



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Housing and Community Development
VAC Chapter Number:	13 VAC 5-21-10 et seq. and Amending 13 VAC 5-80-10, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130 and 140 and repealing 13 VAC 5-80-20, 30 and 150
Regulation Title:	Virginia Certification Standards and Virginia Standards for Individual and Regional Code Academies
Action Title:	Final
Date:	5/23/03

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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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 substantive amendments to the Virginia Certification Standards proposed by the Board of Housing and Community Development (Board) are as follows:
To add the following definitions: “certificate”, “BCAAC” and “training” to the regulations;
To delete the list of categories of BHCD certificates and the list of approved testing agencies and examinations;
To establish circumstances and conditions under which a person may be issued a Board provisional certificate.

The proposed amendments to the Virginia Standards for Individual and Regional Code Academies proposed by the Board of Housing and Community Development (Board) are intended to update this regulation, which is used to accredit a individual or regional code academy to conduct educational programs for persons seeking to become certified to enforce Virginia's building and fire prevention related regulations, by adding standard definitions, repealing unnecessary adoption provisions, deleting the maximum amount of levy funds that may be carried over and by repealing the VAC section with DHCD's address.

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.

The Board of Housing and Community Development adopted final Virginia Certificate Standards and Virginia Standards for Individual and Regional Code Academies on April 7, 2003.

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.

There is no federal source of legal authority to promulgate the regulation.

The statutory authority for the Board of Housing and Community Development (Board) to promulgate the Virginia Certification Standards is found in the General Assembly's mandate to the Board in § 36-137(5) of the Code of Virginia, which directs and empowers the Board to make such rules and regulations as may be necessary to carry out its responsibilities. One of the Board's responsibilities is to issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations to any persons seeking to become qualified to perform inspections pursuant to the building and fire regulations adopted by the Board as found in the General Assembly's mandate to the Board in § 36-137 (6). § 36-137 (5) of the Code of Virginia provides the legal authority for the Board to adopt the Virginia Standards for Individual and Regional Code Academies. § 36-137 (7) of the Code of Virginia provides the legal authority for the Department to accredit individual or regional training academies maintained by localities, which retain the building permit fee levy authorized under the Uniform Statewide Building Code (13 VAC 5-62-10 et seq.).

§ 36-137. Powers and duties of Board; appointment of Building Code Academy Advisory

Committee.

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 prevention 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, Chapter 9 (§ 27-94 et seq.) of Title 27, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.
 7. Levy by regulation up to two 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 that 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.
- The Board shall appoint a Building Code Academy Advisory Committee (the Committee) comprised of representatives of code enforcement personnel and construction industry professions affected by the provisions of the building and fire prevention regulations promulgated by the Board. Members of the Committee shall receive no compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties in accordance with § 2.2-2813. The Committee shall advise the Board and the Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.
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 Consolidated Plan Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities.
15. Advise the Governor and the Department on the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

<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 final regulations and that it comports with state 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 rationale for the substantive changes to the Virginia Certification Standards being proposed by the Board is as follows:

To add the following definitions: “certificate”, “BCAAC” and “training”, to provide increased clarity of the regulation for the public.

To delete the list of categories of BHCD certificates and the list of approved testing agencies and examinations to reduce confusion and to add flexibility to amend categories of certificates or approved agencies and examinations.

To establish circumstances and conditions under which a person may be issued a Board provisional certificate to eliminate a regulatory burden on persons needing such certificate while pursuing full certification.

To require certificate holders certified by the Board of Housing and Community Development to attend continuing educational training in order to maintain status as an active certificate holder.

This provides the public better assurance certificate holders are current on issues and information affecting their trade.

Amendments adopted by the Board will also bring the Virginia Standards for Individual and Regional Code Academies into line with the other building and fire related regulations promulgated by the Board and only the deletion of the maximum amount of levy funds that may be carried over to the next fiscal year for operation of the individual or regional training

academies is considered to change the status quo. Deleting this carry-over limitation will assist training academies finance training activities and improvements.

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 key provisions of the Virginia Certification Standards that change the current status of law is the establishment of the circumstances and conditions under which a person may be issued a Board provisional certificate.

Only the deletion of a maximum amount of levy funds that may be carried over to the next fiscal year for operation of the individual or regional, training academies is considered to change the status quo of the Virginia Standards for Individuals and Regional Code Academies.

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 for the public of implementing the Certification Standards amendments will be the establishment of the circumstances and conditions under which a person may be issued a Board provisional certificate, which will allow the regulation to be less burdensome and intrusive. The agency sees no disadvantages for the public or the Commonwealth.

There are no disadvantages to the public or the Commonwealth to promulgate the proposed amendments to the Virginia Standards for Individual and Regional Code Academies.

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.

Public comment was received from the State Building Code Technical Review Board (TRB) and the Building Code Academy Advisory Committee requesting the regulation be amended to remove language related to appealing a decision of the Board of Housing and Community

Development directly to the TRB. Such decisions are subject to judicial review and therefore need not be appealed to the TRB. The Board approved and accepted this recommendation.

The Building Code Academy Advisory Committee recommended several other amendments to the proposed regulation:

1. To add the code official to the list of persons who may be sanctioned this provides increased accountability of building officials.
2. To delete reference to the development of a training and certification “guidance document” and to set out training requirements for certain categories of certification. Training requirements are best determined by the Board after consultation with the Department and the Building Code Academy Advisory Committee.
3. To require the Department of Housing and Community Development to maintain a list of testing agencies for various certifications in order to provide the public quick and easy access to such list.
4. To clarify that alternative experience and school allowance may substitute for technical module training.

The Board approved and accepted these recommendations.

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.

Public comment was received from the State Building Code Technical Review Board (TRB) and the Building Code Academy Advisory Committee requesting the regulation be amended to remove language related to appealing a decision of the Board of Housing and Community Development directly to the TRB. Such decisions may be case decisions and therefore subject to judicial review. The Board approved and accepted this recommendation.

The Building Code Academy Advisory Committee also recommended several other amendments including amendments to the proposed regulation:

1. To add the code official to the list of persons who may be sanctioned.
2. To delete reference to the development of a training and certification “guidance document” and to set out training requirements for certain categories of certification.
3. To require the Department of Housing and Community Development to maintain a list of testing agencies for various certifications.
4. To clarify the alternative experience and school allowance to substitute for technical module training.

The Board approved and accepted these recommendations.

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.

Sections 13 VAC 5-21-10 and 13 VAC 5-80-10 are amended to add and expand terms used within the regulation to provide increased clarity and better understanding of the regulatory provisions.

Section 13 VAC 5-21-20 is amended to clarify the purpose of the Virginia Certification Standards.

Section 13 VAC 5-21-31 is amended to provide more specificity to the required documentation needed prior to certification and to clarify provisions related to approval of other training, experience or education as equivalent to code academy training.

Section 13 VAC 5-21-41 is amended to delete the list of categories of Board of Housing and Community Development certificates and the list of approved testing agencies and examinations. Such list was not inclusive of all certificate categories and approved testing agencies, a listing that is subject to change periodically. The section will require DHCD to maintain a list of BHCD certification categories and required training. The section also specifies certification requirements.

Section 13 VAC 5-21-51 is amended to establish circumstances and conditions under which a person may be issued a provisional certificate. This allows persons meeting certain conditions to obtain a needed certificate while continuing to work toward receiving full certification. This section also requires certificate holders certified by the Board to attend continuing education training in order to maintain status as an active certificate holder. This provides the public better assurance that certificate holders knowledge is current.

Section 13 VAC 5-21-61 is amended to provide that sanctions apply to technical assistants and inspectors. The section is also amended to provide that sanctions may be imposed for failure to obtain certification as may be required under the USBC, VADR or SFPC. This section is also amended by deleting all provisions related to an advisory review committee and administrative provisions related to considering sanctions. Instead, the provisions of the Administrative Process Act shall be used for hearings and consideration of sanctions.

Sections 13 VAC 5-21-70 and 13 VAC 5-80-40 is amended to delete provisions related to appeals to the TRB and to specify that decisions of the BHCD are case decisions and are subject to judicial review in accordance with the Administrative Process Act.

Section 13 VAC 5-80-60 is amended to delete the requirement that accredited code academy may not carry forward more than 25% of the previous fiscal year's levy. Removing the limitation on the carry forward provides an additional source for financing academy programs and program improvements.

Sections 13 VAC 5-80-20, 30, and 150 are repealed.

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.

N/A