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To: The Honorable Daniel J. McKee, Governor
The Honorable K. Joseph Shekarchi, Speaker of the House
The Honorable Dominick J. Ruggerio, President of the Senate

From: Erik Godwin, Deputy Director, Office of Management and Budget

Subject: Office of Regulatory Reform Quarterly Report: FY 2024 Q3

FY 2024 Quarter 3 Report: January 1, 2024 – March 31, 2024

Quarterly Summary Data

Total Submissions by Type of Rulemaking

- Regular Rulemaking, Pre-Comment Review: 15
- Regular Rulemaking, Post-Comment Review: 16
- Direct Final Rulemaking: 3
- Emergency Rulemaking: 0

Unique Regulations by Type of Action

- Adoption: 5
- Amendment: 29
- Repeal: 0

ORR Review Time by Type of Rulemaking

- Regular Rulemaking, Pre-Comment Review: 10.4 days
- Regular Rulemaking, Post-Comment Review: 1.8 days
- Direct Final Rulemaking: 8.3 days
- Emergency Rulemaking: N/A – None this quarter

ORR Interventions

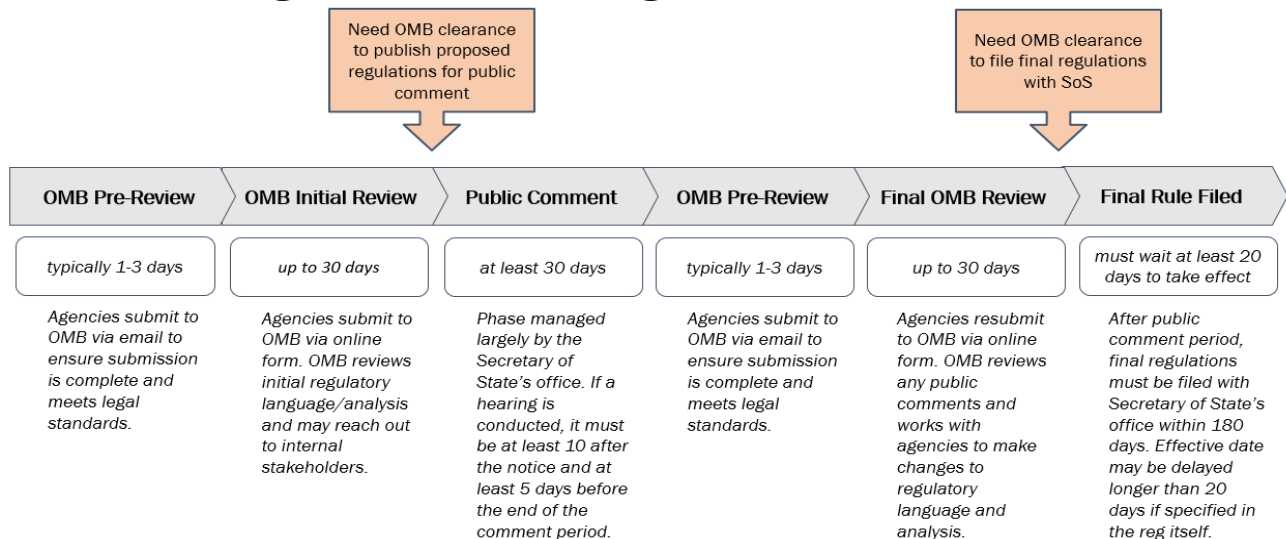
- Submissions where analysis was changed: 38.2%
- Submissions where regulatory language was changed: 35.3%

Regulatory Oversight

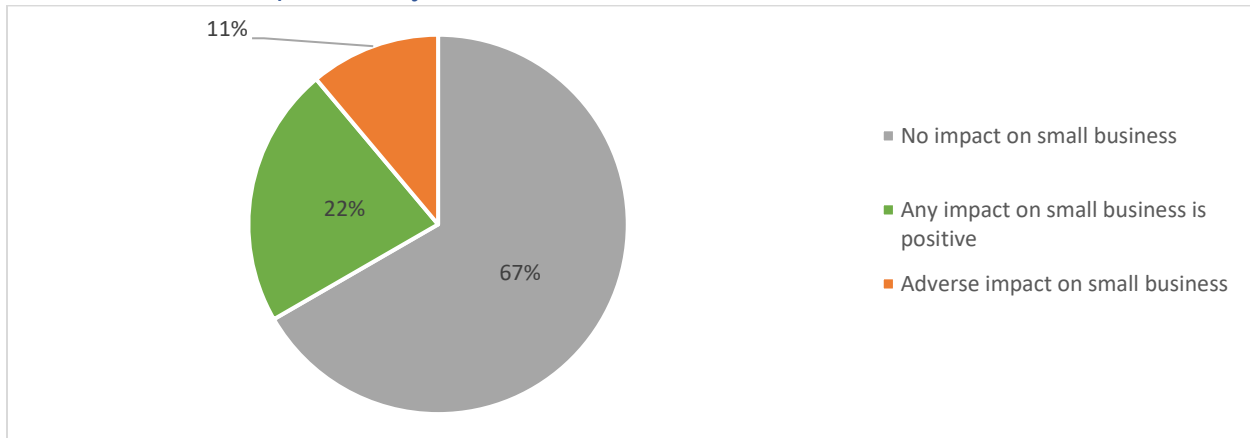
As part of the Office of Management and Budget, the Office of Regulatory Reform’s (ORR) mission is to review new and amended regulations with a focus on minimizing adverse impacts on Rhode Island businesses, large and small. Since February 2015, ORR has been operating under [Executive Order 15-07](#), which requires all executive branch regulations to undergo ORR review using a model similar to the federal regulatory model. EO 15-07 outlines a process to ensure regulations are not imposing unnecessary burdens on businesses and citizens.

Prior to EO 15-07, the Director of Regulatory Reform had the authority to intervene on any individual regulatory or permitting issue. With the process established by Executive Order, agencies must submit all proposed regulatory actions to ORR, providing a systematic way to address regulatory issues. ORR reviews an agency’s regulatory package and, if approved, those proposed rules and impact statements may proceed through a public comment process. Any input from that process goes directly back to ORR for final consideration. Below is an outline of the regulatory review process. While this is the official process outlined in EO 15-07, ORR frequently works with agencies early by reviewing draft regulations and assisting with the regulatory analysis.

Regular Rulemaking and ORR Review:



Small Business Impact Analysis



Note: Emergency and post-comment regulations are not included in this summary chart.

ORR collects data from agencies regarding the projected effect of regulatory amendments and rescissions on small businesses in Rhode Island. The chart above illustrates the estimated aggregate impact of such amendments.

Agencies consider a number of factors when evaluating a regulation's impact on small business entities. These include whether the regulation may assist small businesses through actions such as targeted deregulation, adversely impact small businesses relative to their larger counterparts, or result in the absence of discernable effects. Several considerations inform these determinations, including the amount of discretion an agency has to reduce adverse impacts, the universe and diversity of the small businesses affected by the regulation, and exogenous factors impacting the small business's economic sector. These factors include economic climate, firms' expectations of future economic conditions (which may or may not align with signals from the broader market), national or global events or supply shocks, or technological advancements that transform businesses' cost functions.

Regulatory Submissions Reviewed By ORR

The following regulatory submissions were cleared by ORR during the fiscal year quarter covered by this report. Regulations cleared by ORR are not immediately effective. Regulations must go through the formal rulemaking process administered by the Secretary of State's Office (SOS). In some cases, regulations cleared by ORR are not filed with SOS.

The information in this table (except "Days Under Review" and "Clearance Date") is self-reported by regulatory agencies with their submissions, although ORR can suggest changes to agencies' submissions. In this report, minor, non-substantive revisions of agencies' regulatory summaries have been made for some of the information presented below for the sake of grammatical correctness, clarity, and brevity.

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Preliminary Draft	Health	Practice of Electrolysis and Laser Hair Removal	Amendment	3	Includes laser hair removal in the regulations based upon statutory amendments (Pub. Law 19-129). The amendments being proposed are based upon a statutory amendment to R.I. Gen. Laws Chapter 5-32 ["Electrolysis and Laser Hair Removal"] which added § 21 ["Practice of laser hair removal"] and amended several other sections. This statute was proposed on 13 February 2019 and was enacted on 8 July 2019. The statute which guides the proposed amendments differentiates between electrologists licensed before and after July 1, 2019.	2024-01-05
Post-Comment Draft	Health	Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health	Amendment	0	The annual licensure fee for nursing service agencies is being increased from \$500.00 to \$1,000.00 in response to the enactment of Public Law 23-102. The amendment proposed is based on statute and therefore, RIDOH does not have discretion regarding the fee change.	2024-01-08
Post-Comment Draft	Environmental Management	Operation of Air Pollution Control Systems	Amendment	0	The DEM OAR is proposing to amend 250-RICR-120-05-16, in response to the EPA's final action, Findings of Failure to Submit (FFS) State Implementation Plan (SIP) Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 Fed. Reg. 1680 (January 12, 2022). The final FFS action went into effect on February 11, 2022, and gave DEM OAR 18 months from that date to submit an amendment to DEM OAR's SIP or face sanctions under Clean Air Act § 109.	2024-01-12
Preliminary Draft	Environmental Management	Part 7 - Dealers	Amendment	5	<ol style="list-style-type: none"> Jonah crab (proposed new section 7.17): Division proposal to require that dealers only accept whole Jonah crabs, consistent with harvester requirements (as found in Part 5 - Lobsters, Crabs, and Other Crustaceans section 5.11(C)(2)) that specify only whole Jonah Crab may be retained and sold, consistent with the Fishery Management Plan for Jonah Crab. Striped Bass tagging clarification (section 7.13(A)): Division proposal to clarify that striped bass shall be tagged immediately "at the location of sale". As currently written, the rule does not specify that tagging must take place no later than at the time and location of sale. Striped Bass reporting requirements (section 7.11(F)(2)): This rule was previously adopted (effective April 30, 2023) but was then inadvertently omitted in a subsequent filing (effective November 20, 2023). This proposal seeks to re-establish this omitted rule as previously adopted. 	2024-01-16

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Post-Comment Draft	Executive Office of Health and Human Services	Self-Directed Care	Amendment	1	EOHHS is amending this regulation to merge our two existing self-directed programs (Personal Choice and Independent Provider) into a single program, called Personal Choice. This amendment is pursuant to 2023-H-5991Aaa which requires EOHHS to merge its two self-directed programs into one and add the formal training/registry feature of the Independent Provider program to the Personal Choice program.	2024-01-17
Direct Final	Human Services	Child Care Assistance Program Rules and Regulations	Amendment	13	This amendment updates language regarding cooperation with Office of Child Support Services, allowing for continued eligibility during the 12-month certification period when there is non-cooperation with OCSS. This change meets the CCDF regulation that requires certification periods of no less than 12 months (45 C.F.R. §98.21, Eligibility Determination Processes). In addition, removing the FPL chart and adding a link streamlines the rule.	2024-01-23
Post-Comment Draft	Health	Licensing Doctors of Acupuncture and Doctors of Acupuncture and Chinese Medicine	Amendment	0	RIDOH proposes amending Licensing Doctors of Acupuncture and Oriental Medicine [216-RICR-40-05-8] to address legislative changes to the licensing process for Doctors of Acupuncture and Doctors of Acupuncture and Chinese Medicine.	2024-01-23
Preliminary Draft	Business Regulation	Rhode Island Industrial Hemp Program	Amendment	13	The amendments presented in this proposed regulation (“Regulation”) are largely motivated by changes to the federal rule that govern the states’ abilities to monitor and regulate hemp programs as administered through and by the Agricultural Marketing Service (“AMS”) of the United States Department of Agriculture (“USDA”). Apart from the proposed amendments related to requirements of the final version of 7 C.F.R. § 990 (“Final Rule”), the Department is clarifying the following general areas for the ease of the licensees and consumers: packaging, labelling, registry identification cards, outdoor sales’ variances, and inhalation products.	2024-01-24
Preliminary Draft	Administration	Rules and Regulations for Grant-Making Involving Federal Funds	Amendment	22	The proposed amendment to the Regulation addresses the following areas identified since the regulation was published in early 2023: 1) First-come, first-served subaward programs; 2) Clarification of the subaward decision remedy process and other technical corrections; 3) Changes to Annual Organization Registration requirements to make requirements less burdensome for subrecipients and to better support review by state agency personnel; and 4) Clarification of subrecipient insurance requirements and insurance waiver authority for subawards.	2024-01-31

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Post-Comment Draft	Environmental Management	Operating Permits	Amendment	0	On July 12, 2023 the Environmental Protection Agency (EPA) finalized the removal of the “emergency” affirmative defense provisions from the EPA’s Title V operating permit program regulations. These provisions allowed sources to avoid liability in enforcement proceedings by demonstrating that violations of certain emissions limitations in a Title V permit were caused by an “emergency” situation. The Title V affirmative defense provisions are inconsistent with EPA’s interpretation of the Clean Air Act’s enforcement structure, following the 2014 D.C. Circuits NRDC v. EPA (749 F.3d 1055) decision, and are considered a violation of the Clean Air Act. This decision published July 12, 2023, effective August 21, 2023, requires states to remove affirmative defense provisions from EPA-approved state operating permit programs by August 21, 2024.	2024-02-01
Preliminary Draft	Health	Masking in School	Adoption	0	The Rhode Island Department of Health is proposing to adopt Masking in School (216-RICR-30-05-4) for the purpose of publicly setting forth the rationale for a masking requirement in the event a future masking requirement is promulgated by the Rhode Island Department of Health for students in grades Kindergarten through twelve in Rhode Island.	2024-02-02
Preliminary Draft	Labor and Training	Workers' Compensation Rules Pursuant to 28-36-15 (Lack of Insurance)	Amendment	10	<p>The Rhode Island Department of Labor and Training (“Department”) is promulgating amendments to its regulations for Workers’ Compensation rules pertaining to lack of insurance under R.I. Gen. Laws § 28-36-15. This section of the state law covers the Department’s enforcement powers in matters where an employer fails to have workers’ compensation insurance. The Department is proposing these changes to bring the regulations into conformance with the law.</p> <p>In addition, the proposed revisions will also clarify in regulation that out of state employers with no Rhode Island employees can operate in Rhode Island for six (6) months with workers' compensation insurance issued by the employer’s home state that covers Rhode Island claims generally.</p>	2024-02-12
Preliminary Draft	Executive Office of Health and Human Services	Medicaid Integrated Health Care Coverage, SSI Financial Eligibility Determinations	Amendment	10	Effective 1/1/2024, the Medically Needy Standards by Family Size are increased in accordance with the yearly increase in CPI-U. Technical edits are also being made to fix errors and clarify the regulation.	2024-02-12

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Post-Comment Draft	Revenue	Limited Power of Attorney Form	Adoption	2	R.I. Gen. Laws § 31-3-3(c) as amended during the 2023 legislative session requires the Department of Revenue/Division of Motor Vehicles to publish rules and regulations in order to effectuate the publication and use of a limited power of attorney form for registration transactions.	2024-02-14
Post-Comment Draft	Design Professionals	Rules and Regulations for Professional Engineering	Amendment	3	The Board of Registration for Professional Engineers (“Board”) at the Department of Business Regulation is proposing some amendments to its Rules and Regulations for Professional Engineering to streamline procedures and remove redundant or unnecessary regulatory provisions. These changes also reflect 2021 amendments to the Professional Engineering Act which updated the licensing requirements and provided a pathway for engineering technology degree applicants.	2024-02-15
Post-Comment Draft	Health	Licensing of Nursing Facilities	Amendment	6	<p>The Rhode Island Department of Health is proposing amendments to remove incorporated references, update incorporated references to more recent versions, add definitions for “lessee”, “licensee”, “management company”, “operator”, and “owner”, and revise definitions of “advanced practice registered nurse”, “capacity”, “change in operator”, “change in owner”, “controlling person”, “equity” and “nursing facility.”</p> <p>The regulation also clarifies the relationships among owners and operators which arise as a result of the separation of operation from ownership, including that the owner of a nursing facility is the person that holds title to the real property; that a change in owner must be reviewed by the Department; that the operator of a nursing facility is the person that is responsible for the operation of the facility; that managers only assist operators of nursing facilities; that lessees can also be operators; and that nursing facility licenses are customarily held by the operator.</p> <p>Finally, the regulation also requires two employees certified in Basic Life Support (BLS) to be present in the nursing facility at all times.</p>	2024-02-15
Post-Comment Draft	Executive Office of Health and Human Services	Medicaid Managed Care Delivery Options	Amendment	0	On 5/18/23, Governor McKee signed the Equality in Abortion Coverage Act which directed EOHHS to cover abortions for Medicaid beneficiaries. Federal law restricts coverage of abortions to instances of rape, incest, or in order to preserve the life of the mother. The State will pay for coverage of all other abortions with state only dollars.	2024-02-16

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Post-Comment Draft	Executive Office of Health and Human Services	Overview of the Rhode Island Medicaid and Children's Health Insurance Programs	Amendment	0	On 5/18/23, Governor McKee signed the Equality in Abortion Coverage Act which directed EOHHS to cover abortions for Medicaid beneficiaries. Federal law restricts coverage of abortions to instances of rape, incest, or in order to preserve the life of the mother. The State will pay for coverage of all other abortions with state only dollars.	2024-02-16
Post-Comment Draft	Executive Office of Health and Human Services	Medicaid Payments and Providers	Amendment	6	To comply with state risk screening requirements, fingerprinting requirements, and federal regulations governing the enrollment, screening and termination of Medicaid providers pursuant to 42 CFR § 455.	2024-02-22
Post-Comment Draft	Health	Practice of Electrolysis and Laser Hair Removal	Amendment	1	Includes laser hair removal in the regulations based upon statutory amendments (Pub. Law 19-129). The amendments being proposed are based upon a statutory amendment to R.I. Gen. Laws Chapter 5-32 ["Electrolysis and Laser Hair Removal"] which added § 21 ["Practice of laser hair removal"] and amended several other sections. This statute was proposed on 13 February 2019 and was enacted on 8 July 2019. The statute which guides the proposed amendments differentiates between electrologists licensed before and after July 1, 2019.	2024-02-23
Preliminary Draft	Public Utilities Commission	Implementation of a Renewable Energy Standard	Amendment	9	The rules are amended to reflect the changes enacted on June 27, 2022 (2022 P.L. Ch. 218)	2024-02-23
Post-Comment Draft	Health	Licensing Assisted Living Residences	Amendment	0	Includes the provisions of Public Law 23-353 related to an informal dispute resolution process in assisted living residences (ALRs). Additional amendments are proposed related to variances.	2024-02-26
Post-Comment Draft	Health	Massage Therapists	Amendment	5	RIDOH received two identical comments which noted a conflict between the proposed language and the definition of 'massage therapy' as defined in statute. RIDOH opted to revert the language in section 10.4(B) back to 'massage' as opposed to 'massage therapy' to address this conflict.	2024-02-27
Direct Final	Business Regulation	PART 3 - Motor Vehicle Damage Appraisers	Amendment	6	Amended to include 2023 legislative changes.	2024-02-29
Direct Final	Business Regulation	PART 2 - Unfair Property/ Casualty Claims Settlement Practices	Amendment	6	Amended to include 2023 legislative changes.	2024-02-29

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Post-Comment Draft	Education - Council of Elem and Sec Ed	Regulations Governing the Intervention and Support for Failing Schools	Adoption	4	Promulgated pursuant to R.I. Gen Laws § 16-7.1-5.1.	2024-03-05
Preliminary Draft	Health	Public Drinking Water	Amendment	18	<p>In accordance with R.I. Gen. Laws § 42-35-2.5 and the PFAS in Drinking Water, Groundwater, and Surface Waters Act, R.I. Gen. Laws § 46-32-1 et seq. (PFAS Act), as amended in June 2023, RIDOH proposes amendments to the rules and regulations for Public Drinking Water (216-RICR-50-05-1) for the regulation of per and polyfluoroalkyl substances (PFAS) in drinking water.</p> <p>The PFAS Act contemplates the filing of two different rules: (1) A rule regarding adoption of the interim drinking water standard of 20 parts per trillion (ppt) as an MCL (a final version of which must be filed by June 1, 2024), and (2) A rule regarding the regulation of PFAS as a class or subclass (initial public review for which must begin by February 1, 2024 and a final rule which must be published by June 30, 2025).</p> <p>RIDOH is proposing to file one rule that satisfies both of those requirements. Specifically, CDWQ is proposing to establish a final MCL of 20 ppt for the total of the 6 PFAS contaminants identified in the PFAS Act: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and perfluoroheptanoic acid (PFHpA), and perfluorodecanoic acid (PFDA). RIDOH believes that regulating these 6 PFAS constitutes regulating PFAS as a class/subclass based on the data and information RIDOH has collected from water systems in the State to date and the analysis it developed a few years ago to support draft regulations that were never published.</p> <p>RIDOH's data indicate that those 6 PFAS are the only PFAS detected in Rhode Island drinking water at levels that are expected to significantly impact human health. RIDOH believes that regulating the 6 PFAS named in the statute is the best approach to reduce human health risks from PFAS. RIDOH chose an approach to regulating PFAS that extends the interim drinking water standard for PFAS of 20 ppt established in PFAS Act because public water systems have had to work to come into compliance with the interim standard and it does not make sense to make them meet a new set of rules at this time. EPA is expected to publish a final rule for PFAS by the end of 2023 or early 2024, which RIDOH will need to adopt within three years after publication.</p>	2024-03-12

Review Stage	Agency	Regulation Title	Rulemaking Action	Days Under Review	Reason for Regulatory Action	Clearance Date
Preliminary Draft	Housing	Rules and Regulations for the Low-Income Housing Tax Credit Program	Adoption	24	Permitted under R.I. Gen. Laws § 44-71-9.	2024-03-15
Preliminary Draft	Environmental Management	Conservation Management Areas	Amendment	5	Makes technical corrections and changes the Bowditch Boat Ramp horsepower restrictions to allow landowners to use high horsepower boats on the pond during the off-season.	2024-03-20
Preliminary Draft	Coastal Resources Management Council	Management Procedures	Amendment	9	<p>The proposed regulation amendment to Section 1.1.4.6(A)(10) (Beach Vehicle Permits) was initiated due to conversations between Staff and municipal police departments. During the impromptu discussion, local police departments inquired about CRMC's 3-day beach vehicle pass program as there have been a disproportionate number of instances for 3-day beach vehicle pass holders as opposed to annual beach vehicle pass holders.</p> <p>After reviewing our beach vehicle permit history over the past 3 years, Staff estimates that CRMC issues approximately 2,000 annual beach passes per year and less than fifty (50) 3-day beach passes per year. Due to the limited participation in the 3-day beach vehicle pass program and the ability for 3-day users to still apply for an annual beach vehicle pass, CRMC has initiated the proposed rulemaking.</p> <p>The proposed regulation amendment to Section 1.5.12 (Permit Extensions) proposes to eliminate the fourth extension request, which is required to be heard before the Council, but retain the three administrative extension requests, each at one-year maximum. This proposed revision would allow for a more efficient and timely processing of such requests. Additionally, the requirement that all extension requests must demonstrate "good cause" will remain as is.</p>	2024-03-21
Post-Comment Draft	Administration	Rules and Regulations for Grant-Making Involving Federal Funds	Amendment	0	<p>The proposed amendment to the Regulation addresses the following areas identified since the regulation was published in early 2023:</p> <ol style="list-style-type: none"> 1) First-come, first-served subaward programs; 2) Clarification of the subaward decision remedy process and other technical corrections; 3) Changes to Annual Organization Registration requirements to make requirements less burdensome for subrecipients and to better support review by state agency personnel; and 4) Clarification of subrecipient insurance requirements and insurance waiver authority for subawards. 	2024-03-22