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Proposed Regulation Agency Background Document

Agency name	Board of Funeral Directors and Embalmers; Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC65-40-10 et seq.
VAC Chapter title(s)	Regulations for the Funeral Service Intern Program
Action title	Periodic Review
Date this document prepared	10/11/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 Board of Funeral Directors and Embalmers has adopted proposed regulations to: 1) amend 18VAC65-40-130 (A) to reduce the number of hours required for an internship from 3,000 to 2,000; 2) require supervisors to register for supervision of each funeral service intern with an expiration for the registration of 48 months or at the completion of the intern's training, whichever occurs first in order to allow the Board to track active supervisors and make sure supervisors are in good standing; and 3) add a regulation requiring that interns be identified to the public as interns in titles, correspondence, and communications with the public.

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.

N/A

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 Executive Order 14 (as amended, July 16, 2018), "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. The comment period on the periodic review began on May 14, 2018 and ended on June 13, 2018.

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.

18VAC65-40-10 et seq. Regulations for the Funeral Intern Program are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board with authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. *To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000 et seq.](#)) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100 et seq.](#)) and Chapter 25 (§ [54.1-2500 et seq.](#)) of this title.*

Authority for the Board to take disciplinary action for failure to adequately supervise funeral service interns is found in:

§ 54.1-2806. Refusal, suspension, or revocation of license.

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes: ...

21. Failure to comply with the reporting requirements as set forth in § 54.1-2817 for registered funeral service interns;
22. Failure to provide proper and adequate supervision and training instruction to registered funeral service interns as required by regulations of the Board;

Authority to regulation funeral service interns is found in:

§ 54.1-2817. Funeral service interns.

A person desiring to become a funeral service intern shall apply on a form provided by the Board. The applicant shall attest that he holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a funeral service intern for an individual convicted of a felony, if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The Board shall not, however, approve an application to be a funeral service intern for any person convicted of embezzlement or of violating subsection B of § 18.2-126.

The Board, in its discretion, may refuse to approve an application to be a funeral service intern for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

When the Board is satisfied as to the qualifications of an applicant, it shall issue a certificate of internship. When a funeral service intern wishes to receive in-service training from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and the funeral service intern later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the funeral service intern an affidavit showing the length of time served with him. The affidavit shall be filed with the Board and made a matter of record in that office. Any funeral service intern seeking permission to continue in-service training shall submit a request to the Board.

A certificate of internship shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered funeral service intern at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time, a penalty fee shall be due in addition to the renewal fee.

The registration of any funeral service intern who is in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of his service. The Board may also waive the renewal fees for such military personnel.

All registered funeral service interns shall report to the Board on a schedule prescribed by the Board upon forms provided by the Board, showing the work which has been completed during the preceding period of internship. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.

Before such funeral service intern becomes eligible to be examined for the practice of funeral service, evidence shall be presented along with an affidavit from any licensee under whom the intern worked showing that the intern has assisted in embalming at least 25 bodies and that the intern has assisted in conducting at least 25 funerals. In all applications of funeral service interns for licenses for the practice of funeral service, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the internship shall not entitle him to any privilege except to be examined for such license.

Credit shall not be allowed for any period of internship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the Board may deny an additional internship. A funeral service intern may continue to practice for up to 90 days from the completion of his internship or until he has taken and received the results of all examinations required by the Board. However, the Board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the Board determines that enforcement of the limitation will create an unreasonable hardship.

The Board shall have power to suspend or revoke a certificate of internship for violation of any provision of this chapter.

No more than two funeral service interns shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered funeral service intern must be actively employed by or under contract with a funeral establishment.

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's intended to solve.

The purpose of this regulatory action is to provide clear, enforceable regulations for the supervision and practice of interns, so that interns and funeral homes are not misleading the public about their status and that they are being appropriately supervised to protect the public health and safety in the handling of human remains.

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.

The Board of Funeral Directors and Embalmers has adopted proposed regulations to: 1) amend 18VAC65-40-130 (A) to reduce the number of hours required for an internship from 3,000 to 2,000 and specify that an extension beyond 48 months for completion of an internship will only

be granted for extenuated circumstances; 2) require supervisors to register for supervision of each funeral service intern with an expiration for the registration of 48 months or at the completion of the intern's training, whichever occurs first in order to allow the Board to track active supervisors and make sure supervisors are in good standing; and 3) add a regulation requiring that interns be identified to the public as interns in titles, correspondence, and communications with the public.

In addition, the Ad Hoc Committee convened to conduct a periodic review of intern regulations recommended edits to several sections and the following changes:

18VAC65-40-90: Renewal of Registration

Clarification that a notice of renewal also can be transmitted electronically, consistent with legislation that became effective on July 1, 2018

18VAC65-40-250: Requirements for Supervision

Specify that supervision must be provided under a funeral service licensee with an unrestricted license and also restrict approval of supervisors with previous board action within the previous two years.

18VAC65-40-320: Reports to the board; six month report; partial report

Consider removal of language related to deduction of credit hours for late intern reports in 18VAC65-40-320(B)(2).

18VAC65-40-330: Failure to submit a training report

Change language to clarify that an intern may not receive credit for training if they fail to submit a training report, rather than forfeiting partial credit for training.

18VAC65-40-640: Disciplinary action

Clarify that disciplinary action may be imposed for failure to comply with *the statutes* or regulations of the Board of Funeral Directors and Embalmers.

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.

- 1) The primary advantage to the public is more clarity in oversight of funeral interns and assurance that the persons supervising their practice hold appropriate licensure that is in good standing. All amendments are intended to provide additional consumer protection. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to the Commonwealth, except more clarity in regulation will assist the Board in interpretation of the law.

3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”

The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth and to enforce the Code of Virginia.

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.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “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 - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 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 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: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and</p>	<p>There are no costs for implementation and enforcement. Funds for the Board of Funeral Directors and Embalmers are provided by fees charged to applicants and licensees.</p>
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c) whether any costs or revenue loss can be absorbed within existing resources	
<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 costs to other agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs to localities.
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

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.	Licensed funeral establishments Branch establishments Funeral service licensees who supervise interns Funeral service interns
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.	There are 420 licensed funeral establishments and 79 licensed as branch establishments. The Board has no estimate of the number of small businesses affected. Individual establishments and branch establishments hold licenses but may be owned by large national companies (i.e., Woody's and Nelson's are local establishments owned by SCI). There are 1463 funeral service licensees with current, active licenses; 567 are registered supervisors. In the 4 th quarter of FY19, there were 186 funeral interns.
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 should be no costs related to these amendments, which provide additional clarity and consumer protection.
Benefits the regulatory change is designed to produce.	There is significant benefit for persons seeking licensure as a funeral service provider by a 1/3 reduction in the required training hours. While interns may receive some compensation for their work, the ability to be a full-time employee after 2,000 hours of training is beneficial. Additionally,

	<p>some funeral homes will benefit from increased availability of workforce, since Virginia licensing requirements will be more in line with neighboring jurisdictions.</p>
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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.

The Board published a NOIRA on August 6, 2018 and identified several amendments necessary to provide greater oversight of the funeral internship program. At the same time, the Board initiated periodic reviews for all chapters of regulations, so it was determined that the recommended amendments from the earlier NOIRA and the changes recommended from the overall review should be combined. The Board also published a NOIRA (Action 5275) to initiate rulemaking to reduce the number of hours required for an internship.

It was decided to combine Action 5221 (Periodic review) and Action 5275 (Internship hours) into one proposed stage under Action 5221.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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.

The agency has not found alternative regulatory methods for clarification of regulation or public protections needed for the public who rely on funeral homes at the time there is a death.

Periodic Review and Small Business Impact Review Report of Findings

A report of findings in the periodic review and small business impact was posted on the Virginia Regulatory Townhall:


 [TH-07 Periodic Review Report of Findings \(2/4/2019\)](#)

Action Implementing the Result

Action ID #5221: [Periodic review 2019](#)

Attorney General Certification

Result of Review: Certified

 Review Memo 4/19/2018

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

A 30-day comment period on the NOIRA for periodic review (Action 5221) was open from July 8, 2019 to August 7, 2019; there were no comments received. The NOIRA on reduction in internship hours (Action 5275) received three comments during the comment period between June 6, 2019 and July 6, 2019:

Commenter	Comment	Agency response
Harris Funeral Home	Believes apprentices (interns) should complete more hours. (Vanessa Harris posted the same comment on her own behalf.)	<p><i>The Board compared the number of hours required in Virginia to those required in other states, including Maryland (1,000 hours), North Carolina (2,000), and Kentucky (1 year of full time training (40 hour/week). Virginia appeared to be out of line with almost every other state. A commenter on the periodic review noted that a Funeral Service Provider Workforce Study showed that funeral service licensees are retiring or leaving the profession at a higher rate than licensees coming into the profession. The Board concurred with this commenter that the current 3,000 hour internship requirement is a factor in being able to continually have a pool of qualified funeral service licensees.</i></p> <p><i>In regard to comparison to hours required for an apprenticeship, the Board compared internship hours for other health professions, which range from one year for professions such as speech-language pathologists to 2,000 hours as an administrator-in-training (AIT) for a</i></p>

		<p><i>nursing home administrator. To qualify as an assisted living facility administrator (a profession with similar educational requirements), a person must have 30 hours of post-secondary education and 640 hours of training as an AIT.</i></p> <p><i>The Board determined that the reduction in hours is reasonable and should be included with proposed regulation with an opportunity for additional comment at that stage.</i></p>
Jamie Karpa	Commented that funeral service interns need to be trained in all aspects of funeral business and need more hours, not less.	Same board response for all comments.
Larry Spiaggi, Past President of the Va. Funeral Directors Association	Commented he opposes a reduction in hours, and he compared the number of hours required for apprenticeships in trades such as electrician and plumber.	Same board response for all comments.

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.

The Board of Funeral Directors and Embalmers is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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 or email to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

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
90		Sets out requirements for renewal of registration as a funeral service intern	The amendment notes that renewal notices may be sent by mail or electronic, consistent with legislation passed in 2018.
110		Sets out requirements for late renewal or reinstatement of registration	Renewal within one renewal cycle does not require “reinstatement” but is a late renewal. The term in subsection A is amended for consistent use of terminology.
130		Establishes requirements for funeral service internships	Subsection A is amended to reduce the minimum number of hours from 3,000 to 2,000. <i>As noted in Board response to comment above, Virginia appears to be out of line with almost every other state. A commenter on the periodic review noted that a Funeral Service Provider Workforce Study showed that funeral service licensees are retiring or leaving the profession at a higher rate than licensees coming into the profession. The current 3,000 hour internship requirement is a factor in being able to continually have a pool of qualified funeral service licensees. The statutory requirement of assisting in 25 embalmings and 25 funerals remains, so the minimum number of hours does not alter the core requirements for training. Currently, the allowance to grant an extension of time for completion of an internship is for “good cause shown.” The amended language says “only for extenuating circumstances” to more</i>

			<p>clearly state the condition under which an extension would be granted.</p> <p>Subsection D is added to specify that a person must be identified as a “funeral service intern” on nametags and in all communications and interactions with the public. <i>The intent of the additional language is protection for consumers, so they understand that a person is receiving training in a funeral home and is not a licensed funeral service provider.</i></p>
220		Sets out the qualifications for a training site for an internship	Subsection B is amended to replace old terminology of a “resident trainee” with the current term of “intern.”
250		Establishes requirements for supervision	<p>Subsection B is amended to clarify that the requirement for two years of practice is practice as a funeral service licensee, a funeral director, or an embalmer. The regulation is further amended by specifying that a licensee who has been the subject of disciplinary action within the most recent two years will not be approved to provide supervision.</p> <p><i>Currently, it is required that a supervisor have a full and unrestricted license, but the amendment will prohibit someone who has been disciplined within the past two years from supervising an intern. Since the professionalism, skills, and integrity of the supervisor is critical to training of an intern for competency in the profession, the Board would be concerned about a licensee serving as a supervisor if he/she has recently been disciplined by the Board.</i></p> <p>Subsection C is amended to clarify that the supervisor is responsible for making sure that an intern is receiving training under the direct supervision of a licensee who has a current license in good standing.</p> <p>Subsection D is added to require a supervision to register with the Board for each intern for whom he/she is providing supervision. That registration then expires in 48 months (the maximum time allowed for an internship) or at completion of the intern’s hours, whichever occurs first. If the internship is extended for extenuating circumstances,</p>

			<p>the supervisor’s registration is similarly extended. <i>The intent of the rule is to ensure that the Board is aware of who is currently supervising interns, so there is greater accountability and consistency. Currently, there are 567 persons registered as supervisors, but only 186 interns, so it is apparent that the majority of those registered are not actively serving as supervisors of interns. (Each supervisor may have two interns).</i></p> <p>Subsection G is added to reiterate the limitation of two interns per supervisor at an one time, as is provided in § 54.1-2817.</p>
280		States the requirements for a supervisor application package	Subsection A is amended to clarify that the application for registration of supervision is for each intern to be supervised.
320		Sets out the requirements for reports to the Board	Subsections A and B are amended to eliminate the provisions to authorize the Board to add time to the internship for submission of late reports or to deduct credit for late reports. <i>Since there are no specific standards for such additions or deductions, application of the rule could be arbitrary and subjective. Additionally, late reports may be the responsibility of the supervisor, but deduction of credit or additional hours penalized the intern.</i>
340		Sets out supervisors’ responsibilities	Subsection C is amended to be consistent with the language in § 54.1-2817, which refers to an intern “assisting” in conducting a minimum of 25 funerals, rather than arranging 25 funerals. Subsection D is amended to be consistent with the language in § 54.1-2817, which refers to an intern “assisting” in the performance of 25 embalmings, rather than “performing” the embalmings.
640		Sets out the authority of the Board to take disciplinary action	Failure to comply with regulations of the Board provides grounds for disciplinary action, but failure to comply with statutory provisions related to funeral service also provides grounds. The section is amended to clarify and specify that “laws” as well as regulations must be followed.

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-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

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

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