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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Council of Higher Education for Virginia
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	40 VAC 31-125
<b>VAC Chapter title(s)</b>	Certification Required for Out-of-State Postsecondary Schools Offering Distance Learning in Virginia
<b>Action title</b>	Distance Education
<b>Date this document prepared</b>	March 16, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

This regulatory action comes as a result of a 2020 legislative mandate to create regulatory language to amend 8VAC 40-31. Legislation that will become effective July 1, 2022 requires out-of-state postsecondary schools offering distance education to Virginia citizens to be certified by the State Council of Higher Education for Virginia or be participants in a reciprocity agreement to which the Commonwealth belongs. This action creates the language for the regulation and describes certification requirements for schools that do not participate in a reciprocity agreement.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

“SCHEV” and “Council” are used for the State Council of Higher Education for Virginia.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

Pursuant to § 23.1-215, Council may adopt such regulations as may be necessary to regulate certain private and out-of-state institutions operating in the Commonwealth. Under current law, out-of-state postsecondary schools that provide distance learning to Virginia residents are not required to be certified by Council unless they have physical presence in the state. However, the Code was amended in 2020 to require certification, effective July 1, 2022.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

Article 3 of Chapter 2 of Title 23.1 of the *Code of Virginia* grants the State Council of Higher Education for Virginia the authority to regulate Certain Private and Out-of-State Institutions of Higher Education.

§ 23.1-215 of the *Code of Virginia* authorizes the State Council of Higher Education for Virginia to adopt, pursuant to the Administrative Process Act, such regulations as may be necessary to implement the provisions of this chapter.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

This regulation is essential to protect the welfare of citizens who are enrolled in programs by out-of-state distance education providers. The national education landscape has changed such that online education programs have proliferated. While it may once have been a common operational model to offer distance learning through “telecommunications equipment” which was located at a site within the state, technological advancements have rendered that model obsolete. Out-of-state postsecondary schools can and do conduct business with Virginia citizens from locations entirely outside of Virginia. Those citizens are entitled to the same protections afforded to Virginia students enrolled in Virginia schools through SCHEV certification processes.

The regulation will not have any effect on institutions that are members in good standing of the National State Authorization Reciprocity Agreement (NC-SARA)—it imposes no certification requirements on

SARA members from other states. The NC-SARA framework ensures adequate consumer protections for students of SARA schools nationwide. Certification for schools that are not members of NC-SARA is more complex and will require a separate process that has been outlined in the proposed language. The agency does not expect objections or comments from NC-SARA members. Any issues that arise will be due to comments and requests by schools that do not participate in the NC-SARA reciprocity agreement.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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The regulation will provide that “any degree-granting postsecondary school providing distance learning to residents of the Commonwealth from a location outside of the Commonwealth shall be certified to operate in the Commonwealth or shall be a participant in a reciprocity agreement to which the Commonwealth belongs”. Schools that are members of the NC-SARA reciprocity agreement are not subject to the regulation as—according to NC-SARA, Virginia reciprocally honors their home states’ authorization.

The substantive sections of the regulation (parts A through E) will provide criteria that must be fulfilled by schools that are not members of NC-SARA in order to be certified to operate. Part A addresses aspects of the school’s current status, such as accreditation, being in good standing in its home state, and providing certain disclosures to the public. Parts B through E address the school’s obligations to the Commonwealth regarding maintenance of student records, payment of fees, etc.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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No alternatives to the regulatory change were considered, as the Code change that is effective July 1, 2022 will necessitate corresponding regulations. The regulation affects only out-of-state postsecondary schools and thus there is no impact on Virginia small businesses.

**Periodic Review and  
Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or small business impact review.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the*

*Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The State Council of Higher Education for Virginia is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Beverly A. Rebar, J.D., 101 N. 14<sup>th</sup> Street, 9<sup>th</sup> Floor, Richmond, Virginia 23219, 757-572-1169, [beverlyrebar@schev.edu](mailto:beverlyrebar@schev.edu). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.