



## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Housing and Community Development (DHCD)
<b>Virginia Administrative Code (VAC) citation</b>	13VAC 5-21-51
<b>Regulation title</b>	Virginia Certification Standards (VCS)
<b>Action title</b>	Issuance of Certificates – Active/Inactive Certificate Status Relative to Required Periodic Training and Continuing Education
<b>Date this document prepared</b>	May 31, 2011

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

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

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.

Proposed regulations were published in the January 31, 2011 Virginia Register, a 60-day comment period was established through March 1, 2011 and a public hearing was held on March 28, 2011. No public comments were received.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

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The Board of Housing and Community Development adopted final regulations with no changes to the proposed regulations at its May 23, 2011 meeting.

### 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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 there are no disadvantages to the public or the Commonwealth, please 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.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

There are no changes to the regulation since the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response

No public comments were received.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
13VAC5-21-51 A.		<p>Certificates will be issued when an applicant has complied with the 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>Certificates will be issued when an applicant has complied with the 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 <u>maintenance training courses</u> designated by the Department <u>and completed the required continuing education</u> subsequent to becoming certified. An inactive certificate holder is a person who is certified but <u>who</u> has not attended all such <u>periodic maintenance training courses or completed the required continuing education</u> subsequent to <u>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</p>

			<p>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 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.</p>
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**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.*

Other alternatives for achieving the need in the most cost-effective manner are not known at this time. No alternatives were suggested during the public comment period.

**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.*

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The regulations do not have an impact on the institution of family and family stability.