<https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-271.1/>

1007 permits courts, upon request of offenders, to eliminate these additional driving restrictions when remote alcohol monitoring devices are used in combination with an ignition interlock. The legislation defines “remote alcohol monitoring device” as

an unsupervised mobile testing device with the ability to confirm the location and presence of alcohol in a person and that is capable of scheduled, random, and on-demand tests that provide immediate, or as-requested, results. A testing device may be worn or used by persons ordered by the court to provide measurements of the presence of alcohol in their blood.

The offender would be required to refrain from alcohol consumption at all times, and the monitoring device would be worn or accessible at all times, not only when driving.

Chapter 1007 specifies that VASAP is to “adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices.” Further the legislation states that “Such regulations shall also provide for the establishment of a fund, using a percentage of fees received by the manufacturer or distributor providing ... remote alcohol monitoring devices, to afford persons found by the court to be indigent all or part of the costs of ... remote alcohol monitoring device.”

Proposed Regulation

The proposed new regulation, 24 VAC 35-70 *Remote Alcohol Monitoring Device Regulations*, has 14 sections. Some of the most noteworthy requirements and their sections are listed below.

- Section 30. Approval of manufacturers: Explains the requirements manufacturers of remote alcohol monitoring devices have to meet in order to contract for the provision of services in Virginia.
 - VASAP shall issue a request in compliance with the Commonwealth of Virginia procurement procedures to contract with remote alcohol monitoring manufacturers for the services and commodities required for the implementation and maintenance of the Commonwealth's remote alcohol monitoring program.
 - Requirements for manufacturers seeking to contract include, but are not limited to:
 - Services shall be made available within a 50-mile radius of every residence in the Commonwealth unless otherwise authorized by VASAP.

Manufacturers are permitted to subcontract remote alcohol monitoring services to third party service providers for delivery of their remote alcohol monitoring services in Virginia.

- Adequate insurance covering liability related to remote alcohol monitoring operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of \$1 million per occurrence and \$3 million general aggregate total.
 - Provide a state remote alcohol monitoring director who will serve as a central point of contact for VASAP regarding all aspects of the manufacturer's remote alcohol monitoring operations. Among other duties, the manufacturer's state remote alcohol monitoring director would be expected to (i) respond promptly to problems in the field; (ii) upon request of VASAP provide testimony themselves, or through their designee, before applicable courts, the General Assembly of Virginia, or VASAP; (iii) assist and provide training to VASAP; and (iv) be responsible for quality control of reports and statistics, updates to all required documentation, and field services reporting and repairs.
 - Provide remote alcohol monitoring generated reports and report all required alcohol-related violations to the relevant local Alcohol Safety Action Program.³
- Section 60. Fees: Establishes the fees manufacturers must pay if they desire to conduct remote alcohol monitoring business in the state. Outlines the fees that service providers may charge offenders.
 - States that all potential manufacturers desiring to conduct business in the Commonwealth of Virginia's remote alcohol monitoring program shall submit a \$250 nonrefundable application fee to VASAP.
 - States that the following additional fees shall be paid by the manufacturer to VASAP:
 - A \$250 annual contract review fee;

³ The 24 Alcohol Safety Action Programs provide probationary oversight to offenders who have been referred from a court, typically for a conviction of driving under the influence.

- A \$50 annual review fee for each remote alcohol monitoring service location;
 - A \$30 monthly remote alcohol monitoring administrative fee for each offender.
 - A \$250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Remote Alcohol Monitoring Certification Exam due to an unsuccessful attempt on the first exam; and
 - A \$250 remote alcohol monitoring device certification fee for any new device proposed for use in the Commonwealth.
- States that service providers may charge offenders for remote alcohol monitoring services at rates up to, but not to exceed, the following:
 - \$80 for a standard remote alcohol monitoring device orientation;
 - \$330 plus applicable taxes, per month, for remote alcohol monitoring device calibrations and monitoring, inclusive of the monthly administrative fees to be paid to VASAP;
 - \$10 per month for optional insurance to cover theft or accidental damage to the remote alcohol monitoring device and its components;
 - An amount of 10% over the actual replacement cost of the remote alcohol monitoring device and its components when theft or accidental damage occurs and the offender has not purchased the optional insurance;⁴
 - \$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;
 - \$35 for missed appointments; and
 - An amount permitted by the Code of Virginia at the time for returned checks.
 - Additionally, in this section it is stated that all manufacturers or their service providers shall create and maintain an indigency fund for offenders who are

⁴ VASAP is aware of three manufacturers likely to seek a contract and estimates that for two of the manufacturers, the replacement cost of the remote alcohol monitoring device and its components would be \$2,000 to \$2,500. The replacement cost is unknown for the third likely manufacturer.

eligible for a reduction in fees based upon a declaration of indigency by the court and approval by VASAP. No manufacturers or their service providers shall deny service to any offender for whom there has been a declaration of indigency by the court and approval by VASAP.

- Section 80. Remote alcohol monitoring device orientation: Requires that the offender be provided orientation and training in the proper use of the remote alcohol monitoring device.
- Section 120. General manufacturer requirements: Lists general requirements for manufacturers to follow, including but not limited to:
 - Obtain approval from VASAP before disseminating any offender training or advertising materials used in association with the Virginia remote alcohol monitoring program.
- Section 130. Service provider technician certification: Explains the prerequisites for qualifying to be a remote alcohol monitoring service provider technician, to include the certification testing process.
 - Service provider technicians and state directors are required to possess a Virginia Remote Alcohol Monitoring Certification Letter to perform any remote alcohol monitoring services in the Commonwealth.
 - Newly hired service provider technicians, or state directors, however, may perform remote alcohol monitoring services under the direct supervision of a certified technician or state director for training purposes for up to 90 days prior to obtaining a Virginia Remote Alcohol Monitoring Certification Letter.
 - In order to obtain the Virginia Remote Alcohol Monitoring Certification Letter, the applicant must pass the Virginia Remote Alcohol Monitoring Certification Exam.

Estimated Benefits and Costs

The introduction of the option for offenders to request the remote alcohol monitoring device is potentially beneficial for offenders who do not wish to have their driving limited to purposes such as driving to and from work. By refraining from alcohol consumption at all times

and paying for the installation and use of the device,⁵ they would be able to drive at any time to any location. To the extent that a substantial number of offenders choose to request the device and their requests are granted by courts, businesses that provide the devices would likely benefit and the additional monitoring data could enable more informed decisions by local courts.

Participating in the remote alcohol monitoring program is optional for offenders. Contracting with VASAP to provide remote alcohol monitoring devices and services is optional for manufacturers. Thus, the creation of the program does not appear to create costs because offenders and businesses could simply choose not to participate in the newly available option.

There is discretion on specifics of the proposed regulation, though. For example, Chapter 1007 does not mandate that manufacturers have service centers within a 50-mile radius of every residence in the Commonwealth. It seems likely that manufacturers would find it more profitable to not meet this proposed requirement in the least populated areas of Virginia. The proposed requirement is beneficial for offenders in rural areas in that it limits how far they would have to travel to receive the service.

The legislation also does not directly address liability insurance for remote alcohol monitoring device manufacturers. Code of Virginia § 18.2-270.2 mandates that the *Ignition Interlock Program Regulations* (24 VAC 35-60) require that ignition interlock systems be “manufactured by an entity which is adequately insured against liability, in an amount established by VASAP, including product liability and installation and maintenance errors.” The *Ignition Interlock Program Regulations*⁶ do require manufacturers to submit “sufficient documentation to enable the verification of adequate insurance covering liability related to ignition interlock operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of \$1 million per occurrence and \$3 million general aggregate total.”

Chapter 1007 amends § 18.2-270.2 to require that VASAP adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices, but unlike for ignition interlocks, does not address insurance. On liability insurance, the proposed *Remote Alcohol Monitoring Device Regulations* are analogous to the existing *Ignition Interlock Program Regulations* in that it is stated that manufacturers are required to submit “sufficient

⁵ This is in addition to the costs paid for the installation and use of the ignition interlock.

⁶ See <https://law.lis.virginia.gov/admincode/title24/agency35/chapter60/section40/>

documentation to enable the verification of adequate insurance covering liability related to remote alcohol monitoring operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of \$1 million per occurrence and \$3 million general aggregate total.” This is beneficial in that it provides some financial protection for Virginians, but it is an additional required cost for manufacturers.

Businesses and Other Entities Affected

VASAP is aware of three manufacturers of remote alcohol monitoring devices that are likely to seek to contract to provide the services and commodities required for the implementation and maintenance of the Commonwealth's remote alcohol monitoring program. Two of the manufacturers already provide ignition interlocks and have service centers throughout the Commonwealth. VASAP believes that those manufacturers would use their existing service centers for the remote alcohol monitoring devices as well as the ignition interlocks. The third manufacturer does not currently have service centers in the Commonwealth. VASAP estimates that it would need 20 to 25 service centers to provide adequate statewide coverage.⁷ This manufacturer could choose to subcontract the servicing of its devices to one or more other firms.

The proposed regulation would also affect VASAP, courts, the 24 Alcohol Safety Action Programs located throughout the Commonwealth,⁸ and those offenders who qualify and are potentially interested in the Virginia remote alcohol monitoring program.

Small Businesses⁹ Affected:

According to VASAP, all three manufacturers of remote alcohol monitoring devices that are likely to seek to contract are large corporations and have operations in other states or even in other countries. Thus, they may not be considered to be small businesses. As stated above, one of the three manufacturers does not currently have service centers in the Commonwealth and may

⁷ The proposed regulation requires that services be made available within a 50-mile radius of every residence in the Commonwealth of Virginia unless otherwise authorized by VASAP.

⁸ The Alcohol Safety Action Programs provide probationary oversight to offenders who have been referred from a court, typically for a conviction of driving under the influence.

⁹ 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.”

choose to subcontract the servicing of its devices to one or more other firms. Such firms may be small businesses, but would not be adversely affected by the establishment of this regulation.

Localities¹⁰ Affected¹¹

The proposed regulation applies throughout the Commonwealth and does not introduce costs for local governments.

Projected Impact on Employment

The manufacturer that does not already have service centers would have to either hire staff for the required service centers, or subcontract the servicing of its product. In the latter case, the subcontractor or subcontractors would have to hire staff. Since according to VASAP each service center would typically have one employee, approximately 20 to 25 new jobs would be created. If the demand for the remote alcohol monitoring devices turns out to be substantial, the two manufacturers with existing service centers may need to hire additional staff as well.

VASAP does not believe additional staff would be necessary for the courts, the Alcohol Safety Action Programs, or itself.

Effects on the Use and Value of Private Property

The manufacturer that does not already have service centers, or its subcontractor(s), would need to rent or purchase 20 to 25 physical properties for service centers. This would positively impact the value of such properties. To the extent that the renting and servicing of remote alcohol monitoring devices is profitable under the set fees in the proposed regulation, the values of the manufacturers and potential subcontractors may increase.

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

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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.