



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Housing and Community Development (DHCD)
Virginia Administrative Code (VAC) citation	13VAC 5-21-51
Regulation title	Virginia Certification Standards (VCS)
Action title	Issuance of Certificates – Active/Inactive Certificate Status Relative to Required Periodic Training and Continuing Education
Date this document prepared	31 August 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This regulatory action amends the existing regulation to clarify the existing mandatory requirements for all certificate holders in code enforcement, consisting of building officials and technical assistants, to separately obtain both periodic training to maintain a level of technical knowledge required of the certificate holder as well continuing education to progress the level of professional skill commensurate with the building code cycles and the construction industry developments. This regulatory action further correlates the proposed regulatory amendments within the Virginia Uniform Statewide Building Code (USBC), which encompass the relevant Sections of the Virginia Construction Code (Section 105.2.3), Virginia Residential Code (Section 105.2.3), and Virginia Maintenance Code (Section 104.4.4), regarding compliance with each of the two requirements for periodic maintenance training and continuing education credits. In addition, this regulatory action applies the mandated training and education requirements to further define the active and inactive certificate status of certificate holders relative to the ongoing training and education of certificate holders. In order to achieve and sustain active status once certified, an individual must satisfactorily attend the periodic training as designated by DHCD and complete the continuing education as additionally required by the regulations; the failure to

satisfactorily accomplish one or both of these periodic training or continuing education requirements results in an inactive certificate status.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DHCD – Department of Housing and Community Development
BHCD – Board of Housing and Community Development
USBC – Uniform Statewide Building Code
VCS – Virginia Certification Standards

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The statutory authority of the state to promulgate this regulation is pursuant to Title 36 of the Code of Virginia §36-137, mandating the Board of Housing and Community Development (BHCD) to 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 Title 36, Chapter 9 (§ [27-94](#) et seq.) of Title 27, and any regulations adopted thereunder, who have completed training programs, topic examinations, or in other ways demonstrated adequate knowledge.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

As recognized in §36-99 of the Code of Virginia, the purpose of the USBC protects the health, safety, and welfare of the citizens of the Commonwealth, while permitting buildings to be constructed in the most economical manner consistent with such pertinent recognized standards relative to construction, health, and safety. Therefore, the certification and associated training and education of the local code enforcement personnel are inherent in and critical to the achievement of this purpose and ensures the technical and professional level of those personnel, including the

knowledge and skill gained resultant from the mandated periodic training and continuing education, as well as a familiarity with and understanding of recent developments within the building codes and construction industry. This regulatory action also clarifies the dual requirements for both training and education categories to sustain an active status of the certificate holder and correlates the requirements with the proposed amendments in the USBC.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

—

Not being substantive in nature, this regulatory action primarily serves to clarify and correlate the existing regulatory requirements.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

—

The primary advantage of this regulatory action, beyond the clarification and correlation of the existing regulations, provides for a consistent interpretation and application of the existing regulation among the local code enforcement personnel, ensures adequate training and education of the local code enforcement personnel, and promotes a knowledge and skill level of the local code enforcement personnel that progresses concurrently with the building code cycles and construction industry developments. All certificate holders in code enforcement, consisting of building officials and technical assistants, must separately obtain both periodic training to maintain a level of technical knowledge required of the certificate topic as well continuing education to progress the level of professional skill commensurate with the building code cycles and the construction industry developments. The identification of active versus inactive status of certificate holders assists the localities and the general public with the determination of the eligibility of the local code enforcement personnel as a building official or technical assistant and assurance of the technical and professional levels of the local code enforcement personnel. This regulatory action poses no foreseen disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive

requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No federal requirements would be applicable regarding this regulatory action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality would be particularly affected by this regulatory action.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, DHCD and the BHCD are seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Although no impacts on small businesses are foreseen, DHCD and the BHCD are seeking such information as defined in § 2.2-4007.1 of the Code of Virginia. Such information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Vernon Hodge, 600 East Main Street, Suite 300, Richmond, Virginia, 23219, telephone: 804-371-7174, facsimile: 804-371-7092, and email: vernon.hodge@dhcd.virginia.gov. Written comments must include the name and address of the commenter and must be received by the last date of the public comment period In order to be considered.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website, www.townhall.virginia.gov, and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>No projected fiscal impact to the state to implement and enforce the proposed regulation as the amendment only clarifies and correlates the existing regulation that currently requires both the periodic training and continuing education of local code enforcement personnel.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>No projected fiscal impact to the localities as the amendment only clarifies and correlates the existing regulation that currently requires both the periodic training and continuing education of local code enforcement personnel.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>No projected impact to other entities, businesses, or individuals as the amendment only clarifies and correlates the existing regulation that currently requires both the periodic training and continuing education of local code enforcement personnel. This regulatory action applies to a very limited number of individuals or entities, being the building officials and technical assistants employed by local building departments.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>No projected impact to or effect upon such entities or small businesses as the amendment only clarifies and correlates the existing regulation that requires the periodic training and continuing education of local code enforcement personnel. The state currently contains 332 localities/jurisdictions, with approximately 2,900 certified and actively employed individual local code enforcement personnel statewide.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>No projected fiscal impact to other entities, businesses, or individuals as the amendment only clarifies and correlates the existing regulation that requires the periodic training and continuing education of local code enforcement personnel. This existing requirement is supported by a very flexible program for which many resources may be utilized or obtained at no or low cost to the locality or individual.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>A projected beneficial impact to the public as the amendment only clarifies and correlates the existing regulation that requires both the periodic training and continuing education of local code enforcement personnel. This regulatory action promotes the uniform interpretation and application of the existing regulation and requirements and ensures the technical knowledge and professional skill levels of the local code enforcement personnel. This regulatory action ensures that the local</p>

	code enforcement personnel properly maintain technical knowledge and enhance professional skill by sustaining training and education commensurate with the current building codes cycles and the industry development of products, materials, methods, and techniques, to assist with the inspection process of residential and commercial construction to protect the health safety and welfare of the public at the most economical means possible.
--	---

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternatives are presently available as this regulatory action is only a clarification to the interpretation and application of an existing regulation and a correlation with similar proposed regulatory amendments relative to the USBC. As this regulatory action has no impact upon or will not affect small businesses as defined in §2.2-4007.1, less burdensome or intrusive alternatives or measures are not available or applicable. Other more economical or cost effective alternatives or measures to achieve this objective are not known at this time. Should any alternatives become available or recommended, they will be promptly evaluated during the public comment period.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No alternative regulatory methods are available as this regulatory action is only a clarification of the interpretation and application of an existing regulation and a correlation with similar proposed regulatory amendments relative to the USBC. As this regulatory action has not impact upon or will not affect small businesses as defined in §2.2-4007.1, other alternatives or measures to benefit small businesses are not available or applicable. Other more economical or cost effective alternatives or measures to achieve this objective are not known at this time. Should any alternatives become available or recommended, they will be promptly evaluated during the public comment period.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

-

None received at this time.

Commenter	Comment	Agency response

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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 proposed regulations do not have an impact on the institution of family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

-

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
13VAC5-21-51 A.		Certificates will be issued when an applicant has complied with the	Certificates will be issued when an applicant has complied with the applicable requirements of this

		<p>applicable requirements of this chapter. Certificate holders will be classified as active or inactive. An active certificate holder is a person who is certified and who has attended all periodic training courses designated by the Department subsequent to becoming certified. An inactive certificate holder is a person who is certified but has not attended all such training courses. An inactive certificate holder may request reinstatement as an active certificate holder after completing make-up training courses authorized by the Department. Provisional certificates may also be issued in accordance with subsection C of the section.</p>	<p>chapter. Certificate holders will be classified as active or inactive. An active certificate holder is a person who is certified and who has attended all periodic <u>maintenance training courses</u> designated by the Department and completed the required <u>continuing education</u> subsequent to becoming certified. An inactive certificate holder is a person who is certified but <u>who has not attended all such periodic maintenance training courses or completed the required continuing education subsequent to becoming certified</u>. An inactive certificate holder may request reinstatement as an active certificate holder after completing make-up training courses authorized by the Department. Provisional certificates may also be issued in accordance with subsection C of the section.</p> <p>* This regulatory action promotes the uniform interpretation and application of the existing regulation and coincides with the proposed clarifications in the USBC to promote the uniform interpretation and application of the existing regulation and to eliminate confusion regarding the requirements for the mandated completion of separate periodic training courses designated by DHCD and continuing education credits obtained through a variety of additional resource channels. This regulatory action ensures that the local code enforcement personnel properly maintain technical knowledge and enhance professional skill by sustaining training and education commensurate with the current building codes cycles and the industry development of products, materials, methods, and techniques, to assist with the inspection process of residential and commercial construction to protect the health safety and welfare of the public at the most economical means possible. In addition, this amendment connects the existing post-certificate training and education requirements with the status of a certificate holder and their eligibility as a building official or</p>
--	--	--	--

			technical assistant, whereby a certificate holder shall be classified by either an active or inactive status based upon their satisfactory and timely completion of both the required periodic training as well as the continuing education.
--	--	--	--

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements