



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Housing and Community Development
VAC Chapter Number:	21
Regulation Title:	Virginia Certification Standards
Action Title:	Final
Date:	06/28/00

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The final regulation consists of most of the existing technical provisions of the 1996 Virginia Certification Standards and contains most of the administrative provisions and formatting of the 1993 standards. A brief summary of the substantive regulatory amendments made since the proposed regulations were published is to: (i) clarify that the department will verify not approve, proof of qualifications; (ii) update to the 2000 Edition of the BOCA Certification Programs; (iii) add the ASME QEI-1 Standard as an acceptable alternate for elevator inspectors; (iv) change from DHCD to BHCD as approving alternate testing, examinations or education and experience for certification; (v) reduce the list of prohibited acts, which may result in BHCD sanctions from eleven (11) to two (2); and (vi) require the board to respond within 60 days of receipt of a petition.

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.

On May 22, 2000, the Board of Housing and Community Development adopted a final regulation entitled "Virginia Certification Standards" (13 VAC 5-21-10 et seq.)

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The statutory authority for the Board of Housing and Community Development to promulgate the regulations regarding certificates of competence and training requirements for code officials and assistants is found in the General Assembly's mandate to the Board in § 36-137(5 & 6) of the Code of Virginia, which directs the Board to issue a certificate of competence regarding the building and fire regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections and to make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary

§ 36-137 Powers and duties of Board

The Board shall exercise the following powers and duties, and such others as may be provided by law:

1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
3. Monitor the policies and activities of the Department and have the right of access to departmental information.
4. Advise the Governor and the Director on matters relating to housing and community development.
- 5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary.**

6. Issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of this title and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.

7. Levy by regulation up to one percent of building permit fees authorized pursuant to § 36-105 to support training programs of the Building Code Academy established pursuant to § 36-139. Local building departments shall collect such levy and transmit it quarterly to the Department of Housing and Community Development. Localities which maintain, individual or regional, training academies accredited by the Department of Housing and Community Development shall retain such levy. However, such localities may send employees to training programs of the Building Code Academy upon payment of a fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year for the continued operation of the Building Code Academy. Annual collections of such levy in excess of \$500,000 or any unobligated fund balance greater than one-third of that year's collections shall be credited against the levy to be collected in the next fiscal year.

8. Establish general policies, procedures, and programs for the Virginia Housing Partnership Revolving Fund established in Chapter 9 (§ 36-141 et seq.) of this title.

9. Determine the categories of housing programs, housing sponsors and persons and families of low and moderate income eligible to participate in grant or loan programs of the Virginia Housing Partnership Revolving Fund and designate the proportion of such grants or loans to be made available in each category.

10. Advise the Director of the Department on the program guidelines required to accomplish the policies and procedures of the Virginia Housing Partnership Revolving Fund.

11. Advise the Virginia Housing Development Authority on matters relating to the administration and management of loans and grants from the Virginia Housing Partnership Revolving Fund.

12. Establish the amount of the low-income housing credit, the terms and conditions for qualifying for such credit, and the terms and conditions for computing any credit recapture amount for the Virginia income tax return.

13. Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.

14. Advise the Department in the development of the Comprehensive Housing Affordability Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+36-137>

The Office of the Attorney General has certified that the Board of Housing and Community Development has the statutory authority to promulgate the proposed amendments to the Virginia Certification Standards (13 VAC 5-21-10 et seq.) and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The explanation, rationale or justification of the needed regulatory amendment regarding changing the definition of “Code Academy” to better comport with the definition in the Standards Governing Operation of Individual and Regional Code Academies (13 VAC 5-80-10), is to clarify that training classes at Department of Housing and Community Development (DHCD) certified individual and regional code academies are included in required “training and subject area requirements”, for certification.

The explanation, rationale or justification of the needed regulatory amendment regarding changing that the DHCD will verify not approve proof of qualifications, is that the Board of Housing and Community Development (BHCD) issues certificates of competence to candidates, not the Department.

The explanation, rationale or justification of the needed regulatory amendment regarding clarifying that fire prevention code official and fire prevention inspector are exempted from the Building Officials and Code Administrators International, Inc. (BOCA) Certification Program and must be approved under the Virginia Department of Fire Programs (DFP) training, is required in order to comply with a BHCD resolution.

The explanation, rationale or justification of the needed regulatory amendment regarding updating to the 2000 Edition of the Building Officials and Code Administrators International, Inc. (BOCA) Certification Program is required because the 1999 Edition of the BOCA Certification Program is no longer available.

The explanation, rationale or justification of the needed regulatory amendment regarding adding the ASME QEI-1 Standard as an acceptable alternate to the BOCA Certification Program for elevator inspector training and examination, is necessary due to the large number of individual request for approval of the ASME QEI-1 Standard and the time required to grant individual exceptions.

The explanation, rationale or justification of the needed regulatory amendment regarding changing from DHCD to BHCD as to who may approve alternate testing and examinations or combinations of education and experience for certification, is that the BHCD issues certificates of competence to candidates, not the DHCD.

The explanation, rationale or justification of the needed regulatory amendment regarding adding that the DHCD may approve other educational training modules as being equivalent to Code Academy training modules, is that DHCD is granted such under § 36-139 et seq. of the Code of Virginia.

The explanation, rationale or justification of the needed regulatory amendment regarding changing when the BHCD determines a candidate has complied with the Virginia Certification Standards, that a certification, shall and not may, be issued, is being made at the request of the regulated community and is considered appropriate.

The explanation, rationale or justification of the needed regulatory amendment regarding the proposed regulation, 13 VAC 5-21-61 Sanctions; peer review; petition, being amended to reduce the list of certificate holder prohibited acts, which may result in BHCD sanctions on a certificate holder, from eleven (11) to two (2), is being made at the suggestion of the regulated community, which suggests that the lengthy list contained prohibited acts outside the scope of the BHCD authority.

The explanation, rationale or justification of the needed regulatory amendment regarding the proposed regulation, 13 VAC 5-21-61 Sanctions; peer review; petition, was amended to require the BHCD to respond within 60 days of receipt of a candidate’s or certificate holder’s petition, is being made at the suggestion of the regulated community, which suggests that the BHCD respond in a timely manner and is considered appropriate.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action’s detail.

The new substantive provisions between the proposed and the final regulation are:

1. Clarify that the department will verify not approve, proof of qualifications;
2. Update to the 2000 Edition of the BOCA Certification Program;
3. Add the ASME QEI-1 Standard as an acceptable alternate for elevator inspectors;
4. Change from DHCD to BHCD as approving alternate testing, examinations or education and experience for certification;
5. Reduce the list of prohibited acts, which may result in BHCD sanctions from eleven (11) to two (2); and
6. Require the board to respond within 60 days of receipt of a petition.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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, please include a sentence to that effect.

The primary advantage to the public of the proposed amendments is a more uniform application of the USBC, VADR, SFPC and these standards across the Commonwealth. The primary advantage to the department is fewer questions due to the clarifying nature of the amendments. There are no disadvantages to the public or the department.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

A brief summary of the substantive regulatory amendments made since the proposed regulations were published is to:

1. Clarify that the department will verify not approve, proof of qualifications;
2. Update to the 2000 Edition of the BOCA Certification Program;
3. Add the ASME QEI-1 Standard as an acceptable alternate for elevator inspectors;
4. Change from DHCD to BHCD as approving alternate testing, examinations or education and experience for certification;
5. Reduce the list of prohibited acts, which may result in BHCD sanctions from eleven (11) to two (2); and
6. Require the board to respond within 60 days of receipt of a petition.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The Board of Housing and Community Development received comment from 5 (five) statewide associations regarding the proposed Virginia Certification Standards. The key suggestions were:

1. Change from DHCD to BHCD as approving alternate testing, examinations or education and experience for certification;
2. Reduce the list of prohibited acts, which may result in BHCD sanctions from eleven (11) to two (2);
3. Require the board to respond within 60 days of receipt of a petition; and
4. Delete the State Building Code Technical Review Board from the appeals section and require the Board of Housing and Community Development to hear appeals.
5. Establish the “advisory review committee” as a full time committee to review all proposed board certification activities.

The Board of Housing and Community Development's response to the public comment received regarding this regulation was to amend the proposed inline with suggestions 1 through 3 above and to not amend the proposed as suggested in 4 & 5 above.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Detailed below are the substantial amendments made to these proposed regulations by the Board and adopted as final regulations on May 22, 2000.

The proposed regulation, 13 VAC 5-21-10 Definitions, was amended to change the definition of "Code Academy" to better comport with the definition in the Standards Governing Operation of Individual and Regional Code Academies (13 VAC 5-80-10).

The proposed regulation, 13 VAC 5-21-31 Proof of qualifications for certificate and examination, was amended to change that DHCD will verify not approve, proof of qualifications, prior to BHCD certification.

The proposed regulation, 13 VAC 5-21-31 Proof of qualifications for certificate and examination, was amended to clarify that fire prevention code official and fire prevention inspector are excepted from the BOCA Certification Program and add the Virginia Department of Fire Programs (DFP) address and phone number.

The proposed regulation, 13 VAC 5-21-31 Proof of qualifications for certificate and examination, was amended to update to the 2000 Edition of the BOCA Certification Program.

The proposed regulation, 13 VAC 5-21-31 Proof of qualifications for certificate and examination, was amended to add the ASME QEI-1 Standard as an acceptable alternate to the BOCA Certification Program for elevator inspectors.

The proposed regulation, 13 VAC 5-21-31 Proof of qualifications for certificate and examination, was amended to change from DHCD to BHCD as to who may approve alternate testing and examinations or combinations of education and experience for certification and who must consider future amendments of approved testing agencies and examinations when deciding whether a requested alternate should be granted.

The proposed regulation, 13 VAC 5-21-41 Categories and requirements, was amended to add that the DHCD may approve other educational training modules as being equivalent to Code Academy training modules as provided under § 36-139 et seq. of the Code of Virginia.

The proposed regulation, 13 VAC 5-21-51 Certification, was amended to change when the BHCD determines a candidate has complied with this chapter, that a certification shall and not may be issued.

The proposed regulation, 13 VAC 5-21-61 Sanctions; peer review; petition, was amended to reduce the list of certificate holder prohibited acts from eleven (11) to two (2), which may result in BHCD sanctions on a certificate holder.

The proposed regulation, 13 VAC 5-21-61 Sanctions; peer review; petition, was amended to remove the annual selection of a chairman for the advisory review committee.

The proposed regulation, 13 VAC 5-21-61 Sanctions; peer review; petition, was amended to require the BHCD to respond within 60 days of receipt of a candidate's or certificate holder's petition.

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.

The analysis that assesses the impact, including to what extent, this regulatory action will have on the institution and stability of the family is:

- 1) To neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children;
- 2) To neither encourage nor 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) To neither strengthen nor erode the marital commitment; and
- 4) To neither increase nor decrease disposable family income.