



[townhall.virginia.gov](http://townhall.virginia.gov)

## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Council of Higher Education for Virginia
<b>Virginia Administrative Code (VAC) citation(s)</b>	8 VAC 40-31
<b>Regulation title(s)</b>	Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
<b>Action title</b>	Amendments to correct errors to the regulations that became effective February 3, 2014
<b>Date this document prepared</b>	March 29, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The revised Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates became effective on February 3, 2014 and subsequent to that date State Council of Higher Education for Virginia (SCHEV) discovered five errors that were not caught during the revision process. Two of errors involve fees included on the fee chart that are no longer applicable. Two errors in the regulation wording reflect former fees charged as opposed to current fees. The last error mistakenly uses the word "following" instead of the correct "prior to", which makes the paragraph conflict with the Code of Virginia.

## 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.*

---

"SCHEV" or "Council" are used for the State Council of Higher Education for Virginia.

## 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.*

---

On February 2, 2014, revisions to the *Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas, and Certificates* became effective. These revisions included revisions to the fee schedule, word changes, and section additions and deletions. After the revised regulations became effective, SCHEV noted errors and ambiguities that were not detected at the time of revision.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

---

Chapter 21.1 of the *Code of Virginia* grants the State Council of Higher Education for Virginia the authority to regulate Certain Private and Out-of-State Institutions of Higher Education.

§ 23-276.3 of the *Code of Virginia* authorizes the State Council of Higher Education for Virginia to adopt, pursuant to the Administrative Process Act, such regulations as may be necessary to implement the provisions of this chapter.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.*

---

The reason for this change is to provide clarity. Educational institutions certified to operate in Virginia rely on these regulations to maintain compliance with the laws governing their operation in Virginia. These changes will remove errors and ambiguities not detected until after the changes to the regulations became effective on February 3, 2014.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

---

These changes are non-controversial because they correct ambiguities that were inadvertently made during the last revision of the regulations which became effective February 3, 2014. They will remove fees that are no longer charged and will correct wording so it does not conflict with wording in other sections of the regulation or that conflict with Code.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

---

There are no substantive changes. These changes are to remove fees no longer charged or to remove ambiguities.

### 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.*

---

These changes will correct errors that cause ambiguity in the current regulation and remove fees that are no longer charged.

There are no disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.*

---

Not Applicable

### 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.*

Not Applicable

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.*

Not Applicable

### 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 requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</b>	Not Applicable
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	Not Applicable
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	The institutions that are required to obtain certification from SCHEV will be affected by these changes.
<b>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.</b> Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	SCHEV regulates approximately 300 postsecondary institutions of which approximately 50% would be considered small businesses.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other</b>	Not Applicable

<p><b>entities. Please be specific and include all costs including:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>b) 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.</b></p>	
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The changes will eliminate ambiguities in the regulation and remove fees that are no longer charged</p>

### 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.*

There are no viable alternatives to these changes as they must be made to correct errors and ambiguities.

### Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Periodic review and small business impact review report of findings

*If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

Commenter	Comment	Agency response

Not Applicable

### Family impact

*Please assess the impact of this 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.*

Not Applicable

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
8VAC40-31-160Q Certification criteria for all postsecondary schools		An institution shall notify council staff of the following occurrences no later than 30 days <b>following</b> said occurrence: 1. Addition of new programs or modifications to existing program. Program names must adhere to the CIP taxonomy maintained by the National Center for Education Statistics. 2. Addition of a new branch location or instructional site. 3. Address change of a branch or instructional site in Virginia. Notification of the above	Change the word “ <b>following</b> ” to “ <b>prior to</b> ”. This mistake was made during the last revision of the regulation and goes against § 23-276.4(A)(3)of the <i>Code of Virginia</i> which requires institutions to receive approval from Council prior to offering degrees, courses for degree credit, programs of study leading to a degree, or non-degree credit and § 23-276.4(A)(4) which requires institutions to receive approval from Council prior to initiating other programs for degree credit or awarding degrees, certificates, or diplomas at a new or additional level. Allowing institutions to initiate new programs or add a new branch without

		referenced occurrences shall be submitted in writing on forms provided by and in a manner prescribed by the council.	notifying SCHEV until 30 days after the fact goes clearly against Code and was made in error. During the last revision, items requiring notification “prior to” the event were to be listed under this section while items requiring notification “following” the event were listed under 8VAC40-31-160R. However, the word “following” was used erroneously in both sections This change does not impact the institutions as SCHEV currently requires institutions to report the items listed in 8VAC40-31-160Q <b>prior to</b> the change in accordance with Code requirements.
8VAC40-31-170D Initial Certification, recertification and change of ownership		A school submitting its initial application for certification will have 180 days to complete the application process, after which time its application will be withdrawn by the council and it will receive a refund of the application fee minus the nonrefundable <b>handling charge of \$300.</b>	Change the words “ <b>handling charge of \$300</b> ” to “ <b>administrative fee.</b> ”  SCHEV failed to adjust the wording in this section to conform to the new fee schedule approved during the last revision of the regulation. This change will correct the discrepancy between the actual nonrefundable fee charged and the one quoted here.
8VAC40-31-260B Fees		All fees are nonrefundable with the exception of withdrawal of an application in which case all fees will be refunded minus a <b>reasonable handling charge of \$300.</b>	Change the words “ <b>reasonable handling charge of \$300</b> ” to “ <b>nonrefundable administrative fee noted in D below.</b> ”  SCHEV failed to adjust the wording in this section to conform to the new fee schedule approved during the last revision of the regulation. This change will correct the discrepancy between the actual nonrefundable fee charged and the one quoted here.
8VAC40-31-260D Fees		Annual fee for all unaccredited out-of-state career-technical schools \$2,500	Delete this fee. This is no longer applicable.
8VAC40-31-260D Fees		Application fee for each additional branch \$300	Delete this fee. This is not applicable.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
--------------------------------	--	---------------------	--

--	--	--	--

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.