

Office of Regulatory Reform: Period One Regulatory Look Back Report

Report to Governor Lincoln D. Chafee
and the Rhode Island General Assembly
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ABSTRACT

This report reviews findings and recommendations related to Period One of Rhode Island's regulatory reform efforts.

Please note that an earlier printed version of this report marked the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals as non-compliant in “Table 6: Non-compliant Regulatory Entities.”

Based on communications early in the review phase, they are considered compliant for Period One. This is noted on page 24 alongside “Table 5: Compliant Regulatory Entities” and also corrected on pages 3, 22, 24, and 25.

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EXECUTIVE SUMMARY

Small businesses are the engine of growth and job development. Efforts to improve the state's economy must place small businesses at the forefront. As they bear a disproportionate share of regulatory costs and burdens, fundamental changes are needed in Rhode Island's regulatory environment to make regulatory entities more responsive to small businesses, without compromising statutory missions or the health and safety of Rhode Islanders.

The Office of Management and Budget's (OMB) Office of Regulatory Reform (ORR) is charged with overseeing the reform process passed by the Rhode Island General Assembly and signed into law by Governor Lincoln D. Chafee. At the conclusion of Period One, the first 90-day review, the ORR has discovered significant challenges to overcome in order to realize the vision for a **clear, predictable, and reliable** regulatory system.

PERIOD ONE FINDINGS:

- Twenty-eight entities complied with the reform process, while 19 entities were not in compliance. Non-compliant entities had few total regulations (70 or 4.3 percent).
- Fourteen entities submitted 100.0 percent of their regulations.
- Ten agencies participated although their regulations were exempt from the review.
- Though it received 838 submissions (doubling Governor Chafee's 25.0 percent target), ORR found significant data quality issues, including:
 - regulatory entities had difficulty consistently identifying the type and number of small businesses affected by regulation;
 - regulatory entities had difficulty quantifying the costs and benefits associated with a given regulation;
 - complete economic impact statements were submitted for only 422 regulations (25.7 percent of total regulations, 50.4 percent of those received); and
 - small business input was sought for a small number (1.4 percent) of regulations submitted.
- Regulatory entities identified 91 of the 838 regulations as having a small business impact. ORR identified an additional 88 regulations with small business impact, as well as 129 regulations needing further review to determine potential small business impact.
- When asked to amend, repeal, or maintain regulation, entities recommended to maintain 789 (94.2 percent) of their regulations in their current form.
- Of the 179 regulations identified by entities and ORR as having a small business impact, 26 were offered for amendment or repeal.
- When asked to consider five possible options for accommodating small businesses, entities identified 11 regulations as appropriate for potential accommodation.

PERIOD ONE RECOMMENDATIONS:

#1: Map the Regulatory Environment

Rhode Island lacks an up-to-date map of state government organization. Over time, complex inter-entity relationships have developed to reflect changing entity autonomy and authority. These fluctuating relationships make the regulatory environment difficult to navigate, especially when entities overlap. ORR will create an up-to-date map, and work with small businesses to identify jurisdictional overlaps and conflicts.

#2: Reduce the Number of Statutory Exemptions

Three hundred and forty-four (21.0 percent) regulations across 22 regulatory entities were exempt from the reform process, due to separation of powers considerations or the Rhode Island General Law definition of small business. Slightly over half (51.5 percent) of the exempt regulations are economic in nature. While a number of exempt entities are participating in the reform process, the definitional barrier will remain a consistent challenge. ORR recommends that this issue and its consequences be closely considered.

#3: Improve Accessibility to Regulations

Small businesses reported needing outside professional help in order to navigate the 26,240 pages of regulation (the equivalent of 10.1 copies of *War and Peace*), an estimated one-third of which is written at the collegiate level. Furthermore, each department uses a different template for writing regulations. ORR will provide entities with tools to measure readability and standardize a template for ease of access and use.

#4: Remove Duplicative Regulations and “Non-Regulations”

A number of duplicate regulations address similar issues in multiple departments (e.g. Access to Public Records). In addition, there are many regulations that are simply departmental policy. Policy directs internal behavior while regulation directs external behavior. ORR will work to streamline duplicate regulations, and will help departments seek alternative forums for internal policy, removing them from the regulatory landscape.

#5: Rejoin Separated Regulation

A recent trend of separating the chapters of one large regulation into separate “regulations” (many without any regulatory content) was found. This practice has a number of unintended consequences. It increases the sheer number of regulations and creates confusion while following separate pieces which should be a logical whole. It also allows entities to renew a piece of a regulation without sending the whole regulation through the rulemaking process. ORR will work to discourage this practice.

#6: Reform the Audit, Inspection, and Enforcement Process

Audit, inspection, and enforcement practices have as much impact on small business as regulatory policy, while increasing costs to the State. Compliance with enforcement was the highest occurring small business impact reported (20.1 percent of submitted regulations). ORR recommends that enforcement reform occur concurrently with regulatory reform. ORR will work with small business and regulatory entities to provide recommendations in this area.

#7: Promote Lawmaker and Small Business Participation in Reform

Regulations are influenced by the statutes that empower them. Understanding statutory impact is critical to effective reform. For this reason, lawmakers will need to become involved in the reform process. Likewise, the perspective of the business community will prove invaluable in providing regulatory balance. ORR will actively seek these perspectives for its reform efforts, while simultaneously encouraging regulators to do the same.

#8: Support Improved Cost-Benefit Analysis

Data quality was a significant concern. Regulatory entities had difficulty quantifying the number and type of businesses they regulated, as well as the costs and benefits of their regulations. Complete economic impact statements were only submitted for 422 regulations (25.7 percent of total regulations, 50.4 percent of those received). ORR will promote improved cost-benefit analysis by identifying barriers, as well as providing technical support to regulatory entities.

#9: Promote Continuous Process Improvement

Regulatory reform is a new and ongoing process. Both during the 19-month review process and beyond, ORR will promote continuous process improvement by providing regulatory entities with technical support, shared lessons learned, and best practices.

#10: Push Regulatory Reform Efforts Beyond the Current Performance Levels

Entities were asked to consider how they could improve Rhode Island's regulatory environment for small businesses. When asked to amend, repeal, or maintain regulation, entities recommended to maintain 789 (94.2 percent) of their submitted regulations in their current form. Of the 179 regulations identified by entities and ORR as having a small business impact, 26 were offered for amendment or repeal. When asked to consider five possible options for accommodating small businesses, entities identified 11 regulations as appropriate for potential accommodation. ORR commends those entities that have begun the hard work of reform. However, ORR believes that collectively Rhode Island can do better. Thus far, the proposals for reform only address a small portion of overall regulation. To this end, as it continues its review, ORR will challenge entities to consider small business amendments or accommodations in more areas. The sooner that reform occurs, the sooner we will realize improvements to Rhode Island's economic environment.

INTRODUCTION

A vibrant small business sector is critical to Rhode Island’s economic prosperity. To promote the small business sector and to make government more efficient, the Rhode Island General Assembly passed, and Governor Lincoln D. Chafee signed into law a measure aiming to create a **clear, predictable, and reliable** regulatory system.

Effective regulations play a key role in promoting the health and safety of Rhode Islanders, as well as stewardship among the industries and businesses in the state. However, both lawmakers and regulatory entities¹ must ensure that small businesses – the backbone of our economy – are not disproportionately weighed down by the cost of compliance.

“Look Back” reviews are critical in evaluating each regulation on its own, as well as how each impacts the entire regulatory landscape. Unmonitored, this landscape becomes costly and overly complex. This results in missed opportunities for business growth and investment. Conversely, regulations that are habitually reviewed, well-written, and adaptable to the scale of business improve Rhode Island’s economic climate, by reducing both the cost of doing business and the overhead costs to the state.

To this end, the Office of Regulatory Reform (ORR) was created in 2010 to oversee the efforts of creating a navigable regulatory environment. As the first step in his accelerated reform process, Governor Chafee instructed all regulatory entities to submit economic impact statements (EIS) (see Appendix B) examining the small business impact of each regulation to ORR. Entities must submit 25.0 percent of their regulations in each of four 120-day review periods. Entities with ten or fewer must submit all regulations during the first 120 days. The urgent state of Rhode Island’s economic climate demands attention now. To this end, Governor Chafee directed regulatory entities to offer “bold and proactive solutions” to address the complexity, volume, and compliance costs of the state’s 1,642 regulations.

This report outlines Period One’s initial findings, and lays out the recommendations needed to successfully move the reform process forward. Ensuing reports will draw on previous findings, and inform remaining cycles. A cumulative report will be issued in the second quarter of calendar year 2014. ORR retains the right to further review and analyze all regulations submitted for review, regardless of when they were submitted, for continuing analysis and subsequent recommendations.

¹ For the purposes of this report, the phrases “regulatory entities” and “entities” will interchangeably refer to any rulemaking body, including agencies, authorities, boards, commissions, committees, corporations, councils, divisions, departments, and offices.

FINDINGS AND RECOMMENDATION AREAS

In beginning the review process, working with entities, and reviewing the submissions for Period One, ORR sought to find systemic changes that could be made to improve Rhode Island's regulatory and enforcement culture, without compromising the missions of regulators. ORR offers the following recommendations after its initial 90-day review:

Recommendation Area #1: Map the Regulatory Environment

ORR finds that Rhode Island does not have a current organizational chart of overall state government. Up-to-date charts do exist for many entities. However, tying these together proved challenging. Older charts have shown that entity autonomy and responsibility have shifted over the years. For example, the Division of Elderly Affairs (DEA) was once a cabinet-level department. It is now a division within the Department of Human Services (DHS). DHS, in turn, reports to the relatively new Executive Office of Health and Human Services (EOHHS).

These complex relationships make it harder to navigate and understand our regulatory system. Customers – in this case, small business owners – need to be able to identify regulatory entities. They should be able to easily learn an entity's scope and mission, and to whom the entity is accountable. Thus, ORR has begun to map Rhode Island's regulatory landscape. It is also seeking to identify areas of overlap and confusion during the mapping process. ORR recommends that an updated system map be placed online to help businesses navigate the state.

Entity overlap also causes other problems. Conflicting entity jurisdiction poses serious burdens to businesses who must comply with more than one regulator on the same issue. For example, the Department of Environmental Management (DEM) and the Coastal Resources Management Council (CRMC) are separate entities. However, small businesses often must work with both DEM and CRMC on similar projects, such as those relating to wetlands. A small business might receive project approval from one entity, but not the other. It can be difficult for a business to understand why they need to satisfy two environmental entities in order to move a project forward. There may be different underlying criteria used by each entity, but the logic may not be clear from the customer's perspective. Working through these challenges with multiple entities increases their frustration with doing business in Rhode Island. Note that during Period One, only one of these entities reported that there may be overlapping jurisdiction.

As the review continues, ORR may recommend areas to consider for possible consolidation, which can result in a more streamlined government. This would improve the state's regulatory landscape and increase the ability of small businesses to navigate our system.

Recommendation Area #2: Reduce the Number of Statutory Exemptions

ORR found that 344 of the 1,642 (21.0 percent) Rhode Island regulations during Period One were not subject to its review. Some of these were exempt from the review process due to separation of powers issues. Many were exempt due to the small business definition found in Rhode Island General Law (RIGL) §42-35.1-3(4) (see Appendix C). These 344 regulations span 22 fully or partially exempt entities, listed in Table 1.

These exemptions, particularly those due to the RIGL small business definition, result in a significant gap in potential regulatory reform. Just over half of the 344 exemptions (51.5 percent) were “economic” in nature. (Generally, economic regulations address a particular industry, while social ones protect health and welfare.) Exempted regulations related to industries such as finance, insurance, development, architecture, building design, nonprofit charities, entertainment, and energy production.

The Department of Business Regulation (DBR) illustrates the results of these exemptions. Due to the RIGL small business definition, 86 of DBR’s 113 regulations (76.1 percent) were exempt (as of Period One). These mostly related to finance and insurance.

In the spirit of collaboration, a number of exempt entities complied with Governor Chafee’s request. Those entities, collectively submitting 183 regulations for Period One review, are noted in Table 1 with an asterisk. ORR thanks them for their involvement, and welcomes any future submissions from other exempt entities.

However, while their voluntary participation assists the current ORR process, the nature of these exemptions pose a potential challenge to regulatory reform. Exemptions inhibit the ongoing goal to improve Rhode Island’s business climate. ORR recommends a close review of these exemptions to determine their effects, and removing exemptions where possible.

Table 1: List of 22 Fully or Partially Exempt Entities

Architects, Board of Examination and Registration of	Judiciary, Rhode Island
Attorney General, Department of	Land Surveyors, Board of Examiners of Professional
Auditor General	Landscape Architects, Board of Examiners of Professional
Business Regulation, Department of (Partial Exemption)*	Legislative Services, Joint Committee on*
Elections, State Board of*	Parole Board
Engineers, Board of Registration for Professional	Public Utilities and Carriers, Division of Public Utilities Commission*
Ethics Commission*	Public Utilities Commission*
General Treasurer, Office of the*	Secretary of State, Office of*
Health Insurance Commissioner, Office of	Taxation, Division of (Partial Exemption)*
Housing and Mortgage Finance Corporation (Partial Exemption)*	Unauthorized Practice of Law Committee
Judicial Nominating Commission	Workers’ Compensation Court – Medical Advisory Board

* = submitted regulations despite exemptions

Recommendation Area #3: Improve Accessibility to Regulations

Over one-third (37.5 percent) of respondents in the 2013 Small Business Surveyⁱ stated that they needed help to navigate and comply with regulation. This help came from paid consultants outside of the small business. Consultants both determine which rules apply to a certain business, and help that business comply. From this, ORR infers that there are barriers hindering ease of access to regulation.

In Period One, ORR identified three issues related to accessibility. These are volume, format, and readability.

Volume is related to the amount of regulation. As of January 2012, the state had 1,642 regulations. These regulations were spread across 26,240 pages. Reading all day long at a speed of five minutes a page, it would take a person about 20 weeks to read everything. As single-sided copies, the regulations would stand at five and a half feet tall. As double-sided copies, they would be equal to about 10 copies of *War and Peace*.

Format refers to the way that regulation is presented, organized and arranged. ORR found varying formats across entities. There was no standard approach to writing a regulation. Reviewers had to orient themselves to a new style for each entity. Some entities even had multiple styles.

Readability is related to the ease with which a text can be read. Readability can be measured by two formulas, the Flesch Reading Ease Score and the Flesch-Kincaid Grade Level Score. Both scores are used by a number of government and professional organizations. They are also a standard add-in of Microsoft Word.

The Flesch Reading Ease Score measures word difficulty and syntax. It scores text on a scale from zero to 100. Higher numbers imply better readability. Sentences with many clauses and long words will score lower on the scale. The developer, Rudolf Flesch, set the “plain English” score at 60. The Flesch-Kincaid Grade Level Score takes Flesch’s formula and matches it to a grade level. Microsoft recommends that these scores fall between 7th and 8th grade.ⁱⁱ

Table 2 provides an overview of the score system.

Table 2: Flesch Reading Ease Score Explanation

Raw Score	Difficulty Level	Estimated School Grade Level	Representative Reading
< 30	Very Difficult	College	Scientific Journal
30 to 50	Difficult	High School or Some College	Academically Oriented Magazine
50 to 60	Fairly Difficult	Some High School	Quality Magazine
60 to 70	Standard	7 th or 8 th Grade	Digests
70 to 80	Fairly Easy	6 th Grade	Science Fiction
80 to 90	Easy	5 th Grade	Pop Fiction
90 to 100	Very Easy	4 th Grade	Comic Books

ORR began an analysis on the readability of regulations from Period One. It found that many regulations scored within the “Difficult” to “Very Difficult” range. The average grade level was between 11th and 12th grade. From this initial research, ORR estimates that about one-third of regulation is written at a college reading level.

No formula can truly measure understanding. Technical or scientific terms may be required, which will always score lower. However, these two scores can help inform if a text may be too difficult for the average person to read. They can also help set appropriate readability goals for each document. Readability goals should balance the audience (its likely reading level and familiarity with the concepts), the complexity and language of the subject matter, and the consequences if the regulation is not fully understood.

As an exercise, ORR conducted readability analysis on an earlier draft of this document. The recommendation areas scored low. The technical sections scored very low. ORR was able to improve many sections after rewriting the report using the readability guidelines, moving the overall reading level from “college” to “high school or some college.”

A good example of an entity seeking to improve readability is Rhode Island’s own Office of the Health Insurance Commissioner (OHIC). In 2010, OHIC became the first insurance commission to require that insurer’s policies meet certain Flesch levels, in this case a 65 (eighth-grade level). This general practice has now been adopted by over 30 states. In their research OHIC found that 47.0 percent of Rhode Islanders read at a 6th grade level or below.ⁱⁱⁱ

ORR infers that due to the subject matter of the regulation (explaining health coverage to all those insured in Rhode Island) and to the audience (very broad, including all levels of education and literacy), OHIC determined a comparatively low reading level was required. ORR strongly urges all regulating entities to consider the same issues in writing their own regulations.

Improving accessibility by making regulations concise, consistently organized, and readable will reduce the burden on those who have to comply. ORR is in the process of developing both a grading rubric and a standardized format. Additionally, ORR will be conducting further analysis on readability during subsequent periods, and will provide detailed findings and guidelines in future reports. From these tools ORR will identify opportunities for improvement and share them with entities.

Recommendation Area #4: Remove Duplicative Regulations and “Non-Regulations”

The review process uncovered a number of duplicative regulations and “non-regulations.” Each is described below, with examples.

Duplicative Regulations

Duplicative regulations are very similar, but just different enough to create potential compliance problems. The clearest example includes regulations related to the Access to Public Records Act (APRA). ORR found that 19 entities have specific APRA regulations. Many other entities embed APRA language in other regulations. The following are the entities with APRA regulations, along with their ERLID number(s).

1. Administration, Department of (6105)
2. Airport Corporation (7100)
3. Attorney General, Department of (7085, 7095)
4. Business Regulation, Department of, Central Management (7128)
5. Corrections, Department of (5043)
6. Ethics Commission (1759)
7. Executive Office of Health and Human Services (6410)
8. Health, Department of (2945)
9. Health and Educational Building Corporation (2245)
10. Housing Appeals Board (3751)
11. Housing and Mortgage Finance Corporation (RIHMFC) (1084)
12. Narragansett Bay Commission (967)
13. Public Safety, Department of (7087)
14. Public Utilities and Carriers, Division of Public Utilities Commission (6190)
15. Public Utilities Commission, Rhode Island Energy Facility Siting Board (6047)
16. Public Utilities Commission (6046)
17. Secretary of State, Office of (6071)
18. Taxation, Division of (6045)
19. Transportation, Department of (1258)

Most of these APRA regulations are quite similar. In some cases, they are almost identical, but with one or two concrete differences in timelines or fees. Those seeking to gain access to public records from several departments must spend more time sorting out what is required for each entity. This example shows how each entity’s regulation alone may be reasonable and navigable, but in the aggregate they become complex and burdensome. The ORR is working with Department of Administration (DOA) legal staff to develop standard language, processes, and fees. This will provide clear APRA guidelines across state government entities.

Beyond APRA duplication, entity economic impact statements identified 28 (3.3 percent) regulations as potentially duplicating or conflicting with other regulations. Entities also identified 89 regulations (10.6 percent) as having an impact on another body. ORR will work with entities to examine these more closely, and act quickly on as many as possible.

“Non-regulations”

A number of regulations seem to be internal policies or employee handbooks. While this is allowable under statute, ORR believes codifying internal policies into regulation unnecessarily complicates the regulatory landscape. Research into best regulatory practice discourages this type of regulation, which can also waste entity resources by binding these policies into the rulemaking process. ORR defines “non-regulations” as those that guide actions *internal* to an entity, and believes that regulations should only guide actions *external* to an entity. ORR commends the desire to increase public access to internal policies, but encourages alternate methods such as posting on the entity website.

ORR found a number of regulations that may serve entities better as internal guidance. The Department of Public Safety (DPS) provides a good case study. Table 3 lists the nine DPS regulations (of 14 Period One submissions) that seem to describe DPS internal working policies. For example, ERLID 5881 concerns the Rhode Island State Police Rules and Regulations for Sworn Members. The title suggests to the reader that this is a regulation. But it covers the mission, leadership structure and expected conduct of sworn members of the Division. It also includes items typically seen in a human resources handbook (i.e. courtesy, saluting, and use of tobacco or gum). Other regulations in the table speak to the conduct of sworn members, employees, and recruits, or outline internal policies and procedures.

Again, ORR does not wish to decrease public access by hiding internal policies from view. However, other methods (e.g. website) would better serve this goal. ORR will work with Public Safety, and other entities with similar internal policies, to identify similar cases. ORR will hold to the belief that this practice is not conducive to a streamlined regulatory process, and will encourage removal from the rulemaking process. In addition, ORR will support training to help regulators identify alternatives to regulation where suitable.

Table 3: Regulations Submitted by the Department of Public Safety

Entity	Regulations (ERLID #)*	Purpose of Regulation
Capitol Police	<u>Rhode Island Capitol Police Rules and Regulations (6842)</u>	Organizational mission, leadership structure, expectations of member conduct
Fire Marshal, Office of the State	<u>Division of the Rhode Island State Fire Marshal Employee Rules and Regulations (6054)</u>	Organizational structure, member responsibilities and required conduct
Municipal Police Training Academy	<u>Rhode Island Municipal Police Training Academy Rules and Regulations Manual (6315)</u>	Leadership structure of the academy, policies for recruit training and instructor qualifications, conduct requirements for recruits
Public Safety, Department of	<u>Department of Public Safety Civilian Employees Rules and Regulations (6512)</u>	Organizational structure, expectations of employee conduct
Public Safety, Department of	<u>Rhode Island Division of Sheriffs Rules and Regulations (6844)</u>	Mission statement, organizational mission, leadership structure, expectations of member conduct
Rhode Island State Fire Academy	<u>Policies and Procedures of the Rhode Island Fire Academy (6524)</u>	Policies and procedures regarding the Fire Academy
State Police, Rhode Island	<u>Rhode Island State Police Rules and Regulations Sworn Members (5881)</u>	Organizational mission, expectations of member conduct
State Police, Rhode Island	<u>Rhode Island State Police Civilian Employees Rules and Regulations (6843)</u>	Organizational structure, expectations of employee conduct
Capitol Police	<u>Rhode Island Capitol Police Rules and Regulations (6842)</u>	Organizational mission, leadership structure, expectations of member conduct

* = ERLID (Electronic Record Locator Identification number)

Recommendation Area #5: Rejoin Separated Regulations

ORR discovered a recent trend of dividing a single regulation into separate regulations. This trend was present in a number of departments. Examples include the Coastal Resources Management Council's (CRMC) "Red Book" (split into 65 regulations) and the Department of Administration's (DOA) State Procurement Regulations (split into 14 regulations).

A similar practice involves separating a regulation's fee structure from the regulation itself. Examples here include the Department of Environmental Management (DEM), which has two regulations for one rule area; one with regulatory content, and a second for the related fees. Likewise, the Department of Health (DOH) keeps a "master fee" regulation that covers fees across a number of its regulations.

One reason given by regulatory entities is that these practices simplify the process for future amendments, while at the same time making those amendments more visible. ORR agrees that this practice may simplify the rulemaking process. However, ORR believes that this practice yields some unintended consequences. Entities may have additional rationales, which may need to be examined.

First, the practice simply adds to the overall number of regulations. While the content would be the same, high numbers of regulations tend to fuel concerns around regulatory compliance. In other words, businesses hear that they have 1,642 regulations to comply with. This is an inflated number. Returning to our CRMC example, if the 91 regulations maintained by the Council were rejoined logically, ORR estimated that this would reduce their regulations to about 18 or an 80.2 percent overall reduction.

Second, this separation causes confusion. Again staying with our example, each section of the CRMC Management Plan is split. This includes the table of contents and appendices, as well as other sections of the document. As separate regulations are renewed, they are assigned a new identification number. The new identification number re-orders the regulation on searchable media, placing the updated regulation at the end. This leaves the document out-of-order.

Adding to the confusion is the fact that the separate chapters refer to each other. No additional cross-referencing is included to help readers navigate these related sections. For example, regulation number 2621 refers to a series of tables (e.g. Table 1, Table 1A, and Table 1B) that are not contained within the regulation but within another regulation. After an initial 30-minute search, ORR found other tables, but could not find the tables in question.

Third, this separation turns non-regulation into regulation. There are a number of instances where a separated section does not regulate by itself. For example, ORR found five "table of contents" regulations in Period One that simply were chapter lists, on their own containing no substance.

Lastly, splitting up regulation may allow entities to maintain possibly unpopular sections of regulation indefinitely. As a regulatory entity, one may be tempted toward this practice, as it allows a section needing update to be renewed without having to revisit the content of a more controversial section.

For these reasons, ORR believes that the benefits of separation regulation are outweighed by the costs. During future periods ORR will identify regulations meeting the above criteria and recommend merger where appropriate.

Recommendation Area #6: Reform the Audit, Inspection, and Enforcement Process

Audits, inspections, and enforcement activities were the top type of small business impact identified by regulators. (See the section on “Findings on Small Business Impact” for more detail.) In the 2013 Small Business Survey, small businesses told ORR that they were having trouble with a number of state procedures in this area. ORR believes that enforcement affects business as much as regulation itself. For this reason, ORR recommends that enforcement reform be tied to regulatory reform.

Efficient enforcement supports businesses by helping them comply with the rules. Here “good” businesses are supported and given tools for compliance. This type of enforcement does not provoke overly burdensome costs and tasks.

Inefficient and inflexible enforcement treats every business the same, good or bad. Here penalties for abuses from one business are carried to all businesses. This drives up the cost of compliance across the board, thereby reducing the ultimate benefit of regulation.

ORR will continue to connect with small business owners on this issue. Guidance will be issued in future reports. The principles for effective enforcement discussed in the 2005 Hampton Report^{iv} may serve as a guide for reform in this area. These principles include:

- risk assessment (i.e. directing resources to where they can have the best impact) should be central to an enforcement program;
- no inspection should occur without reason;
- data requirements should be reduced for less risky businesses;
- resources from unnecessary inspections should be guided toward giving advice for small business compliance;
- forms should be few and simple;
- forms and data should be coordinated across agencies;
- when new regulation is designed, plans for ease of enforcement should be built in; and
- regulators should be streamlined according to theme (e.g. health, environment, etc.).

Recommendation Area #7: Promote Lawmaker and Small Business Participation in Reform

Government has passed a number of laws over the years. These laws offer prescriptions barring or commanding certain acts. Some are very specific, while others are written generally. In both instances, entities are given the power to develop regulations that allow them to implement the intent of the law.

As regulations are extensions of the law, ORR has questioned the influence a statute has over the content of a regulation. In some instances, a regulation is a mere rewriting of the law for clarity.

The regulations promulgated by the Division of Taxation provide a good example of this issue. Taxation's regulations are short, with just over three-quarters of their regulations fewer than three pages in length. Taxation is empowered by specific laws that contain little flexibility to use its own judgment.

However, other entities are governed by statutes that give them far greater latitude. In these cases, lawmakers give these entities more leeway to develop regulation, as they have to rely on them for their professional, technical, and scientific expertise.

For these, ORR needs to research where statutory authority ends and agency-level discretion begins. Part of ORR's task in aiding entities in developing regulatory flexibility for small businesses involves identifying these boundaries, which informs where reform can best occur.

Many entities reinforced this observation by stating in their submissions that they were merely promulgating rules based on law. To meet the goal of ensuring that the costs of regulation do not outweigh the benefits, ORR encourages lawmakers to become part of the reform process. The best way to approach this would be to conduct analysis similar to the economic impact statement process before submitting a bill for hearing. This proactive review would provide additional insight into the impact of legislation and help understand the potential consequences.

Small business itself must also play a crucial role in these reform efforts. The feedback received in Governor Chafee's 2013 Small Business Survey suggests that businesses find it hard to access and interact with entities. ORR suggests that entities create advisory groups specific to business industries. This will help them gain better insight into the regulated public, prior to the hearing process.

ORR encourages entities to seek out trade associations and similar groups so that they may act in an informational and advisory capacity. Through its Small Business Ombudsman, ORR will provide entities' contact information for specific parties of interest, and if needed, facilitate introductory meetings.

Recommendation Area #8: Support Improved Cost-Benefit Analysis

Data were received for 838 regulations (51.0 percent of all regulations) during Period One. While this doubled Governor Chafee's request for a 25.0 percent review, ORR found the overall quality of the data to be poor.

There were a significant number of instances where the data were not complete.

Not all entities complied with the request to submit economic impact statements. Almost one-third submitted a general letter stating that their regulations had no small business impact. Some of those that did submit economic impact statements left sections blank, or said that items were not applicable. More often, entities were simply not able to quantify the economic impacts of regulation. All of these reduced the quality of the data available for ORR review.

Data quality issues inhibit ORR's ability to:

- identify the small business sectors subject to regulation;
- identify the total number of small businesses subject to regulation;
- quantify the costs borne by small businesses for compliance; and
- quantify the enforcement and implementation costs borne by regulatory entities.

ORR found that Rhode Island's regulatory entities had difficulty quantifying the costs and benefits related to regulation. They often answered that these were "unknown," "indeterminable," or "difficult to quantify."

It's important to realize that this work is difficult. In researching reform efforts, ORR learned that both the federal and state governments faced similar problems in quantifying regulatory action. However, Rhode Island needs to challenge itself to push past these obstacles to meaningful reform. Simply complying with the stated procedures, without substantive evaluation of impact, is not enough to realize the charge for bold and proactive solutions. Procedural compliance lends itself to bad or incomplete data, which affects data-driven decision-making. Substantive compliance is required.

Submissions that were closest to the mark were those where direct contact with small businesses balanced the view of the regulator (i.e. regulatory benefits) with the view of the small business owner (i.e. regulatory costs or burdens). Twelve of the Period One submissions (1.4 percent) included contact with a small business in preparation of the economic impact statement. These were much more in line with the kind of entity feedback needed to start the reform process. Regulatory entities must gain better knowledge of who is being regulated, both for assessing the impact of regulation and for ensuring compliance.

A final challenge to determining impact involves regulations that address special conditions or that change depending on the circumstance. As an example, the Department of Environmental Management has site-specific regulations for those seeking to build. In these cases, a regulation may only have an impact on those businesses adjacent to wetlands or coastal

features. Predictions on economic impact can be difficult, especially when more than one regulation addresses a single occasion (e.g. building next to a coastal wetland).

There is a need for additional support to improve cost-benefit analysis. Improvements here will help the state understand the compliance burden associated with each regulation, as well as the aggregate burden. Indeed, in Governor Chafee's 2013 Small Business Survey, business owners described their feelings toward compliance as "death by a thousand paper cuts." In other words, it is the cumulative buildup of rules that is damaging to business. One survey respondent said that he would rather pay \$100 for compliance one time, instead of \$10 ten times. Now that the 2013 survey has established a baseline, ORR plans to execute follow-up surveys to measure progress.

ORR will guide and assist entities on how their data can be improved during subsequent review periods. ORR believes that the use of past data (e.g. 3 to 5 years) may be the best vehicle for quantifying costs and benefits. This will especially be true in areas where cost and benefit predictions fall short. If providing their own analytics proves to be difficult for many entities, one solution would be to provide ORR with the resources to centralize this function within the OMB, by adding an economist with a background in cost/benefit analysis, and working closely with the OMB Office of Performance Management.

Recommendation Area #9: Promote Continuous Process Improvement

The effort to create a clear, predictable and reliable regulatory environment in Rhode Island is a task that requires commitment and due diligence on all levels. This is the first project of this kind within our State. Moreover, it is an area that no state or federal government has yet mastered.

There is no clear-cut path to follow, but we can start by reviewing both best practice models and lessons learned from what has and has not worked, both elsewhere and in our own process to date. With these as our starting point, we must continually improve our review process and technical and analytical tools. Further, we must strive to always improve communication between departments, customers and stakeholders, exploring learning opportunities to achieve an optimum level of performance.

The central tenet of Continuous Process Improvement (CPI) is that improvement is not linear, but cyclic. This applies to the ORR review in two ways.

First, while the 19-month timeline is divided into four review periods, each period will cumulatively build on prior ones. ORR will use what it learned in creating and testing the initial framework to improve the review process in later periods (while maintaining the consistent definitions and methodology needed for robust data). Findings from later periods may be applied to regulations submitted for review in Period One, if that will lead to more substantive improvement.

Second, the purpose of the official 19-month review is not to make one-time improvements and then go back to the same old way of doing things. The goal is to create a statewide, ongoing shared understanding, along with practical tools and guidelines, which will help lawmakers and regulatory entities continually consider the consequences of each regulatory change or addition.

The core CPI process is the “Plan – Do – Check – Act” Cycle of continuous improvement.^v Following is the PDCA cycle that ORR used to initiate the 19-month review process.

1. **PLAN/Identifying and analyzing the problem:** Rhode Island’s regulatory system is hard to understand, navigate and plan for, particularly for small business. This leads to missed economic opportunities and benefits for the State.
2. **DO/Developing and testing a potential solution:** ORR created the Economic Impact Statement and other review tools, defined the review scope, and developed an analytical methodology. ORR distributed the EIS form to regulatory entities.
3. **CHECK/Measuring how effective the test solution was, and analyzing whether it could be improved in any way:** ORR reviewed the Period One submissions from regulatory entities, and identified opportunities to enhance the review process. ORR released the Period One Report.
4. **ACT/Implementing the improved solution fully:** ORR will work with all stakeholders to enhance the Periods Two through Four data collection and review process.

This cycle will continue throughout the remaining Periods, and will set the stage for continual improvement well after the 19-month review ends.

Specifically, after Period One, ORR will be working with individual entities to ensure data quality, and to clearly communicate what ORR needs to carry out Governor Chafee’s charge. ORR will assist regulatory entities with a standardized best practice example and useful tools and techniques that allow for identifying and quantifying small business impact. ORR will help entities broaden their understanding of how the overall regulatory reform effort can provide a win-win for all involved. This will increase the quality of the data, broaden participation and allow for more robust findings.

As the review process develops and based upon ongoing conversations with entities, ORR may explore additional ways to provide tools and learning opportunities for regulatory entities. This could include additional training, as well as more detailed tools such as a guidebook for regulatory best practices.

Recommendation Area #10: Push Regulatory Reform Efforts Beyond Current Performance Levels

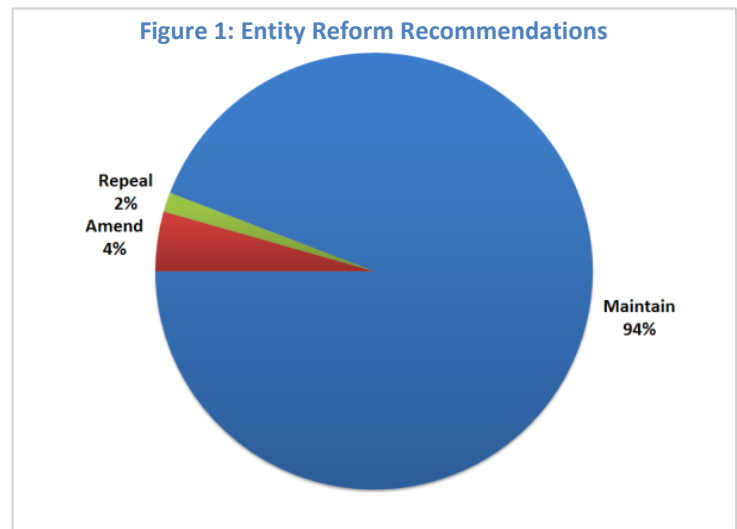
Entities were asked to consider how they could improve Rhode Island’s regulatory environment for small businesses. This exercise included the following two specific questions (see Appendix B for complete EIS form). Results are given below.

1. Should the regulation be amended, repealed or maintained (i.e. is it still relevant)?
2. Are there options for accommodating small businesses?

Entity Recommendations: Amend, Repeal or Maintain

Entities were asked to give ORR their proposals to amend, repeal, or maintain regulations based on their review. Of the 838 submissions to ORR, most (789 or 94.2 percent) received a recommendation to maintain the regulation as is. Only 37 (4.4 percent) received a recommendation to amend, and 12 (1.4 percent) received a recommendation to repeal (see Figure 1).

Of those identified as amend or repeal, only 26 (3.1 percent of submissions) were marked as having a small business impact.



Entity Recommendations: Potential Accommodation for Small Business

ORR also asked entities to consider the five options below. Options with a positive response could be considered for future amendments.

1. Can the regulation provide for less stringent compliance or reporting requirements for small businesses?
2. Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
3. Can the compliance or reporting requirements be consolidated or simplified for small businesses?
4. Can performance standards for small businesses replace design or operational standards?
5. Are there alternative regulatory methods that would minimize the adverse impact on small businesses?

Of the 838 submissions, 422 answered the questions in the accommodation section. Of these, 11 were identified as for likely accommodation (see Table 4). These 11 made up 1.4 percent of those marked as “maintain.”

Table 4: Regulations Identified in Period One for Potential Small Business Accommodation

Regulatory Entity (Sub-entity in italics)	Regulation (with ERLID #)	Small Business Accommodation Type
Administration, Department of, <i>Minority Business Enterprise</i>	Regulations Governing Participation by Minority Business Enterprises in State Funded and Directed Public Construction Projects, Construction Contracts, and Procurement Contracts for Goods and Services (716)	<ul style="list-style-type: none"> • Less stringent compliance or reporting requirements • Performance standards to replace design or operational standards
Disabilities, Governor's Commission on	Chapter J. Disability Business Enterprises (7253)	<ul style="list-style-type: none"> • Less stringent compliance or reporting requirements • Less stringent deadlines for compliance or reporting requirements • Consolidated or simplified compliance or reporting requirements
Economic Development Corporation, <i>Quonset Development Corporation</i>	Quonset Business Park Development Package(6448)	<ul style="list-style-type: none"> • Consolidated or simplified compliance or reporting requirements
Environmental Management, Department of	Rules and Regulations for Dredging and the Management of Dredged Material (6179)	<ul style="list-style-type: none"> • Alternative method for minimizing impact
Environmental Management, Department of, <i>Air Resources</i>	Air Pollution Control Regulation No. 23 - Control of Perchloroethylene Emissions from Dry Cleaning Operations (4517)	<ul style="list-style-type: none"> • Consolidated or simplified compliance or reporting requirements
Environmental Management, Department of, <i>Air Resources</i>	Air Pollution Control Regulation No. 28 - Operating Permit Fees (6307)	<ul style="list-style-type: none"> • Alternative method for minimizing impact
Environmental Management, Department of, <i>Air Resources</i>	Air Pollution Control Regulation No. 29 - Operating Permits (6513)	<ul style="list-style-type: none"> • Alternative method for minimizing impact
Environmental Management, Department of, Waste Management	Solid Waste Regulation No.4 Incinerators and Resource Recovery Facilities (1006)	<ul style="list-style-type: none"> • Alternative method for minimizing impact
Housing Resources Commission	Rules and Regulations Governing the Building Homes Rhode Island Program (5229)	<ul style="list-style-type: none"> • Less stringent compliance or reporting requirements
Housing Resources Commission	Rule and Regulations for the Expedited Permit Process (5584)	<ul style="list-style-type: none"> • Less stringent compliance or reporting requirements • Less stringent deadlines for compliance or reporting requirements
Labor and Training, Department of	Elevator Safety Code (6713)	<ul style="list-style-type: none"> • Alternative method for minimizing impact

ORR Recommendations

ORR commends those entities that have stepped up to the reform process in Period One, either by recommending regulations for repeal (12) or amendment (37), or identifying potential small business accommodations (11), duplicate regulations (28), or regulations that impact another body and thus may conflict (89). (Potential duplicate and conflicting regulations are detailed in Recommendation Area #4.)

ORR will work with these entities to examine and act on these proposals quickly. ORR will provide assistance needed to help entities repeal, amend, and accommodate regulations as soon as possible, so that Rhode Island businesses can start benefitting from reform in real time.

During the upcoming Periods, ORR will meet with these entities to determine:

- how regulation will be amended to help small business;
- the impact of repeals on small business (i.e. what was the tangible benefit);
- how the areas for accommodation will be realized;
- how duplication or conflict will be evaluated and removed; and
- the entity timeline for proposed reforms.

ORR will work with entities to establish realistic timelines for these goals. However, as the time for reform is now, entities will be encouraged to complete these tasks quickly. Preferably, ORR will strive to see as many reforms achieved as possible within the accelerated timeline.

Moving past the current proposals, ORR believes that collectively Rhode Island can do better.

Thus far, the proposals for reform only address a small portion of overall regulation. To this end, as it continues its review, ORR will challenge entities to consider small business amendments or accommodations in more areas. Each entity must be willing to take a close look at the part it can play in Governor Chafee's reform initiative.

REGULATORY ENTITY COMPLIANCE STATUS AS OF PERIOD ONE

ORR used the Secretary of State's ("Secretary") rule listing to identify which entities needed to comply with the reform process. As of the 2012 re-file period (see RIGL§42-35-4.1 for more detail), the listing contained 74 regulatory entities. These 74 had 1,642 state regulations among them. ORR also used this list to identify those who were exempt from the process (see Recommendation Area #2: Reduce the Number of Statutory Exemptions).

The next task was to determine which entities needed to submit regulation. Extra effort was needed here as some entities were divisions of others. Quickly it became apparent that these divisions differed in their levels of autonomy related to rulemaking and self-analysis. In other words, some divisions were able to freely submit data while others asked to be included in a supervising entity's review process.

As the process began with the Secretary's listing, ORR decided to maintain that listing in the long run. This avoids confusion about talks held with early participants, and will best preserve the work to date.

Of the 74 entities above, ORR cut the list down to 47 after taking into account the following:

- the nineteen fully exempt entities;
- the previous two entities newly merged into one Board of Education;
- the two entities without active regulations (Industrial Facilities Corporation and Police Officers Commission on Standards and Training); and
- the four Department of Public Safety divisions whose regulations were listed both together and separately in the Secretary's listing.

Based on the data received in Period One, 28 (59.6 percent) out of the 47 offered enough data to be marked as compliant. The reader should note that the remaining 19 only have a small number of regulations among them (70 total or 4.3 percent of all regulation). ORR accepted submissions after the December 31, 2012 deadline to promote full participation in the reform process. ORR will continue its efforts to engage all entities in the review.

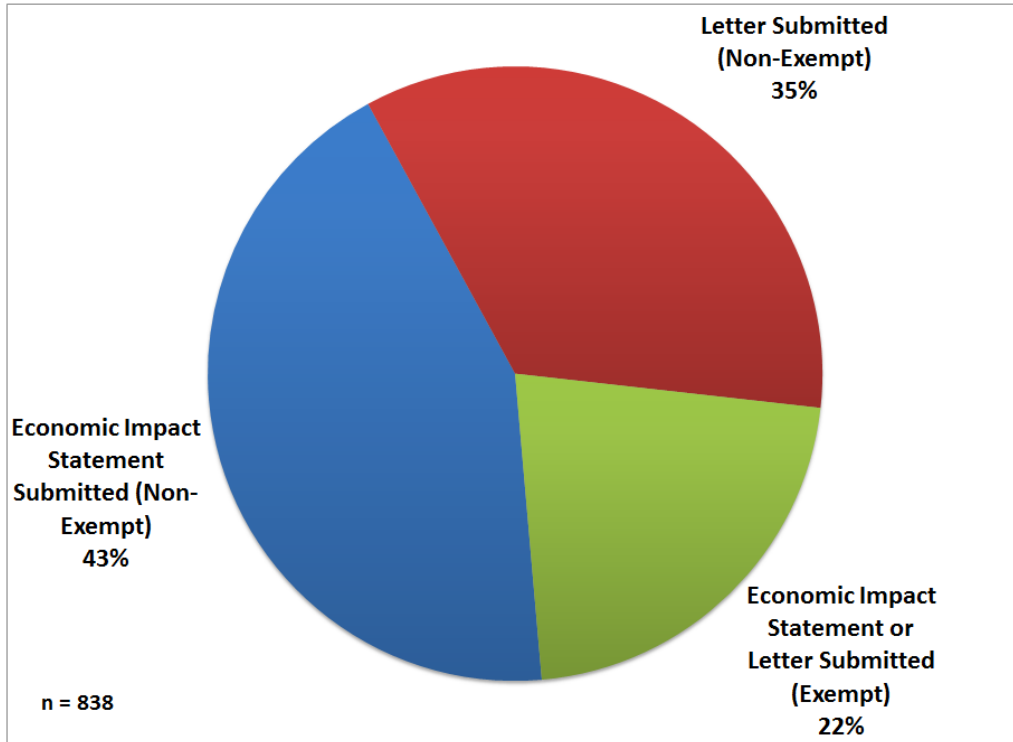
As discussed (see Recommendation Area #8: Support Improved Cost-Benefit Analysis) entity submissions varied in their content and completeness.

Fully compliant entities filled out a complete economic impact statement for the number of regulations that were due in Period One.

Procedurally compliant entities sent in a letter instead of an impact statement, more often than not stating that they had reviewed its regulations and found no impact.

Letters from non-exempt entities accounted for 34.7 percent of the 838 submissions. Figure 2 provides a picture of the submittal method of exempt and non-exempt entities.

Figure 2: Submittal Method for Period One Regulations Received by ORR



The two tables on the following pages present compliance status and detail for each of the 47 entities with non-exempt regulations.

Table 5: Compliant Regulatory Entities

Entities	Total Non-Exempt Regulations	Submitted Regulations	% Submitted	Submission
Department of Administration	37	17	45.9%	EIS
Airport Corporation	7	7	100%	EIS
Department of Behavioral Healthcare, Developmental Disabilities and Hospitals	17	4	23.5%*	EIS
Building Code Standards Committee	16	9	56.3	Letter (to complete full EIS after amendments)
Department of Business Regulation	21	6	28.6%	EIS
Department of Children, Youth and Families	181	168	92.8%	EIS & Letter
Clean Water Finance Agency	11	4	36.4%	EIS
Coastal Resources Management Council	91	28	30.8%	EIS
Department of Corrections	18	10	55.6%	EIS
Disabilities, Governor’s Commission on	15	15	100%	EIS & Letter
Economic Development Corporation	10	7	70.0%	EIS
Department of Environmental Management	186	53	28.5%	EIS
Executive Office of Health and Human Services	62	51	82.3%	EIS & Letter
Fire Safety Code Board of Appeal and Review	1	1	100%	EIS
Health and Education Building Corporation	3	3	100%	Letter
Department of Health	129	42	32.6%	EIS
Historical Preservation & Heritage Commission	7	7	100%	Letter
Housing and Mortgage Finance Corporation	19	6	31.6%	EIS
Commission for Human Rights	23	6	26.1%	EIS
Department of Human Services	40	11	27.5%	EIS
Department of Labor and Training	45	43	95.6%	EIS
Division of Motor Vehicles	39	10	25.6%	EIS
Department of Public Safety	14	11	78.6%	EIS
Department of Revenue	3	3	100%	EIS
Rhode Island Rivers Council	1	1	100%	Letter
Division of Taxation	202	113	55.9%	EIS
Department of Transportation	19	13	68.4%	Letter
Water Resources Board	6	6	100%	Letter
28 Regulatory Entities	1223	655	53.6%	

*BHDDH is considered compliant based upon determinations early in the review period, but will need to submit 5 more to reach Period Two compliance.

Table 6: Non-compliant Regulatory Entities

Entities	Total Non-Exempt Regulations	Submitted Regulations	% Submitted	Note
Board of Accountancy	7	4	57.1%	Need 100%
Agricultural Lands Preservation Commission	1	0	0%	
State Council on the Arts	2	0	0%	
Batterers Intervention Program Standards Oversight Committee	2	1	50.0%	Need 100%
Capital Center Commission	2	0	0%	
RI Historical Cemetery Commission	1	0	0%	
Department of Education	1	0	0%	
Division of Elderly Affairs	6	0	0%	Requested to be part of DHS process; submission expected for Q3.
Energy Resources	2	0	0%	
Higher Education Assistance Authority	5	0	0%	
Housing Appeals Board	2	0	0%	
Housing Resources Commission	5	4	80.0%	Need 100%
Narragansett Bay Commission	8	7	87.5%	Need 100%
Personnel Appeal Board	1	0	0%	
Public Transit Authority	4	0	0%	
Resource Recovery Corporation	10	0	0%	
Student Loan Authority	6	0	0%	
Turnpike and Bridge Authority	4	3	75.0%	Need 100%
Water Resources Board Corporate	1	0	0%	
19 Regulatory Entities	70	19	27.1 %	

In starting the review, ORR used the baseline of 1,642 total state regulations as of the 2012 re-file. However, over the course of its review, entities continue to add or repeal regulation as needed. (Note: in his letter to regulatory entities, Governor Chafee stated that unless each entity is in compliance – in other words, has submitted enough regulations to be compliant for that Period – it may not file any new regulations without express permission from him or a demonstrated emergency pursuant to RIGL§42-35-3(b)). As ORR wants to assist entities in review of their “real time” regulations, the numbers in the above tables may differ slightly during ORR’s review process to reflect regulatory changes.

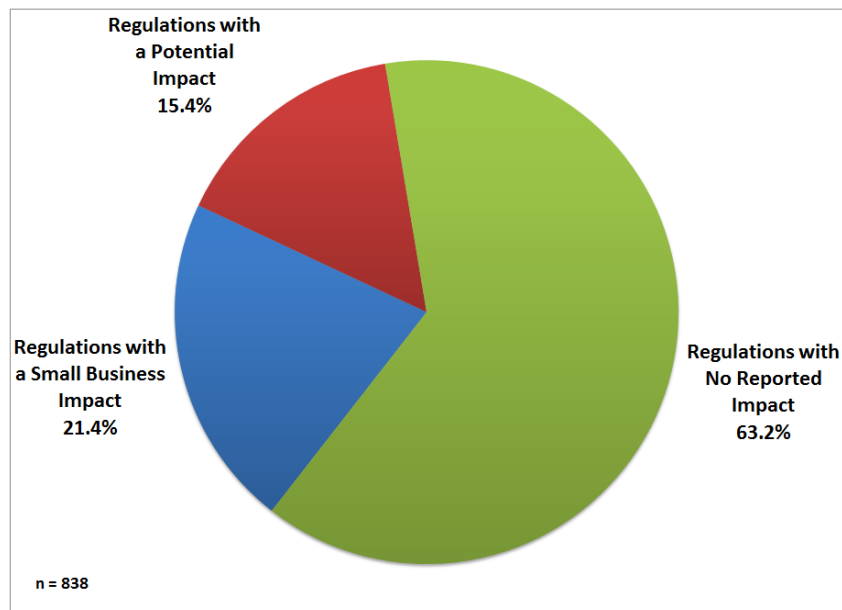
SMALL BUSINESS IMPACT AS OF PERIOD ONE

Summary of Findings

In his September 2012 letter to regulatory entities, Governor Chafee stated that regulations come with both benefits and costs, which are at this point unclear. ORR developed an economic impact statement (EIS) to measure benefits and costs. This analysis tool was the first step toward the goal of creating a clearer regulatory picture. The tool was developed after reviewing like efforts toward reform in the State of Massachusetts. It outlines which regulations have a small business impact, along with the number and type of small business affected. See Appendix B for the EIS form.

Of the 838 submissions received, 91 (10.9 percent) were identified by entities as having a direct small business impact. Further, after review of the submitted data, ORR identified 88 regulations (10.5 percent) with a small business impact. This brings the total regulations with a small business impact to 179 (21.4 percent) in Period One. Also, there are 129 regulations (15.4 percent) where a potential impact may exist (see Figure 3). ORR will need to conduct more research on these remaining regulations.

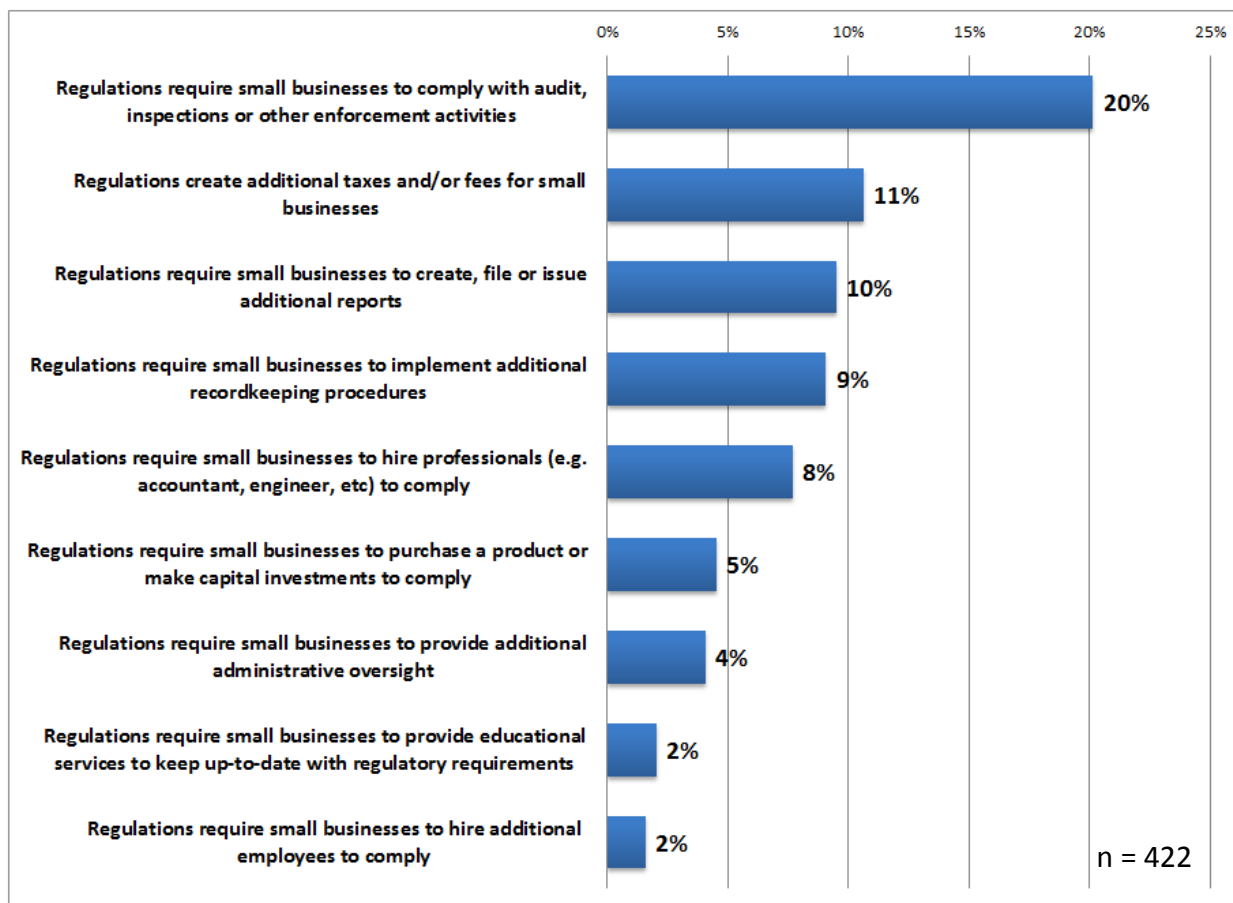
Figure 3: First Period Submissions Received, by Business Impact



ORR provided a series of closed-ended questions at the end of the economic statement. Of the regulations received, 422 (50.4 percent total received) contained answers to these questions. As noted, the others provided a general letter stating that regulations did not have an impact. From these responses, the following data (Figure 4, next page) were gathered on how small businesses are affected by regulation.

ORR notes that these findings represent the view of regulators (only 12 of the submitted regulations, or 1.4 percent, contacted a small business to prepare the economic impact statement). These figures will change as more information is received by entities. However, a picture of the challenges faced by small business begins to emerge from the data.

Figure 4: Regulatory Small Business Impacts for Percentage of Regulations Submitted



Detail of Five Entities with Greatest Small Business Impact

ORR identified five entities that were most often identified by respondents when asked about small business obstacles in the 2013 Small Business Survey. It is important to note that some entities, due to their statutory mandates, are necessarily more focused on small business than others.

Entities detailed:

- Division of Taxation;
- Department of Environmental Management;
- Department of Health;
- Department of Labor and Training; and
- Coastal Resources Management Council.

Key entity data given in the tables below include:

- Summary data: description, supervising entity if any, and other entities it may affect;
- Compliance status and progress in reviewing entity's total regulations;
- Measures of impact the entity has on small business;
- Measures of influence that federal/state rulemaking has on the entity's regulations;
- Summary of entity's impact on small business;
- Entity-specific recommendations for regulatory reform; and
- Full tables detailing the entity's small business impact (specific sectors and generally).

Notes and clarifications:

- Tables include only data from Period One, primarily taken directly from entity EIS forms (including "Other Entities Affected"). Analysis will continue over the 19-month process. As entities submit additional regulations, tables will reflect cumulative totals.
- "Federal Influence" and "State Influence" relate to the influence of law over regulatory content, as identified by entities and in ORR's initial review. However, ORR will be conducting further research on the boundary between statutory authority and agency-level discretion.
- NAICS (North American Industry Classification System): Codes used by businesses and government to classify businesses according to type of economic activity.
- ERLID (Electronic Regulation Locator Identification Number): Every Rhode Island regulation is assigned a unique ERLID by the Office of the Secretary of State.
- The tables on "Entity's Impact on Small Business: Detail" lists individual regulations. This outlines the impacts each regulation has on particular businesses. Note that when entities gave the estimated number of small businesses as "unknown," "indeterminable," or similar, ORR used "not provided" in the tables.
- For reference, there are nearly 96,000 small businesses in Rhode Island.

Division of Taxation (Taxation)

Description: Taxation is charged with the collection and assessment of all state taxes.	Supervising Entity	Department of Revenue
	Other Entities Affected	Rhode Island Economic Development Corporation

TAXATION COMPLIANCE STATUS: PERIOD ONE

Exempt from Review: PARTIAL	Compliance Status: COMPLIANT	Regulations submitted for review: 113 of 217 (52.1 percent)
Percentage of Total Taxation Regulations Reviewed as of Period One		

MEASURES OF IMPACT AND INFLUENCE: PERIOD ONE

Small Business Impact	HIGH	88 regulations (77.9 percent) have definite small business impact
		3 regulations (2.7 percent) have potential small business impact
		7 regulations (6.2 percent) have no business impact
		Note that 15 of 113 regulations (13.3 percent) were exempt from review.
Federal Influence	NONE	0 of 113 regulations (0.0 percent) were identified as influenced by Federal law or rulemaking
State Influence	HIGH	113 of 113 regulations (100.0 percent) were identified as influenced by Rhode Island General Law
IMPACT/INFLUENCE KEY: <u>HIGH</u> : > 75% regulations <u>MODERATE</u> : 25% to 75% regulations <u>LOW</u> : < 25 % regulations <u>NONE</u> : No regulations		

TAXATION'S IMPACT ON SMALL BUSINESS: PERIOD ONE, SUMMARY

Taxation provided specific industry analyses on 68 of the 113 submissions. The first table below (Detail/Specific Sectors) lists the 68 regulations, the sector(s) each impacts (by NAICS code), and Taxation's best estimate of how many small businesses each impacts.

Taxation also provided 23 economic impact statements for regulations that could not be tied to a specific sector. The second table below (Detail/General Impacts) lists the 23 regulations, and which kinds of small businesses each impacts. These address businesses based on legal formation, elective services, or administrative processes. Taxation thus found impact difficult to quantify.

Seven regulations submitted had no impact on small business.

Per Taxation, the estimated cost to create, monitor and enforce their Period One submissions is \$1,285,553.

RECOMMENDATIONS FOR TAXATION REGULATORY REFORM: PERIOD ONE

- ORR will work one-on-one to provide Taxation with information, research tools, and guidelines. These will help Taxation gain insight to, and quantify the cost of, compliance borne by regulated entities.
- Continue to create customer-centric language, written in a clear, predictable, and reliable way. The majority of Taxation’s regulations had moderate scores on the Flesch Readability Scale, with a fair number of both very high and fairly low scores.
- For regulations that have a clearly identified industry: work to clearly identify the cost of compliance borne by small business.
- Use historical data to establish baseline impact on small businesses.
- Continue Period Two review.

TAXATION’S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

Impact on Specific Sectors

Impacting Regulation’s ERLID #	NAICS Small Business Sector(s) Impacted	Estimated Number of RI Small Businesses
570	Accommodation and Food Service	5,500 to 6,000
5995	Accommodation and Food Service	6,000
278	Administrative and Support and Waste Management and Remediation	7
405	Administrative and Support and Waste Management and Remediation	7
265	Agriculture, Forestry, Fishing and Hunting	20
263	Arts Entertainment and Recreation	fewer than 59
437	Construction	57
1676	Construction	1,200
611*	Finance and Insurance	fewer than 6,000
624*	Finance and Insurance	fewer than 6,000
238	Health Care and Social Assistance	fewer than 214
1675	Health Care and Social Assistance	100
4320	Health Care and Social Assistance	101
256	Information	24
388	Information	fewer than 52
215	Manufacturing	fewer than 2,154
216*	Manufacturing	24
235*	Manufacturing	numerous small businesses
244	Manufacturing	fewer than 4
249	Manufacturing	16
250	Manufacturing	16
307	Other Services	432
572	Other Services	200 to 300
4307	Other Services	not submitted
223	Professional, Scientific and Technical Services, Retail Trade	1,140
438	Professional, Scientific and Technical Services	fewer than 118
730	Professional, Scientific and Technical Services	not submitted
5457	Professional, Scientific and Technical Services	23
211	Retail Trade	fewer than 30,000
212	Retail Trade	fewer than 1,400

TAXATION'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

Impact on Specific Sectors (continued)

212	Retail Trade	fewer than 1,400
220	Retail Trade	fewer than 30,000
228	Retail Trade	86
233	Retail Trade	1,010
247	Retail Trade	fewer than 30,000
261	Retail Trade	fewer than 30,000
262	Retail Trade	fewer than 30,000
301	Retail Trade	fewer than 30,000
316	Retail Trade	not submitted
317	Retail Trade	fewer than 30,000
320	Retail Trade	fewer than 30,000
321	Retail Trade	125
324	Retail Trade	fewer than 30,000
328	Retail Trade	1,165
329	Retail Trade	fewer than 300
356	Retail Trade	not provided
403	Retail Trade	fewer than 17
410	Retail Trade	159
416	Retail Trade	715
433	Retail Trade	18
449	Retail Trade	1,200
450	Retail Trade	1,200
451	Retail Trade	1,200
452	Retail Trade	1,200
453	Retail Trade	1,200
455	Retail Trade	1,200
456	Retail Trade	1,200
457	Retail Trade	1,200
458	Retail Trade	1,200
460	Retail Trade	6
987	Retail Trade	fewer than 30,000
1674	Retail Trade	15
4312	Retail Trade	189
4322	Retail Trade	fewer than 30,000
6629	Retail Trade	fewer than 30,000
6971	Retail Trade	1,874
240	Transportation and Warehousing	7
4317	Transportation and Warehousing	1,051

*Primarily impacts identified sector, though impacts may exist outside of sector

TAXATION'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

General Impacts

Impacting Regulation's ERLID #	Types of Businesses Impacted	Estimated Number of RI Small Businesses
248	Any business required to file a tax return by mail	most small businesses
258	Any business assessing a finance, interest, insurance or other charges	not provided
299	Any business partnership	fewer than 2,487
387	Any business that collects and remits sales tax in Rhode Island	not provided
445	Any business that requests litigation expenses for prevailing in adjudicator proceedings conducted by the Division of Taxation	any applicable RI business
466	Any business invested in a certified venture capital partnership	any applicable RI business
469	Any business providing daycare services to its employees	any applicable RI business
505	Any type of business that may incorporate	any applicable RI business
508	Any type of business that may incorporate	any applicable RI business
628	Any business individually owned	any applicable RI business
632	Any business individually owned	any applicable RI business
736	Any business with employees	any applicable RI business
752	Any business party to an administrative hearing	any applicable RI business
1244	Taxpayer rights	any applicable RI business
2337	Any business requesting a declaratory ruling	any applicable RI business
2347	Any business with "double residence" status	not provided
2429	Any business individually owned	any applicable RI business
2875	Any type of business that may incorporate	any applicable RI business
5461	Any business subject to the franchise tax	any applicable RI business
5858	Provides any business a tax rate reduction based on increasing FTE employment	any applicable RI business
5859	Any business affected by estate computation	any applicable RI business
6853	Any type of business that may incorporate	any applicable RI business
6856	Any type of business that may incorporate	any applicable RI business

Department of Environmental Management (DEM)

Description: DEM is charged with the protection, restoration and management of the State’s natural resources. This includes more than 14,000 acres of state park and management areas.	Supervising Entity	None
	Other Entities Affected	Coastal Resources Management Council Office of Energy Resources Department of Motor Vehicles

DEM COMPLIANCE STATUS: PERIOD ONE

Exempt from Review: NO	Compliance Status: COMPLIANT	Regulations submitted for review: 53 of 186 (28.5 percent)
Percentage of Total DEM Regulations Reviewed as of Period One		

MEASURES OF IMPACT AND INFLUENCE: PERIOD ONE

Small Business Impact	MODERATE TO HIGH	30 regulations (56.6 percent) have definite small business impact
		11 regulations (20.8 percent) have potential small business impact
		12 regulations (22.6 percent) have no business impact
Federal Influence	MODERATE	26 of 53 regulations (49.1 percent) were identified as influenced by Federal law or rulemaking
State Influence	MODERATE	27 of 53 regulations (50.9 percent) were identified as influenced by Rhode Island General Law
IMPACT/INFLUENCE KEY:		HIGH: > 75% regulations LOW: < 25 % regulations MODERATE: 25% to 75% regulations NONE: No regulations

DEM’S IMPACT ON SMALL BUSINESS: PERIOD ONE, SUMMARY

DEM provided specific industry analysis on 30 of the 53 submissions. The first table below (Detail/Specific Sectors) lists the 30 regulations, the sector(s) each impacts (by NAICS code), and DEM’s best estimate of how many small businesses each impacts.

DEM also provided 11 economic impact statements for regulations that could not be tied to a specific industry sector. The second table below (Detail/General Impacts) lists the 11 regulations and the types of small businesses each impacts. These regulations are project-dependent, meaning the regulatory impact is determined by several factors such as location, type of building structure, and type of business. DEM thus found impact difficult to quantify. Of the 11, one submission provides users with the terms and definition used by DEM. This regulation is provided for any individual or business seeking definitional clarity.

ORR could not finalize the calculation of cost for DEM to create, monitor and enforce regulations, due to inconsistent data quality.

RECOMMENDATIONS FOR DEM REGULATORY REFORM: PERIOD ONE

- Calculate cost of enforcement.
- ORR will work one-on-one to provide DEM with information, research tools, and guidelines. These will help DEM to gain insight to, and quantify the cost of, compliance borne by regulated entities.
- Regulations should use customer-centric language, written in a clear, predictable, and reliable way. DEM's regulations had low to moderate scores on the Flesch Readability Scale. It should be noted that this ranking could be in part due to the technical environmental terms used. However, further review is warranted.
- Work to ensure clear lines of jurisdiction with Rhode Island Coastal Resources Management Council, as identified in DEM's Period One submission.
- For regulations that do not have a clearly identified industry: use historical data to establish baseline impact on small business.
- Continue Period Two review.

Notes:

- DEM tends to separate regulation from fees. For example, Air Pollution regulation 28 (6307) outlines permits. Regulation 29 (6513) outlines permit fees.
- The individuals filling out DEM economic impact statements were very good at identifying businesses related to agriculture, fishing and hunting. Pollution control regulations were a bit more difficult, unless they had to do with a handful of large-scale polluters.

DEM'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

Impact on Specific Sectors

Impacting Regulation's ERLID #	NAICS Small Business Sector(s) Impacted	Estimated Number of RI Small Businesses
853	Agriculture, Forestry, Fishing and Hunting	10
904	Agriculture, Forestry, Fishing and Hunting	2
906	Agriculture, Forestry, Fishing and Hunting	103
913	Agriculture, Forestry, Fishing and Hunting	7
998	Agriculture, Forestry, Fishing and Hunting	30
1001	Agriculture, Forestry, Fishing and Hunting	83
2135	Agriculture, Forestry, Fishing and Hunting	800
3266	Agriculture, Forestry, Fishing and Hunting	83
5053	Agriculture, Forestry, Fishing and Hunting	fewer than 215 small businesses
5061	Agriculture, Forestry, Fishing and Hunting	21
6980	Agriculture, Forestry, Fishing and Hunting	5
7037	Agriculture, Forestry, Fishing and Hunting	3,000
7038	Agriculture, Forestry, Fishing and Hunting	3,000
7039	Agriculture, Forestry, Fishing and Hunting	3,000
7039	Agriculture, Forestry, Fishing and Hunting	3,000
7105	Agriculture, Forestry, Fishing and Hunting	1,228
7240	Agriculture, Forestry, Fishing and Hunting	3,000
6179	Arts, Entertainment and Recreation	80
6669	Health Care and Social Assistance	2

DEM'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL		
Impact on Specific Sectors (continued)		
4510	Manufacturing	1
4724	Manufacturing	50 to 60
4729*	Manufacturing, Health Care and Social Assistance, Utilities, Wholesale Trade	6
5997*	Professional, Scientific and Technical Services, Retail Trade	220
6543	Professional, Scientific and Technical Services	15
330*	Retail Trade, Agriculture, Forestry, Fishing and Hunting	74
1005*	Retail Trade, Administration and Support and Waste Management and Remediation	120
5998	Retail Trade	20
6875	Retail Trade	75
6981	Retail Trade	75
7182	Retail Trade	75
*Primarily impacts identified sector, though impacts may exist outside of sector		
General Impacts		
Impacting Regulation's ERLID #	Types of Businesses Impacted	Estimated Number of RI Small Businesses
501	Petroleum terminals; any small business employing an above ground storage tank for petroleum products greater than 500 gallons	less than 1,800
502	Any small business who engages in a regulated environmental violation will be assessed an administrative penalty for violating said regulation	potentially thousands
4497	Any small business that operates equipment that generates visible air contaminant emissions	potentially hundreds
4517	Any small business which emits air contaminants	potentially hundreds
4604	Any small business which manufactures or uses products with mercury	not provided
4695	Any program falling under the following programs will be subject to an application fee: Rhode Island Pollution Discharge Elimination System and Pretreatment, Wastewater Treatment Facilities Program, Groundwater Quality Certification Program, Water Quality Certification Program, Underground Injection Control Program, Office of Air Resources	not provided
4999	Any business that disposes its sanitary (human) sewage onsite	not provided
6069	Any business using road salt for de-icing	not provided
6307	Businesses subject to Air Pollution regulation number 29	8 small businesses
6513	Businesses subject to Air Pollution regulation number 29	8 small businesses
6857	Any business with groundwater discharge	not provided

Department of Health (DOH)

Description: DOH's The mission is to prevent disease and to protect and promote the health and safety of the people of Rhode Island.	Supervising Entity	Executive Office of Health and Human Services
	Other Entities Affected	Public Safety

DOH COMPLIANCE STATUS: PERIOD ONE

Exempt from Review: NO	Compliance Status: COMPLIANT	Regulations submitted for review: 42 of 129 (32.5 percent)
Percentage of Total HEALTH Regulations Reviewed as of Period One		

MEASURES OF IMPACT AND INFLUENCE: PERIOD ONE

Small Business Impact	LOW	2 submitted regulations (4.8 percent) have definite small business impact
		4 submitted regulations (9.5 percent) have potential small business impact
		36 submitted regulations (85.7 percent) have no business impact
Federal Influence	LOW	1 of 42 regulations (2.4 percent) was identified as influenced by Federal law or rulemaking
State Influence	HIGH	41 of 42 regulations (97.6 percent) were identified as influenced by Rhode Island General Law
IMPACT/INFLUENCE KEY: <u>HIGH</u> : > 75% regulations <u>MODERATE</u> : 25% to 75% regulations <u>LOW</u> : < 25 % regulations <u>NONE</u> : No regulations		

DOH'S IMPACT ON SMALL BUSINESS: PERIOD ONE: DETAIL

DOH provided specific industry analysis on two of the 42 submissions. The first table below (Detail/Specific Sectors) lists the two regulations, the sector(s) each impacts (by NAICS code), and how many small businesses each impacts.

DOH also provided four economic impact statements for regulations that could not be tied to a specific sector. The second table below (Detail/General Impacts) lists the four regulations and the types of small businesses each impacts. These regulations are designed for administrative and adjudicatory processes, along with anatomical gift guidelines and the assessment of pain. DOH thus found impact difficult to quantify.

Per DOH, the estimated cost to create, monitor and enforce their Period One submissions is \$856,100.

RECOMMENDATIONS FOR DOH REGULATORY REFORM: PERIOD ONE

- ORR will work one-on-one to provide DOH with information, research tools, and guidelines. These will help DOH gain insight to, and quantify cost of, compliance by regulated entities.
- Regulations should use customer-centric language, written in a clear, predictable, and reliable way. DOH’s regulations generally had moderate scores on the Flesch Readability Scale, with a fair number of low scores. It should be noted that this ranking could be in part due to the medical and technical terms used. However, further review is warranted.
- Continue Period Two review.

Notes:

- Determination of licensing fees in relation to small business impact calculation: Some regulators considered licensing to be the responsibility of the employee, while others considered it to be a small business cost. For consistency, ORR determined that professional licenses are issued to individuals (and thus are not included in the small business impact calculation), whereas trade licenses are the responsibility of business (and thus are included in the small business impact calculation). Although there may be exceptions to this rule, EIS data supports this determination.

DOH’S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

Impact on Specific Sectors

Impacting Regulation’s ERLID #	NAICS Small Business Sector(s) Impacted	Estimated Number of RI Small Businesses
132	Health Care and Social Assistance	20 small businesses
7066	Other Services (Funerary Services)	39 small businesses

*Primarily impacts identified sector, though impacts may exist outside of sector

General Impacts

Impacting Regulation’s ERLID #	Types of Businesses Impacted	Estimated Number of RI Small Businesses
118	Any business filing for application and award of reasonable litigation expenses in adjudicatory proceedings conducted before the Department of Health	all applicable RI business
2531	Any business providing the assessment of pain	not provided
2945	Establishes uniform procedures and practices governing administrative proceedings	businesses involved in administrative proceedings
4517	Any business that procures anatomical gifts, in accordance with the “Revised Uniform Anatomical Gift Act”	negligible

Department of Labor and Training (DLT)

Description: DLT provides workforce development, workforce security and workforce protection to the state’s workers, employers and citizens. Through federal and state funding, it offers employment services, educational services and economic opportunity to both individuals and employers. DLT also protects the workforce by enforcing labor laws, prevailing wage rates and workplace health and safety standards. And, the department provides temporary income support to unemployed and temporarily disabled workers.	Supervising Entity	None
	Other Entities Affected	Department of Revenue Division of Taxation Department of Administration

DLT COMPLIANCE STATUS: PERIOD ONE

Exempt from Review: NO	Compliance Status: COMPLIANT	Regulations submitted for review: 43 of 45 (95.6 percent)
Percentage of Total DLT Regulations Reviewed as of Period One		

MEASURES OF IMPACT AND INFLUENCE: PERIOD ONE

Small Business Impact	MODERATE TO HIGH	20 regulations (46.5 percent) have definite small business impact
		14 regulations (32.6 percent) have potential small business impact
		9 regulations (20.9 percent) have no business impact
Federal Influence	LOW	9 of 43 regulations (20.9 percent) were identified as influenced by Federal law or rulemaking
State Influence	HIGH	34 of 43 regulations (79.1 percent) were identified as influenced by Rhode Island General Law
IMPACT/INFLUENCE KEY:		
	<u>HIGH</u> : > 75% regulations	<u>MODERATE</u> : 25% to 75% regulations
	<u>LOW</u> : < 25 % regulations	<u>NONE</u> : No regulations

DLT’S IMPACT ON SMALL BUSINESS: PERIOD ONE, SUMMARY

DLT provided specific industry analysis on 24 of the 43 regulations submitted for review. The first table below (Detail/Specific Sectors) lists the 24 regulations, the sector(s) each impacts (by NAICS code), and DLT’s best estimate of how many small businesses each impacts.

DLT also provided 10 economic impact statements for regulations that could not be tied to a specific sector. The second table below (Detail/General Impacts) lists the 10 regulations, the types of businesses each impacts, and DLT’s best estimate of how many small businesses each impacts. These regulations mostly refer to undefined groups, or all Rhode Island employers. Compliance and enforcement are dependent upon business operation, Workers’ Compensation and insurance. DLT was able to quantify many of the impacts on small business, but some ambiguity remains, for the above reasons. Of the 10, two submissions clarify federal law.

Per DLT, the estimated cost to create, monitor and enforce their Period One submissions is \$1,122,561.

RECOMMENDATIONS FOR DLT REGULATORY REFORM: PERIOD ONE

- Continue to create customer-centric language, written in a clear, predictable, and reliable way. The majority of DLT’s regulations had moderate scores on the Flesch Readability Scale. However, a number had low scores as well.
- Continue Period Two review.

Notes:

- Determination of licensing fees in relation to small business impact calculation: Some regulators considered licensing to be the responsibility of the employee, while others considered it to be a small business cost. For consistency, ORR determined that professional licenses are issued to individuals, (and thus are not included in the small business impact calculation), whereas trade licenses are the responsibility of business (and thus are included in the small business impact calculation). Although there may be exceptions to this rule, EIS data supports this determination.

DLT’S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

Impact on Specific Sectors

Impacting Regulation’s ERLID #	NAICS Small Business Sector(s) Impacted	Estimated Number of RI Small Businesses
4003	Agriculture, Forestry, Fishing & Hunting, Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation, Information, Finance and Insurance, Real Estate and Rental and Leasing, Professional, Scientific and Technical Services, Management of Companies and Enterprises, Administrative and Support, Waste Management, Educational Services, Health Care and Social Assistance, Arts, Entertainment and Recreation, Accommodation and Food Service, Other Services	31,607
5355	Agriculture, Forestry, Fishing & Hunting, Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation, Information, Finance and Insurance, Real Estate and Rental and Leasing, Professional, Scientific and Technical Services, Management of Companies and Enterprises, Administrative and Support, Waste Management, Educational Services, Health Care and Social Assistance, Arts, Entertainment and Recreation, Accommodation and Food Service, Other Services, Government	31,607
5775	Agriculture, Forestry, Fishing & Hunting, Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation, Information, Finance and Insurance, Real Estate and Rental and Leasing, Professional, Scientific and Technical Services, Management of Companies and Enterprises, Administrative and Support, Waste Management, Educational Services, Health Care and Social Assistance, Arts, Entertainment and Recreation, Accommodation and Food Service, Other Services, Government	31,607

DLT'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL		
Impact on Specific Sectors (continued)		
6664	Agriculture, Forestry, Fishing & Hunting, Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation, Information, Finance and Insurance, Real Estate and Rental and Leasing, Professional, Scientific and Technical Services, Management of Companies and Enterprises, Administrative and Support, Waste Management, Educational Services, Health Care and Social Assistance, Arts, Entertainment and Recreation, Accommodation and Food Service, Other Services, Government	31,067
6974	Agriculture, Forestry, Fishing & Hunting, Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation, Information, Finance and Insurance, Real Estate and Rental and Leasing, Professional, Scientific and Technical Services, Management of Companies and Enterprises, Administrative and Support, Waste Management, Educational Services, Health Care and Social Assistance, Arts, Entertainment and Recreation, Accommodation and Food Service, Other Services, Government	31,067
758	Construction	3,675
2586	Construction, Retail Trade	2,387
2808	Construction	1,490
2916	Construction	3,675
2919	Construction	1,633
3730	Construction	3,675
6212	Construction, Information	4,633
5444	Construction	18
5528	Construction	1,281
5178	Construction	1,000
7107	Construction	3,675
3726	Health Care and Social Assistance	2,270
5338	Health Care and Social Assistance	3
5714	Health Care and Social Assistance	2,270
5767	Health Care and Social Assistance	1,398
1660	Manufacturing	267
3994	Manufacturing, Wholesale Trade, Information, Finance and Insurance, Real Estate and Rental and Leasing, Professional, Scientific and Technical Services, Management of Companies and Enterprises, Administrative and Support, Educational Services, Health Care and Social Assistance, Arts, Entertainment and Recreation, Other Services	15,633
7140	Retail Trade, Transportation	624
2950	Transportation and Warehouse, Mining, Quarrying and Oil and Gas Extraction	124
*Primarily impacts identified sector, though impacts may exist outside of sector		

DLT'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

General Impacts		
Impacting Regulation's ERLID #	Types of Businesses Impacted	Estimated Number of RI Small Businesses
733	All self-insured businesses	not provided
750	Any business which hires leased employees from employment agencies or temporary employment companies Estimate of 15% small businesses that lease employees each year	489 employment/ temporary employment firms Estimated number of small businesses - 5,150
1661	All business with >50 employees	2,958 small businesses
1662	All Rhode Island businesses that pay employee wages	any applicable business
1663	All Rhode Island businesses with employees who work on Sundays or holidays	any applicable RI business
2858	Any business not obtaining workers' compensation insurance	any applicable RI business
2966	Health care businesses and entities offering vocational rehabilitative services	Potentially 2,310 small businesses
3725	Any business which has an employee who retires and is receiving pension benefits who is also entitled to workers' compensation indemnity benefits	Potentially 31,067 small businesses However, there are only 6,000 individuals who are eligible for Workers' Compensation indemnity benefits each year
6713	All businesses and building owners that are responsible for the operation and inspection of their elevator device	3,056 small businesses
7164	All business except for accounting, dentist, attorneys, fueling operators service T.F. Green, manufacturers of monoclonal antibodies, car rental services serving T.F. Green, limousine and taxi-cab companies that operate 7/24, agriculture, maritime, health care, retail, restaurants, hotels, motels, summer camp resorts, recreational facilities, pharmacies, and offshore petroleum exploration and extraction, extraction companies and telemarketing companies.	21,374 small businesses
1663	All self-insured businesses	32,742 small businesses
2858	Any business which hires leased employees from employment agencies or temporary employment companies Estimate of 15% small businesses that lease employees each year	489 employment/ temporary employment firms Estimated number of small businesses - 5,150
2966	All business with >50 employees	2,310 small businesses

Coastal Resources Management Council (CRMC)

Description: CRMC’s primary responsibility is to preserve, protect, develop, and where possible to restore the coastal areas of the state via the issuance of permits for work with the coastal zone of the state.	Supervising Entity	None
	Other Entities Affected	None

CRMC COMPLIANCE STATUS: PERIOD ONE

Exempt from Review: NO	Compliance Status: COMPLIANT	Regulations submitted for review: 28 of 91 (30.8 percent)
Percentage of Total CRMC Regulations Reviewed as of Period One		

MEASURES OF IMPACT AND INFLUENCE: PERIOD ONE

Small Business Impact	MODERATE TO HIGH	15 regulations (53.6 percent) have definite small business impact 7 regulations (25.0 percent) have potential small business impact 6 regulations (21.4 percent) have no business impact
Federal Influence	HIGH	28 of 28 regulations (100.0 percent) were identified as influenced by Federal law or rulemaking
State Influence	NONE	0 of 28 regulations (0.0 percent) were identified as influenced by Rhode Island General Law
IMPACT/INFLUENCE KEY: <u>HIGH</u> : > 75% regulations <u>MODERATE</u> : 25% to 75% regulations <u>LOW</u> : < 25 % regulations <u>NONE</u> : No regulations		

CRMC’S IMPACT ON SMALL BUSINESS: PERIOD ONE, SUMMARY

CRMC provided specific industry analyses on 15 of the 28 regulations submitted for review. The first table below (Detail/Specific Sectors) lists the 15 regulations, the sector(s) each impacts (by NAICS code), and CRMC’s best estimate of how many small businesses each impacts.

CRMC also provided seven economic impact statements for regulations that could not be tied to a specific sector. The second table below (Detail/General Impacts) lists the 7 regulations and the types of small businesses each impacts. These regulations are project-dependent, meaning the regulatory impact is determined by several factors such as location, type of building structure, and type of business. CRMC thus found impact difficult to quantify. Of the seven, one provides users with the terms and definitions used by CRMC. This regulation is provided for any individual or business seeking definitional clarity.

Six submissions had no impact on small business.

CRMC did not provide data on the cost of establishing and enforcing regulations.

RECOMMENDATIONS FOR CRMC REGULATORY REFORM: PERIOD ONE

- Calculate cost of enforcement.
- ORR will work one-on-one to provide CRMC with information, research tools, and guidelines. These will help CRMC gain insight to, and quantify cost of, compliance borne by regulated entities.
- Continue to create customer-centric language, written in a clear, predictable, and reliable way. DEM’s regulations generally had low to moderate scores on the Flesch Readability Scale. However, a number had very low scores. It should be noted that this could be in part due to the technical and specific terms used. However, further review is warranted.
- Review regulations where the Economic Impact Statement clearly states that it is not a regulation. These appear to be “non-regulations” promulgated for informational purposes by chapter. Consider holding outside of the rulemaking process.
- Ensure clear lines of jurisdiction with DEM, as DEM identified an overlap between departments.
- For regulations that do not have a clearly identified industry: use historical data to establish baseline impact on small business.
- Review Economic Impact Statements provided to ORR by CRMC for review. Determine if there are in fact no costs incurred by the department for establishment of the regulation or for enforcement.
- Continue Period Two review.

CRMC’S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

Impact on Specific Sectors

Impacting Regulation’s ERLID #	NAICS Small Business Sector(s) Impacted	Estimated Number of RI Small Businesses
6039	Arts, Entertainment and Recreation, Accommodation and Food Service, Transportation and Warehousing	331
2622	Utilities, Transportation and Warehousing, Manufacturing, Mining, Quarrying and Oil and Gas Extraction, Administrative and Support and Waste Management and Remediation Services	204
3035	Utilities, Transportation and Warehousing, Manufacturing, Mining, Quarrying and Oil and Gas Extraction, Administrative and Support and Waste Management and Remediation Services	204
6888	Utilities	1
6889*	Utilities	1
6890*	Utilities	1
6891*	Utilities	1
6892*	Utilities	1
6893*	Utilities	1
6894*	Utilities	1
6895*	Utilities	1
6896	Utilities	1
6897*	Utilities	1
6898	Utilities	1
6899	Utilities	1

*Primarily impacts identified sector, though impacts may exist outside of sector

CRMC'S IMPACT ON SMALL BUSINESS: PERIOD ONE, DETAIL

General Impacts		
Impacting Regulation's ERLID #	Types of Businesses Impacted	Estimated Number of RI Small Businesses
2621	Any business looking to obtain an assent (permit) for activities (e.g. filling, removing, grading coastal features, or dock construction, new buildings, dredging etc. in specific areas of tidal waters, coastal features and contiguous areas	project-dependent
2623	For business seeking to perform activities within watershed areas of poorly flushed estuaries	project-dependent
2626	For businesses proposing new construction along the shoreline that requires a permit	project-dependent
2627	Applies to businesses when they file a substantive objection to a matter pending before CRMC	project-dependent
2628	Provides business the ability to define what new activities along the shoreline and within 200 feet of a coastal feature qualify as Findings of No Significant Impact	project-dependent
2676	Establishes definition of terms used within Coastal Resources Management Program	all business seeking clarification
2618	Provides businesses guidance as to the jurisdiction of CRMC and what regulations may apply based on location	project-dependent

CONCLUSION

Research by both the US Small Business Administration (SBA) and the RI General Assembly has found that the burden of regulatory compliance falls harder on small businesses. These small firms simply cannot use the same economies of scale held by larger firms and must spread their compliance costs across fewer employees or sales.^{vi}

Businesses, government itself, and public opinion have all called for reform. The findings in this report support those calls. Reform efforts must address Rhode Island's goals for boosting growth and competitiveness, reducing the small business burden, meeting the public agenda, and improving social welfare. Collaboration from all affected and interested parties will be needed to achieve these linked goals. Collectively, lawmakers, regulatory entities, and small business must keep the focus on creating a better business environment.

Based upon the results in the Period One review report, much more effort will be needed to realize Governor Chafee's call for "bold and proactive" solutions. Reform efforts have some significant obstacles to overcome.

This is not easy work. But failure to respond to the needs of small businesses will adversely affect competition, innovation, productivity, and ultimately the health of the Rhode Island economy. All stakeholders need to find ways to overcome these obstacles.

ORR will continue to provide assistance to push this process to higher levels of performance. Political proponents of reform must continue provide support, while recognizing that reform will be an ongoing endeavor. Only by directly confronting the difficult work of creating a clear, predictable and reliable regulatory system can we improve our state's economic climate, and ultimately the quality of life, for all Rhode Islanders.

APPENDIX A: Common Acronyms Used In This Report

- APRA** – Rhode Island Access to Public Records Act
- CRMC** – Rhode Island Coastal Resources Council
- CPI** – Continuous Process Improvement
- DOA** – Rhode Island Department of Administration
- DBR** – Rhode Island Department of Business Regulation
- DEA** – Rhode Island Division of Elderly Affairs
- DEM** – Rhode Island Department of Environmental Management
- DHS** – Rhode Island Division of Human Services
- DLT** – Rhode Island Department of Labor and Training
- DOH** – Rhode Island Department of Health
- DPS** – Rhode Island Department of Public Safety
- EIS** – Economic Impact Statement
- EOHHS** – Rhode Island Executive Office of Health and Human Services
- ERLID** – Electronic Record Locator Identification number
- NAICS** – North American Industry Classification System
- OMB** – Rhode Island Office of Management and Budget
- ORR** – Rhode Island Office of Regulatory Reform
- RIGL** – Rhode Island General Law
- SBA** – United States Small Business Administration
- Secretary** – Rhode Island Office of the Secretary of State
- Taxation** – Rhode Island Division of Taxation

APPENDIX B: Economic Impact Statement Form

Economic Impact Statement Template for Existing Regulations

Guidance for Determining How Many Small Businesses will be Impacted by the Proposed Regulation

The U.S. Small Business Administration (SBA) defines small businesses according to size standards which are matched to the North American Industry Classification Systems (NAICS). The SBA table of small business size standards can be found at the following URL: <http://www.sba.gov/content/table-small-business-size-standards>. The SBA defines a small business differently depending on the industrial classification using either employee number or annual revenue. Because staff will most likely not have access to annual revenue data, small businesses should be considered to have an employee size of NO MORE THAN:

- 100 for Wholesale Trade (Sector 42);
 - 200 for Retail Trade (Sector 44-45); and
 - A small business is defined as one with fewer than 500 employees
- **Step 1: Identify Business Sectors to be Impacted:** Staff developing the regulation should generate a list of the business sectors (using the 6-digit NAICS codes) which their program thinks will be impacted by the regulation.
 - For the most current list of NAICS codes with definitions:
http://www.census.gov/eos/www/naics/2007NAICS/2007_Definition_File.pdf
 - **Step 2: Determine the Number of Small Businesses in Each Sector:** Once there is a list of 6-digit NAICS codes that are expected to be impacted by the regulation, determine the *number* of small businesses in Rhode Island with those NAICS codes by going to the SBA’s online searchable database of self-certified small businesses:
http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm

Once at the SBA “Dynamic Small Business Search” page:

- i) In the first section (“Location of Firm”), scroll down to highlight Rhode Island. (Leave all other selections [congressional district, county, etc.] blank.)
- ii) Leave the “Government Certifications” selections as “Not Required” (this should be the default setting).
- iii) Leave the “Ownership and Self-Certifications” selections blank.
- iv) In “Specific Nature of Business,” enter the 6-digit NAICS code(s) from step one above.
- v) Leave the next four sections blank (General Nature of Business; Profile Last Updated; Maximum Acceptable Bonding Levels; and Quality Assurance Standards).
- vi) In the “Size” section, select “No More Than” and enter 500 employees (leave “Annual Revenue” blank).

- vii) Do not make any entries under “Capabilities” or “Searching for a Specific Profile.”
- viii) Under “Search Results Display Options” select the number of results you want to be shown (e.g. 500), and leave the columns to be displayed and tabular format at the default setting.
- ix) At the bottom of the screen, click on “Search Using These Criteria.”
- x) The number of firms displayed in your results table is the number of small businesses to be impacted by this regulation for the NAICS codes selected.

Note: In some cases, staff will already have a list of businesses in RI that are projected to be impacted because the industry is currently regulated by an existing regulatory program and the information is collected in an existing database. Staff should determine whether this method will yield a more accurate list of small businesses to be impacted as opposed to searching the SBA database by NAICS code.

SMALL BUSINESS IMPACT STATEMENT

In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.

Agency submitting regulation:

Subject matter of regulation:

ERLID Number:

Statutory authority:

Other agencies affected:

Other regulations that may duplicate or conflict with the regulation:

Describe the scope and objectives of the regulation:

What was the rationale for establishing this regulation?

Does the rationale still exist?

Is the rationale still relevant?

Business industry(ies) affected by the regulation:

Types of businesses included in the industry(ies):

Total number of small businesses included in the regulated industry(ies) *Please see the attached guidance documents for assistance determining the total number of small businesses:*

Number of small businesses potentially subject to the proposed regulation:

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues?

What is the cost to your agency of establishing and enforcing this regulation?

What would the consequences be if the regulation did not exist?

Effective date used in cost estimate:

	Yes	No	<i>*Note: For each question, please answer “yes” or “no” and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i>
1.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do small businesses have to create, file, or issue additional reports?
2.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do small businesses have to implement additional recordkeeping procedures?
3.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do small businesses have to provide additional administrative oversight?
4.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do small businesses have to hire additional employees in order to comply with the proposed regulation?
5.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
6.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
7.	Yes	No	Are performance standards more appropriate than design standards?

	<input type="checkbox"/>	<input type="checkbox"/>	
8.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
9.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation have the effect of creating additional taxes and/or fees for small businesses?
10.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
11.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in RI?
12.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in RI?
13.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Can the regulation provide for less stringent compliance or reporting requirements for small businesses?
14.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
15.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
16.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Can performance standards for small businesses replace design or operational standards?
17.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?
18.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Have any small businesses or small business organizations been contacted during the preparation of this document? If so, please describe.

TITLE 42
State Affairs and Government

CHAPTER 42-35.1
Small Business Regulatory Fairness in Administrative Procedures

SECTION 42-35.1-3

§ 42-35.1-3 Economic Impact statements. – (a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, with the exception of emergency regulations adopted in accordance with subsection 42-35-3(b) and excluding those businesses defined in subsection (c) of this section, each agency shall prepare, in conjunction with assistance and oversight from the office of regulatory reform and in congruence with the analysis required in subsection (b) of this section, an economic impact statement that includes the following:

(1) An identification and estimate of the number of the small businesses subject to the proposed regulation;

(2) The 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;

(3) A statement of the effect or probable effect on impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(b) The economic impact statement required herein shall be published in guide form as well as posted on the department of administration and the office of management and budget websites. The guide should be published and/or posted on or around the same date as the regulation change and shall include a description of actions need by the small business to meet the requirement of the regulation. The office of regulatory reform shall develop criteria for the economic impact statement.

(c) The following professional and business activities shall not be considered a small business for purposes of this section:

- (1) Financial institutions including banks, trusts, savings and loan associations, thrift institutions, consumer and industrial finance companies, credit unions, mortgage and investment bankers and stock and bond brokers;
- (2) Insurance companies, both stock and mutual;
- (3) Mineral, oil and gas brokers;
- (4) Subdividers and developers;
- (5) Landscape architects, architects and building designers;
- (6) Entities organized as nonprofit institutions;
- (7) Entertainment activities and productions including motion pictures, stage performances, television and radio stations and production companies;
- (8) All utilities, water companies and power transmission companies, except electrical power generating transmission companies providing less than four and one-half (4.5) kilowatts; and
- (9) All petroleum and natural gas producers, refiners and pipelines.

History of Section.

(P.L. 2009, ch. 229, § 1; P.L. 2009, ch. 230, § 1; P.L. 2012, ch. 89, § 2; P.L. 2012, ch. 120, § 2; P.L. 2012, ch. 445, § 1.)

ENDNOTES

ⁱ <http://www.governor.ri.gov/documents/regulatory/Small%20Business%20Survey%20Report%20-%20FINAL.pdf>

ⁱⁱ <http://office.microsoft.com/en-us/word-help/test-your-document-s-readability-HP010354286.aspx>

ⁱⁱⁱ http://www.ohic.ri.gov/documents/Insurers/Regulations/Regulation%205%20Readability/1_Regulation%205%20final.pdf

^{iv} <http://www.berr.gov.uk/files/file22988.pdf>

^v <http://asq.org/learn-about-quality/project-planning-tools/overview/pdca-cycle.html>

^{vi} <http://www.sba.gov/advocacy/7540/632371>