



Proposed Regulation Agency Background Document

Agency name	State Council of Higher Education for Virginia
Virginia Administrative Code (VAC) citation	8 VAC 40-31
Regulation title	Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas, and Certificates
Action title	The revision of the existing regulations will strengthen protection provisions and standards for students attended certified postsecondary institutions.
Date this document prepared	September 8, 2010

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.

These regulations will strengthen or enhance protections of students attended certified postsecondary institutions operating within the Commonwealth of Virginia. The regulations provide specific expectations of faculty and administrator qualifications require schools to use GAAP in its financial reporting, clarify actions that may result in the suspension or revocation of a school's certificate to operate and describes requirements of a teach-out arrangement in the event of the closure of a certified school.

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.

N/A

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

The State Council of Higher Education for Virginia is granted explicit authority to promulgate regulations necessary to implement the provisions of § 23-276.3 of the Code of Virginia which states: “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. The Council’s regulations shall include, but need not be limited to, (i) procedures by which a school may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing postsecondary education opportunities in schools subject to the provisions of this chapter; and (iv) information to assist persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals.”

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.

The regulations governing private and out-of-state postsecondary institutions are designed to ensure the certified schools meet minimal academic standards, provide protections to students pursuing postsecondary educational opportunities at these schools, and provide information to persons who rely on postsecondary degrees in judging the competence of individuals. Amending, modifying and deleting the current version of 8 VAC 40-31 et. seq. will ensure that the certified institutions continue to provide a valuable service to the citizens of the Commonwealth of Virginia.

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.)

The proposed regulations will enhance consumer protections for students attending certified schools. They clarify certain expectations for schools that had been unwritten previously. Certified schools will better understand equipment and facility requirements, actions that may result in the suspension or revocation of a school’s certificate to operate, and standards regarding administrator and faculty requirements. SCHEV may defer to accreditor standards when such expectations may conflict with SCHEV requirements for accredited postsecondary institutions. The proposed regulations provide guidance to schools when closing to ensure student are allowed to complete their program of study via an approved teach-out arrangement. Finally, the proposed regulations will eliminate the noncompliance fee charged when a school is determined to be out of compliance, but add fees for services rendered by SCHEV staff toward the certified schools.

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.

The regulatory action poses no disadvantages to the public or to 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.

While there are applicable federal requirements for the certified schools that participate in the Federal Financial Aid program, SCHEV requirements within the proposed regulations do not exceed the applicable federal requirements.

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 will be particularly affected by the proposed regulations. Schools impacted by the regulations exist in major cities across the Commonwealth.

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 Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Linda H. Woodley, Director, Private and Out-of-State

Postsecondary Education, State Council of Higher Education for Virginia, 101 N, 14th Street, 9th Floor, James Monroe Building, Richmond, VA 23219; lindawoodley@schev.edu; phone number – 804-371-2938, Fax – 804-225-2604. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

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 create 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.	The Private and Out-of-State Postsecondary Education unit of the State Council of Higher Education for Virginia operates with non-general funds. There will be no cost to the state to implement/enforce these regulations.
Projected cost of the new regulations or changes to existing regulations on localities.	\$0
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Private and out-of-state postsecondary institutions that are required to certify to operate in Virginia will be affected by the changes to the existing regulations
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.	Currently 343 private and out-of-state postsecondary institutions are certified to operate in Virginia by the State Council of Higher Education for Virginia.
All projected costs of the new regulations or changes to existing regulations 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.	All certified schools are required to recertify annually. The recertification process includes the submission of a recertification fee. The proposed regulations include a change to the fee structure. For schools whose annual gross tuition is \$50,000 or less, the fee will reduce from \$500 to \$250. For schools whose annual gross tuition is greater than \$150,000, the proposed fee will increase from \$2,500 to \$4,000 or \$5,000. Also, fees have been included to cover administrative cost required to add new locations and programs, as requested by the institutions.
Beneficial impact the regulation is designed to produce.	The proposed regulations will improve operational standards at the certified institutions; thereby providing additional consumer protections to the students attended these institutions.

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.

SCHEV could continue using the existing regulations; however, consumers (students) will have limited protections against postsecondary institutions operating in Virginia. Certain areas of clarification, though not all, in the proposed regulations could be addressed by the creation of guidance documents. However, the guidance documents themselves would not have desired clarity without profound changes in regulations

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.

SCHEV examined regulations currently in place for similar postsecondary institutions employed by other states. While SCHEV took measures to avoid excessive additional administrative requirements of certified schools, to establish less stringent compliance could sacrifice the quality of instruction provided to students attending said schools. Accredited schools may find that SCHEV may defer to accreditor standards when such standards conflict with SCHEV requirements, in an effort to prevent schools from being out of compliance with accreditor standards.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received following the publication of the NOIRA; however, SCHEV sought guidance in the development of the proposed language with a group of certified school administrators and our representative within the Attorney General's office. The language submitted represents the work of this regulatory advisory committee.

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.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improved oversight of private and out-of-state postsecondary institutions will strengthen the administration of the schools and expand consumer protection for students attended the certified institutions.

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 if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Current requirement	Proposed change, rationale, and consequences
8 VAC 40-31-10 Definitions	This section provides definition of terms used within the regulations.	<ul style="list-style-type: none"> • Clarify definition of “administrative capability”. • Define “conditional certification”. • Define “distance education” • Define “graduate credit” • Define “private postsecondary career school” • Delete “proprietary school” • Define “provisional certification” • Change “site” to “instructional site” • Clarify definition of a “vocational school
8 VAC 40-31-30 Advertisement, announcements, and other promotional materials	This section provides guidance to certified schools concerning advertising.	<ul style="list-style-type: none"> • Delete requirement that out-of-state schools must have permission from their state approving agency to offer courses or degree programs outside the home state. • Delete requirement that school must state that it is certified to operate by SCHEV on course registration materials. • Clarify that schools must state that it is certified to operate by SCHEV on all publicity, advertisement, and promotional materials distributed to current or prospective students
8 VAC 40-31-50 Religious institutions	This section provides guidance for postsecondary institutions desiring the religious exemption	<ul style="list-style-type: none"> • Clarify that schools seeking religious exemption from certification may not award degrees with secular titles.

	from the requirement of certification.	
8 VAC 40-31-60 Schools, programs, degrees, diplomas, and certificates exempt from Council action	This section explains the various programs that may be offered by a postsecondary institution that may be exempt from the requirement of certification.	<ul style="list-style-type: none"> • Allow exemption for programs conducted on a not-for-profit basis by an organization for training of their employees, provided employees are not charged tuition and advertising for open enrollment is not used. • Clarify that when a school offers exempt and non-exempt programs, the school as a whole is subject to the provisions of certification.
8 VAC 40-31-110 Certain existing approvals and exemptions continued	This section speaks to the exemptions offered to all public and some private postsecondary schools, and when such exemption can be revoked.	<ul style="list-style-type: none"> • Clarify that if a previously exempt school's authorization to grant or confer degrees is revoked, the school's exemption will end and the school will be subject to the provisions of certification in place at the time of the revocation
8 VAC 40-31-120 Certification required for new and existing postsecondary schools	This section speaks to the types of postsecondary school that are required to certify in order to operate in Virginia.	<ul style="list-style-type: none"> • Replaced "site" with "location" • Added that school operating branches "in Virginia" must certify each separately
8 VAC 40-31-130 Application of certification criteria	This section speaks to the requirement that institution must certify compliance to all standards of this chapter.	<ul style="list-style-type: none"> • Require institutions to comply with all local, state, and federal statutes, laws, and codes. • Clarify that a site visit is part of the initial certification process. • Introduce provisions for a provisional certification
8 VAC 40-31-140 Certification criteria for institutions of higher education	This section provides specific guidance to degree-granting institutions regarding curriculum administrator and faculty qualifications	<ul style="list-style-type: none"> • Separated course, program, curriculum and instruction standards from administrator and faculty credentialing standards. • Clarify that all instructors must hold degrees from accredited colleges or universities in the discipline being taught. • Added qualification standards for administrators and administrative personnel
8 VAC 40-31-150 Certification criteria for career-technical schools	This section provides specific guidance to career-technical schools regarding curriculum, administrator and faculty qualifications	<ul style="list-style-type: none"> • Separated course standards from administrator and faculty credentialing standards. • Clarify that all instructors must hold degrees from accredited colleges or universities in the discipline being taught. • Added qualification standards for administrators and administrative personnel
8 VAC 40-31-160 Certification	This section provides guidance to all certified schools	<ul style="list-style-type: none"> • Added language that allows SCHEV to apply a presumption of compliance with

<p>criteria for all postsecondary schools</p>	<p>concerning general operational requirements.</p>	<p>criteria in this section for accredited schools.</p> <ul style="list-style-type: none"> • Remove requirement that schools must obtain a records maintenance agreement with another school or organization. • Require that all financial statements adhere to GAAP. • Provide standards for telecommunication programs and courses. • Modify refund policy for schools that employ an add/drop period • Introduce provisions for leaves of absence. • Introduce provisions for school programs that require internships, externships or production work. • Added statement that student will not be subjected to adverse actions by school for filing a complaint to SCHEV. • Added provision that schools seeking a waiver of the surety instrument must submit an audited financial statement. • Added required SCHEV notifications, i.e. new/change of location, new program, new school administrators, etc
<p>8 VAC 40-31-170 Initial certification</p>	<p>This section speaks to specific actions required by a postsecondary school submitting an initial application for certification.</p>	<ul style="list-style-type: none"> • Distinguish when a school can use “college” or “university” in its name. • Require that a school that allows its certificate to operate to expire must reapply for certification as a new institution. • Define what constitutes a change of ownership. • Included “site visit” as a step in the certification process
<p>8 VAC 40-31-180 Application Requirements</p>	<p>This section speaks to the application requirements of a postsecondary school submitting an initial application for certification.</p>	<ul style="list-style-type: none"> • Require out-of-state institutions seeking certification to operate in Virginia to attest that it has received no determination of limitation, suspension, revocation or termination by the U.S. Department of Education, an accrediting body or a state regulatory body within the past five years. • Require submission of a three-year projected budget with initial application for certification that demonstrates schools’ ability to maintain operational continuity for up to three years. • Added statement that schools seeking certification must successfully complete a site visit prior to issuance of certificate to operate
<p>8 VAC 40-31-200</p>	<p>This section explains when a</p>	<ul style="list-style-type: none"> • Allow council to change a school’s

Audit requirements	school may be subject to an audit.	status to “conditional” or to initiate suspension or revocation of the certificate to operate as a result of a school audit.
8 VAC 40-31-220 Procedural rules for the conduct of fact-finding conferences and hearings	This section explains the procedurals required by Council and schools concerning fact-finding conferences and formal hearings.	<ul style="list-style-type: none"> • Clarify actions of Council and schools in regards to an informal fact-finding conference or a formal hearing. • Allow for a consent agreement to settle the matter without further administrative action.
8 VAC 40-31-260 Fees	This section provides guidance regarding the fees required of certified schools	<ul style="list-style-type: none"> • Introduce new fees for services rendered by Council staff. • Clarify that recertification fees are based on the school’s annual gross tuition. • Introduce revised recertification fees. • Eliminate noncompliance administrative fee. • Clarify that Council may revise fees annually to ensure adequate resources to implement the provisions of this chapter.
8 VAC 40-31-280 Closure of a postsecondary school	This section provides guidance to schools that cease operations in Virginia.	<ul style="list-style-type: none"> • Provide provisions for a teach-out plan. • Clarify required actions if school closes and provide instruction concerning the documents that must be forwarded to SCHEV for storage.
8 VAC 40-31-300 Freedom of Information Act to apply	This section states that all documents retained by SCHEV are subject to the provisions of the Freedom of Information Act	<ul style="list-style-type: none"> • Eliminate this section, as all documents retained by SCHEV are subject to the provisions of the Freedom of Information Act.
8 VAC 40-31-310 Student Tuition Guaranty Fund	This section provides guidance concerning the distribution of funds via the Student Tuition Guaranty Fund.	<ul style="list-style-type: none"> • Clarify that purpose of funds is to reimburse students for tuition and fees when a certified school ceases to operate. • Removed requirement of “show cause” by school, as the school must be closed before a student is eligible to file a claim.
8 VAC 40-31-320 Agent registration	This section provides guidance to agents that solicit in Virginia.	<ul style="list-style-type: none"> • Changed “sites” to “instructional locations”

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
8 VAC 40-31-165 Equipment and facilities	This section provides guidance to schools on the standards of equipment and facilities expected to operate in Virginia	Laws required by localities, Commonwealth of Virginia and federal government concerning building and equipment	<ul style="list-style-type: none"> • Provide building and equipment standards.

		safety.	
8 VAC 40-31-193 Loss of Accreditation	This section provides guidance to certified school that loses accreditation.	None known	<ul style="list-style-type: none"> Introduces required actions if a school loses its accreditation
8 VAC 40-31-195 Suspension or revocation of certificate to operate	This section outlines actions of a school that may result in the suspension or revocation of its certificate to operate.	None known	<ul style="list-style-type: none"> Introduce specific actions that may result in council suspending or revoking a school's certificate to operate.