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Proposed Regulation Agency Background Document

Agency name	Commission on Virginia Alcohol Safety Action Program
Virginia Administrative Code (VAC) Chapter citation(s)	24VAC35-30
VAC Chapter title(s)	VASAP Case Management Policy and Procedure Manual
Action title	Repeal of 24VAC35-30 VASAP Case Management Policy and Procedure Manual
Date this document prepared	December 15, 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.

The purpose of the proposed action is to repeal 24VAC35-30, VASAP Case Management Policy and Procedure Manual, that no longer reflects current agency policy and procedures

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.

"VASAP" means Virginia Alcohol Safety Action Program

Mandate and Impetus

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, or board decision). 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”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 majority of the information in the current regulation is no longer accurate or applicable.

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.

The Commission on VASAP is empowered by the Code of Virginia (18.2-271.2) to “establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.”

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.

This regulation is inaccurate and no longer applicable to agency operational procedures.

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 entire regulation is being repealed.

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.

There are no anticipated disadvantages to the public. Using operational guidelines instead of regulations gives VASAP the flexibility to modify policy and procedures in timely response to the needs of the public, direction of the courts, and changes to the laws of the Commonwealth. The operational guidelines are mostly internal agency procedures; however, they will be available for public viewing.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements or requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No other agencies, localities or entities are particularly affected by this regulatory action. The operational guidelines that will replace the current regulation being repealed covers mostly internal agency procedures; however, the operational guidelines will be made available for public viewing.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and</p>	<p>There is no anticipated economic impact on state agencies</p>
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c) whether any costs or revenue loss can be absorbed within existing resources	
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no anticipated economic impact on localities.
Benefits the regulatory change is designed to produce.	

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There is no anticipated economic impact on other entities.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	

Alternatives to Regulation

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.

Operational Guidelines that pertain to the internal policies and procedures of the agency will replace the existing regulation.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

No impact on small businesses is anticipated.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is no continued need for this regulation since it is approximately 30 years old and no longer reflects current policy and procedure.

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.

Commenter	Comment	Agency response
David Hites	<p>“The laws as currently written support the rights of Virginians. Repealing the statutes is a disservice to all ASAP interlock clients. The law currently only allows ASAP case managers five business days to report a suspected violation to the court and to the offender. Repealing these statutes also dissolves that requirement, giving case managers unlimited time in which to file a court case for a suspected violation. Policy should never override law.”</p>	<p>Thank you for your comment. The operational guidelines that are replacing the regulation to be repealed will still require case managers to report non-compliance violations to the court (absent any court direction to the contrary), and notify the offender. The operational guidelines will permit a more manageable 10-day reporting requirement, instead of the current 5-day requirement. Adherence to this reporting requirement will be a point of emphasis in future certification reviews of all alcohol safety action programs.</p>
Cynthia Hites	<p>VASAP usurps the court system and takes on a judicial role by restarting or extending ignition interlock installation times based on any failed ignition interlock reading, including false positives. People should have the opportunity to defend themselves in court against such accusations, especially since the ignition interlock devices are not ethanol specific and can detect other types of alcohol.</p>	<p>The Code of Virginia requires DUI offenders, as a condition of receiving a restricted driver’s license, to have an ignition interlock installed for a minimum of six consecutive months, without any alcohol violations. While the ignition interlock may detect alcohols other than drinking alcohol (ethanol), probationers are instructed not to use any substances containing alcohol such as mouthwash, hand sanitizer, etc. in the vicinity of the ignition interlock when submitting a breath sample. If drivers ever believe that a “false” positive is being caused by alcohol in the ambient air or is due to residual mouth alcohol, rather than due to a positive blood alcohol concentration from alcohol consumption, then they are afforded the opportunity to provide another breath sample within 15 minutes. This provides sufficient time for such alcohol interferences to dissipate. Ignition interlock data log reports showing changing BAC levels on multiple tests, which are not consistent with the normal oxidation patterns of consumed alcohol, are not counted as violations. Questionable violations, and violations with low BAC readings, are given a second review at the state VASAP office for verification. It is not VASAP’s intention to usurp the court system. VASAP follows the direction of the courts with regard to how and when ignition interlock violations are reported. Some courts do not want to be notified of violations and have directed the ASAPs to automatically extend ignition interlock installation times from the date of the latest</p>

		<p>violation. Some courts do not want to be notified of a first violation, only after a second violation has occurred. Still other courts want to be notified of alcohol violations only, not violations for failing to submit to a rolling retest, for example. Despite the inconsistency of the courts' expectations, offenders always have the right to petition the court to contest the validity of ignition interlock results.</p>
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Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Commission on VASAP is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts 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://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Richard Foy
 Commission on VASAP
 1111 E. Main St., Ste. 801
 Richmond, VA 23219
 (804) 786-5895
 (804) 786-6286 (FAX)
Richard.Foy@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.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
All chapters are being repealed.			The policy and procedures in the existing regulation are no longer applicable for the most part, and the content applies primarily to internal agency policies.