

February 2020

A New Regulatory System for Rhode Island

Regulatory Reform Enabled by the Administrative Procedures Act

Office of Regulatory Reform
Office of Management and Budget



Letter from the Director

In 2016, the Administration worked closely with the General Assembly and the Office of the Secretary of State to pass historic legislation that would completely transform our regulatory system. This law authorized the Office of Regulatory Reform (ORR) to work with our partners to improve access and transparency in regulation and remove unnecessary regulatory barriers for Rhode Island businesses in one of the State's single-greatest efforts to cut red tape.

As a result, Executive Branch agencies – with the help of ORR – were able to reduce the entire Executive Branch's regulatory volume by one-third. To put that into perspective, there were 25,842 pages of active Executive Branch agency regulations at the beginning of this effort. The Governor charged ORR with reducing the state's regulatory volume by at least 15 percent by January 2019. ORR and the agencies went above and beyond to ensure that the foundation of our regulatory landscape was fair, transparent and clear of overly burdensome regulations.

Prior to this effort, one in three businesses stated they needed to hire an outside consultant to navigate and comply with state regulations. Even if those businesses could find the correct regulations, they were often hard to read, out of date or not in line with current practice. Between the design and construction of a user-friendly, online code of regulations and the overhaul of Executive Branch regulations, I'm confident that we have made a significant difference in the way we do business. The long-term benefits of this effort will particularly help small businesses who struggled with our system.

The Administration's collective efforts around regulatory reform – including this key initiative – have engaged the business community across the state at an unprecedented level. I want to thank them for actively participating and bringing valuable insight into this process. With the right tools now in place, we can take another giant leap forward toward improving the economy and making it easier to do business in Rhode Island.



Erik Godwin
Director, Office of Regulatory Reform

Executive Summary

From July 2016 to December 2018, Rhode Island undertook a comprehensive review and codification of all executive branch regulations. This effort was a result of comprehensive rewrite of the Administrative Procedures Act. The rewrite required all regulations to be reviewed and codified into a uniform statewide code by January 1, 2019. Any regulations not codified would lose the force of law.

Rhode Island was one of a handful of states that did not have an online, searchable regulatory code. Businesses frequently stated that the lack of transparency and consistency in Rhode Island's regulations created impediments to growth and investment. While previous efforts had reviewed parts of the state's regulatory code, this was the first system-wide review with an accompanying statutory sunset date.

The effort was led by the Office of Regulatory Reform (ORR) in partnership with the Secretary of State's office. The Secretary of State's office was primarily responsible for the development of an easily searchable online code of regulations. ORR worked closely with agencies to review all regulations by the deadline. Our review was focused on the following areas:

- Removing outdated and onerous requirements;
- Increasing transparency and clarity of regulations;
- Leveraging national best practices; and
- Aligning statute, regulation, and implementation.

Agencies revised or reformed 77% of their regulations, tackling issues ranging from onerous notary requirements to restructuring underground storage tank requirements. Overall, Executive Branch agencies reduced regulatory volume by one third, removing 8,149 out of 25,842 pages of regulation and reducing the number of regulations from 1,387 to 932.

Complementing this effort is the Governor's Executive Order 15-07: Improving Rhode Island's Regulatory Climate to Create Opportunity. Moving forward, this Executive Order will prevent the accumulation of unnecessarily burdensome regulations and ensure a clear, predictable, and reliable regulatory system.

The Administrative Procedures Act

Before 2019, Rhode Island was one of only a few states without a code of state regulations. The absence of a code made it challenging for businesses and individuals to find and understand which regulations apply to them. According to past surveys conducted by the Office of Regulatory Reform (ORR), one in three businesses stated they hired an outside consultant to comply with state regulations. Even after locating the right documents, regulations were often hard to read or out of date.

Recognizing the burden that an outdated and disorganized regulatory scheme created for Rhode Island, the General Assembly and Governor Gina Raimondo passed a comprehensive update to the Administrative Procedures Act (APA) on June 29, 2016. This revised chapter of law*, which governs how regulations are adopted, revised, or repealed, required that every regulation be codified into a statewide, uniform code and adopted through the rulemaking process before January 1, 2019. Regulations had to either be re-noticed and finalized or submitted as a technical amendment in the new code format (meaning no substantive changes could be made).

Overhauling a State's Regulatory Scheme

The Administrative Procedures Act was first adopted in the 1950s. Since its creation, it has only been significantly overhauled twice: once in the 1980s and then again in 2016. The 2016 amendments were based on the 2010 Revised Model State Administrative Procedure Act drafted by the Uniform Law Commission.

The revision to the APA provided Rhode Island the opportunity to significantly overhaul its regulatory processes, structure, and requirements to align one of the state's most impactful systems with modern-day markets, societal needs, and technology.

Improving Transparency and Public Engagement

The amendments added the following sections of law, creating more avenues for the public to be informed and interact with agencies regarding regulatory actions:

* This chapter also governs declaratory orders and contested cases. The amendments to the APA in 2016 did not expand into these sections of law.

Regulatory analysis (42-35-2.9)	Agencies must prepare an analysis examining the impact of the proposed rule against a set of reasonable alternatives.
Direct final rulemaking (42-35-2.11)	For noncontroversial proposed rules, agencies may promulgate on an expedited timeline.
Guidance documents (42-35-2.12)	Clearer delineation between rules and guidance documents has been established, with increased public oversight.
Variance between proposed and final rule (42-35-6.1)	Agencies may only file rules that are consistent with and a logical outgrowth of the rule proposed in the notice.

The New Code

Before the law passed, regulations were published in a centralized location, but did not have to be uniform in structure. Businesses and individuals frequently cited the user interface to access regulations was difficult to navigate, and regulations were not always searchable.



The updated APA required that all regulations be uniformly formatted, searchable, and sequentially indexed in a Rhode Island Code of Regulation (RICR). Each agency now has its own table of contents with interactive features, allowing for users to conveniently search for regulations and provisions with just a click of a button.

Principles of Regulatory Reform

ORR was tasked with organizing the APA effort. Before a regulation could become part of the new RICR, it had to be submitted for ORR review by way of the EO 15-07 and R.I. General Laws 42-35-5, which authorized ORR to establish the schedule of regulatory actions.

During review, ORR worked with agencies to not only review the structure and codification of regulations, but also evaluate the regulatory requirements and recommend changes as necessary. The major reforms fell into four primary categories:

Removing outdated and onerous requirements	Increasing transparency and clarity of requirements	Leveraging national best practices	Aligning statute, regulation, and implementation
<ul style="list-style-type: none">• Reduces compliance burden on businesses• Prevents businesses from having to wade through defunct requirements	<ul style="list-style-type: none">• Ensures that all requirements being enforced are clearly defined and codified• Removes non-regulatory language from the code	<ul style="list-style-type: none">• Allows the state to leverage the latest science, technology, standards, and processes• Aids businesses who are located in multiple states	<ul style="list-style-type: none">• Ensures that agency regulations reflect current state and federal statutes• Harmonizes implementation with legal requirements

Getting Started

For the update to be a success, all 1,387 regulations on the books as of July 2016 had to be either re-promulgated as a part of the new Rhode Island Code of Regulations or repealed by January 1, 2019. In addition to reviewing every regulation before it could be noticed or finalized with the Secretary of State's office (SOS) for promulgation, ORR increased agencies' regulatory rulemaking capacity during the project through the following means:

- Each ORR analyst met with their agencies' rules coordinator and other staff to develop work plans for the submission of regulations to ORR and the Secretary of State's office.
- Analysts often were asked to advise agencies on how to comply with the new requirements in the APA, including the use of cost-benefit analysis as a part of the rulemaking process.
- ORR trained over 100 agency staff on drafting clear regulations and evaluating the impact of existing regulations.

ORR also worked closely with SOS to help develop the structure of the new Rhode Island Code of Regulations (RICR).

Reform Results

At the beginning of the APA effort, there were 1,387 active Executive Branch agency regulations totaling 25,842 pages. Governor Raimondo required a 15% reduction in the state's regulatory volume, removing regulatory red tape statewide.

How effective was the APA effort?

Number of regulations reduced by 32.8%
455 fewer regulations than in 2016

8,149 pages of regulation removed
31.5% of the previous regulatory portfolio

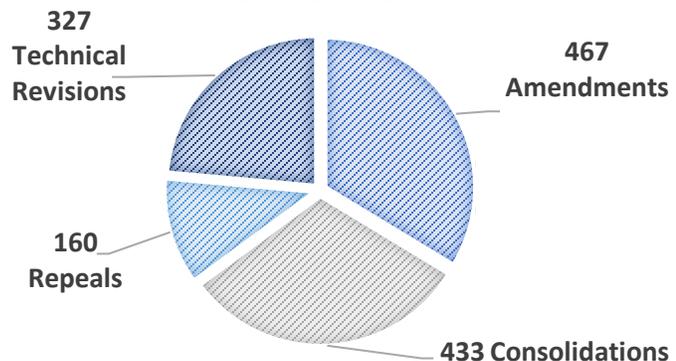
Through the APA effort, the executive branch agencies removed almost one third of the regulatory volume in the state:

- Agencies reduced the original number of regulations from 1,387 to 932 (a 32.8% reduction[†]) in the state's regulations through repeals and consolidation of similar regulations.
- 8,149 out of 25,842 pages of regulation (31.5%) on the books on July 1, 2016 were removed.

Agencies revised or reformed 77% or 1,060 of the 1,387 executive branch regulations:

- 160 regulations were repealed.
- 433 regulations were consolidated into 134.
- 467 regulations were amended.
- Only 327 regulations were codified as is and uploaded as a technical amendment (23%).

APA REGULATORY ACTIONS



All revised regulations are available in the new Rhode Island Code of Regulations on the RI Secretary of State's website: <http://sos.ri.gov/divisions/open-government/state/rules-andregulations>.

[†] Does not include any new regulations prompted by the APA or any new regulations adopted during the time that the APA effort was underway.

Notable Examples of Regulatory Reform

Clarity in Requirements: Making Regulations More Transparent

Department of Health Removes over 600 Pages of Non-Regulatory Information from WIC Regulation

- Pursuant to the United States Department of Agriculture, each year the Rhode Island Department of Health must submit a comprehensive state plan identifying how the state will implement the WIC program (the Special Supplemental Nutrition Program for Women, Infants, and Children). During its review, ORR noted that the WIC regulation was an outdated state plan from 2011 totaling 672 pages, the majority of which did not reflect requirements imposed on the individuals or vendors and businesses participating in the program. Working with ORR, the Department of Health identified which aspects of the State Plan were regulatory and created a new, updated regulation. The regulation, which is now only 29 pages, was significantly streamlined to include only regulatory content and restructured to be read easily alongside the current State Plan.

Reducing Unnecessary Burden

Streamlining and Simplifying: Taxation Consolidates Dozens of Regulations

- Because tax laws and regulations impact every person and business in Rhode Island, it is imperative that these rules are clear and easily accessible. Recognizing that not every Rhode Islander should need an accountant or lawyer comb through rules, the Division of Taxation took advantage of the codification process to organize and streamline its regulations. For example, sixteen motor vehicle tax regulations – which apply to every person buying or selling a car in the state – were consolidated into one regulation. The result is a clearer and more readable code of regulations that saves time for citizens and businesses.

Leveraging National Best Practices

The Business of Child Care

- In 2014, the Department of Children, Youth, and Families proposed a host of facilities requirements that were expensive and burdensome to currently-operating childcare providers. Providers were frustrated, noting a lack of communication and consideration from the Department. The APA effort gave DCYF and ORR the opportunity to streamline the regulations surrounding child care centers. By combining two separate regulations, the standards became clearer and more predictable and reliable for a significant number of child care small businesses in Rhode Island. The new rules aligned with national standards and balanced the health and safety of children with flexibility for the centers to operate effectively.
- *“These regulations reflect our efforts to improve the quality of care for the children we serve, while ensuring our businesses can grow in future years.”* – Nancy Beye, President of BOCA and Patricia Carbone, Executive Board member of RICODA in a letter to DCYF during the public comment period.
- *“The new regulations are clear and concise. The updates made are positive and focus on the health, safety, and well-being of all children in these programs.”* – Office of the Child Advocate, letter dated July 24, 2017.

Aligning Regulation with Legislative and Federal Requirements

Creating Professional Opportunities by Taking a Second Look

- Over time, as statutes are amended, regulations can become misaligned with its accompanying legal requirements. Reflecting one of the cornerstone reforms of the APA, a review of the Department of Health’s Mental Health Counselors and Marriage and Family Therapists licensing regulation showed that the Department and its Board had been misinterpreting the statute. The misinterpretation manifested itself in the form of additional internship hours required above the statute and national standards. ORR worked with the Department to clarify the internship credit hours required, resulting in a regulatory structure that supported the nationally accredited programs and the curriculums available at universities in the state for this professional field.
- *“NBCC applauds the RI Department of Health for its new rules for Clinical Mental Health Counselors. The proposal to recognize a CACREP degree for licensure and portability aligns RI with other state counselor laws. It will ensure graduates can work in federal programs, receive government funding, and move across state lines.”* – David M. Bergman, VP of Legal and External Affairs, National Board for Certified Counselors, public comment dated July 27, 2017

Continuing Efforts

Executive Order 15-07

Since first taking office, Governor Gina Raimondo has actively prioritized cutting red tape by creating mechanisms for regulatory change in her administration. Within two months of her inauguration, Governor Raimondo established Executive Order 15-07: Improving Rhode Island's Regulatory Climate to Create Opportunity.

Under its charge, executive branch agencies, boards, and commissions are required to submit their regulatory actions for review by ORR. ORR's review process, which is modeled after its counterpart at the federal level, is aimed at ensuring future regulatory actions do not impose undue burden or create unintended consequences for businesses and citizens throughout the state.

The effect of the Executive Order is both substantive and critical to maintaining a correctly functioning regulatory process into the future. Because EO 15-07 preceded the new APA process by sixteen months, ORR was able to isolate the impact of the Executive Order separately from the results of the APA rewrite. Relative to the regulatory environment over the ten years preceding the current administration, the Executive Order process generated:

- 199% increase in regulatory repeals/consolidations
- 43% decrease in regulatory actions (regulatory adoptions and amendments)
- 61% decrease in emergency regulatory actions

These reductions occurred even as the agencies continued to meet their statutory obligations.

Because EO 15-07 is in place, ORR continues have oversight over the Executive Branch regulatory process despite the completion of the APA project. EO 15-07 will help protect the gains made during the APA reforms and ensure that Rhode Island's regulatory code continues to be clear, predictable, and reliable.

How to Stay Involved

The launch of the new database on the Secretary of State's website enables stakeholders to be more engaged in rulemaking than ever before. Here are some ways in which businesses and the public can more easily involve themselves in the rulemaking process:

Previously, interested parties were only able to sign up to receive notifications on rulemakings at an agency level. While that functionality is still available, it is now possible to sign up to receive notifications about any individual rule.

Additionally, access to rulemaking documents, such as the public notice of proposed rulemaking, concise explanatory statement, public comments and other materials, are

conveniently located in the same place as the regulation. It is also possible to follow a regulation's history in the "History" tab.

Visit the Secretary of State's website for more information and check out this recent Rhode Island Bar Journal Article for how the APA effort changed the legal landscape in the state.

SOS: <http://sos.ri.gov/divisions/open-government/state/rules-and-regulations>

RI Bar Journal, Page 5:

https://www.ribar.com/UserFiles/File/CMSUploadFiles/RI_Bar_Jan-Feb2019.pdf

If you are a small business or individual, ORR's website provides the ability to comment on regulatory requirements affecting you, either positively or negatively. Visit the Business Suggestion Box on our homepage to submit your feedback.

Acknowledgements

ORR would like to extend its thanks to the General Assembly and sponsors Senator Conley and Representative Shekarchi for making enabling Rhode Island to bring its regulatory landscape into the twenty-first century.

The Secretary of State, Nellie Gorbea, and her staff were instrumental to ORR and the agencies, in delivering an on-time and award-winning code of regulations. In particular, Kristen Cordiero and Kate Telford provided countless hours of support and fostered collaboration across all lines of government.

Lastly, the success of this project would not have been possible without the hundreds of dedicated state employees and rules coordinators throughout the executive branch agencies. We thank you for bringing your programmatic expertise and experiences to the table and for continuing to strive to make Rhode Island work better for its citizens.