



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Housing and Community Development (DHCD)
Virginia Administrative Code (VAC) citation	13 VAC 5-21
Regulation title	Virginia Certification Standards (VCS)
Action title	Update Certification Requirements
Date this document prepared	17 May 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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, 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. This regulatory action applies the mandated training and education requirements to further define the active, inactive, and lapsed certificate status of certificate holders relative to the ongoing training and education of certificate holders. Additionally this regulatory action clarifies references to training and examination requirements for initial certification to the required list maintained by the agency for purposes of certification application and establishes criteria for age of training and examination in the application process.

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 citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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 and non-government 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 initial training, mandated periodic training and continuing education, as well as a familiarity with and understanding of recent developments within the building codes and construction industry.

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 indicate.

This regulatory action poses no foreseen disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. 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 Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Sandi Morris, Training Supervisor, Virginia Department of Housing and Community Development, 600 East Main St., Richmond, VA 23219, (804) 371-7180, sandi.morris@dhcd.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). 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 requirements creates the anticipated economic impact.

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.	No anticipated economic impact.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	No anticipated economic impact.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Not applicable
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.	Not applicable
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 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.	No anticipated economic impact.
Beneficial impact the regulation is designed to produce.	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

	<p>regulatory action ensures that the code enforcement personnel properly maintain technical knowledge and enhance professional skill by obtaining and 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.</p>
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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 the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

None received at this time.

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 list 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
13VAC5-21-10			Addition of definition
13VAC5-21-31.A		The current requirement allows for the qualification endorsement section of the certification application be submitted in written	The proposed change adds electronic submission of the qualification endorsement section of the certification application in addition to the written format.

		form	The intent of this change is to reduce paper applications by utilizing electronic application submission. There is no likely impact related to this proposed change.
13VAC5-21-31.C		The current requirement does not apply limits to age of passing examinations grades in the certification application process.	The proposed change places a six year limit on the age of the passing examination grade accepted in the certification application process except where the applicant holds an active certification issued by the approved testing agency. The intent of this proposed change is to promote the professionalism of the code enforcement personnel through demonstration of competency of current code content and application. There is no likely impact as a result of this proposed change.
13VAC5-21-41.A		Currently the standard identifies specific training requirements in the regulation and is then duplicated in regulation required training list maintained by the department.	The proposed change removes the language of the specific training requirements sited in the regulations and now references all training requirements to the department maintained list. The rationale for this proposed change is to eliminate duplication and allow for training requirement updates to pass through the Board of Housing and Community Development approval eliminating the need for regulation change to maintain current training requirements for all applicants for certification.
13VAC5-21-45.B		The current requirement does not apply limits to the validity of the required training based on time between attendance and submission of application in the certification process.	The proposed change places a six year limit on the age of the training in the certification application process and that all training requirements are based on agency maintained list at the time of application. The intent of this proposed change is to promote the professionalism of the code enforcement personnel through knowledge of current Virginia code content and application. There is no likely impact as a result of this proposed change.
		The current requirement does not apply limits to age of training completed	Additionally the proposed change places a six year limit on the age of the completed training accepted in the certification application process
13 VAC 5-21-45.A		The current regulation allows for applicant to apply for alternative to the examination and training requirements.	The proposed change eliminates the examination alternative. The intent of this proposed change is to promote the professionalism of the code enforcement personnel through knowledge of current model code content and application. There is no likely impact as a result of this proposed change.

13VAC5 – 21-51.A		The current regulation defines the issuance and maintenance process of certification and the existing definition of inactive status.	The proposed change adds the requirement that all certification applications be based on current criteria as indicated on the agency maintained list. Additionally the proposed change further delineates the certificate status of lapsed to indicate the status when a certificate is not maintained per the regulation. There is no likely impact as a result of this proposed change.
13VAC5 – 21-51.C		The current regulation allows for the issuance of a provisional certificate when the agency fails to provide identifies training indicates such a certificate is warranted.	The proposed changes adds criteria for the issuance of a provisional certificate when a certificate falls into inactive or lapsed status or when circumstances out of applicant’s control occurs such as medical or military leave. The intent of this regulation change is to broaden the criteria of provisional certificate issuance. There is no likely impact as a result of this proposed change.
13VAC5 – 21-51.D		New language	The proposed change adds language consistent with that of the USBC to include the continuing education requirement. The intent of this change is to apply consistent certification requirements for all local and non-government certificate holders.
13VAC5-21-61		New language	The proposed change adds the provision for issuance of noncompliance notices when the certificate holder fails to meet the maintenance training or continuing education requirements. The intent of this change is to increase communication and accountability with compliance to regulation requirements thereby ensuring all certificate holders remain current in code knowledge and application.