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## Final Regulation Agency Background Document

<b>Agency name</b>	Commission on Virginia Alcohol Safety Action Program (VASAP)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24VAC35-70
<b>VAC Chapter title(s)</b>	Remote Alcohol Monitoring Device Regulations
<b>Action title</b>	New Regulations Covering Remote Alcohol Monitoring Devices
<b>Date this document prepared</b>	January 20, 2021

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This is a new regulation covering the requirements for the use of remote alcohol monitoring devices in Virginia when mandated by court order.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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

“Remote Alcohol Monitoring Device” means 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 via breath or bodily fluid.

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

### Statement of Final Agency Action

*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.*

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A public hearing was conducted on January 19, 2021. One minor change was made to the proposed regulation and the Executive Director of the Commission on VASAP granted approval for proceeding to the final stage of the regulatory process.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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Senate Bill 439 (2020 General Assembly Session). See “Legal Basis” below.

### Legal Basis

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

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Senate Bill 439 was passed by the 2020 general assembly and signed by the governor. This bill

incorporated SB 154 and SB 520 and made changes and additions to §§ 18.2-270.1, 18.2-270.2, 18.2-271.1 and 18.2-272 of the Code of Virginia. Section 18.2-270.2 directs the Executive Director of the Commission on VASAP or his designee, pursuant to approval by the commission, to certify remote alcohol monitoring devices for use in the Commonwealth and adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices.

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

Offenders who are eligible for an ignition interlock are usually subject to a number of additional driving restrictions such as limiting the permissible purposes for which they can drive. A new law will permit courts, upon request of offenders, to eliminate these additional driving restrictions when remote alcohol monitoring devices are used in combination with an ignition interlock. Unlike ignition interlock devices, which are designed to prevent attempts to drive under the influence, remote alcohol monitoring devices only provide a notification that someone has a prohibited alcohol concentration at a certain time and location. Remote alcohol monitoring devices do not prevent someone from driving under the influence. New legislation requires the Commission on VASAP to develop regulations regarding remote alcohol monitoring devices. These proposed regulations are similar in content to Virginia's ignition interlock regulations, but include language to encompass the wide variety of remote alcohol monitoring devices on the market that use varying technology.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The proposed regulation includes sections addressing the qualifications of remote alcohol monitoring device manufacturers and service providers; training and certification of remote alcohol monitoring technicians and state directors; remote alcohol monitoring device specifications and calibration; program participation fees; customer orientation training; and record keeping.

**Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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The proposed changes to this regulation will improve transportation safety in the Commonwealth. There are no anticipated disadvantages to the public or the Commonwealth.

Remote alcohol monitoring devices protect the public by ensuring that persons prohibited from drinking by court order adhere to their probationary requirements. Courts and probationary agencies will have the benefit of receiving real-time information about offenders they are supervising. A new law, effective July 1, 2021, permits convicted DUI offenders to drive with the sole driving restriction being the installation of an ignition interlock, provided they agree to remote alcohol monitoring as well. This provides drivers who opt to submit to remote alcohol monitoring, in combination with an ignition interlock device, the freedom to drive at any time to any location. The manufacturers and service providers of remote alcohol monitoring devices will have an opportunity to conduct business in Virginia by providing requested services to this offender population.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no applicable federal requirements, or other requirements that exceed applicable federal requirements, in this regulation.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to previously reported information.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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Commenter	Comment	Agency response
Toby Taylor	Pointed out that an inconsistency exists between 24VAC35-70-90(A) and 24VAC35-70-90(B)(1)(a) with regard to ignition interlocks on the Conforming Products List. Recommends rewording for consistency.	VASAP concurs with this recommendation and has made changes to the final version of this regulation.

**Detail of Changes Made Since the Previous Stage**

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
24VAC35-70-90(A)				Reworded for clarity and consistency.
24VAC35-70-90(B)(1)(a)				Reworded for clarity and consistency.

**Detail of All Changes Proposed in this Regulatory Action**

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
N/A – New Regulation			

