



## Final Regulation 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>	Provides rules and instruction for postsecondary schools to obtain a Certificate to Operate in Virginia; replaces emergency regulations of the same number
<b>Date this document prepared</b>	May 11, 2006

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*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

These regulations will be the primary document used by the State Council of Higher Education for Virginia to administer the certification of private and out-of-state postsecondary schools operating in Virginia. The regulations defined terms unique to school certification; identifies the regulated community, exempted schools and exempted degrees; establishes certification criteria and procedures for application and appeal; and imposes administrative fees. The regulations replaces the previous process of approval that covered only institutions of higher learning in 8 VAC 40-30 and includes regulatory oversight of career-technical schools. These regulations will replace Emergency Regulations of the same number, 8 VAC 40-31.

The most substantive change to the regulations since publication in the Virginia Registrar is the creation of a refund policy for programs offered via distance learning. The refund policy, required only of non-accredited schools, or schools accredited by accrediting bodies that do not provide a specific refund

policy, is fair and equitable to the student as well as the school, and is similar in nature as the refund policy used by traditional schools.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The State Council of Higher Education for Virginia adopts the current version of Proposed Regulations 8 VAC 40-31 et. Seq. pertaining to the certification of private and out-of-state postsecondary institutions and delegates to the Executive Director the authority to make revisions during the review process required by the Administrative Process Act.

### 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 numbers, 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.*

The State Council of Higher Education for Virginia is granted explicit authority to promulgate regulations necessary to implement the provision 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 (1) procedures by which a school may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all postsecondary school 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 person who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals.”

Also, Chapter 991 of the 2004 Acts of Assembly was enacted on July 1, 2004. The Chapter repealed the authority of the Virginia Board of Education to regulate proprietary schools and granted it to the State Council of Higher Education for Virginia.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

These regulations are needed to replace Emergency Regulations of the same number, which was a result of legislation passed by the 2004 General Assembly. It provides the State Council of Higher Education for Virginia with regulatory oversight of institutions of higher learning and career-technical schools, and provides standards of operations for both school sectors. The regulations attempt to provide elements of consumer protection for students attending the regulated schools. The goal of the regulations is to provide clear and concise guidelines for the regulated schools, including those career-technical schools

previously regulated by the Virginia Board of Education. All postsecondary schools seeking to operate in Virginia require Council certification. The regulations provide the necessary guidelines to those parties interested in offering postsecondary opportunities to the citizens of the Commonwealth of Virginia. These regulations are the primary document the Council uses to administer the certification process.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The most substantive changes to the regulations since the publication of the proposed regulations includes the development of a specific refund policy for programs offering instruction primarily via distance learning. The refund policy strives to protect the student who withdraws from a program of study while being fair to schools, ensuring they are adequately compensated for the education provided to the student before the withdrawal.

Also, Council is requiring new out-of-state schools seeking to establish a postsecondary school in the Commonwealth of Virginia to provide documentation that the school is operating in good standing in the state/country in which the school was formed, chartered, or organized. The purpose of this provision is to attempt to prevent schools operating as diploma mills from opening in Virginia.

We also added a provision that prohibits the use of blind ads by the regulated community. This ensures that prospective students are fully aware of the school they are contacting as a result of any advertisement received or viewed by the student.

### 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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 of Virginia. Virginia students will benefit from the increased protection of their loans and cash payments. School 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 trigger audits of schools to ensure adherence to standards established in the regulations.

The regulations include a requirement that career technical schools submit an increased administrative fee than they paid to the Board of Education. While this annual certification renewal fee is increased, it eliminates a number of individual fees the schools were charged for certain actions taken throughout the year, such a change of location (\$100), addition of programs (\$100), program deletion (\$50), addition of branch campus (\$100), revised program review and approval/program name change (\$50), extension classroom/additional space approval (\$50), and catalog review (\$50). The use of the surety instrument also eliminates the previous requirement of career technical schools making an annual payment to the Student Tuition Guaranty Fund.

There are not disadvantages to the State Council of Higher Education for Virginia or the Commonwealth of Virginia in the issuing of these regulations.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

For changes to existing regulations, use this chart: **Changes affecting career-technical schools**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-350-10	8 VAC 40-31-10	This section includes definitions of words and terms used in the regulations.	The proposed change adds definitions for the following words and terms: accreditation, adjunct faculty, administrative capability, career-technical school, certification, change of ownership, CIP code number, clock (contact) hour, college, Council, course for degree credit, course registration materials, credit, credit hour, degree, degree program, diploma or certificate, existing institution or existing postsecondary school, full-time faculty, in-state institution, institution of higher education or institution, instructional faculty, multistate compact, noncollege degree school, new institution or new postsecondary school, out-of-state institution, part-time faculty, postsecondary education, postsecondary education activities, postsecondary school, program area, program of study, site, surety instrument, telecommunication activity, unearned tuition, university.
*	8 VAC 40-31-20	*	The proposed change adds specific prohibited acts such as the bartering, selling or exchanging for any consideration of a degree, degree credit, diploma or certificate; the use of a fraudulently issued, obtained, forged or materially altered degree; use of “college” or “university” in school name without Council written approval; use of a school name which has the potential to mislead the general public about the school’s affiliation or association.
<b>8 VAC 20-350-310</b>	8 VAC 40-31-30	This section provides guidelines for advertising and publications.	The proposed change eliminates all reference to the Board of Education and Superintendent.  Requires that an out-of-state school with a presence in Virginia must state in its course registration material that each course, degree, diploma or certificate offered at the Virginia school is approved by the governing body of the school and by the appropriate state

			agency, if any. Any credit earned at the school in Virginia must be transferable to the principal location of the school outside of Virginia.
*	8 VAC 40-31-40	*	This new section exempts state supported institutions of higher education and is not relevant to the Board of Education rules for career technical schools.
8 VAC 20-350-20	8 VAC 40-31-50	Schools offering exclusively religious instruction are exempt.	Proprietary schools offering exclusively religious instruction continue to be exempted by the regulations, however the new regulations state that exemptions granted after July 1, 2002 are valid for only 5 years at which time the school must apply to continue the exemption on forms provided by the State Council. The new regulations also require that the school award only religious degrees. The new regulations require that the school state plainly in its publications that the school's primary purpose is religious and that the school is exempt from certification.
8 VAC 20-350-20	8 VAC 40-31-60	The current section provides 10 exemptions from regulations.	The new regulations do not include the old exemption for courses not exceeding 16 hours or for those not exceeding 40 hours when offered as an adjunct to another primary business or service. The new regulations exempt nursing education programs (the old ones did not) but only to the extent that the Board of Nursing regulates the program. The new regulations add an exemption for any school that is subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia or is subject to approval by any state or federal agency. The new regulations add an exemption for a program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order for professional education or advancement. The new regulations continue the exemption for schools conducted on a contractual basis with no open enrollment or individuals charged for tuition, but it adds the requirement that the school be accredited.
8 VAC 20-350-580	8 VAC 40-31-70	The current regulation says that all actions in regard to denials, revocations, suspensions, and refusals must be done in accordance with the Administrative Process Act.	The new section specifies that denial of an exemption must follow the procedures of 8 VAC 40-31-220 which sets procedural rules per the Administrative Process Act.
N/A	8 VAC 40-31-80	The current regulations do not specify roles of the State Council of Higher Education.	The new section allows council to establish fees for services and methods for collecting the fees. The council may delegate authority to administer §§ 23-276.1 et seq. to the Executive Director. The council must adopt certification criteria for the operation of postsecondary schools in Virginia. Only the council may refuse, revoke or suspend certification and must ensure due process in accordance with the Administrative process act.
	8 VAC 40-31-90	The current regulations do not specify roles of the Executive	The executive director has the following responsibilities: (1) authorize certification for schools

		Director of the State Council of Higher Education.	meeting the criteria, (2) authorize the use of “college” or “university” in a school’s name, (3) authorize religious exemptions, (4) authorize emergency action (including suspending new enrollment, requiring a guaranty instrument or increased penalty, or other actions) when an adverse action by the USDE or and accreditor threatens disruption of operation, (5) assess administrative fees, (6) authorize release of a surety instrument, and (7) delegate administrative responsibilities to council staff.
	8 VAC 40-31-100	The current regulations do not specify the roles of the staff of the State Council of Higher Education.	The role of council staff is: (1) oversight and administration for purposes of compliance with §§ 23-276.1 et seq of the Code of Virginia, (2) review initial and annual certification requirements for all schools, (3) perform audits, (4) investigate all noncertified schools in Virginia, (5) monitor accreditation activities of nonaccredited schools in Virginia, (6) investigate all written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers, (7) share with state or federal agencies or accreditors information regarding the operation or closure of postsecondary schools operating in Virginia, (8) other responsibilities delegated by the executive director.
*	8 VAC 40-31-110	*	The new section continues certain exemptions for institutions of higher education, and thus is not applicable to those schools previously regulated by the Board of Education.
8 VAC 20-350-320, 80, 520	8 VAC 40-31-120	The current sections do not specify that a school is not exempt just because credit is transferred out of state. The current sections do not set out requirements for certification when partnering with another school in the state. The other regulations are continued without modification.	The new section says that schools are not exempt from regulation just because the credit for coursework is transferred out of state. All new postsecondary schools must become certified prior to operating either by telecommunications, mail, or at a site within the state. Correspondence and telecommunications courses must meet same requirements as all other correspondence schools. Existing schools must recertify annually. Each branch must certify separately. A school must be certified before partnering with another school in the state.
8 VAC 20-350-130	8 VAC 40-31-130	The current section requires applicants to commit to conducting the school in accordance with the applicable regulations.	The new section says that certification criteria will include procedures for application for certification and criteria for ensuring all postsecondary schools meet minimal academic or vocational standards. The CEO is responsible for certifying total compliance with all of the certification criteria on an initial and annual basis.
N/A	8 VAC 40-31-140	The current regulations do not cover degree granting institutions.	This section sets out certification criteria for institutions of higher education and is not relevant to those schools formerly regulated by the Board of Education.
8 VAC 20-350-150, 210	8 VAC 40-31-150	The current sections require that instructors have either (1) an accredited degree in the area of teaching or a related field, or (2) be a graduate of a certified proprietary school in the area of teaching and have	Instructor requirements are reduced to only an associate degree in the area of teaching or two years of experience in the area of teaching. The courses must still meet recognized standards.



		two years of experience in the area of teaching, or (3) have four years of experience in the area of teaching. The courses must meet recognized standards in the field.	
8 VAC 20-350-230, 240, 250, 260	8 VAC 40-31-160	These sections detail requirements for student records, enrollment agreements, record maintenance, and refund policies.	The new section requires: <ol style="list-style-type: none"> <li>1. a comprehensive written statement</li> <li>2. a document stating the powers, duties and responsibilities of the board, officers, administrators, and students</li> <li>3. a policy document setting forth the requirements for admission</li> <li>4. records to be kept on all students</li> <li>5. a school catalog or brochure</li> <li>6. a process to establish, review and evaluate curriculum</li> <li>7. records showing financial stability</li> <li>8. a surety instrument</li> <li>9. a written policy on faculty accessibility</li> <li>10. current and accurate information is provided to students</li> <li>11. that programs offered by telecommunications are comparable to those in person</li> <li>12. a library</li> <li>13. a tuition refund policy</li> <li>14.</li> </ol>
N/A	8 VAC 40-31-170	There is no corresponding section in the current regulations.	The new section prohibits using the term college or university in a school name until approved by SCHEV. A school may not operate without certification. Schools must complete the application process within 180 days. Certification is not transferable upon a change of ownership. SCHEV will process applications within 45 days.
8 VAC 20-350-120	8 VAC 40-31-180	The current section sets forth the requirements for an application: <ol style="list-style-type: none"> <li>1. the name of the school, names of owners, and evidence of compliance with regulations of the SCC</li> <li>2. program outlines</li> <li>3. a floor plan</li> <li>4. a certificate of occupancy</li> <li>5. a copy of the lease or deed</li> <li>6. a listing of equipment and books</li> <li>7. the maximum</li> </ol>	The new section sets forth the requirements for an application: <ol style="list-style-type: none"> <li>1. a completed application form</li> <li>2. a statement regarding accreditation</li> <li>3. a transacted surety instrument</li> <li>4. a checklist acknowledging compliance with certification criteria</li> <li>5. payment for fees</li> <li>6. a copy of the SCC certificate to transact business in Virginia</li> <li>7. for out of state schools, a copy of the authorization to operate from the school's home state</li> <li>8. listing of all sites and classes taught</li> <li>9. a statement attesting to all previous involvement with other postsecondary schools</li> <li>10. a listing of all programs, annual enrollment projections, and job placement information.</li> <li>11. a valid business license</li> </ol>

		<p>enrollment and student to teacher ration</p> <ol style="list-style-type: none"> <li>8. a listing of teacher and administrator qualifications</li> <li>9. financial statements</li> <li>10. a copy of the student enrollment agreement, schedule of tuition and fees, copies of other forms used to keep student records, and a procedure for collecting and refunding tuition</li> <li>11. copies of all advertising</li> <li>12. evidence of compliance with STGF and guaranty instrument requirements.</li> </ol>	
N/A	8 VAC 40-31-190	The current regulations do not allow withdrawal of an application.	The new section allows a school to withdraw an application at any time without prejudice, but all authorizations associated with the application will be revoked. A school may at any time submit a new application. SCHEV will refund the application fee minus a handling charge when an application is withdrawn.
N/A	8 VAC 40-31-200	The current regulations do not mention audits.	The new section makes all postsecondary schools subject to random periodic audits. The section says that audit staff shall consist of the executive director or designee and may include individuals with relevant experience and council staff. Audits may also be triggered by staff concerns regarding application information, student complaints, difficulty securing accreditation, adverse action by the U.S. Department of Education or an accreditor, or a USDE composite financial responsibility score of less than 1. The council staff must prepare a report with recommendations for council. Council may take no action and file the report, place the school on probation and require remedial action, or revoke or suspend certification.
N/A	8 VAC 40-31-210	The current Board of Education regulations do not have a corresponding section.	This new section says that the council is not to consider duplication of effort by public or private schools or the need for the program when considering a school's application.
8 VAC 20-350-560, 580	8 VAC 40-31-220	The current sections specify only that the Administrative Process Act is to be followed. The current section allows for	The new section sets for procedural rules of fact finding conferences and hearings including notice, appearance, conduct, location, decisions, and agency representation.



		a 5-person arbitration committee and for informal hearings.	
8 VAC 20-350-90	8 VAC 40-31-230	The current section makes operation without certification a class-2 misdemeanor and makes each day of operation without certification a separate offense.	The new section makes the offering of degrees, etc. without certification a class-1 misdemeanor where each degree, etc. is a separate offense. The council may take any action required by code to deter illegal acts violating the certification requirements.
8 VAC 20-350-100	8 VAC 40-31-240	The current section says that violations of regulations must be referred to the Attorney General or local Commonwealth's Attorney.	The new section allows council to institute an equity proceeding to enjoin known violations of regulations.
N/A	8 VAC 40-31-250	There is no choice of law section in the current regulations.	The new section makes Virginia law applicable to contracts between postsecondary schools and its employees and students.
8 VAC 20-350-510	8 VAC 40-31-260	The current section lists all fees for vocational schools (See comparison with Schedule A below.) Fees will be deposited in the State Treasury. All fees are nonrefundable except when an application is withdrawn, in which case a \$300 handling fee is charged. Fees must be paid with a company check payable to the Treasurer of Virginia.	The new section says that fees are listed in Schedule A. Fees will be deposited in the State Treasury. All fees are nonrefundable except when an application is withdrawn, in which case a \$300 handling fee is charged. Fees must be paid with a company check payable to the Treasurer of Virginia. The new section does not include fees for students with disabilities because SCHEV does not regulate those schools.
8 VAC 20-350-650	8 VAC 40-31-270	The current section requires says that mailing of materials does not constitute receipt of them by the Board unless sent by registered mail, certified mail, express mail, or courier with return receipt requested. The mailing address for the board is given. Electronically submitted materials are accepted contingent on receipt of originals by mail as above.	The new section repeats the receipt requirements. The mailing address is changed to the SCHEV office. No mention is made of electronic submission of materials.
8 VAC 20-350-640	8 VAC 40-31-280	The current section requires schools to notify students of the closing and to make arrangements for students to complete the program or give them refunds. The school must also notify the Board of Education of the closing date and must give the board a class roster and a copy of student's academic attendance and financial	The new section allows council to authorize a school whose application for certification is denied to continue to offer instruction to all current enrollees until the end of the current academic term. The council may authorize a school whose certification is revoked to offer coursework so that students may complete their program provided that they only offer coursework to those students enrolled at the time of revocation and students can finish in a reasonable time. When a school voluntarily closes it must notify council of the planned termination date, date and location of student record transfers, the name of the organization

		<p>payment records and a copy of the enrollment agreement. The school must also submit a detailed closure plan to the board. The section required schools to transfer original or certified true copies of the records to the Board.</p>	<p>maintaining student records, arrangements for continued education of currently enrolled students, and class rosters with name, address and academic status. Council may facilitate record transfer when a school closes. Council is responsible for securing and preserving records until the designated depository accepts them. Council shall seek advice of the Career Council Advisory Board on matters relating to school closures.</p>
8 VAC 20-350-190	8 VAC 40-31-290	<p>The current requirement allows the Board to make an exception of any of the requirements in sections 10 through 180 for good cause.</p>	<p>The new section allows the council to waive or modify certification requirements for accredited schools when it will not conflict with the regulatory goals and when those requirements create an unreasonable hardship on the school.</p>
N/A	8 VAC 40-31-300	<p>There is no corresponding section dealing with the Freedom of Information Act.</p>	<p>The new section says that all materials submitted in support of an application or at the request of council are available for public inspection per the Freedom of Information Act.</p>
8 VAC 20-350-490	8 VAC 40-31-310	<p>The current section creates the STGF for the purpose of reimbursing students at schools that close. The minimum operating balance is set at \$250,000. All certified schools must pay into the fund an amount dependent on gross tuition receipts. Existing schools paying into the fund need not have a guaranty instrument. Certificates to operate expire automatically if a school fails to pay into the STGF. The board must appoint an advisory committee for the fund to make recommendations to the board. The supervisor may appoint a director of the fund from his staff to administer the fund. The director controls how, whether and when disbursements are made. The section sets forth factors to consider when deciding how much to pay a claimant to the fund. The section sets forth requirements for timeliness of claims. The section says that director's determinations shall be in writing and can be appealed by a claimant in a hearing.</p>	<p>The executive director must appoint a director of the STGF. Schools are no longer required to pay into the STGF. All other provisions for administration are continued in the new section.</p>
8 VAC 20-350-610, 620,	8 VAC 40-31-320	<p>The current sections require all agents of all schools to apply for a permit if they are</p>	<p>The new section requires registration only for agents of non-certified accredited schools. Agents of non-certified, non-accredited schools may not conduct</p>

630		<p>soliciting or enrolling students off of the premises (an exemption is made for career or college day programs). Agents must carry a state issued agent ID card. Agents must provide 3 character references. The sections provide for suspending or revoking an agent's permit for bad conduct.</p>	<p>business in Virginia. Agents operating sites in Virginia must seek council certification. The fee is \$300 for each registrant for each school represented. The new section does not require character references or provide for suspension or revocation of an agent's registration.</p>
8 VAC 20-350-510	8 VAC 40-31 Schedule A	<p>The current section specifies the following fees:</p> <ol style="list-style-type: none"> <li>1. Original Certificate to operate: \$300</li> <li>2. Renewal of Certificate: \$150 plus .1% of gross tuition.</li> <li>3. Reissue of Certificate             <ol style="list-style-type: none"> <li>a. change of location: \$100</li> <li>b. addition of programs: \$100</li> <li>c. program deletions: \$50</li> <li>d. addition of branch: \$100</li> </ol> </li> <li>4. review of out of state school for agent permit: \$100</li> <li>5. original agent permit: \$50</li> <li>6. renewal of agent permit: \$25</li> <li>7. revised program review and approval/program name change: \$50</li> <li>8. additional space approval: \$50</li> <li>9. requested catalog review: \$50</li> <li>10. late penalty for application: \$100</li> <li>11. search and issue student transcript: \$5</li> <li>12.</li> </ol>	<p>The new section sets the following fees:</p> <ol style="list-style-type: none"> <li>1. initial fee for new institutions of higher education: \$6000</li> <li>2. initial fee for new career schools: \$2500</li> <li>3. annual fee for unaccredited institutions of higher education: \$6000</li> <li>4. annual fee for accredited institutions of higher education: \$2500</li> <li>5. Renewal fee for career school with gross tuition above \$150,000: \$2500</li> <li>6. Renewal fee for career school with gross tuition above \$100,000 but under \$150,000: \$1500</li> <li>7. Renewal fee for career school with gross tuition above \$50,000 but under \$100,000: \$1000</li> <li>8. Renewal fee for career school with gross tuition under \$50,000: \$500</li> <li>9. late fee: \$100 a day for up to 10 days (\$1000 max)</li> <li>10. audit noncompliance fees: \$1000 per occurrence</li> <li>11. initial or renewed exemption application/request for name acknowledgement/agent registration: \$300</li> <li>12. handling charge for withdrawn application: \$300.</li> </ol>

For changes to existing regulations, use this chart: **Changes affecting institutions of higher education**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 40-31-10	8 VAC 40-31-10	This section includes definitions of words and terms used in the regulations.	The proposed change adds definitions for the following words and terms: accreditation, agent, career-technical school, change of ownership, clock (contact) hour, course registration materials, credit hour, existing institution or existing postsecondary school, gross tuition collected, noncollege degree school, new institution or new postsecondary school, out-of-state institution, postsecondary education activities, teach-out agreement, unearned tuition.
8 VAC 40-31-60	8 VAC 40-31-60	This section describes the types of Institutions, programs, degrees, diplomas and certificates that are exempt from Council action.	<p>Eliminates the exemption of proprietary school and other postsecondary non-degree granting institutions.</p> <p>Eliminates the requirement that a proprietary school that is licensed by the Board of Education and seeks Council certification shall continue to comply with the provisions of Chapter 16 (§ 22.1-319 et seq) of Title 22.1 of the Code of Virginia.</p> <p>Eliminates the exemption for postsecondary courses or programs offered by an institution of higher education at a U.S. military base.</p> <p>Add an exemption for programs of professional or occupational training offered by a school to the extent that the program is subject to approval by any other state or federal agency and that the school is not seeking degree-granting status such that they would be required to obtain Council certification.</p> <p>Eliminates the exemption for certificates or diplomas awarded on the basis of Continuing Education Unit (CEU) credit or equivalent.</p> <p>Adds an exemption for courses offered and delivered by an accredited postsecondary school, recognized by the U.S. Department of Education, if such courses are provided solely on a contractual basis for which no individual is charged tuition and for which there is no advertising for open enrollment.</p> <p>Add an exemption for programs of instruction offered through any public or private high school accredited or recognized by the Board of Education.</p> <p>Adds an exemption for instruction designed to supplement regular classes for student enrolled inn</p>

			<p>public or private high school or to prepare individuals for an examination for professional practice or high education.</p> <p>Adds an exemption for school of fine arts or other avocational courses conducted solely to further artistic appreciation, talent or for person development or information.</p>
<b>8 VAC 40-31-120</b>	<b>8 VAC 40-31-120</b>	This section details certification requirements for new and existing Institutions of Higher Education	In addition to renaming the section title to “Certification required for new and existing postsecondary schools”, this section adds the requirement that any postsecondary school, not previously certified to operate in Virginia, seeking to establish a postsecondary education consortium, agreement, partnership or other similar arrangement with an existing postsecondary school must become certified to operate prior to engaging in postsecondary education activities within Virginia.
<b>8 VAC 40-31-140</b>	<b>8 VAC 40-31-140</b>	This section details certification requirement for Institution of Higher Education.	<p>The percentage of general education courses required of a terminal occupational/technical program leading to the Associate of Occupational Science (A.O.S.) was increased from 10% to 15%.</p> <p>These regulations require that all instructional staff, regardless of the level of instruction, hold a degree from an accredited college or university</p>
*	<b>8 VAC 40-31-150</b>	*	This section provides certification criteria specific for career-technical schools, which have no effect on institutions of higher education
<b>8 VAC 40-31-140</b>	<b>8 VAC 40-31-160</b>	This section details certification requirement for Institution of Higher Education.	<p>The proposed change includes certification requirements for both institutions of higher education and career-technical schools.</p> <p>This section adds that all postsecondary schools must have a clear, accurate, and comprehensive written statement that minimally includes: the number of students enrolled in each program; the number of students that graduate from the school each calendar year; the percentage of those that enroll that subsequently successfully graduate; the number students reporting employment in their field of study within 6 months of graduation; the number of students reporting employment in their field of student within 1 year of graduation.</p> <p>This section adds that students shall follow the established grievance process of the school and may contact SCHEV as a last resort to file a complaint about the school.</p> <p>This section adds that school must provide or make available to students, prospective students and other interested parties a catalog, bulletin or brochure</p>

			<p>containing, as a minimum: the number of students enrolled in each program; the number of students that graduate from the school each calendar year, the percent of those graduating out of the total number that enroll each year; the number of students reporting employment within 6 months and 1 year of graduation; and the name, location, and address of the main campus, branch or site operating in Virginia.</p> <p>This section allows public postsecondary schools originating outside of Virginia that has a branch operating in Virginia to be exempt from the surety instrument requirement.</p> <p>This section requires that new school and unaccredited existing school must complete at least two calendar years of academic instruction to qualify for the surety instrument waiver, instead of one year.</p> <p>This section add that library resources shall be current, well distributed among fields in which the institutions offers instructions, cataloged, logically organized and readily located. The school must maintain a continuous plan for library resource development and support. Career-technical school libraries are required to provide adequate and appropriate resources for completion of course work.</p> <p>This section expands the refund policy requiring accredited schools to follow the refund policy of their accrediting body and all other schools to follow SCHEV's refund policy. The policy allows for a nonrefundable fee not to exceed \$100; requires schools to provide a period of at least 3 business days during which a student can cancel enrollment without any financial obligation to the school, other than the nonrefundable fee; defines that a individual's status as a student can be terminated by the school no later than 7 consecutive instructional days after the last day on which the student attended the school; termination may be earlier if submitted in writing; require that parents or guardians of students under the age of 18 submit notices of termination; refunds must be submitted within 45 days of termination; institutions that provide the majority of their program offerings via distance learning must have a plan for student termination. Establishes refund policy for semester and quarter school; allows that expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits and all other charges represented separately to the student in the enrollment agreement not to be considered in tuition refund computations.</p>
<p><b>8 VAC 40-31-150</b></p>	<p><b>8 VAC 40-31-170</b></p>	<p>This section outlines requirement for initial certification.</p>	<p>The proposed change provides that certified schools can not enter into an agreement to deliver or develop</p>

			<p>courses or programs of study in Virginia with uncertified postsecondary schools. It stipulates that schools that submit their initial application for certification has 180 days to complete the process, after which time the application will be withdrawn and the school shall received a refund of their application fee minus a \$300 non-refundable handling charge. In the event of a change of ownership, the new owner must certify within 45 business days of the transfer of ownership.</p> <p>This section establishes the certificate to operate expiration date for each school sector:</p> <p>Out-of-state private degree &amp; career-technical schools – expire August 31 of each year.</p> <p>Out of state public institutions – expire September 14 of each year</p> <p>In-state private, non-profit institutions – expire September 30 of each year</p> <p>In-state proprietary degree granting &amp; academic career-technical schools – expire October 14 of each year</p> <p>In-state career-technical schools (letters A – D) – expire October 31 of each year</p> <p>In-state career-technical schools (letters E-P) – expire November 14 of each year</p> <p>In-state career-technical schools (letters Q – Z and others) – expire November 30 of each year</p>
<p><b>8 VAC 40-31-160</b></p>	<p><b>8 VAC – 40-31-180</b></p>	<p>This section provides certification application requirements</p>	<p>The proposed change requires that unaccredited institutions must obtain candidacy status within 3 years of initial accreditation and full accreditation within 6 years to maintain eligibility for certification.</p> <p>It also establishes that unaccredited institutions that undergo a change of ownership during the plan of action to secure accreditation may remain on the plan of action timetable established by the original owner. No additional time for obtaining full accreditation will be granted due to a change of ownership.</p> <p>Schools must provide a complete listing of all sites, their address, phone number and classes taught there.</p> <p>New postsecondary school are required to submit an notarized statement from the President/CEO attesting to any previous involvement in the operation of a postsecondary school, or any previous involvement by any administrator, owner, controlling shareholder or members of the school's governing board.</p>



			<p>Schools must submit a complete listing of all diplomas, certificate or degree programs offered during their period of certification.</p> <p>Requires that a branch campus or site of a school under different ownership or different school names than the main campus must submit a separate application for certification and pay a separate fee.</p>
8 VAC 40-31-180	8 VAC 40-31-200	Provides guidance for audits.	Removes that Council's ability to refer audit findings to the Attorney General for consideration of imposition of criminal penalty.
8 VAC 40-31-210	8 VAC 40-31-230	Covers criminal prosecution for violations	The proposed change allows Council to take any action required by the Code of Virginia to deter illegal or improper acts, which may violate the requirements for school certification.
8 VAC 40-31-240	8 VAC 40-31-260	This section discusses fees.	<p>The proposed change established \$300 as a non-refundable handling fee for certification application processing.</p> <p>Eliminates Council authority to adjust fees as deemed necessary.</p>
8 VAC 40-31-260	8 VAC 40-31-280	This section provides guidance when a school closes.	The proposed change allows Council to seek advice from the Career College Advisory Board on matters related to school closures.
*	8 VAC 40-31-310	*	The proposed change includes information about the Student Tuition Guaranty Fund (STFG). Schools seeking initial certification after July 1, 2004 are not required to pay in to the fund. All other schools must follow provisions in place at the time of their initial certification. Institutions of higher education were not required to pay into the STGF
*	8 VAC 40-31-320	*	The proposed change establishes regulations for agents operating in Virginia. Agents representing non-certified accredited postsecondary schools must register with Council and pay a fee of \$300 per school represented. Agents representing unaccredited postsecondary school may not conduct business in Virginia. Agent permits expire on December 31 of each year. Renewal applications are due 60 days prior to the expiration date.

The following table details change from the current Emergency Regulations to the Proposed Regulations.

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
8VAC40-31-10. Definitions.	8VAC40-31-10. Definitions.	The section gives definitions of terms in the chapter.	<ul style="list-style-type: none"> <li>Definitions for “academic credit” and “academic vocational” are omitted.</li> </ul>

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
			<p>Definitions for “credit,” “credit hour,” and “unearned tuition” are added.</p> <ul style="list-style-type: none"> <li>• In the definitions for “branch,” “course registration material,” “full time faculty,” “instructional faculty,” and “part time faculty,” the term “institution” is replaced with -school-.</li> <li>• The definition of “certification” is changed so that it applies to –private or out of state postsecondary schools- and –certificate or diploma” programs as well as “institutions of higher education and/or degree program[s].”</li> <li>• The definition for “contact hour” (and now also -clock hour-) is changed to remove the reference to “the basic unit of attendance” and changes the applicable period from “50 minutes of scheduled instruction and/or examination” to –50 minutes of supervised or directed instruction and appropriate breaks-.</li> <li>• The definition for “diploma or certificate” is changed by deleting the following language: “applies only to those awards given for coursework offered within Virginia by institutions of higher education which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, degrees at the associate, baccalaureate, graduate, or professional level.”</li> <li>• The definition of “in-state institution” is changed so that all out of state institutions rather than just those incorporated outside of Virginia may be considered as in-state institutions.</li> <li>• The definition of “postsecondary school” is</li> </ul>

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
			<p>corrected by adding the language “any entity offering” certain programs rather than by defining the school as the program itself.</p> <ul style="list-style-type: none"> <li>In the definition of “proprietary”, “for-profit” is replaced with – profit making-.</li> </ul>
8VAC40-31-20(C)&(E). Prohibited Acts.	8VAC40-31-20(C)&(E). Prohibited Acts.	These subsections prohibit institutions from representing that credits earned are applicable toward a degree except in accordance with this chapter and allow the council to refuse to certify misleading names of institutions.	The terms “institution” and “institution’s” have been replaced with -school- and -school’s-.
8VAC40-31-30. Advertisements, announcements, and other promotional materials.	8VAC40-31-30. Advertisements, announcements, and other promotional materials.	This section requires that “out of state schools” include certain information in its course registration materials and prohibits institutions from representing in any material that they are supervised, endorsed, accredited, or recommended by any state agency.	The phrase “An out-of-state school” was replaced with -A school with its main campus not located in Virginia that has a physical presence in Virginia-. The terms “institution” and “institution’s” were replaced with -school- and -schools-.
8VAC40-31-50. Religious Institutions.	8VAC40-31-50. Religious Institutions.	The section provides a limited time exemption to religious <i>institutions</i> subject to certain conditions.	All occurrences of the term “institution” are replaced with -school-. The last subsection “E” was re-titled -F-. The previous version had two subsection “E”s.
8VAC40-31-60. Institutions, programs, degrees, diplomas, & certificates exempt by council action.	8VAC40-31-60. Schools, programs, degrees, diplomas, & certificates exempt by council action.	The section provides 11 specific exemptions from certification for institutions for certain types of programs and degrees.	The term “institution” was replaced by - school- wherever it appeared in the specific exemptions. The exemption (5) for professional programs was expanded to include programs subject to approval by any state or federal agency or if the school is not seeking degree-granting status. The exemption (8) for postsecondary courses provided on a contractual basis with no charge for tuition is narrowed so that only schools that are accredited by some accrediting entity recognized by the U.S. Department of Education are exempt.
8VAC-40-31-70. Denial of exemption; Appeal of action.	8VAC-40-31-70. Denial of exemption; appeal of action.	The section provides the right to a hearing for an <i>institution</i> if the council denies a request for an exemption.	The term “institution” is replaced with - school-.
8VAC40-31-80. Role of the Council.	8VAC40-31-80. Role of the Council.	The section defines the role of the council and makes reference “§ 23-276.1 through § 23-276.12.”	The code reference is changed to -§ 23-276.1 et seq.-

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
8VAC40-31-90. Role of the Executive Director.	8VAC40-31-90. Role of the Executive Director.	The section defines some administrative responsibilities of the executive director. The section uses the term "institution."	All occurrences of the term "institution" are replaced with -school-. Identification of the first subsection as "A" removed as there was only one subsection.
8VAC40-31-100. Role of the Council Staff.	8VAC40-31-100. Role of the Council Staff.	The section defines the role of the council staff. The section uses the term "institution" and makes reference to "§ 23-276.1 through § 23-276.12."	All occurrences of the term "institution" are replaced with -school-. Identification of the first subsection as "A" removed as there was only one subsection. The code reference is changed to -§ 23-276.1 et seq.- The superfluous language "and chapter" was deleted.
8VAC40-31-110. Certain existing approvals & exemptions continued.	8VAC40-31-110. Certain existing approvals & exemptions continued.	The section allows <i>institutions of higher education</i> with existing approvals to confer degrees to continue to confer degrees unless that approval is revoked.	In subsection B, the phrase "institution of higher education" is shortened to – institution-. There is no change in meaning since the terms have identical definitions per 8VAC40-31-10.
8VAC40-31-120. Certification required for new and existing postsecondary schools.	8VAC40-31-120. Certification required for new and existing postsecondary schools.	The section requires new and existing postsecondary schools to be certified prior to engaging in covered activities whether by telecommunications or at a site in Virginia.	The new section adds –mail correspondence courses- to the types of courses requiring certification.
8VAC40-31-140. Certification criteria for institutions of higher education.	8VAC40-31-140. Certification criteria for institutions of higher education.	The section sets certification criteria for institutions of higher education including the percentage of general education courses required for each level of degree. It also requires instructors to hold a degree of a certain level depending on the level of the course taught or to have experience.	The new section increases the required percentage of general education courses at the Associate of Occupational Science level from 10% to 15%. The new section requires that required instructor degrees to be: -from an accredited college or university-.
8VAC40-31-150. Certification criteria for vocational schools.	8VAC40-31-150. Certification criteria for vocational schools.	The section sets certification criteria for vocational schools including curricular requirements and requires that instructors hold associate degrees or have experience.	The new sections require that the associate degree required for instructors be -related to the area of instruction-.
8VAC40-31-160. Certification criteria for all postsecondary schools.	8VAC40-31-160. Certification criteria for all postsecondary schools.	The section sets certification criteria for all postsecondary schools including requirements for (A) a written comprehensive statement with 6 specific elements, (B) a written document describing the powers and duties of the board, officers, administrators and students, (C) a written policy defining admissions requirements with 4 specific elements, (D) maintenance of student records, (E) a catalog or brochure with 11 specific elements, (F) a process for determining curricula, (G) documentation of financial soundness, (H) maintenance of a surety	5 elements relating to enrollment, graduation, and employment are added to statement of subsection (A). 1 element relating to grievances is added to the policy document of subsection (C) and the schools are required to provide the document to all applicants. Subsection (D) is amended to define a 5-year retention period for student records. Also, subsection (D) is amended so that state supported public schools may enter into agreement with the university system of which they are a part for the purpose of maintaining student records in the event of closure or revocation of certification. (Schools that do not fit this exception

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
		instrument, (I) a written policy for faculty accessibility, (J) accuracy of information, (K) quality of non-residential programs, (L) a library, and (M) a tuition refund policy.	must contract with another school with whom they are not corporately connected. 4 elements are added to the catalog of subsection (E) regarding the number of students enrolled, the number that graduate, and the corresponding graduation percentage, and accurate information regarding the transferability of diplomas or certificates. The existing financial aid element of subsection (E) is expanded to include the percentage of students receiving federal aid and the average student debt at graduation. The existing placement and employment element of subsection (E) is expanded to include the number of students reporting employment in their field of study at 6 months and 1 year after graduation. The citation in subsection (I) to USDE stability requirements is corrected to § 160.H from § 140.I. The surety instrument requirement of subsection (H) is amended to provide an exemption to “public postsecondary schools originating in another state and have a branch or site in Virginia. The tuition refund policy requirement of subsection (M) is amended to require adherence to the tuition refund requirements of their accrediting body if required. The tuition refund policy requirement is amendment of subsection (M) is amended to require full refund (minus a nonrefundable portion) of tuition if the student withdraws or is dismissed prior to the start of the program. The tuition refund policy requirement of subsection (M) is amended to require that institutions providing a majority of their programs through distance learning have a plan for student termination which is provided to SCHEV for review with annual certification or recertification applications. In several of the subsections of this section, the term “institution” has been replaced with -school-.
8VAC40-31-170. Initial certification.	8VAC40-31-170. Initial certification.	The section prohibits institutions from using of the term “college” or “university” without acknowledgment from SCHEV that the name does not violate regulations. The section requires schools to notify SCHEV of proposed name prior to submission to	The term “institution” is replaced with – school- in several subsections. A requirement is added that schools complete the application process within 180 days or the council will withdraw the application, and the application fee will be refunded minus a handling charge of

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
		the State Corporation Commission (SCC) and requires that institutions have authorization from the SCC to transact business in Virginia prior to certification. The section prohibits operation of institutions in Virginia without certification, and prohibits certified institutions from entering into agreements with uncertified institutions. The section details certification expiration dates and recertification deadlines for the various types of institutions. The section requires recertification of an institution when there is a change of ownership.	\$300.
8VAC40-31-180. Application requirements.	8VAC40-31-180. Application requirements.	The section sets requirements for the information that must be included in an application including a completed form, a statement of accreditation status, a copy of the transacted surety instrument form, a checklist and notarized statement acknowledging compliance with certification criteria, a company check, a copy of the institutions certificate from the SCC, a copy of an out of state school's authorization to operate in the state where its main campus is located, a listing of all sites with contact information, a statement setting forth the involvement of any member of the school's board in the operation of another postsecondary school, a list of all diploma or certificate programs offered, and evidence of a valid business license.	The term "institution" is replaced with – school- in several subsections. The requirement that "For out-of-state institutions, a copy of the institution's authorization to operate from the state agency in which its main campus is domiciled" has been modified to apply to - schools whose main campus is not in Virginia- rather than only out-of-state schools. The requirement to provide a statement setting forth board members' involvement in other postsecondary schools has been expanded to include disclosure of any criminal convictions or civil penalties levied by a legal entity against any school they were affiliated with. The requirement to list all diploma or certificate programs is expanded for renewing schools to include the number of degrees of each type awarded, the number of students graduating and the number enrolled, and follow-up employment information from graduates. The section adds a new requirement that when a branch campus or site is under different ownership or has a different name than the main campus, the branch or site must apply for certification and pay the certification fee.
8VAC40-31-190. Withdrawal of application by a postsecondary school.	8VAC40-31-190. Withdrawal of application by a postsecondary school.	The section allows withdrawal of any application for certification by an institution without prejudice at any time and file a new one.	The term "institution" was replaced with – school-.
8VAC40-31-200. Audit	8VAC40-31-200. Audit requirements.	The section requires periodic audits of institutions, sets the composition of	The term "institution" was replaced with – school-.

Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
requirements.		the audit committee, defines triggers for audit, requires a report, and lists action that the council may take based on the findings of the report.	
8VAC40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§ 2.2-4019 thru 2.2-4030 of the Code of Virginia).	8VAC40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§ 2.2-4019 thru 2.2-4030 of the Code of Virginia).	The section requires that no certification can be denied, suspended, or revoked without notice of the proposed action and the time and place of a hearing. The section provides for formal and informal conferences and sets requirements for appearance and conduct. The section also requires a written statement and recommendation to be prepared and that the council render a decision based on the recommendation.	The term "institution" was replaced with – school-.
8VAC40-31-240. Civil enforcement.	8VAC40-31-240. Civil enforcement.	The section allows the council to seek an injunction against schools violating the regulations regardless of any remedy available at law.	The term "institution" was replaced with – school-.
8VAC40-31-260. Fees.	8VAC40-31-260. Fees.	The section specifies the location of fee amounts, where they are deposited; that they are non-refundable, and that they must be by company check payable to the Treasurer of Virginia.	The nonrefundable "reasonable handling charge" associated with the withdrawal of an application is specified to be \$300.
8VAC40-31-270. Receipt of applications, correspondence and other materials.	8VAC40-31-270. Receipt of applications, correspondence and other materials.	The section specifies the mailing address for correspondence and states that mailing of items does not constitute receipt by SCHEV unless sent by registered or certified mail, return receipt requested.	The address is modified from "ATTN: Institutional Certification" to –ATTN: Private and Out of State Postsecondary School Certification-.
8VAC40-31-280. Closure of a postsecondary school.	8VAC40-31-280. Closure of a postsecondary school.	The section allows the council to allow a school whose application has been denied or revoked to continue to offer programs to current students to complete their programs. It specifies a school's duties when it ceases operation voluntarily.	The term "institution" was replaced with – school-.
8VAC40-31-290. Waiver by council	8VAC40-31-290. Waiver by council	The section allows the council to waive certification requirements for accredited institutions.	The term "institution" was replaced with – school-.
8VAC40-31-300. Freedom of Information Act to apply.	8VAC40-31-300. Freedom of Information Act to apply.	The section says that all application materials submitted by a school are subject to FOIA.	The term "institution" was replaced with – school-.
8VAC40-31-310. Student Tuition Guaranty Fund (proprietary schools only).	8VAC40-31-310. Student Tuition Guaranty Fund.	The section requires the Executive Director to appoint a Director of the Fund, provides the purpose of the Fund, provides exemptions to schools seeking initial certification after July 1, 2004, defines timeliness of claims	The term "institution" was replaced with – school-. The words "(proprietary schools only)" are deleted from the sections title.



Current section number (Emergency)	Proposed new section number, if applicable	Current requirement (Emergency)	Proposed change and rationale
		against the fund, gives the director investigatory authority	

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Summary of Comments	Summary of SCHEV Response
Jim Waldman, Director	New regulations should require name of institution, level of accreditation, location, and web address to be included in advertising.	Amend sec 30 to require name, address, and SCHEV certification status in all advertising materials.
Dr. John A. Sabatini, Jr Executive Director, Regulatory Affairs	School does not collect employment & placement statistics; unable to report enrollment data on state-by-state basis; question whether reporting information refers to entire student body or just Virginia students	Amend section 160(B)(9), (B)(10), and (F)(11) so that employment and placement statistic reporting requirements are only applicable to career technical and unaccredited institutions. Delete requirement of 160(B)(11) requiring "long range plans" and replace with language in (B)(3) requiring a statement of consistency of proposed offerings with school's stated purpose. Add language in section 160 to make clear that the enrollment and graduation data requested should be specific to Virginia.
Mark Singer, Executive Director	Sections 160(b)(6)-b(10) and 160(f)(1)-(4) are duplicative of SRTK and publication in catalog will mean data is soon out of date. Complains of requirement that "all" faculty at degree schools must have accredited degree.	Amend section 160(f) so that the information may be published in catalog OR brochure, bulletin, or electronic media. Amend some reporting requirements so that they more closely mirror federal data requirements. No amendment of 140. Point out that 140 does not require degrees for all instructors and that there are exceptions. Also, it is too hard to verify compliance with accreditor requirements b/c there are so many accreditors.
George Geyer, Owner	Fees have disparate impact on small business. Recommends exempting all accredited schools. Concern that school will be held responsible for failing to provide placement data if the student does not respond or is unreachable. Not clear what is required for recertification.	Fees: No amendment at this time - refer to our EIA response published in Va. Register. But, we are still taking comments. Exemptions: No amendment, b/c the exemptions are statutory and we don't have discretion. Placement data: No amendment - explain that schools only need to make reasonable effort to contact students and get the information. Recertification: no amendment - explain that recertification requires filing an application that conforms with section 180 and that SCHEV

		staff is always available to answer questions.
Jennifer McClure, Director of Licensing & Government Relations	Degree programs do not track placement and employment of graduates; other concerns about reporting graduation rates and enrollment information	Graduation rates language change to reflect the percentage of certificate-, diploma- or degree-seeking students claiming Virginia residence would complete/graduate within 150% of the normal time for completion; placement rate information required of unaccredited institutions of higher education and career-technical schools only.
Jeffrey C. Tiebout, Director/Owner Victoria Stone, Director/Owner Nancy Mignone, Owner Fred Mignone, Owner	With annual fee of \$200,000, annual certification fee of \$2500 is prohibitive; request requirements for library for career-technical schools not be the same as a traditional college; does not understand why regulated by SCHEV and not Va. Department of Education	Library must be adequate and appropriate for the purpose and enrollment of school; no comparison to traditional college; fee reasonable for services offered by SCHEV; transfer to SCHEV instituted by General Assembly.
Nicholas H. Allen, Provost and Chief Academic Officer	Regulations state information should be reported based on "calendar year", school collects data based on "fiscal year"; regulations ask for reporting of student employment w/in 6 mos and 1 year of graduation, students reporting employment at time of registration is not factored; regulations do not clarify whether longitudinal data, data from a snapshot of one year or other timeframe is requested for the % of graduates from the total number of student enrolled each year; definition of who is a Virginia student is not clear; does average indebtedness include debt from graduating institution only or include transferable indebtedness; UMUC conducts student surveys every 3-years, not 6mos or 1 year after graduation.	Final regulations will use "academic year" or "fall head count" where appropriate; only non-accredited and career-technical schools will be required to report placement information; graduation rate calculation same as rate used for IPEDS; final regulations request specifically for information from students claiming Virginia residence only; average indebtedness from that institution only.
Marian Goldberg, Owner	It is cost prohibitive that small schools have to provide an annual audited financial statement; although fees have been changed, still too high for a small school - school with gross income of \$500 - \$40,000 would pay same as school with goss income of \$150,000; small school should not have to have a fully-catalogued library; a one-size-fits-all set of regulations and policies is not appropriate as there are such disparate differences in sizes, incomes and types of proprietary schools	Schools have option of using audited, reviewed or compiled financial statements; further career-technical schools can use forms supplied by SCHEV; schools with gross tuition less than \$50,000 will pay \$500, schools with gross tuition greater than \$150,00 will pay \$2,500; library must be adequate and appropriate for the purpose and enrollment of school;

<p>Dr. Victor N. Berlin, President</p>	<p>The definition of "credit" should also apply to graduate schools; request an exemption for SCHEV-approved non-accredited schools being required to hire faculty members with a PhD from an accredited school, due to shortage of available qualified applicants in certain fields of study; request clarification on requirement for percentage of enrolled students that subsequently graduate from the school; school does not collect employment data on students after graduation; request clarification on student indebtedness;</p>	<p>"Graduate" added to definitions of "credit" and "academic credit"; faculty requirements already allow for an exemption with proper documentation; will not lower the required standard; regulations have been changed to clarify exactly what enrollment figures are required; employment data is based on student response to survey, school accountable to make effort to collect data only; explained student indebtedness as it relates to loans offered by the school, not monies from other schools and/or sources</p>
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A public hearing was held on Monday, April 10, 2006 at the SCHEV office. The hearing was attended by: Susan Paulson, St. Leo University; Carl Newell, Bryant & Stratton College; Steve Scherer, ITT Tech – Richmond; Alan Thompson, ITT Tech – Norfolk; Catherine Turner, University of Phoenix; Laura Todd, University of Professional Sciences and Sephonia Gee, Institute of Advanced Esthetics. Comments referenced questions about reporting graduation rates, reporting student employment, reporting student indebtedness at time of graduation; reporting information in college catalogs, brochures and bulletins; and required faculty qualifications.;

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
<p>8 VAC 40-31-10</p>	<p>n/a</p>	<p>Added definitions for "academic credit", "academic-vocational", and "avocational",</p>	<p>"Academic credit" and "academic-vocational" were included in the definitions in the Emergency Regulations of the same number. For some reason, they did not transfer to the copy of the Proposed Regulations submitted for publication. "Avocational" added to define the types of programs exempt from certification.</p>
<p>8 VAC 40-31-30 (B)</p>	<p>n/a</p>	<p>Certified schools must include in all publicity, advertisement and promotional materials: (1) that it is certified to operate in Virginia by SCHEV; (2) the school's complete name at it appears on the CTO; and (3) the address of at least one branch campus</p>	<p>Revised in response to a public comment about the use of "blind advertising." SCHEV believes that when students respond to an advertisement for higher education they should know to what school they are making the inquiry.</p>

		operating in Virginia	
8 VAC 40-31-160 (B) (6), (7), (8), (9), and (10)	n/a	Changed the enrollment statistics school are required to include in a clear, accurate and comprehensive written statement. Clarified that information is requested only for enrolled students claiming Virginia residence. Requires placement information from non-accredited institutions of higher education and career-technical schools only.	Clarified for out-of-state schools that information requested related only to students claiming Virginia residence.  Revised in response to public comments; institutions of higher education do not collect placement data.  Also, made requested enrollment statistics more in line what that which is required by the U.S. Department of Education.
8 VAC 40-31-160 (E) (4)	n/a	Requires school to maintain a record of all financial transactions between the student and the school for up to 3 years after the student’s last date of attendance.	Will assist SCHEV in responding to student complaints about school refunds and other financial transactions.
8 VAC 40-31-160 (F) (1), and (2)	n/a	Requires that schools make certain information available to students and others through a catalog, bulletin, brochure or electronic media. Also clarified that all enrollment data requested relates to Virginia residence only.	Revised in response to public comments: schools concerned that they would have to frequently republish the school catalogs;
8 VAC 40-31-160 (N)	n/a	Requires that accredited schools adhere to SCHEV refund policy if their accrediting bodies policy does not describe specific refund terms.	Provide consumer protection concerning refunds when accrediting bodies require schools to establish “fair and equitable” refund policies; this statement is vague and does not necessarily protect students.
n/a	8 VAC 40-31-160 (N) (8)	Establishes a refund policy for schools that offer their program of study completely via telecommunications.	Provides a refund policy for distance learning programs in response to comments received.
8 VAC 40-31-160 (O)	n/a	Requires that schools maintain evidence of teaching faculty academic transcripts as well as other documents supporting experience in area of teaching or professional and scholarly achievement.	Schools must be able to support hiring decisions and ensure that students are being instructed by knowledgeable faculty.
8 VAC 40-31-170 (C)	n/a	Requires that out-of-state schools seeking certification to operate in Virginia must provide written documentation from it home state/country that the school is in good standing; if the school formerly operated in another state/country, but was not operating there at the time of their	An attempt to prevent out-of-state schools forced out of their home state for illegal activities or suspicion of being a diploma mills from operating within the Commonwealth of Virginia

		application to operate in Virginia, must provide written documentation that school closed in good standing and could reopen in that state/country.	
8 VAC 40-31-230 (C)	n/a	Informs schools operating without certification that SCHEV will request the local Commissioner of the Revenue to revoke their business license.	Adding specific language found in §23-276.15 of the Code of Virginia.
8 VAC 40-31-260 (E) and (F)	n/a	Informs schools that if a late fee is assessed, that fee and all other required fees must be paid before the CTO will be issued; also informs schools that if any payment to SCHEV to returned for any reason, the school must resubmit the required fee via a money order or certified bank check.	Clarifies schools financial responsibility if recertification package is submitted late, and if the school submits a check that is returned for any reason.
8 VAC 40-31-310 (D)	n/a	States that to be eligible to receive compensation from the Student Tuition Guaranty fund, the student had to have been enrolled in the school or on an approved leave of absence at the time of the school closure, and that the closure of the school prevented the student from completing his program of study.	Clarifies under what circumstances a student is eligible for compensation via the Student Tuition Guaranty Fund.

Enter any other statement here

**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.*

Several changes have been made to the regulations from the Emergency to the Proposed to the Final stage in attempts to mitigate any administrative burdens on small businesses. These changes include a reduction in the annual certification fee; the establishment of a flat fee that eliminates other administrative fees; and allowing career-technical schools to submit the annual financial statement on forms provided by Council staff instead of requiring an audited, reviewed or compiled financial statement.

## 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.*

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These regulations will neither strengthen nor erode the authority or rights of parents in the education, nurturing or supervision of their children as it deals specifically with postsecondary education. By ensuring that schools comply with the established consumer protection provisions included in the regulations, the regulations encourage economic self-sufficiency by ensuring students ability to obtain additional vocational instruction that my enhance/improve their marketability. While the regulations will neither strengthen nor erode the marital commitment, the available of a diverse number of postsecondary schools certified to operate may increase disposable family incomes as student advance in their careers after completing additional training offered by the regulated schools.