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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	3VAC5-30-30
<b>VAC Chapter title(s)</b>	Tied House
<b>Action title</b>	Amendment to Board Payments Regulation
<b>Date this document prepared</b>	January 10, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Virginia Alcoholic Beverage Control Authority is amending Section 3VAC5-30-30 to reflect the Board's ability to accept payment for taxes, fees, penalties, charges, and costs through the Authority's online licensing system.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

NA

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

- 1) The date the action was taken is January 11, 2023, during the VA ABC Board meeting.
- 2) The Virginia Alcoholic Beverage Control Authority is the agency taking the action.
- 3) The title of the regulation is "Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board."

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

The mandate for this change is the Authority's decision to ensure that the regulation matches current practice. Currently, the regulation states that payments to the Board for taxes, fees, penalties, charges, or cost shall be in the form of "cash" as defined by the regulation. The regulation's definition for "cash" does not include payments made online through the Authority's licensing system; however, the Authority has the capability and has implemented acceptance of payments through its licensing system.

This rulemaking is expected to be non-controversial because Section 4.1-240 of the Code of Virginia permits the Board to accept payment by any commercially acceptable means for the taxes, penalties, or other fees imposed on a licensee. Additionally, this revision ensures the regulation aligns with the practice that has already been implemented. The revisions to the regulation do not take away any privilege currently enjoyed by licensees while giving them more flexibility in how they may make payment.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

- 1) The promulgating agency is the Virginia Alcoholic Beverage Control Authority.
- 2) Section 4.1-101 of the Code of Virginia (Code) establishes the Virginia Alcoholic Beverage Control Authority (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act). Section 4.1-103(7) states the Board may delegate or assign any duty or task

to be performed by the Authority to any officer or employee of the Authority. Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111.

Section 4.1-111 (A) of the Code provides the Board with the authority to adopt reasonable regulations which it deems reasonable to carry out the provisions of the ABC Act and to amend or repeal such regulations.

Section 4.1-240 (A) of the Code states the Board may accept payment by any commercially acceptable means, including checks, credit cards, debit cards, and electronic funds transfers, for the taxes, penalties, or other fees imposed on a licensee in accordance with this subtitle.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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- (1) The rationale for this change is that it is needed to maintain consistency between the Authority's regulation and the Authority's practices.
- (2) The change is essential to protecting the health, safety, and welfare of citizens because those interests are protected through consistent application of regulations.
- (3) The goal of the change is to achieve consistency between current practices and the text of the regulation. Inconsistencies between regulations and actual practices have the potential to create confusion in the regulated community and this change is intended to prevent any confusion and inform licensees of all of their options when it comes to making payment to the Authority.

### Substance

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

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The substantive change to the existing text will be adding language that states payments to the Authority may be made through the online licensing system.

### Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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The primary advantage to the public and the Commonwealth is that the regulation will be consistent with the current practice within the Authority. There are no disadvantages.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements and no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>There are no projected costs, savings, fees, or revenues associated with the change for the Authority.</p>
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<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no projected costs, savings, fees, or revenues associated with the change for other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefit is that the regulation will be consistent with the current practice within the Authority.

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues associated with the change for localities.
Benefits the regulatory change is designed to produce.	The benefit is that the regulation will be consistent with the current practice within the Authority.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	This change only impacts VA ABC licensees.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	This revision will only impact those licensees that choose to make payments using the Authority’s online system. It is not a requirement to make payment through the online system. The Authority does not track which of these licensees would qualify as a small business.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no projected costs.
Benefits the regulatory change is designed to produce.	The benefit is that the regulation will be consistent with the current practice within the Authority.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

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There are no other viable alternatives considered. This change was considered the least burdensome or intrusive because it has already been implemented. It also does not impose any new requirement on licensees as payment through the Authority's online system is voluntary and at the discretion of the licensee.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

## Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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There was no analysis of alternative regulatory methods. This revision permits licensees to pay taxes, fees, penalties, charges, and costs through the Authority's online system. Licensees and applicants have already taken advantage of this payment method. The revision does not impose any new schedules or deadlines. The regulation does not establish any new performance standards for small businesses. There are no exemptions for small businesses.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Alcoholic Beverage Control Authority is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to LaTonya Hucks-Watkins, 7450 Freight Way, Mechanicsville, VA 23116, 804-213-4698, 804-213-4574, latonya.hucks-watkins@virginiaabc.com. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-30-30		<p>A. Sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.</p> <p>B. "Cash," as used in this section, shall include (i) legal</p>	<p>A. Sales of wine or beer between wholesale and retail licensees of the <del>board</del>-<u>Authority</u> shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.</p> <p>B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth, (iii) a valid check drawn upon a bank</p>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		<p>tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth, (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board.</p> <p>C. If a check, money order or electronic fund transfer is used, the following provisions apply:</p> <ol style="list-style-type: none"> <li>1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages; and</li> <li>2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of</li> </ol>	<p>account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the <del>board</del> <u>Authority</u>.</p> <p>C. If a check, money order or electronic fund transfer is used, the following provisions apply:</p> <ol style="list-style-type: none"> <li>1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages; and</li> <li>2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.</li> </ol> <p>D. If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the <del>board</del> <u>Authority</u>, the following provisions shall apply:</p> <ol style="list-style-type: none"> <li>1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund</li> </ol>



Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		<p>the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.</p> <p>D. If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:</p> <ol style="list-style-type: none"> <li>1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;</li> </ol>	<p>transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;</p> <ol style="list-style-type: none"> <li>2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and</li> <li>3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.</li> </ol> <p>E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the <del>board</del> <u>Authority</u> any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one</p>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		<p>2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and</p> <p>3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.</p> <p>E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single</p>	<p>incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the <del>board</del> <u>Authority</u> and in accordance with the instructions set forth in such form.</p> <p>F. Payments to the <del>board</del> <u>Authority</u> for the following items shall be for cash, as defined in subsection B of this section:</p> <ol style="list-style-type: none"> <li>1. State license taxes and application fees;</li> <li>2. Wine taxes and excise taxes on beer and wine coolers;</li> <li>3. Solicitors' permit fees and temporary permit fees;</li> <li>4. Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;</li> <li>5. Civil penalties or charges and costs imposed on licensees and permittees by the board; and</li> <li>6. Forms provided to licensees and permittees at cost by the board.</li> </ol> <p><b>Provided however, payments to the Authority for the aforementioned items may be made directly through the Authority's licensing system software.</b></p>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		<p>retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.</p> <p>F. Payments to the board for the following items shall be for cash, as defined in subsection B of this section:</p> <ol style="list-style-type: none"> <li>1. State license taxes and application fees;</li> <li>2. Wine taxes and excise taxes on beer and wine coolers;</li> <li>3. Solicitors' permit fees and temporary permit fees;</li> <li>4. Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;</li> <li>5. Civil penalties or charges and costs imposed on licensees and permittees by the board; and</li> <li>6. Forms provided to licensees and permittees at cost by the board.</li> </ol>	

*If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.*

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

New chapter-	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
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<b>section number</b>			

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

**Table 3: Changes to the Emergency Regulation**

<b>Emergency chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current <u>emergency</u> requirement</b>	<b>Change, intent, rationale, and likely impact of new or changed requirements since emergency stage</b>