



Virginia  
Regulatory  
Town Hall

[townhall.state.va.us](http://townhall.state.va.us)

## 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>	Provide rules and instructions for Institutions of Higher Education to obtain a Certificate to Operate in Virginia
<b>Document preparation date</b>	October 23, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### 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.*

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.

### Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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 (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.”

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

The State Council of Higher Education regulates the activity of Private and Out-of-State Institutions of Higher Education (IHE) 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

### 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.*

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.

### Impact on family

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

There will be negligible impact on the institution of the family and family stability in general. However, the regulations are intended to provide additional consumer protections for students and families by adding approval standards related to the maintenance of student records, requiring surety protection for tuition, and requiring institutions to certify that they meet the Council's standards.