



ORR REGULATORY REVIEW SUBMISSION GUIDANCE

Agency instructions for online submission to satisfy
requirements of Executive Order 15-07 and
RIGL § 42-35.1 (Small Business Regulatory Fairness in
Administrative Procedures, including Regulatory Flexibility)

Rhode Island Office of Regulatory Reform
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Overview of ORR Regulatory Review Process

ORR Preliminary Draft Review

In this stage, executive branch agencies submit proposed regulations and related data and other documents for ORR review under both Executive Order 15-07 (“Improving Rhode Island’s Regulatory Climate to Create Opportunity”), and RIGL § 42-35.1 (Small Business Regulatory Fairness in Administrative Procedures, including Regulatory Flexibility Analysis). ORR must clear these submissions before agencies may publish proposed regulations with the Secretary of State (SOS). Steps:

- 1) Consult your ORR analyst with questions about the level of benefit-cost analysis required, or about the “Analyzing Regulatory Benefits and Costs” guidance to preparing required analyses.
- 2) Use the Optional Agency Worksheet to gather data and draft responses (especially helpful if data is coming from multiple staff).
- 3) Prepare the final draft of proposed regulations.
- 4) When finalized, follow Item-by-Item Instructions below to submit required responses and documents.
 - The system emails you a complete copy of your submission, including links to PDFs.
- 5) Respond quickly to any ORR queries or requests for more or different data or analysis.
 - If you and your ORR analyst agree that data or document changes are needed, the analyst will update the Submission System.
 - ORR may reach out to other agencies that overlap your regulation or proposed change (including, but not limited to, those you identify in your submission).
- 6) Your ORR analyst will email you when the regulation is cleared. Alternatively:
 - Email your ORR analyst if you choose to withdraw the regulation (to postpone or cancel the intended action).
 - If agreement cannot be reached to clear or withdraw the regulation, ORR may email and publish a Return Letter, fully explaining why ORR cannot clear the regulation.
- 7) Follow guidance from the SOS to electronically publish your regulation.
- 8) After the SOS RulesTracker notifies ORR that the regulation is published with SOS, your entire submission will be posted on ORR’s website, including benefit-cost analyses and other PDFs.

Public Comment

EO 15-07 does not change any requirements of the 30-day public comment process. However, note that based upon conversations with ORR during the Preliminary Draft Review, you may wish to consult ORR while reviewing comments and revising regulations as needed.

Analysis must also be updated to reflect changes during or after public comment. Note that certain changes may require an additional period of public comment, which will then require an additional ORR Preliminary Draft Review for clearance to “re-notice” the action. It is up to agency counsel to determine if particular changes may require additional public comment.

ORR Post-Comment Draft Review

In this stage, executive branch agencies submit final regulations and related data and other documents for ORR review under Executive Order 15-07, and update any information that may have changed during public comment. ORR must clear these submissions before agencies may file final regulations with the Secretary of State (SOS). Steps:

- 1) If no public comments were received and no substantive changes were made to the regulation, you must only electronically certify this information, using the online ORR Submission System (first and last screens only). If public comments were received and/or not changes were made, you must complete the following steps.
- 2) Copy and paste your preliminary submission responses into the system, and make any updates if needed. Your preliminary submission was emailed to you after you first submitted, and you can contact your ORR analyst if you have trouble finding that email.
- 3) Your ORR analyst will email you when the regulation is cleared.
- 4) Follow guidance from the SOS to file your regulation electronically and in hard copy.
- 5) When the SOS RulesTracker notifies ORR that the regulation is published with SOS, your entire submission will be posted on ORR's website, including benefit-cost analyses and other PDFs.

Direct Final/Emergency Regulations

There are two other types of rulemaking: direct final regulations and emergency regulations. Direct final regulations are submitted only once to ORR and must complete the entire Submission System form. The Administrative Procedures Act (RIGL § 42-35) specifies that direct final regulations are filed with SOS and must wait 30 days before going into effect. If any public objections are submitted during that 30-day period, the agency must restart the rulemaking process using regular rulemaking. If an objection was received, the agency would resubmit to ORR and specify the submission was the Preliminary Draft phase of regular rulemaking.

Emergency regulations are also submitted only once to ORR. Emergency regulation submissions skip the small business parts of the form (sections E, F, G). After emergency regulations are submitted to SOS they go into effect immediately.

Exceptions to the Requirement for Full Benefit-Cost Analysis

Four items in the Submission System involve analyzing the benefits and costs of regulations:

- Item A2: Net Present Value
- Item D1: Describe and Quantify Who Must Comply
- Item D2: Summary of Societal Benefits and Costs to Rhode Island
- Item D3: Upload full Benefit-Cost Analysis, based on “Analyzing Regulatory Benefits and Costs”

Three categories of regulations are not, or may not be, required to submit all of these items.

Regulations Which May Not Require a Full Benefit-Cost Analysis

Regulations meeting one or more of the following criteria may not require a full economic analysis:

- Emergency regulations;
- Regulatory changes that are technical—not changing the “status quo;”
- Regulations implementing federal mandates, where the agency has little if any discretion;
- Regulations primarily effecting internal agency workings;
- Regulations where benefits or costs are less than \$1,000,000 annually or in any one year; or
- Regulations implementing state statutory mandates that grant the agency little if any discretion.

Contact your ORR analyst for a final determination if you believe the regulation meets these thresholds. Note that based on its review, ORR may at any time determine that a full analysis is needed, particularly if the regulation has novel legal or policy implications for the state. ORR urges you to consult your ORR analyst early in the process, to ensure that you understand how these criteria may apply. Note that regulations meeting these criteria **still require responses to Items D1 and D2**, but **may skip A2 and D3**.

Item-by-Item Instructions for the Online ORR Submission System

Login Page

- Select your agency and your review stage.
 - **Regular rulemaking must be submitted twice**, before public comment (“Preliminary Draft”) and after public comment (“Post-Comment Draft”). Unfortunately, you are not able to import the data from your preliminary submission into your post-comment submission. You will receive an email copy of your preliminary submission that you can use to copy and paste the text from each field into your post-comment submission.
 - **Emergency rules** are only submitted once because there is no public comment period.
 - **Direct final rules** are only submitted once. If there is a public objection, you will need to resubmit the direct final rule using the regular rulemaking option, and follow both ORR and Secretary of State (SOS) procedures for regular rulemaking.

Section A: Key Identification

A1: Title

Use the complete title, exactly as in the SOS database.

A2: Net Present Value (\$ or other measure)

If you completed a benefit-cost analysis, enter the net present value (the net benefits and costs discounted back to a present value). Leave blank if a value was not calculated.

A3 through A5: Agency Contact Information (WILL NOT appear in any public reports)

Use the name and contact details of the person who ORR should call with questions. This may or may not be the rules coordinator.

A6: Rulemaking Action (Amend, Adopt, or Repeal)

A7: Current ERLID*

If amending or repealing a current regulation, note the ERLID number here. If a new adoption, use “TBD.”

A8: Fiscal Impact to State or Municipalities?

RIGL § 22-12-1.1 requires fiscal notes for administrative rules. Fiscal impacts are regulatory changes that directly impact the budgets of the state or municipal governments. These impacts include new revenue (e.g. a fee change) or reduced revenue (e.g. a new tax credit). Rules that require the hiring of new staff would also have fiscal impact. If “yes” is selected, a fiscal note describing these impacts must be uploaded later in the submission.

A9: Regulation Reformatted?

As part of the new Rhode Island Code of Regulations, all regulations need to be reformatted to fit into the code by the end of 2018. This field lets you indicate if your submission has or has not been reformatted. If the submission is a repeal no reformatting is required.

A10: Legal Deadline

Answering “yes” displays a date field for the exact legal deadline. You may share any non-legal timing concerns with your ORR analyst directly.

A11: Part of Consolidation?

If several regulations are being consolidated there should be one adoption and several repeals. This field lets you indicate that a consolidation is taking place. A “yes” response will display field A11a.

A11a: Associated ERLIDS or Reg for Consolidation

If this submission is an adoption as part of a consolidation, note all ERLIDs that are being repealed as part of the adoption. All of these repeals must be submitted separately through ORR’s Submission System. If this submission is one of those repeals, note the title of the consolidated regulation that is being adopted.

A12 (Emergency): Choose One (initial 120-day period or 60-day extension)

Only displays for emergency submissions.

A13 (Post-Comment): Any Comments Received?

Only displays for post-comment submissions. Answering “yes” will display other items related to this review stage. Answering “no” to this question and question A14 will skip you to the final screen, on which you will electronically certify that this information is accurate.

“Comments” include any public comment, whether it is verbal or written, positive or negative.

A14 (Post-Comment): Any Changes to Regulatory Language After Public Comment?

Only displays for post-comment submissions. Changes to the regulatory language should only be made in response to public comments, so this field should only read “yes” if field A13 was “yes”. If you did not receive any comments but made technical changes to the regulation (correcting typos or formatting, for example), do not select “yes” here. However, if you decided to make any substantive changes (even if not prompted by public comment) select “yes.”

*ERLID = Electronic Record Locator Identification number (assigned by SOS; changes with each new regulatory action)

Section B: Regulatory Detail**B1: Reason for Regulatory Action/Change**

Explain why the agency is taking this action now. This is likely to be similar or identical to the language you will enter for SOS as the initial “Concise Explanatory Statement.” However, ensure that this explains not just the reason for the regulation, but also the reason the agency is currently changing it.

Include here any statutory or other legal requirement (e.g. to amend based on federal changes or to meet a state statutory requirement) or other reason (e.g. to align regulation with current practice or to clarify due to public questions or difficulties complying with the regulation).

B2: List of Changes to Regulatory Status Quo

While you will be asked to submit a marked-up version of the regulation that uses strikeout and underline to indicate any changes, it can be difficult to determine how the regulatory environment is

changing because of the proposed regulatory action. Substantive changes should be summarized in this field. In order for the ORR analyst to locate the changes, you must include page and line numbers in the regulation you upload to the system, and cite the page and line number when discussing the substantive change.

B3: Summary of Purpose

Provide the purpose of the entire regulation (regardless of the extent of the changes).

B4: Enabling RIGL State Statute

Include only specific enabling statutes; do not include the Administrative Procedures Act (RIGL § 42-35). If no enabling statute, describe the authority the agency has to promulgate the regulation.

B4: Describe/Cite any Federal Influence(s)

Cite any federal codes or standards that the agency must follow or has used in developing the regulation. Include the level of influence. This could range from federal requirements for all states, with no state or agency leeway, to a best practice that the state wishes to voluntarily adopt. It could include a significant state policy decision, or a narrower decision to apply for a competitive grant that includes stipulations or requirements. If no federal influence, enter “none.”

Section C: Overlap with Other Government Entities

C1: Any Overlap with Other Government Entities?

Indicate if the regulatory control of any state agencies or municipalities overlap with this regulation.

C2: Overlapping Governmental Entities (if any)

List all overlapping government entities.

Section D: Regulatory Compliance, Benefits, and Costs

List all who must comply. Include individuals, businesses/nonprofits, or government entities.

D1: Describe and Quantify Who Must Comply

Quantify what you can (including estimates or ranges), or if not possible, explain why and describe what triggers compliance. Examples: “55 pet stores and 62 kennels,” “42,386 individuals who are eligible for these benefits,” or “about 30,000 fishermen.” If no one group is impacted, give criteria such as “any individual making over \$100,000 per year” or “any business that emits more than” a certain emission level. Include past data if available. Consider *all* parties that must comply.

D2: Summarize Societal Benefits and Costs to Rhode Island

Even if the regulation does not require a full benefit-cost analysis, this field should be used to discuss the societal impact of the regulatory change on Rhode Island. Even if benefits or costs cannot be quantified, it is important to acknowledge anticipated benefits and costs. Societal benefits and costs go beyond things like fees or the cost of required training. For example, a regulation requiring all lifeguards to annually attend a \$500 course has societal costs beyond the \$500 fee. These include: the value of the time spent taking the course (usually valued with an average wage); the costs to the

public of a possible reduction in the supply of lifeguards due to a prohibitive fee; and the potential benefit of increased safety and less loss of life.

D3: Upload Full Benefit-Cost Analysis (PDF)

A full benefit-cost analysis is required if benefits or costs in any one year exceed \$1,000,000. Contact your ORR analyst for assistance in determining if a full analysis is required. See ORR's "Analyzing Regulatory Benefits and Costs" guidance for more information about creating a benefit-cost analysis.

D4: Upload Fiscal Note (PDF)

If you selected "yes" to question A8 about fiscal impact to the state or municipalities, a fiscal note is required. Contact your ORR analyst for a fiscal note template.

Section E: Small Business Determination

E1: Small Business Impact Determination (choose one)

Indicate if the regulation has "adverse," "positive," or "no" impact on small businesses (defined in RIGL § 42-35.1-3(c)). A regulation has "small business impact" if it requires that a small business do or not do something, or be held accountable for understanding the regulation. It also has small business impact if certain small businesses must do something or understand the regulation due to certain business decisions or interactions (e.g. apply for a grant, bid for a contract, legal proceedings).

If there is adverse impact (overall negative impact), complete Sections F and G to comply with RIGL § 42-35.1-3 and 1-4 (Small Business Economic Impact Statement; Regulatory Flexibility Analysis). If the regulation has no adverse impact, you will have completed your Regulatory Flexibility Analysis. ORR will contact you if it identifies additional adverse impact.

Section F: Small Business Impact

Economic impact statements are required if regulations may have adverse impact on small business.

F1: Describe/Quantify Small Business That Must Comply

Quantify what you can (including estimates or ranges), or if not possible, explain why and describe what triggers compliance. Examples: "55 pet stores and 62 kennels" or "about 30,000 fishermen." If no specific industry is impacted, give criteria such as "any business with over \$1 million in annual revenue" or "any business that emits more than" a certain emission level. Include past data if available. Consider *all* parties that must comply.

F2: Describe/Quantify Any Projected Compliance Costs

Agencies must identify "projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record." Consider costs such as submitting to inspections, paying taxes or fees, hiring additional employees or consultants, capital investments, or using certain materials.

F3: Describe Any Probable Regulatory Effects on Small Business

Include both positive and negative "probable effects on small business."

Section G: Regulatory Flexibility

RIGL § 42-35.1-4 requires “Regulatory Flexibility Analysis.” The first part of this analysis is in Item E1 (is there adverse impact on small businesses). If so, agencies must “consider, without limitation...the following methods of reducing the impact of the proposed regulation on small businesses.”

G1 through G6:

Certify that the agency has fully considered reducing small business burden via these five methods, which include less stringent requirements or schedules, simplified requirements, performance standards, or small business exemptions. In G6, explain why any box is not checked.

G7: Results of Alternative Methods Considered

Describe any alternative methods considered, and the results.

Section H: Upload Remaining Documents

In Section H, you will be presented with particular documents to download, depending on the review stage. The chart below details what is required for each. Save all documents as PDFs to upload into the system (the “Public Comment” packet can be scanned instead of saved as a PDF document). There is a maximum of 10MB per PDF and a 20MB per submission; contact ORR if this is a concern.

Most of the detail below concerns Post-Comment Review. Post-Comment Review requires that ORR understand public reaction to the proposed changes, and how the Final Regulations differ from both existing regulation and the Proposed Regulations. Besides the follow PDFs, Post-Comment Review requires a description of the **Substantive Differences Between Proposed and Final Regulations**. This description should cite page and line numbers to identify which sections have changed.

Document	Review Stage(s)	Description
Regulatory Language	Preliminary; Direct Final; Emergency	A marked-up version of your regulation that uses strikeouts and underlines to show what regulatory language is changing. If the regulation is an adoption, no markup is needed. <u>The regulation must include page and line numbers.</u>
Final Reg Language, Clean	Post-Comment	A version of the final regulation without any markup.
Reg Language, Changes Made Post-Comment Tracked	Post-Comment	This upload is only for regulations that were changed between the preliminary phase and the post-comment phase. This upload should display, using strikeouts and underlines, <u>only</u> those changes that between these two phases. If you have difficulty tracking only these changes, contact your ORR analyst. <u>The regulation must include page and line numbers.</u>
Public Comments	Post-Comment	Many agencies proactively prepare a Response to Comment, but it is not required unless requested under the APA. If you have or will prepare a Response to Comment which covers all the below, submit that. If not, submit any document which includes: <ul style="list-style-type: none">• Summary of all comments, both written and oral (no audio files)

		<ul style="list-style-type: none"> • If changes were made in response to each topic; if not, why not <p>A copy of all written comments (can be scanned)</p>
Any Additional Documents (Optional)	Preliminary; Post-Comment; Direct Final; Emergency	Any additional documents, consolidated into one upload, that would help inform ORR about this regulatory submission.

Section I: Agency Certification

Certify the submission’s accuracy by electronically signing your name and providing your title. Your electronic signature has the same force and effect as your written signature. Clicking “Submit” will instantly transmit your submission to all required reviewers.