

Commonwealth of Virginia



**REGULATIONS GOVERNING CERTIFICATION
OF CERTAIN INSTITUTIONS TO CONFER
DEGREES, DIPLOMAS, AND CERTIFICATES**

**STATE COUNCIL OF HIGHER EDUCATION
FOR VIRGINIA**

Title of Regulations: 8 VAC 40-31 et seq.

**Statutory Authority: § 23-276.1 – 23-276.12
of the *Code of Virginia***

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Summary:

The regulation administers the certification of private and out-of-state postsecondary schools, which includes institutions of higher education and noncollege degree schools. Noncollege degree schools may be academic-career-technical or career-technical schools. It combines the previous regulations used by SCHEV regulating institutions of higher education (8 VAC 40-30) and the regulations used by the Board of Education to regulate the career-technical schools (8 VAC 20-350) and replaces the emergency regulation (8 VAC 40-31) effective since November 2004.

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 or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

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

"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" means 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) offers courses that consist of a large number of unit subjects that comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis.

"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.

"Avocational" means instructional programs that are not intended to prepare students for employment but are intended solely for recreation, enjoyment, personal interest, or as a hobby.

"Branch" means an additional location, operated by a school 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.

"Career-technical school" means a school that does not offer courses for degree credit; same as academic-vocational school.

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

"Certification" means the process of securing authorization to operate a private or out-of-state postsecondary school or institution of higher education and/or degree, certificate, or diploma program in the Commonwealth of Virginia.

"Change of ownership" means 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 schools is nonexempt; or (iii) change from profit to nonprofit or collective.

"CIP code" means the six-digit number assigned to each discipline specialty in the Classification of Instructional Programs (CIP) taxonomy maintained by the National Center for Education Statistics.

"Clock (or contact) hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"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 school, a specific program, or a certain course.

"Credit" means (i) the quantitative measurement assigned to a course generally stated in semester hours, quarter hours, or clock hours or (ii) the recognition awarded upon successful completion of coursework.

"Credit hour" means a unit by which a school may measure its coursework. The number of credit hours assigned to a traditionally delivered course is usually defined by a combination of the number of hours per week in class, the number of hours per week in a laboratory, and/or the number of hours devoted to externship multiplied by the number of hours in the term. One unit of credit is usually equivalent to, at a minimum, one hour of classroom study and outside preparation, two hours of laboratory experience, or three hours of internship or practicum, or a combination of the three multiplied by the number of weeks in the term. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level that 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 that represents a level of educational attainment at or below the associate degree level and that is given for successful completion of a curriculum comprised of two or more courses.

"Existing institution" or "existing postsecondary school" means any postsecondary school that either (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 a school; (ii) principal employment is with that school; 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 that 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. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) the institution has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) the institution 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 that has received certification from the council and either: (i) offers courses or programs of study or instruction that lead to, or that may reasonably be understood to be applicable to, a degree; (ii) operates a facility as a college or university or other entity of whatever kind that 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 a school who 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.

"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 neither operated in another state as a postsecondary institution nor has been approved to operate in another state as a postsecondary institution.

"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-career-technical or career-technical.

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

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with a school and (ii) courseload of teaching assignments is of lesser quantity than that expected of a full-time faculty member and/or is of lesser quantity than the school's definition of a full load of courses.

"Postsecondary education" means 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. It includes programs of an academic, career-technical, and continuing professional education purpose, and excludes avocational 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 any entity offering 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, career-technical, 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 school" means a privately owned and managed, profit-making 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 may or may not 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 closed or closing 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.

"Unearned tuition" means the portion of tuition charges billed to the student but not yet earned by the institution; the unearned tuition represents future educational services to be rendered to presently enrolled students.

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

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 that 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 school may represent that credits earned at or granted by that person, firm, or school 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 Title 23 of the Code of Virginia 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 an individual proprietorship, association, co-partnership or corporation that uses the words "college" or "university" in its training programs solely for its employees or customers, that does not offer degree-granting programs, and whose name includes the word "college" or "university" in a context from which it is clear that such entity is not an educational school.

E. The council may refuse to certify school names and terms that have the potential to mislead the general public about the school'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 (i) a clear statement that the council has certified the school to operate in Virginia and (ii) a complete address of the main campus and all branch locations within Virginia.

B. A school certified to operate by council in accordance with this chapter shall include in all publicity, advertisement and promotional materials (i) a clear statement that the council has certified the school to operate in Virginia, (ii) the school's complete name as indicated on the Certificate to Operate, and (iii) the address of at least one branch campus located in Virginia.

C. A school with its main campus not located in Virginia that has a physical presence in Virginia shall state in its course registration materials distributed in Virginia that:

1. Each course or degree, diploma, or certificate program offered in Virginia is approved by the governing body of the school; and
2. The appropriate state agency, if any, in the state where the main campus of the school is located has granted whatever approval may be necessary for the school 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. Ensure that any credit earned for coursework offered by the school in Virginia may be transferred to the school's principal location outside Virginia as part of an existing degree, diploma, or certificate program offered by the school.

D. No advertisement, announcement, or any other material produced by or on behalf of a postsecondary school shall in any way indicate that the school 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 by the Commonwealth of Virginia in the future.

8 VAC 40-31-50. Religious institutions.

A. The council shall exempt from the provisions of Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia any school whose primary purpose is to provide religious training or theological education, provided that the school:

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

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

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

1. The titles of religious degrees that may be awarded include, but are not limited to, (i) Bachelor of Education in a specific religion, (ii) Master of Divinity, and (iii) Doctor of Sacred Theology.

2. The titles of secular degrees that may not be awarded in any discipline, including religion, religious 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.

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

D. A school that awards secular degrees in addition to religious degrees, certificates or diplomas, as defined in subsections A and B of this section, must comply with the provisions for certification for all nonreligious degree programs.

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

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

1. Any school that claims an exemption under subsections A and B 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 a school is not exempt under subsections A and B of this section.

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

G. A school whose claim for exemption under subsections A and B 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. Schools, programs, degrees, diplomas, and certificates exempt from council action.

A. The following activities or programs offered by schools and not leading to a degree, diploma or certificate 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 a school, 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 that 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 nursing education program offered by a school to the extent that the program is regulated by the Virginia Board of Nursing.
 - a. The Virginia Board of Nursing is the state agency authorized to license registered nurses and to approve nursing programs with regard to the adequacy of the curricula and resources for preparing students to take the licensing examination.
 - b. In order to offer a degree in nursing, a school must obtain council certification prior to seeking approval from the Virginia Board of Nursing.
4. Any professional program for professional or occupational training offered by a school to the extent that the program is (i) subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia; or (ii) subject to approval by any other state or federal agency; and (iii) offered by a school that is not seeking degree-granting status such that it would be required to obtain prior council certification.
5. Any course or program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for continuing or professional education or similar purpose and for which no certificate, degree, or degree credit is awarded.
6. Courses or programs offered through approved multistate compacts, including but not limited to the Southern Regional Education Board's Electronic Campus.
7. Those courses offered and delivered by a postsecondary school that is accredited by an entity recognized by the U.S. Department of Education (USDOE) for accrediting purposes, if such courses are provided solely on a contractual basis for which no individual is charged tuition and for which no advertising has been made for open enrollment.
8. 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.
9. Any public or private high school accredited or recognized by the Virginia 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 of the Code of Virginia, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school.
10. 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.
11. Schools of fine arts or other avocational courses that are conducted solely to further artistic appreciation, talent, or for personal development or information.

B. Notwithstanding the exemptions provided in this section, a school 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 school 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 Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 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. of the Code of Virginia).

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 a school's name.
3. Authorize religious exemptions.
4. Authorize emergency action pursuant to § 23-276.7 of the Code of Virginia, in the event a school has received an adverse action by the USDOE or by its accrediting agency that threatens a disruption of the operation of the school 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 actions as it may deem necessary. The authority of the executive director in these instances includes the authority to:
 - a. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels.
 - b. Require the school 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.
- B. The executive director may delegate certain administrative responsibilities to the council staff.

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

- A. The council staff shall:
 1. Provide oversight and administration for purposes of compliance with Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia.
 2. Review initial and annual certification requirements for all schools.
 3. Perform random and periodic site visits to review, inspect and investigate school 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.
- B. The executive director may delegate other responsibilities as deemed appropriate.

PART IV. SCHOOLS FOR WHICH CERTIFICATION IS REQUIRED.

8 VAC 40-31-110. Certain existing approvals and 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 school's approval or authorization is revoked by the council in accordance with 8 VAC 40-31-200.
- B. A Virginia institution that is approved or authorized to confer degrees by the council, the Virginia 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 at the time the approval or authorization was granted.

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

- A. Unless otherwise exempted from these regulations, all instructional offerings of a new or existing postsecondary school in Virginia are subject to this chapter, even when 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, mail correspondence courses, or at a site within the Commonwealth.

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

2. With the exception of degree programs, academic credit and other courses offered exclusively from outside the Commonwealth of Virginia through individual and private interstate communication, all telecommunications activities and mail correspondence courses are subject to the certification criteria required for all postsecondary schools.

C. Existing postsecondary schools must recertify 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. Noncertified postsecondary schools that seek 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 and (ii) criteria designed to ensure that all postsecondary schools that are subject to this chapter meet minimal academic or career-technical 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.

A. This section shall apply to each institution for which certification is required.

B. 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 as follows:

1. For terminal occupational/technical programs leading to the Associate of Occupational Science (A.O.S.) degree, general education courses must compose at least 15% 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 from an accredited college or university, 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 from an accredited college or university, 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 from an accredited college or university.

b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements and/or demonstrated competences in the discipline can be shown. The institution must document and justify any such exception.

7. All instructional faculty teaching in a program at the master's level or higher shall hold a doctoral or other terminal degree from an accredited college or university. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements and/or demonstrated competences in the discipline can be shown. The institution must document and justify any such exception.

C. In addition to the instructor qualifications in subsection B of this section, 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 holds either full-time, part-time, or adjunct appointments.

4. The institution's academic programs shall ensure that: (i) a properly credentialed and course qualified instructor teaches each course; (ii) 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) continual curriculum development and oversight for each major and concentration/track is maintained; and (iv) a program director is named and designated to oversee each program area.

5. A plan is in place that ensures interaction between student and faculty, and among students.

8 VAC 40-31-150. Certification criteria for career-technical schools.

A. The criteria in this section shall apply to each career-technical school for which certification is required.

B. 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 career-technical programs not leading to a degree and not offered as degree credit, must either (i) hold an associate degree related to the area of instruction or (ii) possess a minimum of two years of technical/occupational experience in the area of teaching responsibility or a related area.

C. In addition to the instructor qualifications in subsection B of this section, the career-technical school must certify that:

1. Courses of study conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or conform to recognized training practices in those fields.
2. A plan is in place that ensures interaction between student and faculty, and among students.

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

A. The criteria in this section shall apply to all postsecondary schools for which certification is required.

B. 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 as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;
4. A description of the postsecondary school's activities including telecommunications activities away from its principal location, and 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 and a list of the degree programs currently offered or planned to be offered in Virginia;
6. For each Virginia location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students claiming Virginia residence who were enrolled in each program offered;
7. For each Virginia location, the total number of students that completed/graduated from the school as of the end of the last academic year and the total number and percentage of students claiming Virginia residence who completed/graduated from each program offered by the school as of the end of the last academic year;

8. For unaccredited institutions of higher education and career-technical schools only, the total number of students claiming Virginia residence who report employment in their field of study within (i) six months of graduation/completion and (ii) one year of graduation /completion.

C. 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 school;
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; and
4. The students, if students participate in school governance.

D. The postsecondary school shall have, maintain, and provide to all applicants a policy document accurately defining the minimum requirements for eligibility for admission to the school and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school that 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;
4. Students' rights, privileges, and responsibilities; and
5. The established grievance process of the school, which shall indicate that students should follow this process and may contact council staff to file a complaint about the school as a last resort.

E. The postsecondary school shall maintain records on all enrolled students. At a minimum, these records shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that 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 a minimum of three years after the student's last date of attendance.
2. A transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in an electronic 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. A record of all financial transactions between each individual student and the school including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance.
5. A written, binding agreement transacted 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. State-supported, public schools originating in a state other than Virginia and operating a campus within Virginia may choose to enter into a written, binding agreement regarding student records with the university system of which they are a part.

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

1. The number of students claiming Virginia residency enrolled in each program offered.
2. For each Virginia location, the total number of students that completed/graduated from the school as of the end of the last academic year and the total number and percentage of students claiming Virginia residence who completed/graduated from each program offered by the school as of the end of the last academic year.
3. A description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation.
4. A broad description, including academic and/or career-technical 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.
5. 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.
6. The school's refund policy for tuition and fees pursuant to subsection N 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 initiation of a complaint proceeding.
7. The name and address of the school's accrediting body, if applicable.
8. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates /diplomas.
9. A statement that all school officials accurately represent the transferability of any courses or programs and that indicates whether any of the associate degrees offered by the school are considered terminal degrees.
10. A statement that ensures that all school officials accurately represent the transferability of any diplomas or certificates offered by the school.
11. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, a statement that these programs are terminal occupational/technical programs and that credits generally earned in these programs are not applicable to other degrees.
12. The academic or course work schedule for the period covered by the publication.
13. A statement that accurately details the type and amount of career advising and placement services offered by the school.
14. The name, location, and address of the main campus, branch or site operating in Virginia.

G. 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 must include, but not be limited to:

1. An explanation of how each program is consistent with the mission of the school.
2. An explanation of the written process for evaluating each degree level and program, or career-technical program, once initiated and an explanation of the 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 and career-technical programs offered by the school.

H. 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 USDOE Financial Ratio (composite score).

1. Institutions of higher education shall provide the results of an annual audited, reviewed or compiled financial statement. Career-technical schools shall provide the results of an annual audited, reviewed or compiled financial statement or the school may elect to provide financial information on forms provided by council staff.
2. The USDOE 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 I of this section; 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.

I. 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 that is 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 non-Title IV funds that 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 (non-Title IV) Tuition Liability. A school certified under this regulation shall be exempt from the surety instrument requirement if it can demonstrate a USDOE composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years.

1. Public postsecondary schools originating in a state other than Virginia that are operating a branch campus or site in the Commonwealth of Virginia are exempt from the surety bond requirement.
2. New schools and unaccredited existing schools must complete at least two calendar years of academic instruction to qualify for the surety waiver /exemption.

J. The school shall have a current written policy on faculty accessibility that 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 a course's regularly scheduled class hours at each site and throughout the period during which the course is offered.

K. All recruitment personnel must provide prospective students with current and accurate information on the school 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 shall knowingly make any statement or representation that is false, inaccurate or misleading regarding the school.

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

M. 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 school. Library resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The school shall maintain a continuous plan for library resource development and support, including objectives and selections of materials. 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. Career-technical schools shall provide adequate and appropriate resources for completion of course work.

N. 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, and if those requirements describe specific refund terms. Otherwise, accredited institutions, as well as 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 subdivision 2 of this subsection, 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 prior to the start of the program, or is dismissed prior to the start of the program.
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 nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.
3. The school shall provide a period of at least three business days, excluding weekends and holidays, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subdivision 2 of this subsection.
4. Following the period described in subdivision 3 of this subsection, 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. The school 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. The school is 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. An institution that provides the majority of its program offerings through distance learning shall have a plan for student termination, which shall be provided to council staff for review with its annual or recertification application.

6. The minimum refund policy for a school that financially obligates 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 a school that financially obligates 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 school but withdraws or is terminated during the first quartile (25%) 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 quartile (more than 25% but less than 50%) 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 quartile (more than 50% but less than 75%) 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 more than three quartiles (75%) of the program shall not be entitled to a refund.

8. The minimum refund policy for a school that offers its programs completely via telecommunications shall be as follows:

a. For a student canceling after the 5th calendar day following the date of enrollment but prior to receipt by the school of the first completed lesson assignment, all moneys paid to the school shall be refunded, except the nonrefundable fee described in subdivision 2 of this subsection.

b. If a student enrolls and withdraws or is discontinued after submission of the first completed lesson assignment, but prior to the completion of the program, minimum refunds shall be calculated as follows:

(1) A student who starts the program but withdraws up to and including completion of the first quartile (25%) of the program is entitled to receive as a refund a minimum of 75% of the stated cost of the course or program for the period.

(2) A student who starts the program but withdraws after completing up to the second quartile (more than 25%, but less than 50%) of the program is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(3) A student who starts the program but withdraws after completing up to the third quartile (more than 50%, but less than 75%) of the program is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(4) A student who withdraws after completing the third quartile (75%) or more of the program is not entitled to a refund.

c. The percentage of the program completed shall be determined by comparing the number of completed lesson assignments received by the school to the total number of lesson assignments required in the program.

9. 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.

10. Expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges are not required to 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. The school shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund and shall submit the policies to council staff for approval.

11. For programs longer than one year, the policy outlined in subdivisions 7 and 8 of this subsection shall apply separately for each academic year or portion thereof.

12. 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.

13. When notes, contracts or enrollment agreements are sold to third parties, the school shall continue 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.

O. The school shall keep official transcripts for all teaching faculty to document that each has the appropriate educational credentials or other relevant documentation to support reported experience in the area of teaching responsibility or documentation of professional competencies and/or scholarly achievements.

**PART VI.
CERTIFICATION REQUIREMENTS.**

8 VAC 40-31-170. Initial certification.

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

1. A school seeking certification must notify council staff 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 school's certificate from the Virginia State Corporation Commission authorizing it to transact business in the Commonwealth under the acknowledged name must be submitted to council staff.

B. A school shall not operate in the Commonwealth of Virginia without first receiving certification to operate from the council. Certified schools shall not enter into any agreement to deliver or develop courses or programs of study in Virginia with noncertified postsecondary schools.

C. An out-of-state postsecondary school seeking certification to operate in the Commonwealth of Virginia must secure written documentation from the higher education coordinating and/or approving agency in the state or country in which the school is formed, chartered, established, or incorporated indicating that the school is operating in good standing. If the school formerly operated in another state or country but is not operating there at the time of its application to operate in Virginia, the school must secure from the higher education coordinating and/or approving agency documentation that it closed in good standing and would be allowed to re-establish a postsecondary school in that state or country. These written documentations must be provided to council staff.

D. 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 handling charge of \$300.

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

F. Certification is not transferable. In the event of a change of ownership of a certified school, the new owner or governing body must secure certification. The school must apply for certification within 45 business days following a change of ownership. During the 45-day period and the time required for the council staff to process the new application, up to and not exceeding 90 days, the old certification shall remain in effect provided that no changes have been made in the academic programs, policies, or financial considerations such that the change would constitute or create a violation of council's policies.

G. Council staff will process all applications and provide notice to applicants within 45 business days of receipt of a completed application package.

H. Valid-through dates of Certificates to Operate and due dates of recertification applications are as follows:

1. Out-of-state private degree-granting and career-technical school certificates are valid for one year beginning on September 1 of the calendar year and ending on August 31 of the following calendar year. Applications are due not later than July 2.

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

8 VAC 40-31-180. Application requirements.

A. Each certification to operate attests that the school is in compliance with Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 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 council staff.
2. A statement regarding the school's accreditation status, if applicable.
 - a. Career-technical schools must provide a statement that the 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 and career-technical schools requesting initial certification must be accredited by an accrediting organization recognized by the USDOE.
 - c. Unaccredited institutions that offer courses for degree credit and existing unaccredited out-of-state career-technical schools must submit a plan of action for securing accreditation from an organization recognized by the USDOE, including the name of the accrediting organization and timeframe. In order to remain eligible for certification, the postsecondary school must secure, at a minimum, candidacy status or equivalent within three years of its initial date of certification, and initial accreditation no later than six years after initial certification. Changes to the plan of action timeframe for accreditation will be granted only at the discretion of the council.
 - 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 transacted surety instrument form, with the State Council of Higher Education for Virginia named as the obligee.
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 school's certificate, if incorporated, from the State Corporation Commission providing authorization to transact business within the Commonwealth.
7. For schools whose main campus is not in Virginia, a copy of the school'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 programs offered at the site.
9. For new postsecondary school applicants, a signed and notarized statement provided by the president or CEO, that attests to any previous involvement in the operation of a postsecondary school or any previous involvement by any administrator, owner, controlling shareholder, or member of the school's governing board in the operation of a postsecondary school. At a minimum, this statement shall include the name(s) of previous schools, the dates of the involvement, the positions held within the school, the location, the status (open/closed, and accredited/nonaccredited) of the school, any known violation of federal or state financial aid rules by the school, any known violations of the policies of an accreditor of the school, any bankruptcy filings by the school, and conviction or civil penalty levied by any legal entity in connection with this or any other educational entity in which he was employed or invested.
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 schools must also include their estimated annual enrollment projections and number of students per program; and
 - b. Schools that are renewing certificates to operate shall include from the previous year the following information:
 - (1) The number of degrees, certificates, or diplomas conferred for each program offered by a school.
 - (2) The number of students graduating and the number enrolled.
 - c. Unaccredited institutions of higher education and career-technical schools shall include, from follow-up surveys of graduates, the number of students reporting placement in jobs relating to their field of study within six months; and one year of graduation.

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 B and C.

D. When a branch campus or site of a school is under different ownership or different school name than the main campus of the school, the branch campus or site must submit an application for certification to operate and must pay a separate certification fee than the main campus of the school.

E. All proprietary postsecondary schools must provide evidence of a valid business license from the locality within which it seeks to operate. If and when council receives confirmation that a school 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 school.

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 (8 VAC 40-31-130 et seq.) of this chapter.

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 shall be 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 school provides instruction; and/or
2. Consist of council staff.

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

1. Council staff concerns based on questionable information in the initial or recertification application.
2. Greater than average volume and frequency of negative student complaints or adverse publicity.
3. Difficulty securing accreditation within the specified time period.
4. Adverse action by the USDOE or the school's accrediting agency.
5. A USDOE composite financial responsibility score of less than 1.0.

D. Following an audit of the school, council staff shall 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 a 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 emergency circumstances exist that require 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 that may have a bearing on the proposed action at a fact-finding conference. If no withdrawal occurs, 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. A school wishing to waive its 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 the party's/representative's 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 practical, in the county or city in which the school 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 violation of any provision of § 23-276.12 of the Code of Virginia that is found by council to have been committed by any person, firm, association, postsecondary school, trust, or other entity that offers or confers degrees, diplomas, certificates, programs, or courses of study shall be punishable as 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 the Code of Virginia to deter illegal or improper acts that may violate the requirement for school certification. Pursuant to § 23-276.15 of the Code of Virginia, upon confirmation of any notification or discovery of any postsecondary school operating without its certification or approval, the council shall notify, in writing, the relevant local commissioner of the revenue or other official serving such equivalent functions of the postsecondary school's violation of such certification or approval requirements, and shall recommend revocation of the school's business license.

8 VAC 40-31-240. Civil enforcement.

Upon the determination of the council that any school, 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. All fees collected by council staff will be deposited in the State Treasury.

B. 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 of \$300.

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

D. The flat fee schedule is as follows:

Initial fee for all new institutions of higher education =	\$6,000
Initial fee for all new career-technical schools =	\$2,500
Annual fee for all unaccredited institutions of higher education =	\$6,000
Annual fee for all unaccredited out-of-state career-technical schools	\$2,500
Renewal fee for all postsecondary schools with gross tuition collected greater than \$150,000, as recorded on most recent financial statement =	\$2,500
Renewal fee for all postsecondary schools with gross tuition collected greater than \$100,000 but less than or equal to \$150,000, as recorded on most recent financial statement =	\$1,500
Renewal fee for all postsecondary schools with gross tuition collected greater than \$50,000 but less than or equal to \$100,000, as recorded on most recent financial statement =	\$1,000
Renewal fee for all postsecondary schools with gross tuition collected less than or equal to \$50,000, as recorded on most recent financial statement =	\$500
Late fee =	\$100/day for first 10 business days after expiration of annual certification (Maximum fee = \$1,000) (11th day institution notified to cease and desist and matter referred for prosecution)
Returned check fee =	\$35
Noncompliance administrative fees =	\$1,000 for each occurrence of noncompliance found as a result of audit

Initial or renewed exemption application/request for name acknowledgement/agent registration =	\$300
Nonrefundable handling charge (withdrawal of application) =	\$300

E. If a late fee is assessed, the school must submit the assessed fee, required certification fee and all required certification documents prior to the issuance of the Certificate to Operate.

F. A school that submits a payment that is returned for any reason must resubmit the required payment, any applicable late fee, and the assessed returned check fee of \$35 via a money order or certified bank check only.

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:

**State Council of Higher Education for Virginia
ATTN: Private and Out-of-State Postsecondary School 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 school:

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. A roster showing the name, address, and current academic status of all enrolled students.

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

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

F. The council shall seek the advice of the Career College Advisory Board on matters relating to closures of its member schools.

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

The council may waive or modify the certification requirements for an accredited school if the council finds that such waiver or modification will not conflict with the intent of the regulations and that in light of the school's mission, literal application of such requirement(s) creates an unreasonable hardship on the school.

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

All materials submitted by a school 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 (§ 2.2-3700 et seq. of the Code of Virginia) and shall be available for public inspection in accordance with the provisions of § 2.2-3704 of the Code of Virginia.

8 VAC 40-31-310. Student Tuition Guaranty Fund.

A. The executive director shall appoint in writing a Director of the Student Tuition Guaranty Fund.

B. The purpose of the fund is to reimburse tuition and fees due students at schools 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 that 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 its recertification.

D. A claim shall be made against the fund only if it arises out of the cessation of operation by a school at which the student was enrolled or was on an approved leave of absence at the time of the closure and the closure prevented the student from completing the program of study for which he enrolled on or after July 1, 2004. If the school holds a surety bond or other guaranty instrument, filing a claim against the guaranty instrument shall be the initial response. 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 period shall not be 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 these parties 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 that 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 shall thereby be 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 no financial aid was involved, then refunds will be made to the student.

8 VAC 40-31-320. Agent registration.

A. Agents representing one or more noncertified accredited postsecondary schools must:

1. Register with the council prior to soliciting in Virginia; and
2. Pay an annual fee of \$300 per school represented.

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

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

D. Agent permits expire on December 31 of each calendar year. An application for an agent permit renewal must be submitted to council staff at least 60 days prior to the expiration date.