



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	8 – State Council of Higher Education for Virginia (SCHEV)
<b>VAC Chapter Number:</b>	40
<b>Regulation Title:</b>	Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
<b>Action Title:</b>	Emergency
<b>Date:</b>	June

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency.*

This emergency regulatory action is necessary pursuant to 9-6.14:4.1 (C) (5) (ii) of the Administration Process Act. The regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

The action seeks to repeal 8 VAC 40-30 et al and promulgate emergency regulations 8 VAC 40-31 in order to implement changes required by the passage of Senate Bill 627 in 2002. The primary purpose of the changes is to move from a process where SCHEV must review an institution's application for approval to a process whereby institutions must certify that they meet the Council's standards as stated in statute and regulation. Additionally, the changes provide for the implementation of a fee structure, which among other things will require institutions to pay an annual fee to operate in the Commonwealth.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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The State Council of Higher Education for Virginia (SCHEV) is granted explicit authority to promulgate regulations necessary to implement the provisions of Section 23-276.3 of the Code Virginia – “The State Council of Higher Education for Virginia shall adopt, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.) such regulations as may be necessary to implement the provisions of this chapter.”

Specifically, the 2002 General Assembly passed legislation (Chapter 127) which requires “That, pursuant to the authority granted by § [2.2-4011](#) for the adoption of emergency regulations, the State Council of Higher Education shall adopt regulations to implement the provisions of this act within 280 days of the date of its enactment. “

On August 14, 2002, the Office of the Attorney General sent to SCHEV a letter stating “the Council has the authority to find that the adoption of such regulations is necessitated by an emergency situation as defined in Section 2.2-4011A(ii)...”

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

### **Background:**

The State Council of Higher Education regulates the activity of Private and Out-of-State institutions of higher education operating within the Commonwealth of Virginia. All institutions of higher education – those offering degree programs and degree credits, require council certification. This regulation will be the primary document the Council uses to administer the institutional certification process and to award annual certification to operate in Virginia. The regulation will: outline the specific definitions unique to

institutional certification; identify the regulated community; identify exempted institutions (per appropriate code) and requirements; define application procedures; establish and outline certification criteria; explain procedures for due process (appeal); and provide for the establishment of fees.

### **Consumer Protection:**

This regulation will provide institutions of higher education (IHE) with a set of specific and clearly defined criteria to confer degrees and degree credit in the Commonwealth. It will also make the certification process more efficient by eliminating the time and cost-consuming practice of individual program approval. Virginia students will benefit from the increased protection of their loans and cash payments. Institutions will be required to provide surety for all student payments via loan or cash that has not been earned. The council will conduct random and triggered audits of institutions, these visits – not currently a requirement – provide a much-needed opportunity to look into institutional practices on the “back end”. Finally, oversight for the institutional certification program will be delegated to Executive Director of the State Council of Higher Education. This delegation precludes the fully appointed council – which meets quarterly – to act directly upon institutional and individual program approvals, pushing the authority to the staff level.

### **Potential Issues:**

Because this regulation includes a new requirement upon institutions to submit fees with certification applications and revises surety conditions, the council was proactive in soliciting feedback from private and public institutions while drafting emergency regulations. This feedback translated into several substantive changes to the emergency regulations and a clear understanding by the regulated community of the need for the regulatory changes.

### **Fee Structure:**

The fee structure is included in the emergency regulations as Schedule A.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

There are no alternatives to promulgating emergency regulations, as they are required by the passage of Senate Bill 627 in 2002. However, SCHEV has worked closely with those institutions affected by the emergency regulations to ensure that the regulations meet the new statutory requirement, but do so in a manner as less burdensome on the regulated community as possible.

## Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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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There will be negligible impact on the institution of the family and family stability in general. However, the emergency regulations are intended to provide additional consumer protections for students and families by adding approval standards related to the maintenance of student records and requiring institutions to certify that they meet the Council's standards.

Additionally, the emergency regulations encourage economic self-sufficiency and the assumption of responsibility for oneself by providing information necessary for individuals to make informed choices about possible post-secondary educational opportunities.