



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

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**24 VAC 35-60 – Ignition Interlock Regulations**  
**Commission on Virginia Alcohol Safety Action Program**  
December 5, 2014

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### **Summary of the Proposed Amendments to Regulation**

The Commission on Virginia Alcohol Safety Action Program (VASAP) proposes to: 1) require that all ignition interlocks be equipped with cameras, 2) require that all ignition interlock vendors' state directors and service technicians take a certification test to demonstrate their knowledge of applicable state laws and regulations prior to being permitted to install ignition interlock devices, 3) incorporate existing fees into the regulation, establish new fees, and amend certain existing fees, 4) allow wet bath simulators for use in the calibration of ignition interlock devices, and 5) require sooner but less frequent rolling tests and increase the length of time for motorists to complete the test when prompted.

### **Result of Analysis**

The benefits likely exceed the costs for the proposed changes. However, the practice of subcontracting which is currently prohibited by the regulation appears to have the potential to be a viable alternative to reduce compliance costs.

### **Estimated Economic Impact**

There are numerous proposed changes. Each substantive change is discussed below.

#### ***Cameras:***

One of the proposed changes will require ignition interlock service providers to install cameras with the interlock device on all vehicles except motorcycles and mopeds. All four of the interlock vendors currently serving Virginia are reported to have this capability. The camera will capture the image of the person providing the breath sample and will ensure that offenders are

not circumventing legal requirements by having other persons provide breath samples to start their vehicles. Thus, new imaging capability will likely deter non-compliance.

Addition of the camera will increase the equipment cost of the overall interlock device. VASAP estimates the cost of the camera to be about \$250 and that there are approximately 9,000 interlock devices currently installed in the Commonwealth. A \$250 added cost per camera would amount to \$2,250,000 for 9,000 interlock devices. Even though ignition interlock devices are not required to be equipped with a camera by regulation currently, according to VASAP cameras are already being required by many courts in Virginia. Thus, the magnitude of total added equipment costs will likely be less than \$2,250,000.

Other costs to the providers include additional labor time for each device installation and downloading of images from the device, updating technician training, possible changes in provider computer systems to accommodate increases in required bandwidth, speed, and storage capacity due to additional image data.

The interlock device is owned by the service providers who lease the device to the offenders. If an offender is convicted of driving under the influence, he or she is required to have an ignition interlock installed in any vehicle he or she operates. Second and any subsequent offenses require an ignition interlock installed in all vehicles owned by or registered to the offender in whole or in part. Service providers are allowed to charge an installation fee and monthly monitoring fee which are regulated. Currently, the installation fee is \$65 for a standard interlock device and the monthly monitoring fee is \$80.<sup>1</sup> However, according to VASAP, in most cases, providers waive the installation fee to promote their services. Thus, providers that are currently waiving the installation fee may start charging for the installation fee to cover their additional costs and providers that are not currently waiving the installation fee may have to absorb the added costs since there is no change in installation and monitoring fees due to the proposed addition of cameras to the interlock device.

***Certification:***

Another proposed change will require service provider state directors and technicians to be certified in order to perform ignition interlock services in the Commonwealth starting June

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<sup>1</sup> Of the \$80 monitoring fee, \$20 goes to local and state ASAP offices.

30, 2015. Existing state directors and technicians as of that day will be grandfathered in. However, VASAP may order a state director or a technician to retake the state certification exam if he or she demonstrates lack of knowledge or incompetence while performing services. The test will measure applicants' knowledge on technical issues, customer service, ethics, Virginia interlock laws and regulations. VASAP anticipates this requirement will improve compliance with laws and regulations. It will also likely increase administrative costs of VASAP as it will take time to prepare the test, administer it, and evaluate the results.

Currently, there are approximately 60 state directors and technicians in the Commonwealth that will be grandfathered in. In the future, no more than 10 certification applications per year are expected. The initial test will be provided free of charge. However, if the applicant fails in his or her first try, any subsequent tests will be provided at a cost of \$250 each. Thus, depending on the outcome of the initial test, state directors and technicians may or may not incur test fees.

In addition to the test fee, applicants are likely to incur costs in terms of their time devoted to preparing for and taking the exam. VASAP estimates that it may take approximately 4 hours to study the curriculum and the test itself may take up to 2 hours to complete. Moreover, the test will be offered in Richmond. Since not all of the state directors and technicians perform their services in Richmond area, many applicants will likely incur travel and lodging expenses to obtain this certification. Furthermore, since the certification must be obtained prior to employment, it may introduce some delays and contingencies in the hiring process for providers.

***Fees:***

The proposed changes will incorporate existing fees into the regulation. Currently, these fees are stated in the request for proposals for provider services but are not in regulations. Addition of the fees in the regulations will likely improve their visibility to the public and when they need to be amended in the future, afford the public an opportunity to review and provide input on such changes.

One of the unintended consequences of including fees in the regulations is the potential delay in adjusting the fees if market conditions dictate a change. A regulatory amendment may take a significant amount of time to go in effect, and may introduce a delay in implementation of

new fees. However, the proposed regulations address that concern by allowing VASAP to increase installation and monitoring fees up to 25% under certain conditions.

Additionally, the proposed fee changes will allow service providers to charge a higher fee for more complex interlock installations such as those on hybrid vehicles or on vehicles with a push button starter. The fee for more complex installations will be \$130. This will allow providers to charge an additional \$65 over the standard installations to cover additional technician labor and training associated with such installations. By allowing providers to charge a higher fee for more costly installations, this change is expected to better allocate cost responsibility for more costly installations.

The proposed fee changes will also allow a \$50 fee to undo a permanent lockout if the permanent lock out occurred due to the fault of the offender and a \$50 an hour fee, not to exceed four hours, for repairs and reinstallation of the interlock if the device is tampered with. These new fees will allow providers to recoup costs for installations and repairs necessitated by the fault of offenders. By holding offenders responsible for costs due to their actions, these two new fees are expected to align incentives with desired outcomes and allocate costs in an economically efficient manner.

The proposed changes will raise the maximum allowable charge for optional ignition interlock insurance from \$6 to \$8 per month to cover cameras. Since the overall cost of the equipment will increase due to inclusion of cameras, the insurance coverage and the premium to provide a higher coverage need to be adjusted. This change will make it possible for offenders to purchase insurance coverage commensurate with the coverage they need to protect themselves from financial liability in case the camera is damaged.

Finally, the proposed changes will allow providers to charge offenders no more than 10% over the replacement cost of ignition interlock device if it is damaged or lost and there is no insurance coverage. Currently, there is no limit on what the providers may charge for a replacement system. This change will prevent providers charging a fee significantly higher than the replacement cost while allowing an additional 10% to cover other potential costs such as shipping, handling, and postage.

***Wet Bath Reference Sample:***

Currently, ignition interlocks must be calibrated using a dry gas reference sample. The proposed regulations will permit vendors to use either a dry gas or wet bath reference sample when calibrating ignition interlocks. This may reduce the cost of calibration for service providers as it will permit more ignition interlock models to be used in Virginia. Some interlock devices can only be calibrated using a wet bath simulator. On the other hand, inspection of different models may add to administrative costs of VASAP.

***Rolling Test:***

Currently, a rolling retest is required within the first 10-20 minutes after the vehicle is started and then again at random intervals every 20 to 40 minutes. A rolling test is a test of offender's breath sample conducted at random intervals during the operation of the vehicle. Once the test is initiated, the offender has six minutes in which to submit a breath sample before the vehicle lights and horn activate.

The proposed regulations will require an initial rolling retest within five minutes of the vehicle starting; and the subsequent random rolling retests will now be less often (every 45-60 minutes). Also, the operator will be given 15 minutes instead of six minutes to provide a breath sample before the vehicle lights and horn activate. This change will deter the incentive an offender may have to drive under the influence when traveling short distances and arriving to their destination in less than 10-20 minutes and likely reduce the chances of distracted driving. Having fewer rolling retests and permitting extra time to complete the retest will give drivers additional time to pull to the roadside prior to submitting a breath sample.

**Businesses and Entities Affected**

These regulations primarily affect ignition interlock vendors, technicians, and offenders. There are currently four contracted vendors employing approximately 60 technicians in the Commonwealth. Also, there are approximately 9,000 offenders with interlock devices installed in their vehicles at the present time.

**Localities Particularly Affected**

The regulations apply throughout the Commonwealth.

## **Projected Impact on Employment**

The proposal to require installation of cameras is expected to increase the demand for technician labor since installations will likely require more time. The proposed certification requirement may reduce the technician labor supply as they will be required to pass a certification test. The combined effect of these changes on employment is indeterminate.

## **Effects on the Use and Value of Private Property**

Permission to charge for some services that were not allowed before, increased fees for more complex installations, and allowing wet bath technology will likely increase provider revenues and have a positive impact on their asset values. On the other hand, increase in the needed working capital and labor demand to install cameras and the proposed certification fee for second and subsequent tests will add to the overall compliance costs and may offset some of the expected positive impact.

## **Small Businesses: Costs and Other Effects**

The main effect of the proposed changes will be on 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 as small businesses.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

Under the current regulations and policy, VASAP does not allow service providers to subcontract with third parties. Every service provider is required to maintain direct control and ownership of service centers within a 50 mile radius of every residence in the Commonwealth. They are permitted to rent service bay space from existing gas stations, automobile repair shops, etc, but are required to employ their own personnel. According to one vendor, “this policy- the only one of two of its kind in the country- is unduly burdensome on the service providers, who bear the cost of directly leasing or owning space throughout the Commonwealth in order to provide this service.”<sup>2</sup>

VASAP is concerned that subcontracting will compromise the integrity of the ignition interlock program. VASAP believes that protecting the chain of evidence for court testimony and evidentiary procedures would be at risk. Through consultation with interlock program

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<sup>2</sup> See Agency Background Document, Form: TH-02, page 6.

administrators in other states, VASAP states that it is aware of many instances of problems associated with subcontracting. However, service providers operate under contract and have an obligation to comply with regulatory requirements. Thus, the risks seem unlikely to increase under a contractual operation of service centers, as compared to the direct operation by the service providers.

While the hesitation of VASAP is understandable, its stand on this issue disregards provider cost concerns. Also, the fact that all fees are regulated by VASAP puts service providers at a very precarious situation because they do not have the ability to change their prices in response to changing costs.

It should be noted that subcontracting is a very common business practice across many industries including construction, manufacturing, health care, information technology, even defense, national security, and aerospace. In today's economy, very complex tasks are accomplished through subcontracting. Undoubtedly, in each case there are some concerns that need to be addressed in the subcontracting process. Given the spread of subcontracting in the nation and the fact that many complex and sensitive tasks in the presence of some serious concerns such as national security are regularly achieved by subcontracting, it is difficult to assume that the ignition interlock regulations cannot be effectively administered if service providers are allowed to subcontract.

In addition, with the proposed new certification requirement VASAP will ensure that the technicians and state directors are competent. The certification will directly measure the knowledge and skills of each technician. Upon a violation, VASAP can revoke, suspend, or terminate an individual's certification. So, there are safeguards in place to make sure the technicians are competent to provide the service and if they fail in performing their duties, a corrective action can be taken. Since the competency of individual technicians and their accountability are addressed in the regulations, it is difficult to reach the conclusion that allowing the service providers to subcontract with certified technicians will somehow compromise the integrity of the Virginia ignition interlock program.

If subcontracting is allowed in performance of interlock services, the providers will have much more flexibility and will likely have opportunities to reduce their costs and improve access

to their services in a significant way. Some of the cost savings will likely be passed on to their customers in an effort to promote their products.

In short, there seems to be a potent opportunity to reduce regulatory compliance costs without compromising the integrity of the Virginia ignition interlock program by allowing providers to subcontract with third parties.

## Real Estate Development Costs

The proposed amendments are unlikely to affect real estate development costs.

## Legal Mandate

**General:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 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:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

**Small Businesses:** If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 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 (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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