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**MEMORANDUM**

**TO:** Peter M. Marone, Director  
Department of Forensic Science

**FROM:** Charles A. Quagliato  
Assistant Attorney General

**DATE:** October 24, 2007

**SUBJECT:** Regulations for Breath Alcohol Testing — 6 VAC 40-20 *et seq.*

In response to a request from the Department of Forensic Science, I have reviewed the proposed regulations, 6 VAC 40-20 *et seq.*, relating to breath alcohol testing equipment and the licensing process associated with that equipment. Virginia Code § 18.2-267(B) requires the Department to “determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff’s departments of the same.” Additionally, Virginia Code § 18.2-268.9 requires the Department to “establish a training program for all individuals who are to administer the breath tests” and “upon a person’s successful completion of the training program, the Department may license him to conduct breath-test analyses.” Upon review of the aforesaid regulations, I find the proposed regulations to be constitutional, consistent with the statutory authority granted by § 18.2-267(B) and § 18.2-268.9 of the Code of Virginia, and in conformity with existing statutory provisions.

*Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.*