

ORR Annual Report: FY 2020 and FY 2021

July 1, 2019 to June 30, 2021

INTRODUCTION

As a part of the Office of Management and Budget (OMB), 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. During fiscal years 2020 and 2021 ORR maintained this mission while overseeing the State's regulatory response to the COVID-19 pandemic. This oversight, along with other work ORR performed to support the State's overall pandemic response, is described on pages two through four of this report.

[Executive Order \(EO\) 15-07](#) requires ORR to review all Executive Branch regulations using a model similar to the federal regulatory model. Signed in February 2015, EO 15-07 outlines a process to ensure regulations are not imposing unnecessary burdens on individuals and businesses. ORR is responsible for the review and approval of all proposed regulatory actions by agencies under the Governor's purview.

For all regulatory actions proposed by these agencies, ORR reviews and approves those regulation drafts at two points: 1) before the regulation is posted for public comment, and 2) after public comments are received and before the agency publishes the final rule. This review ensures that regulatory actions align with the Governor's priorities, and all internal stakeholders receive notice of the proposed regulation. It also ensures that agencies have completed the legally required cost-benefit, municipal, and small business impact analyses, to ensure the benefits justify the costs. Additionally, ORR frequently works with agencies early by reviewing draft regulations and assisting with the development of regulatory analyses.

In today's complex regulatory environment, it is more important than ever to have up-to-date, transparent regulations based on rigorous analyses to balance health, safety, welfare, and the environment with the need to minimize regulatory burdens on Rhode Island businesses and individuals. The EO 15-07 process has significant value across the regulatory landscape, particularly for the business community. During the review, regulatory submissions are frequently revised to improve either language or the accompanying analyses. The bulk of those changes specifically address ways to reduce the burden on regulated entities, such as small businesses and specific sectors of the economy.

In Fiscal Year 2020, ORR reviewed and cleared 259 total agency submissions of new or amended regulations, averaging approximately 22 per month. For initial regulatory submissions (excluding repeals), ORR revised the regulatory text or analyses of 9.6% of the submissions during the EO 15-07 review.

In Fiscal Year 2021, ORR reviewed and cleared 444 total agency submissions of new or amended regulations, averaging approximately 37 per month. For initial regulatory submissions (excluding repeals), ORR revised the regulatory text or analyses of 3.5% of the submissions during the EO 15-07 review. The high volume of pandemic-related emergency regulations (including multiple renewals of those regulations) explains the increase in submissions and the lower rate of ORR revisions.

COVID-19 EMERGENCY REGULATIONS

The Governor declared a state of emergency on March 9, 2020 due to the COVID-19 pandemic. ORR received its first pandemic-related regulation on March 6, 2020 from the Department of Labor and Training related to unemployment insurance. From March 2020 through the end of Fiscal Year 2021, ORR reviewed 311 COVID-related rulemaking actions. Of these actions, 64 were unique regulations, 63 were amendments to existing emergency rules, and 184 were extensions of existing emergency rules. The emergency regulations reviewed were from 11 unique agencies, boards, or commissions.

ORR's oversight of COVID-19 emergency regulations fell into five main areas: drafting and distributing regulatory guidance to agencies, assisting agencies with emergency regulations on a case-by-case basis, tracking emergency regulations through the process, ensuring the relevant agencies across state government (including the Governor's Office) were consulted about pending regulatory actions, and ensuring appropriate fiscal analysis for regulations with impacts on the state budget.

Guidance Memos

ORR received numerous requests from agency personnel during the early days of the pandemic for guidance about how to implement pandemic-related policies. ORR responded on March 20, 2020 with a memo outlining the options available to agencies taking regulatory actions related to COVID-19. The memo explained how agencies could use their director's own powers, the Governor's emergency powers, or the existing emergency regulation process. The memo outlined a streamlined review process that allowed agencies to simultaneously send draft pandemic-related emergency regulations to ORR and the Governor's Office for review. The memo also instructed agencies how to tie the effective dates of their emergency regulations with the Governor's state of emergency. Finally, the memo provided sample language for agencies that needed to notify the public about the postponement of administrative hearings.

Rulemaking Assistance

Given the unprecedented level of emergency rulemaking during the pandemic, ORR assisted agencies in drafting and promulgating emergency regulations. ORR helped agencies identify other internal stakeholders in state government whose operations would be affected by proposed regulations, mediated the interagency interactions, and helped identify areas of unintended consequences or implementation challenges and identify solutions. For example, ORR's involvement in frequently evolving regulations that set standards for the safe reopening of work and business spaces helped identify implementation challenges for state facilities and solutions before the regulations were promulgated.

The pandemic necessitated not only the adoption of emergency regulations but also the continued amendment of those same regulations. ORR worked with the Secretary of State's (SOS) office to ensure that the effective dates of those regulations remained consistent and transparent even as those regulations underwent numerous changes.

Tracking

ORR was responsible for tracking all COVID-related emergency regulations, which included pulling data from the ORR review system and the SOS regulations website. ORR sent this data daily during the pandemic to the Governor's Office, agency leadership, and other COVID response personnel. Because emergency regulations are term limited, ORR played an important role in reminding agencies about upcoming termination dates for their regulations and assisted agencies in extending emergency regulations when needed.

Interagency Review

Interagency review is the process by which ORR sends draft regulations to stakeholders inside the Executive Branch. While pandemic-related regulations frequently touched the jurisdiction of multiple agencies, the expedited nature of COVID-19 emergency regulations required ORR to truncate interagency review. ORR was able to use years of regulatory review experience to conduct targeted reviews with the most relevant groups inside state government.

Fiscal Analysis

COVID-19 regulations frequently impacted state expenditures. Examples of regulations that required this level of fiscal oversight were largely in the health and human services space and were related to ensuring continuity of benefits and customer service to participants in state and federally funded support programs (such as Medicaid, Rhode Island Works, and the Child Care Assistance Program). The pandemic required the closing of physical offices and the shifting of many services from in-person to phone or online-based platforms. It also required waivers of some verification requirements and flexibility of employment participation requirements where federally authorized. Particularly early in the pandemic, when these flexibilities had not been factored into the most recent caseload estimates and budget projections, the impacts of those regulations needed to be analyzed and authorized by the appropriate budgetary authority.

EXECUTIVE ORDER 20-72

Early in the pandemic, ORR identified a potential issue with Rhode Island's COVID-19 emergency regulations: those regulations were time limited to six months even though the pandemic would likely continue for well over a year. For example, the first emergency regulation was officially promulgated on March 12, 2020, which meant that under the State's Administrative Procedures Act (APA) it was due to expire on September 12, 2020.

Typically, agencies must choose either to adopt an emergency regulation through a regular rulemaking process or allow the regulation to expire. However, the evolving nature of the pandemic combined with the fast-moving policy responses made it infeasible for agencies to adopt their COVID-19 regulations through a normal process. Regular rulemaking requires a 30-day public comment period, among other steps. By the time those 30 days passed, many agencies would have already issued multiple adjustments to the initial regulation. Under the status quo, agencies would have been forced to issue another superseding emergency regulation as soon as the (now outdated) regular rulemaking took effect.

ORR worked with the Governor's Office to draft a new executive order to address this issue. Under the APA agencies can adopt an emergency regulation for 120 days with a one-time 60-day extension. [Executive Order 20-72](#) was issued on September 2, 2020 under the Governor's power to waive sections of law during a state of emergency. The executive order waived the provision of state law which permitted only one 60-day extension. Agencies were then able to extend COVID-19 emergency regulations as many times as needed.

ORR put in place several controls over these long-term COVID-19 emergency regulations. The executive order specified that only regulations related to the COVID-19 emergency qualified for multiple renewals. A September 3, 2020 memo issued by ORR further clarified that agencies should only utilize the pathway established by EO 20-72 if their COVID-19 regulations continued to meet the statutory definition of "imminent peril" established in the APA for all emergency regulations, and if those regulations were intended to be temporary in nature (and were thus not suitable for regular, permanent rulemaking).

ORR also established procedural controls related to EO 20-72. Agencies were still required to submit every renewal to ORR for review and approval. ORR worked with the SOS to create a form that agency heads needed to sign to request another 60-day extension. ORR also worked with SOS to create a weekly email sent to all subscribers of the SOS's regulatory notice system, alerting them of these emergency regulation extensions. This measure ensured public transparency even as EO 20-72 modified the standard emergency rulemaking process.

COVID-19 SPECIAL PROJECTS

FEMA Reimbursement

Beginning in August 2020 through the end of Fiscal Year 2021, ORR took lead with the Office of Internal Audit in redesigning the process by which agencies submit requests to the Federal Emergency Management Agency (FEMA) for reimbursement of eligible COVID-19 costs. The team worked closely with several agencies, including the Department of Health (RIDOH), the Department of Administration, the Executive Office of Health and Human Services, and the National Guard, to ensure that their projects were submitted to FEMA in a timely manner. Prior to OMB's intervention, \$1.8 million of the eligible agency reimbursement claims had been formally submitted to FEMA. By the end of Fiscal Year 2021, the four agencies supported by ORR submitted \$95.0 million to FEMA for reimbursement.

COVID-19 Response Support

ORR also provided operational and analytical support to state government during the pandemic. This included loaning a staff member for several months at the beginning of FY 2021 who played a key role in the state's COVID-19-focused workstreams. This person served as project manager with RIDOH assisting the testing, case investigation, contact tracing, and tech enablement response teams.