
EMERGENCY REGULATIONS

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Titles of Regulations: **8 VAC 40-30. Regulation Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates (REPEALED).**

8 VAC 40-31. Regulation Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (adding 8 VAC 40-31-10 through 8 VAC 40-31-320).

Statutory Authority: § 23-276.3 of the Code of Virginia, Chapter 991 of the 2004 Acts of Assembly, and Chapter 447 of the 2005 Acts of Assembly.

Effective Dates: November 8, 2005, through November 7, 2006.

Agency Contact: Linda Woodley, Certification Manager, State Council of Higher Education for Virginia, James Monroe Building, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 225-2604, or e-mail lindawoodley@schev.edu.

Preamble:

This action repeals 8 VAC 40-30 and promulgates emergency regulations 8 VAC 40-31 in order to implement changes required by Chapter 991 of the 2004 Acts of Assembly. The primary purpose of these changes is to incorporate nondegree proprietary schools into SCHEV current policy of self-certification. These regulations will be the primary document that the State Council of Higher Education for Virginia uses to administer the certification of private and out-of-state postsecondary schools and institutions of higher learning. The regulations define terms unique to school certification; identify the regulated community, exempted schools, and exempted degrees; establish certification criteria and procedures for application and appeal; and impose fees. These regulations supplant the previous process of approval in 8 VAC 40-30.

According to the agency's legal counsel, this emergency action is authorized based on legislation enacted in 2005 to correct an oversight in Chapter 991 of the 2004 Acts of Assembly.

CHAPTER 31.
REGULATIONS GOVERNING CERTIFICATION OF
CERTAIN INSTITUTIONS TO CONFER DEGREES,
DIPLOMAS AND CERTIFICATES.

PART I.
DEFINITIONS, PROHIBITIONS, ADVERTISING.

8 VAC 40-31-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Academic credit" means the measure of the total time commitment an average student is expected to devote to learning per week of study. Generally, one unit of credit represents a total of three hours per week of in-class and out-of-class work (Carnegie Unit of Credit). In this context, an hour is defined as 50 minutes. Emerging delivery methodologies may necessitate determining a unit of undergraduate credit with nontime based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to insure these courses are equivalent to traditionally delivered courses.

"Academic-vocational" refers to a noncollege degree school that offers degree and nondegree credit courses.

"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such institution or school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker or independent contractor to procure students or enrollees for any such institution or school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such institution or school.

"Accreditation" means a process of external quality review used by higher education to scrutinize colleges, universities and educational programs for quality assurance and quality improvement. This term applies to those accrediting organizations recognized by the United States Department of Education.

"Adjunct faculty" is defined as professional staff members of businesses, industries and other agencies and organizations who are appointed by institutions and schools on a part-time basis to carry out instructional, research or public service functions.

"Administrative capability" means a branch (i) maintains or has access to all records and accounts; (ii) designates a named site director; (iii) maintains a local mailing address; and (iv) the course offering at the branch consists of a large number of unit subjects which comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis.

"Branch" means an additional location, operated by an institution with an approved existing site. A branch campus must have administrative capability exclusive of the main campus and adequate resources to ensure that the objectives of its programs can be met.

"Certification" means the process of securing authorization to operate an institution of higher education and/or degree program in the Commonwealth of Virginia.

"Change of ownership" refers to the change in power within a school. Change of ownership may include, but is not limited to, the following situations: (i) sale of the school; (ii) merger of two or more schools if one of the institutions is nonexempt; or (iii) change from profit to nonprofit or collective.

"CIP code number" means the six-digit Classification of Instructional Programs number assigned to each discipline specialty.

Emergency Regulations

"Contact hour" means the basic unit of attendance for computing full-time equivalent student (FTES). It is a period of not less than 50 minutes of scheduled instruction and/or examination.

"College" means any institution of higher education that offers degree programs.

"Council" means the State Council of Higher Education for Virginia.

"Course for degree credit" means a single course whose credits are applicable to the requirements for earning a degree, diploma, or certificate.

"Course registration materials" means any official documents provided to students for the purpose of formal enrollment into the institution, a specific program, or a certain course(s).

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level which represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level and includes certificates and specialist degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty and normally is identified by a six-digit CIP code number.

"Diploma" or "certificate" means an award which represents a level of educational attainment at or below the associate degree level and which is given for successful completion of a curriculum comprised of two or more courses and 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.

"Existing institution" or "existing postsecondary school" means any postsecondary school that (i) has been in operation in Virginia for two or more calendar years as of July 1, 2004, and has been certified to operate continuously during that period, or; (ii) has been approved to operate as a postsecondary school in another state, is accredited by an accrediting agency recognized by the United States Department of Education, and is certified to operate in Virginia.

"Full-time faculty" means a person whose: (i) employment is based upon an official contract, appointment, or agreement with an institution; (ii) principal employment is with that institution; and (iii) major assignments are in teaching and research. A full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

"Gross tuition collected" means all fees collected or received on either a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books which have been purchased by, and are the property of, the student.

"In-state institution" means an institution of higher education that is formed, chartered or established within Virginia. For the purposes of certification as a degree-granting institution, an institution incorporated outside Virginia shall be considered a Virginia institution if (i) it is incorporated in a state in which it has no instructional campus, and (ii) it produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Institution of higher education" or "institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary school level which has received certification from the council and: (i) offers courses or programs of study or instruction which lead to, or which may reasonably be understood to be applicable to, a degree; or (ii) operates a facility as a college or university or other entity of whatever kind which offers degrees or other indicia of level of educational attainment beyond the secondary school level; or (iii) uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

"Instructional faculty" means a person employed by an institution of higher education that is engaged in instructional, research, or related activities.

"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by council.

"Noncollege degree school" means any postsecondary school that offers courses or programs of study that do not lead to an associate or higher level degree. Such schools may be academic-vocational or vocational.

"New institution" or "new postsecondary school" means any postsecondary school that seeks certification and has been in operation in Virginia for less than two calendar years as of July 1, 2004, and has not operated in nor has been approved to operate as a postsecondary institution in another state.

"Out-of-state institution" means an institution of higher education that is formed, chartered or established outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with an institution; (ii) principal employment is with an entity other than that institution; and (iii) teaching assignments include at least one course during at least two terms within the academic year.

"Postsecondary education" is the provision of formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or equivalent. This includes programs of an academic, vocational, and continuing professional education purpose, and excludes vocational and adult basic education programs.

"Postsecondary education activities" means researching, funding designing, and/or conducting instructional programs, classes, or research opportunities, designed primarily for

students who have completed the requirements for a high school diploma or its equivalent.

"Postsecondary school" or "school" means formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent. Such schools include programs of academic, vocational, and continuing professional education, and exclude avocational and adult basic education programs. For the purposes of this chapter, a "postsecondary school" shall be classified as either an institution of higher education as defined in this section or a noncollege degree school, as defined in this section.

"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.

"Program of study" means a curriculum of two or more courses that is intended or understood to lead to a degree, diploma, or certificate. It may include all or some of the courses required for completion of a degree program.

"Proprietary" means a privately owned and managed, for-profit institution of higher education or noncollege degree school.

"Site" means a location in Virginia where a postsecondary school (i) offers one or more courses on an established schedule and (ii) enrolls two or more persons who are not members of the same household. A site may or may not be a branch, and it does not have to have administrative capability.

"Surety instrument" means a surety bond or a clean irrevocable letter of credit, issued by a surety company or banking institution, authorized to transact business in Virginia, adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with filing a claim against the instrument.

"Teach-out agreement" means the process whereby a school undertakes to fulfill its educational and contractual obligations to currently enrolled students.

"Telecommunications activity" means any course offered by a postsecondary school or consortium of postsecondary schools where the primary mode of delivery to a site is television, videocassette or disc, film, radio, computer, or other telecommunications devices.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

"Vocational school" refers to a school that does not offer courses for degree credit.

8 VAC 40-31-20. Prohibited acts.

A. Except as in accordance with this chapter, no person, or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree, degree credit, diploma, or certificate.

B. No person, or other entity shall use, or attempt to use, in connection with any business, trade, profession, or occupation any degree or certification of degree or degree credit, including but not limited to a transcript of coursework, which has knowingly been fraudulently issued, obtained, forged, or materially altered.

C. Unless exempted from the provisions of this chapter pursuant to § 23-276.2 of the Code of Virginia, no person, firm, or institution may represent that credits earned at or granted by that person, firm, or institution are applicable for credit toward a degree, except under such conditions and in a manner specified and approved by the Council in accordance with this chapter.

D. Without prior certification, no person or other entity subject to the provisions of this chapter shall use in any manner, within the Commonwealth of Virginia, the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business or in any literature, catalog, pamphlet, or descriptive materials.

1. This subsection shall not apply to any person or other entity that (i) used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in Virginia by the council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in Virginia after July 1, 2002; (iii) was exempted from the provisions of Chapter 21 (§ 23-265 et seq.) of this title, as such law was in effect prior to July 1, 2002; or (iv) was authorized by the council to use a name prior to a request for certification.

2. For only as long as the provisions of Item 158 D of Chapter 912 of the 1996 Acts of Assembly shall be in effect, this subsection shall not apply to individual proprietorships, associations, co-partnerships or corporations which use the words "college" or "university" in their training programs solely for their employees or customers, which do not offer degree-granting programs, and whose name includes the word "college" or "university" in a context from which it clearly appears that such entity is not an educational institution.

E. Council may refuse to certify institution names and terms, which have the potential to mislead the general public about the institution's affiliation or association with any state-supported institution of higher education in Virginia. Terms such as, but not limited to, "public university", "public college," or "community college" may be protected from use by private institutions of higher education.

8 VAC 40-31-30. Advertisements, announcements, and other promotional materials.

A. A school certified to operate by the council in accordance with this chapter shall include in any print and electronic catalogs, and course registration materials that; (i) the council has certified the institution to operate in Virginia, (ii) a complete address of the main campus and all branch locations within Virginia.

B. An out-of-state school shall state in its course registration materials distributed in Virginia that:

Emergency Regulations

1. Each course or degree, diploma, or certificate program offered in Virginia is approved by the governing board of the institution;

2. The appropriate state agency, if any, in the state where the main campus of the institution is located has granted whatever approval may be necessary for the institution to:

a. Offer courses or degree, diploma, or certificate programs at the level for which credit is being awarded for those courses or programs in Virginia;

b. Offer courses or degree programs outside its state;

c. Offer each course or degree, diploma, or certificate program being offered in Virginia; and

d. Any credit earned for coursework offered by the institution in Virginia can be transferred to the institution's principal location outside Virginia as part of an existing degree, diploma, or certificate program offered by the institution.

C. No advertisement, announcement, or any other material produced by or on behalf of a postsecondary school shall in any way indicate that the institution is supervised, recommended, endorsed, or accredited by the Commonwealth of Virginia, by the State Council of Higher Education, or by any other state agency in Virginia.

PART II. EXEMPTIONS.

8 VAC 40-31-40. State-supported institutions.

This chapter shall not apply to the institutions named in §§ 23-9.5 and 23-14 of the Code of Virginia, including their branches, divisions, or colleges, or to any state-supported institution of higher education that may be established in the future.

8 VAC 40-31-50. Religious institutions.

A. The council shall exempt from the provisions of Chapter 21 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia, any institution of higher education whose primary purpose is to provide religious training or theological education, provided that the institution:

1. Awards only degrees, diplomas, or certificates (i) whose titles indicate the institution's primary purpose plainly upon their face and (ii) which state that the institution is excluded from the requirement of state certification; and

2. States plainly in its catalogs and other publications that (i) the institution's primary purpose is to provide religious training or theological education, (ii) the institution's degrees, diplomas, or certificates are so titled and worded, and (iii) the institution is exempt from the requirement of state certification.

3. The title of each degree, diploma, or certificate awarded by an institution which claims an exemption under the provisions of this section must reflect that the institution's primary purpose is religious education.

a. The titles of religious degrees that may be awarded include, but are not limited to, (i) Bachelor of Christian

Education, (ii) Master of Divinity, and (iii) Doctor of Sacred Theology.

b. The titles of secular degrees that may not be awarded in any discipline, including religion, Christian education, and biblical studies, include, but are not limited to, (i) Associate of Arts, (ii) Associate of Science, (iii) Associate of Applied Science, (iv) Associate of Occupational Science, (v) Bachelor of Arts, (vi) Bachelor of Science, (vii) Master of Arts, (viii) Master of Science, (ix) Doctor of Philosophy, and (x) Doctor of Education.

B. Exemptions granted after July 1, 2002 will be for a maximum of five years. Institutions wishing to maintain an exempt status, must reapply to council at least six months prior to the expiration of the exemption period. Exempt institutions shall not make claims of "approval" "endorsement" or other such terms by the council in any of their promotional materials. Exempt institutions shall clearly state in their catalogs and promotional materials that they are exempt from the requirements of state regulation and oversight.

C. An institution that awards secular degrees in addition to religious degrees, certificates or diplomas, as defined in subsections A and B of 8 VAC 40-31-50, must comply with the provisions for certification for all nonreligious degree programs.

D. Each institution requesting full or partial exemption must apply on forms provided by and in a manner prescribed by the council.

E. The council, on its own motion, may initiate formal or informal inquiries to confirm that this chapter is not applicable to a religious institution if the council has reason to believe that the institution may be in violation of the provisions of this section.

1. Any institution which claims an exemption under subsection A of this section on the basis that its primary purpose is to provide religious training or theological education shall be entitled to a rebuttable presumption of the truth of that claim.

2. It shall be the council's responsibility to show that an institution is not exempt under subsection A of this section.

3. The council assumes no jurisdiction or right to regulate religious beliefs under this chapter.

F. An institution whose claim for exemption under subsection A of this section is denied by the council shall have the opportunity to appeal the council's action in accordance with 8 VAC 40-31-70.

8 VAC 40-31-60. Institutions, programs, degrees, diplomas, & certificates exempt by council action.

A. The following activities or programs offered by institutions, otherwise subject to this chapter shall be exempt from its provisions:

1. Any school subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia.

2. Any honorary degree conferred or awarded by an institution, as long as the degree (i) does not represent the

satisfactory completion of all or any part of the requirements of a program or course of study and (ii) is normally regarded as one which is intended to be commemorative in nature in recognition of an individual's contributions to society. Such degree must state on its face that it is honorary in nature.

3. Any postsecondary educational course or program of study offered by an institution of higher education at a United States military post or reservation when that course or program is open only to military post personnel, their dependents or civilians employed by that military post or reservation.

a. Military personnel or civilians employed at one military post or reservation may take courses or programs of study at another military post or reservation without affecting the exemption from this chapter.

b. This exemption shall not apply to an institution that offers a course or program of study at a military post or reservation if:

(1) Civilians who are not employed by the military post or reservation are enrolled in the course or program at that site.

(2) The appropriate military official at the military post or reservation submits a written request to the executive director of the council that the institution be subject to this chapter.

(3) The postsecondary educational course or program of study offered at the military post or reservation is operated by an institution that is not already certified in Virginia and is operated as a branch campus having administrative capability within Virginia.

4. Any nursing education program offered by an institution to the extent that the program is regulated by the Virginia Board of Nursing.

a. The Virginia Board of Nursing is the state agency which is authorized to license registered nurses and to approve nursing programs with regard to the adequacy of the curriculum and resources for preparing students to take the licensing examination.

b. To offer a degree in nursing, an institution must have obtained prior council certification.

5. A professional program for professional or occupational training offered by an institution to the extent that the program is subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia.

6. Any course or program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for professional education or advancement or similar purpose and for which no degree or degree credit is awarded.

7. Courses or programs offered through approved multistate compacts, including but not limited to, the Southern Regional Education Board's Electronic Campus; and

8. Those courses offered and delivered by a postsecondary school solely on a contractual basis for which no individual

is charged tuition and for which there is no advertising for open enrollment;

9. Any school, institute or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business or profession represented by such association;

10. Any public or private high school accredited or recognized by the Board of Education that has offered or may offer one or more courses cited in this chapter, if any tuition, fees and charges made by the school are collected as may be permitted by Title 22.1, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school; or

11. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or to prepare an individual for an examination for professional practice or higher education.

B. Notwithstanding the exemptions provided in this section, an institution of higher education may seek certification for an otherwise exempt activity or program.

8 VAC 40-31-70. Denial of exemption; appeal of action.

If the council denies a request for exemption the executive director shall ensure that the institution is afforded an opportunity to be heard. The procedures set forth in 8 VAC 40-31-220 shall apply.

PART III. ROLE OF THE COUNCIL AND STAFF.

8 VAC 40-31-80. Role of the council.

A. Pursuant to § 23-276.9 of the Code of Virginia, the council may establish fees for services and the methods for collecting such fees.

B. Pursuant to § 23-276.3 (E) of the Code of Virginia and unless otherwise indicated, the council delegates authority for administering the requirements of § 23-276.1 through § 23-276.12 of the Code of Virginia and this chapter to the executive director.

C. Pursuant to § 23-276.3 of the Code of Virginia, the council shall adopt certification criteria for the operation of postsecondary schools in Virginia.

D. Only the council may refuse to grant certification, or revoke or suspend certification. In these instances, the council will be responsible for ensuring due process and compliance with the Administrative Process Act (§ 2.2-4000 et seq.)

8 VAC 40-31-90. Role of the executive director.

A. In addition to other administrative responsibilities vested in the executive director of the council, the executive director shall carry out the following administrative responsibilities relative to this chapter:

1. Authorize certification to operate for postsecondary schools that meet the certification criteria.

2. Authorize the use of the term "college" or "university" in an institution's name.

Emergency Regulations

3. Authorize religious exemptions.

4. Pursuant to § 23-276.7 of the Code of Virginia, authorize emergency action in the event an institution has received an adverse action by the United States Department of Education or by its accrediting agency which threatens a disruption of the operation of the institution and exposes students to a loss of course or degree credit or financial loss. All emergency actions shall be reported to council at its next meeting to either ratify or take such as actions as it may deem necessary. The authority of the executive director in these instances includes:

- a. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels.
- b. Require the institution to provide a guaranty instrument or increase the penal amount or a current guaranty.
- c. Take other actions as may be necessary to protect the rights of currently enrolled or future students.

5. Assess administrative fees.

6. Authorize the release of a surety instrument requirement.

7. The executive director may delegate certain administrative responsibilities to the council staff.

8 VAC 40-31-100. Role of the council staff.

The role of council staff shall include:

1. Oversight and administration for purposes of compliance, Title 23, Chapter 21.1, §§ 23-276.1 through 23-276.12 of the Code of Virginia and chapter.
2. Review initial and annual certification requirements for all institutions.
3. Perform random and periodic site visits to review, inspect and investigate institutional compliance.
4. Investigate as necessary all noncertified postsecondary school activities operating in the Commonwealth of Virginia.
5. Monitor the accreditation activities of all nonaccredited postsecondary schools operating in the Commonwealth of 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 and appropriate accrediting bodies information regarding the operation or closure of postsecondary schools operating in Virginia.
8. The executive director may delegate other responsibilities as deemed appropriate.

PART IV. INSTITUTIONS FOR WHICH CERTIFICATION IS REQUIRED.

8 VAC 40-31-110. Certain existing approvals & exemptions continued.

A. An institution of higher education that was approved or authorized to confer degrees at a particular level or to offer

one or more degree programs or program areas may continue to confer those degrees and to offer those programs until and unless the institution's approval or authorization is revoked by the council in accordance with 8 VAC 40-31-200.

B. A Virginia institution of higher education that is approved or authorized to confer degrees by the council, the State Board of Education, or act of the General Assembly of Virginia and is subject to the conditions of § 23-276.4 (C) of the Code of Virginia, shall be subject to whatever conditions or stipulations may have been imposed.

8 VAC 40-31-120. Certification required for new and existing postsecondary schools.

A. All instructional offerings in Virginia which are not exempted from these regulations are subject to this chapter, even though the credit awarded for those offerings may be transferred to a location outside Virginia.

B. A new postsecondary school must become certified to operate prior to engaging in activities related to postsecondary education via telecommunications activity or at a site within the Commonwealth.

1. The determination for certification of telecommunications activities may be based upon, but not limited to, physical presence.

2. Telecommunications activities, with the exception of degree programs, academic credit and other courses offered exclusively from outside the state through individual and private interstate communication, are subject to the certification criteria required for all postsecondary schools.

C. Existing postsecondary schools must re-certify compliance with certification criteria on an annual basis in order to continue offering postsecondary courses and programs.

D. Postsecondary schools operating branches must certify each separately.

E. Postsecondary schools, not previously certified in Virginia, seeking to establish a postsecondary education consortium, agreement, partnership, or other similar arrangement with an existing postsecondary school, must meet all requirements for certification as set forth in these regulations, and must become certified to operate, prior to engaging in postsecondary education activities within the Commonwealth of Virginia.

PART V. CERTIFICATION CRITERIA.

8 VAC 40-31-130. Application of certification criteria.

A. The certification criteria shall include but not be limited to, (i) procedures by which a postsecondary school may apply for certification, (ii) criteria designed to ensure that all postsecondary schools that are subject to this chapter meet minimal academic or vocational standards.

B. Postsecondary schools, by notarized signature of the Chief Executive Officer, will be responsible for certifying total compliance with certification criteria on an initial and annual basis.

8 VAC 40-31-140. Certification criteria for institutions of higher education.

The following criteria shall apply to each institution for which certification is required:

A. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective. Administrators and faculty must be qualified and appropriately credentialed:

1. For terminal occupational/technical programs leading to the Associate of Occupational Science (A.O.S.) degree, general education courses must compose at least 10% of the total credit hours required for the degree.

2. For terminal occupational/technical programs leading to the Associate of Applied Science (A.A.S.) degree, general education courses shall compose at least 25% of the total credit hours required for the degree.

3. All instructional faculty teaching in a terminal occupational/technical program leading to the Associate of Applied Science (A.A.S.) or Associate of Occupational Science (A.O.S.) degree shall:

a. If teaching general education courses, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

b. If teaching occupational/technical courses, hold either (i) an associate degree or (ii) qualify for a faculty appointment by virtue of scholarly or professional achievements.

4. For all university parallel associate degree programs, general education courses shall compose at least 25% of the total credit hours required for the degree, and required courses in the major field of study shall compose no more than 50% of the total credit hours required for the degree in a specific discipline.

5. All instructional faculty teaching in a college-transfer program at the associate level shall:

a. If teaching general education courses or in programs in the liberal arts and sciences, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

b. If teaching occupational/technical courses, hold a baccalaureate degree in the discipline being taught or qualify by virtue of professional or scholarly achievement.

6. All instructional faculty members who teach in programs at the baccalaureate level shall:

a. Hold a master's degree in the discipline being taught or hold a master's degree in an area other than that being taught with at least 18 graduate semester hours in the teaching discipline.

b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements can be shown.

7. All instructional faculty teaching in a program at the master's level or higher shall:

a. Hold a doctoral or other terminal degree.

b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements can be shown.

B. In addition to the above instructor qualifications, the institution must certify that:

1. All instructional courses for degree credit require a minimum of 15 contact hours for each semester credit hour or a minimum of 10 contact hours for each quarter credit hour, or the equivalent, and an expectation for additional assignments beyond scheduled instructional activities.

2. The elective and required courses for each program are offered on a schedule and in a sequence that enables both full-time and part-time students to complete the program in a reasonable period of time.

3. The institution's instructional faculty at each site shall hold either full-time, part-time, or adjunct appointments.

4. The institution's academic programs meet the following criteria: (i) ensure a properly credentialed and course qualified instructor teaches each course; (ii) ensure that a credentialed and course qualified academic advisor is available to meet the concerns of the student, and that a student contact by any method will elicit a response from the advisor within a reasonable timeline; (iii) ensure that continual curriculum development and oversight for each major and concentration/track is maintained; and (iv) ensure a program director is named and designated to oversee each program area.

5. A plan to provide for interaction between student and faculty, and among students.

8 VAC 40-31-150. Certification criteria for vocational schools.

The following criteria shall apply to each vocational school for which certification is required:

A. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective. Administrators and faculty, if teaching technical courses for vocational programs not leading to a degree and not offered as degree credit, must hold either (i) an associate degree related to the area of instruction or (ii) have a minimum of two years of technical/occupational experience in the area of teaching responsibility or a related area.

B. In addition to the above instructor qualifications, the vocational school must certify that:

1. Courses of study shall conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or must conform to recognized training practices in those fields.

2. It has a plan to provide for interaction between student and faculty, and among students.

Emergency Regulations

8 VAC 40-31-160. Certification criteria for all postsecondary schools.

The following criteria shall apply to all postsecondary schools for which certification is required:

A. The postsecondary school shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

1. The history and development of the postsecondary school;
2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary school;
3. The purpose of the postsecondary school, including a statement of the relative degree of emphasis on instruction, research, and public service;
4. A description of the postsecondary school's activities including telecommunications activities away from its principal location, including a list of all program areas in which courses are offered away from the principal location;
5. A list of all locations in Virginia at which the postsecondary school offers courses, a list of the degree programs currently offered or planned to be offered in Virginia; and
6. A statement of the postsecondary school's long-range plans.

B. The postsecondary school or branch shall have a current, written document, available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the institution;
2. The chief operating officer, president, or director at that site in Virginia;
3. The principal administrators and their credentials at that site in Virginia;
4. The students, if students participate in institutional governance.

C. The postsecondary school shall have and maintain, and shall provide to all applicants upon request, a policy document accurately defining the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school which are relevant to the school's admissions standards. In addition, the document shall explain:

1. The standards for academic credit or course completion given for experience;
2. The criteria for transfer credit where applicable;
3. The criteria for refunds of tuition and fees; and
4. Students' rights, privileges, and responsibilities.

D. The postsecondary school shall maintain records on all enrolled students. These records minimally shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the postsecondary school's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary school. Admissions records must be maintained for five years after the student's last date of attendance.

2. Transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in a database with backup.

3. A record of student academic or course progress at the school including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc.)

4. The school shall transact a written, binding agreement with another school or records-maintenance organization with which the school is not corporately connected for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of school closure or revocation of certification in Virginia.

E. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin or brochure containing, as a minimum the following information:

1. A description of any financial aid offered at the school including repayment obligations, standards of academic progress required for continued participation in the program, and source of loan or scholarship.

2. A broad description, including academic and/or vocational objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.

3. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.

4. The school's refund policy for tuition and fees pursuant to paragraph M of this section, and the school's procedures for handling complaints, including procedures to ensure that a student will not be subject to unfair actions as a result of his/her initiation of a complaint proceeding.

5. The name and address of the school's accrediting body, if applicable.

6. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certifications/diplomas.

7. The school shall ensure that all institutional officials accurately represent the transferability of any courses or programs and state if any of the associate degrees offered by the school are considered terminal degrees.

8. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science

degree, that these programs are terminal occupational/technical programs and their credits generally are not applicable to other degrees.

9. The academic or course work schedule for the period covered by the publication.

10. Placement services and employment opportunities shall be accurately stated.

11. Name, location, and address of the main campus, branch or site operating in Virginia.

F. The school must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Evaluation of school effectiveness must be completed on a regular basis and include, but not be limited to:

1. An explanation of how each program is consistent with the mission of the school.

2. The written process for evaluating each degree level and program, or vocational program, once initiated and written procedures for assessing the extent to which the educational goals are being achieved.

3. Documented use of the results of these evaluations to improve the degree programs.

G. Pursuant to § 23-276.3 B of the Code of Virginia, the school must maintain records that demonstrate it is financially sound, exercises proper management, financial controls and business practices and can fulfill its commitments for education or training. The school's financial resources should be characterized by stability, which indicates the school is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the U.S. Department of Education (USDE) Financial Ratio (composite score).

1. Schools shall provide the results of an annual audited financial statement or a reviewed financial statement.

2. The USDE composite score range is - 1.0 to 3.0. Schools with a score of 1.5 to 3.0 meet fully the stability requirement in subsection H scores between 1.0 and 1.4 meet the minimum expectations; and, scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

H. Pursuant to § 23-276.3 (B) of the Code of Virginia, the school shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia, adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the nonTitle IV funds, which have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in audited or reviewed financial statements as a Current (nonTitle IV) Tuition Liability. Schools certified under this regulation shall be exempt from the surety instrument requirement if they can demonstrate a U.S. Department of Education composite financial responsibility score of 1.5 or greater on their current audited or reviewed financial

statement; or if they can demonstrate a composite score between 1.0 and 1.4 on their current audited or reviewed financial statement and have scored at least 1.5 on an audited or reviewed financial statement in either of the prior two years. New schools and unaccredited existing schools must complete at least two calendar years of academic instruction to qualify for the surety waiver.

I. The school shall have a current written policy on faculty accessibility, which shall be distributed, to all students. The school shall ensure that instructional faculty are accessible to students for academic or course advising at stated times outside regularly scheduled class hours at each site when a course is offered and throughout the period during which the course is offered.

J. All recruitment personnel must provide prospective students with current and accurate information on the institution through the use of written and electronic materials and in oral admissions interviews:

1. The school shall be responsible and liable for the acts of its admissions personnel.

2. No school, agent, or admissions personnel knowingly making any statement or representation that is false, inaccurate or misleading regarding the school.

K. All programs offered via telecommunications must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, and/or face-to-face meetings.

L. The school shall maintain and ensure that students have access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational schools shall provide adequate and appropriate resources for completion of course work.

M. In accordance with § 23-276.3 (B) of the Code of Virginia, the school shall establish a tuition refund policy and communicate it to students. Accredited institutions shall adhere to the tuition refund requirements of their accrediting body, if required. All other schools shall adhere to the following tuition refund requirements:

1. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of the nonrefundable fee described in subsection 2 below, remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws, or is dismissed.

2. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed \$100, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is

Emergency Regulations

nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

3. The school shall provide a period of at least three business days, weekends and holidays excluded, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subsection 2 above.

4. Following the period described in subsection 3 above, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or \$100 whichever is less. A student applicant will be considered a student as of the first day of classes.

5. An individual's status as a student shall be terminated by the school not later than seven consecutive instructional days after the last day on which the student actually attended the school. Termination may be effected earlier by written notice. In the event that a written notice is submitted, the effective date of termination will be the date the student last attended classes. Schools may require that written notice be transmitted via registered or certified mail, provided that such a stipulation is contained in the written enrollment contract. The school may require that the parents or guardians of students under 18 years of age submit notices of termination on behalf of their children or wards. Schools are required to submit refunds to individuals who have terminated their status as students within 45 days after receipt of a written request or the date the student last attended classes whichever is sooner.

6. The minimum refund policy for schools which financially obligate the student for a quarter, semester, trimester or other period not exceeding 4-1/2 calendar months shall be as follows:

a. A student who enters school but withdraws during the first 1/4 (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

b. A student who enters a school but withdraws after completing 1/4 (25%), but less than 1/2 (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

c. A student who withdraws after completing 1/2 (50%), or more than 1/2 (50%), of the period is not entitled to a refund.

7. The minimum refund policy for schools which financially obligate the student for the entire amount of tuition and fees for the entirety of a program or course shall be as follows:

a. A student who enters the schools but withdraws or is terminated during the first 1/4 of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

b. A student who withdraws or is terminated during the second 1/4 of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

c. A student who withdraws or is terminated during the third 1/4 of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

d. A student who withdraws after completing 3/4 (75%) of the program shall not be entitled to a refund.

8. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.

9. It is not required that expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents prior to enrollment in the course or program. Schools shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund and submit the policies to the department for approval.

10. For programs longer than one year, the policy outlined in subdivisions 7 and 8 above shall apply separately for each year or portion thereof.

11. Schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties.

12. When notes, contracts or enrollment agreements are sold to third parties, the school continues to have the responsibility to provide the training specified regardless of the source of any tuition, fees, or other charges that have been remitted to the school by the student or on behalf of the student.

PART VI.

CERTIFICATION REQUIREMENTS.

8 VAC 40-31-170. Initial certification.

A. An institution shall not use the term "college" or "university" until it has received acknowledgment from SCHEV that the name is not in violation of 8 VAC 40-31-20.

1. An institution seeking certification, must notify SCHEV of its proposed name prior to filing such name with the State Corporation Commission.

2. Prior to receiving certification to operate, a copy of the institution's certificate from the Virginia State Corporation Commission authorizing it to transact business in the Commonwealth under the acknowledged name must be submitted.

B. An institution shall not operate in the Commonwealth of Virginia without first receiving certification to operate from

council. Certified institutions shall not enter into any agreement to deliver or develop courses or programs of study in Virginia, with noncertified postsecondary schools.

C. All certifications shall expire on the certificate expiration date. Applications for recertification must be submitted to SCHEV at least 60 days prior to the expiration date of the current certification.

D. Certification is not transferable. In the event of a change of ownership of a certified institution, the new owner or governing body must secure certification. The institution must apply for certification within 45 days following a change of ownership. During the 45-day period and the time required for the council to process the new application, up to and not exceeding 90 days, the old certification remains in effect provided that there are no changes in the academic or course work programs, policies, or financial considerations such that the change would constitute or create a violation of SCHEV's policies.

E. SCHEV will process all applications and provide notice to applicants within 45 days of receipt.

F. Certificate valid dates and recertification due dates are as follows:

1. Out-of-state private degree granting and vocational school certificates are valid for 1 year beginning on 1 September of the calendar year and ending on 31 August of the following calendar year. Applications are due not later than 2 July.
2. Out-of-state public institution certificates are valid for 1 year beginning on 15 September of the calendar year and ending on 14 September of the following calendar year. Applications are due not later than 16 July.
3. In-state private non-profit institution certificates are valid for 1 year beginning on 1 October of the calendar year and ending on 30 September of the following calendar year. Applications are due not later than 2 August.
4. In-state proprietary degree-granting and academic-vocational institution certificates are valid for 1 year beginning on 15 October of the calendar year and ending on 14 October of the following calendar year. Applications are due not later than 16 August.
5. In-state proprietary vocational school certificates (letters A-D) are valid for 1 year beginning on 1 November of the calendar year and ending on 31 October of the following calendar year. Applications are due not later than 2 September.
6. In-state proprietary vocational school certificates (letters E-P) are valid for 1 year beginning on 15 November of the calendar year and ending on 14 November of the following calendar year. Applications are due not later than 16 September.
7. In-state proprietary vocational school certificates (letters Q-Z and others) are valid for 1 year beginning on 1 December of the calendar year and ending on 30 November of the following calendar year. Applications are due not later than 2 October.

8 VAC 40-31-180. Application requirements.

A. Each certification to operate attests that the institution is in compliance with § 23-276.1 through 23-276.12 of the Code of Virginia and with this chapter.

B. To apply for certification the following information must be submitted:

1. A completed certification application form provided by SCHEV.
2. A statement regarding the institution's accreditation status.
 - a. Vocational schools need not provide a statement of accreditation but rather a statement that courses of study offered conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or that courses conform to recognized training practices in those fields.
 - b. Out-of-state Institutions requesting certification must be accredited by an accrediting organization recognized by the United States Department of Education.
 - c. Unaccredited institutions who offer courses for degree credit must submit a plan of action for securing accreditation from an organization recognized by the United States Department of Education, including the name of the accrediting organization and timeframe. In order to remain eligible for certification, an institution must secure as a minimum, candidacy status or equivalent within three years of its initial date of certification, and initial accreditation not later than six years after initial certification.
 - d. Unaccredited institutions that undergo a change of ownership during the time period covered by the plan of action for securing accreditation, and that wish to remain eligible for certification under new ownership, will remain on the plan of action timeframe established by the former ownership. This plan of action timeframe begins from the initial date of certification under the former ownership and encompasses the accreditation dates established in the plan of action put into place by the former ownership. No additional time will be granted for obtaining the minimum level of accreditation required of the plan of action due to the change in ownership. Changes to the plan of action timeframe for accreditation will not be granted except at the discretion of the council.
3. A copy of the transacted surety instrument form.
4. A completed checklist, signed and dated, acknowledging full compliance with certification criteria, along with a notarized attestation statement signed by the chief executive officer or equivalent.
5. A company check in the correct, nonrefundable amount, made payable to the Treasurer of Virginia.
6. A copy of the institution's certificate from the State Corporation Commission providing authorization to transact business within the Commonwealth.

Emergency Regulations

7. 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.

8. A complete listing of all sites, along with their addresses, phone numbers (if applicable), and classes taught at the site.

9. For new postsecondary school applicants, the President or CEO shall provide a signed and notarized statement, which attests to any previous involvement in the operation of a postsecondary school, or any previous involvement by any member of the institutions governing board in the operation of a postsecondary school. As a minimum this statement shall include the name(s) of previous institutions, the dates of the involvement, the positions held within the institution, the location, and the status (open/closed, and accredited/nonaccredited) of the institution.

10. A complete list of all diploma, certificate, or degree program offerings during the valid period of the certification. This list shall consist of the number of hours required for completion of each program, the Classification of Instructional Programs (CIP) Code where applicable, and the type of program and degree.

a. New and unaccredited Institutions must also include their estimated annual enrollment projections and number of students per program, and;

b. Include from the previous year; degrees conferred, placement information, and headcounts.

C. An existing post-secondary school licensed by any other state agency empowered by the Code of Virginia to license the school, its teachers or curriculum, or both, must become certified prior to enrolling any student into a course for degree credit or program of study. The school must submit an application for certification to operate that shall contain all of the requirements outlined in 8 VAC 40-31-160 A and B.

D. All proprietary postsecondary schools must provide evidence of a valid business license from the locality within which it seeks to operate. Upon confirmation that an institution is operating without the required business license, Council shall take action as required by § 23-276.15 of the Code of Virginia.

8 VAC 40-31-190. Withdrawal of application by a postsecondary school.

A. A school that has submitted an application to the council may withdraw that application without prejudice at any time.

B. Withdrawal of an application by a school shall result in revocation by the council of all authorizations associated with that application that previously had been granted to the institution.

C. A school that has withdrawn an application may submit, at any time and without prejudice, a new application to the council in accordance with Part V.

D. A school that withdraws an application prior to receiving notification of certification will receive a refund of the filing fee minus a handling charge.

8 VAC 40-31-200. Audit requirements.

A. All certified postsecondary schools shall be subject to random periodic audits. The purpose of such audit is to verify compliance with certification criteria.

B. At the discretion of council staff, an audit review committee shall consist of the executive director or designee and may:

1. Include individuals with the experience in the disciplines in which the institution provides instruction; and/or
2. Consist of council staff.

C. Audits shall be random and/or triggered by, but not limited to, the following events:

1. Staff concerns based on questionable initial or recertification application information.
2. Volume and frequency of negative student complaints and/or adverse publicity.
3. Difficulty securing accreditation within the specified time period.
4. Adverse action by the U.S. Department of Education or the institution's accrediting agency.
5. A USDE composite financial responsibility score of less than 1.0.

D. Following an audit of the institution, council staff will prepare a report with recommendations for review by the council. If a school is found noncompliant, the council may:

1. Determine no action is necessary and have the report filed;
2. Change the status to probationary certification and require remedial action(s) within a specified timeframe;
3. Revoke or suspend certification;

8 VAC 40-31-210. Duplication of, and need for instruction for degree credit is irrelevant.

In considering an school's application, the council shall not take into account either duplication of effort by public and private schools in Virginia or need within the Commonwealth for the course for degree credit, program of study, or degree program for which certification is sought.

PART VII.

PROCEDURES FOR CONDUCTING FACT-FINDING CONFERENCES AND HEARINGS.

8 VAC 40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§ 2.2-4019 through 2.2-4030 of the Code of Virginia).

A. Fact-finding conference; notification, appearance, conduct.

1. Unless there are emergency circumstances requiring immediate action, no certification application shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference.
2. If a basis exists for a refusal to certify or a suspension or a revocation of a certificate to operate, the council shall

notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the council.

3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the council, which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Institutions who wish to waive their right to a conference shall notify the council at least 14 days before the scheduled conference.

4. If after consideration of information presented during an informal fact-finding conference, a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant information.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a certification, interested parties shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the council within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the institution is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, videoconference or similar technology, in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The council shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The executive director's designee may represent the council in an informal conference or at a hearing.

**PART VIII.
CRIMINAL PROSECUTION FOR VIOLATION; CIVIL
ENFORCEMENT.**

8 VAC 40-31-230. Criminal prosecution for violation.

A. Any person, firm, association, postsecondary school, trust, or other entity which violates any provision of § 23-276.12 of the Code of Virginia or which, without certification from the council as provided in this chapter, offers or confers degrees, diplomas, certificates, programs, or courses of study shall be guilty of a class 1 misdemeanor.

B. Each degree, diploma, certificate, program, or course of study offered or conferred in violation of this chapter or each violation of the provisions of § 23-276.12 of the Code of Virginia shall constitute a separate offense.

C. The council shall take any action required by code to deter illegal or improper acts, which may violate the requirement for institutional certification.

8 VAC 40-31-240. Civil enforcement.

Upon the determination of the council that any institution of higher education, or its agents or representatives, is in violation of this chapter, the council may institute a proceeding in equity to enjoin the violation.

**PART IX.
ADDITIONAL REGULATIONS.**

8 VAC 40-31-250. Virginia law to apply to agreements.

The laws of Virginia shall govern any agreement, contract, or instrument of indebtedness executed between a postsecondary school and any person enrolling in any course or program offered or to be offered by a postsecondary school in Virginia and also between that postsecondary school and any person employed or offered employment by that postsecondary school in Virginia.

8 VAC 40-31-260. Fees.

A. Fees are included in Schedule A of this regulation.

B. All fees collected by council staff will be deposited in the State Treasury.

C. All fees are nonrefundable with the exception of withdrawal of an application in which case all fees will be refunded minus a reasonable handling charge.

D. Fees must be paid with a company check and made payable to the Treasurer of Virginia.

8 VAC 40-31-270. Receipt of applications, correspondence and other materials.

A. All applications, forms, letters or other materials relating to, or required by this chapter should be sent to:

Emergency Regulations

State Council of Higher Education for Virginia
ATTN: Institutional Certification
James Monroe Building, 9th Floor
101 North Fourteenth Street
Richmond, Virginia 23219

B. The mail of items specified in subsection A of this section shall not constitute receipt of them by the council unless sent by registered or certified mail, return receipt requested.

8 VAC 40-31-280. Closure of a postsecondary school.

A. The council, on its own motion, may authorize a postsecondary school whose application for certification to operate is denied in accordance with 8 VAC 40-31-200 to continue to offer instruction for degree credit to all currently enrolled students until the end of the semester, quarter, or other academic term during which certification is denied.

B. The council, on its own motion, may authorize a school whose certification is revoked in accordance with 8 VAC 40-31-200 to offer the coursework necessary for all currently enrolled students to complete their programs and to award degrees to those students, provided that the institution:

1. Offers degree coursework only to those students who were enrolled at the time the school's certification was revoked; and
2. Offers all necessary coursework on a schedule that permits all currently enrolled students to complete their programs in a reasonable period of time.

C. When a school decides to voluntarily cease operations it must immediately inform the council of the following:

1. The planned date for the termination of operations.
2. The planned date and location for the transfer of student records.
3. The name and address of the organization to receive and manage the student records and the name of the official who is designated to manage transcript requests. The organization designated for the preservation of the student records may not be corporately connected to the closing school.
4. Arrangements for the continued education of currently enrolled students via Teach-Out Agreement or other practical solution.
5. Rosters showing the name, address, and current academic status of enrolled students.

D. In the event of institutional closure or revocation of certification, council may facilitate the transfer of student records to the designated repository.

E. Council shall be responsible for securing and preserving student records until the designated repository accepts them.

F. Council shall seek the advice of the Career College Advisory Board on matters relating to school closures.

8 VAC 40-31-290. Waiver by council.

The council may waive or modify the certification requirements for an accredited institution, if the council finds that such

waiver or modification will not conflict with the intent of the regulations and that in light of the institution's mission, literal application of such requirement(s) creates an unreasonable hardship on the institution.

8 VAC 40-31-300. Freedom of Information Act to apply.

All materials submitted by an institution in its application for approval or in response to a request by the council for pertinent information shall be subject to the Virginia Freedom of Information Act (Chapter 21 of Title 2.1 of the Code of Virginia) and shall be available for public inspection in accordance with the provisions of § 2.1-342 of the Code of Virginia.

8 VAC 40-31-310. Student Tuition Guaranty Fund (proprietary schools only).

A. The Executive Director shall appoint in writing a Director of the Student Guaranty Fund.

B. The purpose of the fund is to reimburse tuition and fees due students at institutions previously approved under § 22.1-321 of the Code of Virginia when the school ceases to operate.

C. Schools seeking initial certification after July 1, 2004, shall not be required to pay into the fund. All other schools which were certified to operate prior to July 1, 2004, under the provisions of § 22.1-321 of the Code of Virginia, shall be subject to the provisions valid at the time of certification.

D. A claim shall be made against the fund only if it arises out of the cessation of operation by a school on or after the effective date of this chapter. If the school holds a surety bond or other guaranty instrument, the first priority shall be to file a claim against the guaranty instrument. Claims shall be filed with the director of the fund on forms prescribed by the council within three years after cessation of operation by the school. Claims filed after that are not considered. Within a reasonable time after receipt of a claim, the director shall give the school or its owners, or both, notice of the claim and an opportunity to show cause, within 30 days, why the claim should not be reimbursed in whole or part. The director may cause to be made other investigation of the claim as he deems appropriate or may base his determination, without further investigation, upon information contained in the records of the council.

E. The director's determination shall be in writing and shall be mailed to the claimant and the school or its owners, or both, and shall become final 30 days after the receipt of the determination unless either the claimant or the school, or its owners, within the 30-day period, files with the director a written request for a hearing. Upon request, a hearing shall be held and, subject to the authority of the director to exclude irrelevant or other inappropriate evidence, the claimant and the school or its owners may present such information as they deem pertinent.

F. The Executive Director shall administer the fund upon the following basis:

1. The assets of the fund may not be expended for any purpose other than to pay bona fide claims made against the fund;

2. All payments into the fund shall be maintained by the state comptroller who shall deposit and invest the assets of the fund in any savings accounts or funds which are federally or state insured, and all interests or other return on the fund shall be credited to the fund;

3. Payment into the fund shall be made in the form of a company or cashier's check or money order made payable to the "Student Tuition Guaranty Fund";

G. When a claim is allowed by the director, the Executive Director, as agent for the fund, shall be subrogated in writing to the amount of the claim and the Executive Director is authorized to take all steps necessary to perfect the subrogation rights before payment of the claim. Refunds will be made, first, to the lender issuing student financial aid or the guarantor of the loan, and second, to the student. In the event there was no financial aid involved, refunds will be made to the student.

8 VAC 40-31-320. Agent registration.

A. Agents representing noncertified accredited postsecondary schools must:

1. Register with the council prior to soliciting in Virginia and;
2. Pay an annual fee of \$300.00 for each registrant.

B. Agents representing noncertified unaccredited postsecondary schools shall not conduct business in Virginia.

C. Agents operating sites in Virginia must seek council certification.

Schedule A
FLAT-RATE FEES

Initial fee for all new institutions of higher education =	\$6,000
Annual fee for all unaccredited institutions of higher education =	\$6,000
Annual fee for all existing accredited institutions of higher education =	\$2,500
Initial fee for all new vocational schools =	\$2,500
Annual fee for all existing vocational schools with gross tuition collected greater than \$150,000 =	\$2,500
Annual fee for all vocational schools with gross tuition collected less than or equal to \$150,000 =	\$1,500

Late fee =	\$100.00/day for first 10 business days after expiration of annual certification (11th day institution notified to cease and desist and matter referred for prosecution)
------------	--

Non-compliance administrative fees =	\$1000 for each occurrence of non-compliance found as a result of audit
--------------------------------------	---

Initial or renewed exemption application/ request for name acknowledgement/agent registration =	\$300.00
---	----------

Nonrefundable handling charge (withdrawal of application) =	\$300.00
---	----------

/s/ Mark R. Warner
Governor

Date: November 3, 2005

VA.R. Doc. No. R06-107; Filed November 4, 2005, 2:27 p.m.