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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-23
VAC Chapter title(s)	8 VAC 20-23.10 et seq.
Action title	<i>Licensure Regulations for School Personnel</i>
Date this document prepared	August 8, 2020

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.

This regulatory action is to amend the *Licensure Regulations for School Personnel* to comport with Virginia General Assembly legislation approved in the 2017, 2018, and 2019 sessions related to licensure. The *Licensure Regulations for School Personnel* (8 VAC20-22) were repealed, and revised regulations (8 VAC20-23) became effective August 23, 2018. The regulatory process for the revised regulations needed to conclude before additional amendments were to be submitted. Revisions from the General Assembly sessions have been consolidated to streamline the Administrative Process Act.

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.

All terms have been defined.

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.

The action was taken September 19, 2019; the Virginia Board of Education took the action and approved the amendments; and the title of the regulation is the Licensure Regulations for School Personnel.

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."

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

The regulatory changes are required by the Virginia General Assembly. The requirements are noncontroversial as all requirements are mandated by the General Assembly.

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.

The promulgating agency is the Virginia Department of Education on behalf of the Virginia Board of Education. The General Assembly actions and the corresponding sections of the *Code of Virginia* are as follows:

2017 Virginia General Assembly

HB1770/SB1583 (identical bills) amended § 22.1-298.1 of the *Code of Virginia*. [Note: In 2018 and 2019, this section of the *Code* was amended.]

HB1829 amended § 22.1-298.1 of the *Code of Virginia*.

HB2352 amended § 22.1-298.1 of the *Code of Virginia*. [The 2018 General Assembly passed HB1125 that further amended section 22.1-298.1 of the *Code of Virginia* regarding reciprocity.]

HB2432 amended §§ 22.1-298.1 and 22.1-307 of the *Code of Virginia*.

SB1117 amended § 22.1-298.1 of the *Code of Virginia*.

2018 Virginia General Assembly

HB2 amended § 22.1-298.1 of the *Code of Virginia*.

HB80 amended § 22.1-298.1 of the *Code of Virginia*.

HB215 amended § 22.1-298.1 of the *Code of Virginia*.

HB1125 amended sections 22.1-298.1, 22.1-299, 22.1-299.5, and 22.1-299.6 of the *Code of Virginia*.

2019 General Assembly

SB 1575 amended § 22.1-305.2 of the *Code of Virginia*.

Identical bills, HB 2037 and SB 1397, amended sections §§ 22.1-298.1, 22.1-298.2, and 23.1-902 of the *Code of Virginia*.

HB 2486 amended § 22.1-298.1 of the *Code of Virginia*.

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 amendments to the regulations are required to comport with the statute.

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.

Below are the bills and summaries of the substantive provisions mandated by the General Assembly:

2017 General Assembly

- Identical bills, **House Bill 1770** and **Senate Bill 1583**, permit each local school board or division superintendent to waive certain enumerated licensure requirements for any individual whom it seeks to employ as a career and technical education teacher and who is also seeking initial licensure or renewal of a license with an endorsement in the area of career and technical education.
- **House Bill 1829** specifies that the certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators that is required of every person seeking initial licensure or renewal of a license as a teacher shall include hands-on practice of the skills necessary to perform cardiopulmonary resuscitation.
- **House Bill 2352** exempts from any professional teacher's assessment requirements any individual who has obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education, subject to the approval of the division superintendent or the school board in the school division in which such individual is employed. [The 2018 General Assembly passed House Bill 1125 that further recommended Section 22.1-298.1 of the Code of Virginia regarding reciprocity.
- **House Bill 2432** requires the Board of Education to include in its regulations governing the licensure of teachers and other school personnel procedures for the immediate and thorough investigation by the division superintendent or his designee of any complaint alleging that a license holder has engaged in conduct that may form the basis for the revocation of his license, including requirements for (i) the division superintendent to petition for the revocation of the license upon completing such investigation and finding that there is reasonable cause to believe that the license holder has engaged in conduct that forms the basis for revocation of a license; (ii) the school board to proceed to a hearing on such petition for revocation within 90 days of the mailing of a copy of the petition to the license holder, unless the license holder requests the cancellation of his license in accordance with Board regulations; and (iii) the school board to provide a copy of the investigative file and such petition for revocation to the Superintendent of Public Instruction at the time that the hearing is scheduled. The bill clarifies that in the case of a teacher who is or becomes the subject of a founded complaint of child abuse and neglect, such teacher shall be dismissed after all rights to any administrative appeal have been exhausted.

- **Senate Bill 1117** requires every person seeking initial licensure or renewal of a license with an endorsement as a school counselor to complete training in the recognition of mental health disorder and behavioral distress, including depression, trauma, violence, youth suicide, and substance abuse.

2018 General Assembly

- **House Bill 2** requires the Board of Education to provide for teacher licensure by reciprocity for any spouse of an active duty member of the Armed Forces of the United States or the Commonwealth who has obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education. The bill provides that no service requirements or licensing assessments shall be required for any such individual. This bill is identical to **Senate Bill 103**.
- **House Bill 80** requires the Board of Education, in its regulations providing for teacher licensure by reciprocity, to permit applicants to submit third-party employment verification forms.
- **House Bill 215** requires the Board to establish an experiential route to licensure, issuing a one-year renewable license.
- **House Bill 1125** makes several changes to the teacher licensure process, including (i) permitting teachers with a valid out-of-state license, with full credentials and without deficiencies, to receive licensure by reciprocity without passing additional licensing assessments and (ii) permitting a local school board or division superintendent to waive certain licensure requirements for any individual who holds a provisional license and is employed by the local school board. This bill is identical to **Senate Bill 349**.

On January 24, 2019, the Board of Education approved 270 professional development points for license renewal for a ten-year renewable license and approved including in the *Licensure Renewal Manual* the following maximum professional development points for each option until the renewal requirements are comprehensively reviewed. [Individuals who hold a five-year renewable license must complete 180 professional development points.] All statutory requirements for renewal shall be required.

1. College Credit	270 points
2. Professional Conference	60 points
3. Curriculum Development	135 points
4. Publication of Article	135 points
5. Publication of Book	135 points

6. Mentor/Supervision	135 points
7. Educational Project	135 points
8. Professional Development Activities	270 points

2019 General Assembly

- House Bill 1575** grants to the Chancellor of the Virginia Community College System voting privileges as a member of the Advisory Board on Teacher Education and Licensure (the Advisory Board). The bill requires the Advisory Board to report to the Board of Education and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than December 1, 2019, recommendations relating to licensure qualifications for individuals employed by an institution of higher education to teach (i) career and technical education courses in a high school setting and (ii) dual enrollment courses in a high school setting. The bill also requires the Board of Education to provide for the issuance of a three-year license to solely teach career and technical education courses or dual enrollment courses at public high schools in the Commonwealth to any individual who is employed as an instructor by an institution of higher education that is accredited by a nationally recognized regional accreditation body, is teaching in the specific career and technical education or dual enrollment subject area at such institution in which the individual seeks to teach at a public school, and complies with certain additional requirements.
- Identical bills, **House Bill 2037** and **Senate Bill 1397**, require the Board of Education to issue a license to an individual seeking initial licensure who has not completed the professional assessments prescribed by the Board, if such individual (i) holds a provisional license that will expire within three months; (ii) is employed by a school board; (iii) is recommended for licensure by the division superintendent; (iv) has attempted, unsuccessfully, to obtain a qualifying score on the professional assessments prescribed by the Board; (v) has received an evaluation rating of proficient or above on the performance standards for each year of the provisional license, and such evaluation was conducted in a manner consistent with the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents; and (vi) meets all other requirements for initial licensure.

House Bill 2486 requires the Board of Education in its regulations providing for licensure by reciprocity to grant special consideration to individuals who have successfully completed a program offered by a provider that is accredited by the Council for the Accreditation of Educator Preparation.

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.

The regulatory revisions need to be made to ensure the public is informed of amended provisions of the *Code of Virginia*. House Bill 1575 of the 2019 General Assembly provides the Chancellor of the Virginia Community College voting privileges as a member of the Advisory Board on Teacher Education and Licensure. Other significant changes expands reciprocity for individuals who apply for licensure in Virginia, requires hands-on Cardiopulmonary Resuscitation (CPR), created a One-Year High School License and a Career and Technical Education or Dual Language Endorsement License, and makes technical revisions to the section of the Licensure Regulations for School Personnel governing the revocation, denial, cancellation and suspension of teaching licenses.

The licensure regulations changes do not disadvantage the public or Commonwealth.

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 identified applicable federal requirements or no requirements that exceed 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

The Department of Education is primarily impacted; the Virginia Community College; and the State Council of Higher Education for Virginia

Localities Particularly Affected

School divisions

Other Entities Particularly Affected

Individuals licensed; individuals applying for licensure

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

<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 c) whether any costs or revenue loss can be absorbed within existing resources	Any economic impact is minimal.
<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.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Any economic impact is minimal. However, requiring hands-on CPR is a cost to school divisions, applicants, or licensees.
Benefits the regulatory change is designed to produce.	The revisions are to provide more licensure flexibility to school divisions.

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.	Any economic impact is minimal. However, requiring hands-on CPR is a cost to applicants, or licensees. Individuals seeking licensure through reciprocity (hold a full out-of-state license with no deficiencies), some of whom may not have met the previous testing exception, will not need to take and pass licensure assessments.
Agency's best estimate of the number of such entities that will be affected. Include an estimate	

<p>of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> 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. 	
<p>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:</p> <ul style="list-style-type: none"> 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. 	
<p>Benefits the regulatory change is designed to produce.</p>	

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.

No alternatives were considered since the proposed regulations are required for comport to the Code of Virginia.

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.

Alternative regulatory methods were not applicable since the requirements are required by the Code of Virginia.

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.

As required by § 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.

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 Department of Education** 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 Patty S. Pitts, Department of Teacher Education and Licensure, Department of Education, P. O. Box 2120, Richmond, VA 23218-2120; (804) 371-2522; patty.pitts@doe.virginia.gov. 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
8VAC20-23-10. Definitions.		8VAC20-23-10. Definitions.	Add definitions: <ul style="list-style-type: none"> • Career and Technical Education License

			<ul style="list-style-type: none"> • Career and Technical Education or Dual Enrollment License • One-Year High School License <p>Changes the length of time from five to ten years for renewable licenses. Licensed individuals will now renew every ten years and will meet statutory requirements during the same timeline.</p> <p>Allows the Board of Education to extend a Provisional License under specific circumstances for up to two years. This allows licensees additional time to meet requirements to receive a renewable license.</p> <p>Allows an individual who holds a Provisional License may receive a Provisional License under specified conditions. The intent is to allow school division superintendents the flexibility to continue to employ a teacher who has satisfactory experience and has met all other licensure requirements except testing.</p>
8VAC20-23-20. Administering This Chapter.		8VAC20-23-20. Administering This Chapter.	<p>Allows a local school board or division superintendent may waive certain licensure requirements for an individual whom it seeks to employ as a career and technical education teacher and who is seeking initial licensure or license renewal. This provides school divisions flexibility in employing CTE teachers.</p>
8VAC20-23-40. Conditions for Licensure.		8VAC20-23-40. Conditions for Licensure.	<p>Includes hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. The purpose is for licensees to have the knowledge and skills to perform CPR.</p> <p>Allows teachers who seeks a Provisional License to meet certain requirements during the first year of the Provisional License (statutory requirements).</p> <p>Requires every person seeking initial licensure of a license with an endorsement as a school counselor</p>

			<p>shall complete training in the recognition of mental health disorder and behavioral distress, including depression, trauma, violence, youth suicide, and substance abuse. The purpose of this requirement is to help ensure that school counselors have obtained these skills and knowledge.</p>
<p>8VAC20-23-50. Types of Licenses; Dating Licenses.</p>		<p>8VAC20-23-50. Types of Licenses; Dating Licenses.</p>	<p>Changes the length of time from five to ten years for renewable licenses. Licensed individuals will now renew every ten years and will meet statutory requirements during the same timeline.</p> <p>Allows the Board of Education to extend a Provisional License under specific circumstances for up to two years. This allows licensees additional time to meet requirements to receive a renewable license.</p> <p>Allows an individual who holds a Provisional License may receive a Provisional License under specified conditions. The intent is to allow school division superintendents the flexibility to continue to employ a teacher who has satisfactory experience and has met all other licensure requirements except testing.</p> <p>Sets forth the requirements for the following license types:</p> <ul style="list-style-type: none"> • Career and Technical Education License • Career and Technical Education or Dual Enrollment License • One-Year High School License <p>The creation of the licenses expands school divisions' options in employing licensed instructional personnel.</p>
<p>8VAC20-23-90. Alternate Routes to Licensure.</p>		<p>8VAC20-23-90. Alternate Routes to Licensure.</p>	<p>States that licenses are five years, not ten years.</p>

<p>8VAC20-23-100. Conditions for Licensure for Out-of-State Candidates by Reciprocity.</p>		<p>8VAC20-23-100. Conditions for Licensure for Out-of-State Candidates by Reciprocity.</p>	<p>Allows for the following:</p> <ul style="list-style-type: none"> • Licensure by reciprocity is provided for any spouse of an active duty member of the Armed Forces of the United States or the Commonwealth who has obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education. Each such individual shall establish a file in the Department of Education by submitting a complete application packet, which shall include official student transcripts. No service requirements or licensing assessments shall be required for any such individual. • Licensure by reciprocity is provided for individuals who have obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education. Each such individual shall establish a file in the Department of Education by submitting a complete application packet, which shall include official student transcripts. No service requirements or licensing assessments shall be required for any such individual. • For licensure by reciprocity, applicants may submit third-party employment verification forms. • For licensure by reciprocity, the Board shall grant special consideration to individuals who have successfully completed a program offered by a provider that is accredited by the Council
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			<p>for the Accreditation of Educator Preparation.</p> <p>The text provides more flexibility for reciprocity.</p>
<p>8VAC20-23-110. Requirements for Renewing a License.</p>		<p>8VAC20-23-110. Requirements for Renewing a License.</p>	<p>Includes hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. The purpose is for licensees to have the knowledge and skills to perform CPR.</p> <p>Requires every person seeking initial licensure of a license with an endorsement as a school counselor shall complete training in the recognition of mental health disorder and behavioral distress, including depression, trauma, violence, youth suicide, and substance abuse. The purpose of this requirement is to help ensure that school counselors have obtained these skills and knowledge.</p>
<p>8VAC20-23-190. Professional Studies Requirements for Prek-12, Special Education, Secondary Grades 6-12, and Adult Education Endorsements.</p>		<p>8VAC20-23-190. Professional Studies Requirements for Prek-12, Special Education, Secondary Grades 6-12, and Adult Education Endorsements.</p>	<p>Clarifies the certification or training program shall (i) be based on the current national evidenced-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross and (ii) include hands-on practice of the skills necessary to perform cardiopulmonary resuscitation.</p>
<p>8VAC20-23-720. Revocation.</p>		<p>8VAC20-23-720. Revocation.</p>	<p>Revises text in the regulations in the Revocation section of the regulations to conform to the Code of Virginia.</p>

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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section number			

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