



## Emergency Regulation and 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) citation</b>	8 VAC 40 -31
<b>Regulation title</b>	Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
<b>Action title</b>	New Emergency Regulations Regarding Certification of Institutions and Postsecondary Schools.
<b>Document preparation date</b>	September 14, 2004

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

This emergency regulatory action is necessary pursuant to §2.2-4011 (A) of the Administration Process Act. The regulation is not otherwise exempt under the provisions of §2.2-4006.

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 House Bill 637 in 2004. The repeal of 8 VAC 40-30 et al shall be in effect until such time as the emergency expires or permanent regulations are promulgated. The primary purpose of these changes is to incorporate nondegree proprietary schools into SCHEV current policy of self-certification. The agency plans to make these regulations permanent.

### Legal basis

*Other than the emergency authority described above, 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 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 2004 General Assembly passed legislation (Chapter 991) which requires “That the State Council of Higher Education shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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All post secondary schools seeking to operate in Virginia, require council certification. This regulation will be the primary document the Council uses to administer the certification process. The regulation will: outline the specific definitions unique to school certification; identify the regulated community; identify exempted schools (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. The goal of this regulation is to provide clear and concise guidelines for the regulated communities, including those vocational schools previously regulated by the Department of Education.

### Substance

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation*

*is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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**Background:**

House Bill 637, empowered the State Council of Higher Education with regulatory oversight of both the Private and Out-of-State institutions of higher education and vocational schools. All post secondary schools seeking to operate in Virginia, require council certification. This regulation will be the primary document the Council uses to administer the certification process. The regulation will: outline the specific definitions unique to school certification; identify the regulated community; identify exempted schools (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 postsecondary schools with a set of specific and clearly defined criteria to confer degrees, degree credit, certificates, and diplomas in the Commonwealth. Virginia students will benefit from the increased protection of their loans and cash payments. Schools will be required to provide surety for all student payments via loan or cash where classroom instruction has not been delivered. The council staff will conduct random and triggered audits of schools to ensure adherence to standards.

**Potential Issues:**

This regulation includes a requirement upon vocational schools to submit increased administrative fees. 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 these changes.

**Fee Structure:**

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

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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There are no alternatives to promulgating emergency regulations, as they are required by the passage of House Bill 637 in 2004. 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

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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There will be negligible impact on families. 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, requiring all postsecondary schools to certify that they meet the Council's standards.