



Virginia  
Regulatory  
Town Hall

## Exempt Action Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Criminal Justice Services
<b>VAC Chapter Number:</b>	6 VAC 20-190
<b>Regulation Title:</b>	Regulations for Breath Alcohol Testing
<b>Action Title:</b>	Breath Alcohol Testing
<b>Date:</b>	10/9/2003

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

**Note agency actions exempt pursuant to § 9-6.14:4.1(B)** do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

### Summary

*Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Code of Virginia directs the Department of Criminal Justice Services, Division of Forensic Science to establish a training program, approve equipment, and establish methods to conduct chemical analyses of a person's breath, either to obtain a preliminary analysis of alcoholic content for the purposes of §§ 18.2-267, 29.1-738.1 and 46.2-341.25

or, pursuant to §§ 18.2-268.9, 29.1-738.2 and 46.2-341.26:9, to obtain an analysis that can be considered valid as evidence in a prosecution under §§ 18.2-266, 18.2-266.1, 29.1-738 or 46.2-341.24. These regulations describe the process for approval of breath test devices, general methods of conducting breath tests, training and licensing procedures for operators, required forms and records, and the use of preliminary breath test devices.

The amendments make technical corrections to the regulations and clarify breath test administrative procedures, the approval of breath test devices, licensing procedures, required forms and records, and specifications of preliminary breath test devices.

**Statement of Final Agency Action**

*Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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This regulation was approved by the Criminal Justice Services Board on September 15, 2000, and amendments were approved on October 9, 2003. The Department of Criminal Justice Services is taking the action. The title of the regulation is Regulations for Breath Alcohol Testing.

**Family Impact Statement**

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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Failure to properly administer breath alcohol tests to persons suspected of driving under the influence of alcohol would result in more cases being dismissed on technicalities and have an adverse impact on families by allowing people who drink and drive to continue to do so for a longer period of time. These regulations benefit families by clarifying technical breath alcohol test administration procedures so that cases coming to court will not be dismissed due to technicalities.