

## **APA Talking Points for Agency Stakeholders:**

### **What is the Administrative Procedures Act (APA)?**

- The APA is the law that governs the rulemaking process for government agencies. It determines how agencies notice proposed rules, receive public comments, and promulgate final regulations.
- In 2016, the R.I. General Assembly updated the APA, requiring all regulatory agencies to codify and update their regulations. The new reforms will take advantage of technological advances to increase regulatory transparency to the public.
  - Several sections of the APA were not amended, including those sections that relate to the quasi-judicial functions of agencies.
- The new law requires all regulations to be reformatted, indexed, and published online as the Rhode Island Code of Regulations (RICR). Any regulation not in the new RICR format by January 1, 2019 will no longer have the force of law.

### **Why do we need a code of regulations?**

- Rhode Island is the only state in New England and one of the handful of states across the country that does not have an online, searchable, and indexed code of state regulations.
- Without an organized code it is hard to find all of the regulations related to a specific area. For example, you may know that there is a regulation on lead as it relates to housing, but you may not be aware there are also regulations regarding lead in drinking water. An organized code will help readers understand what the rules of the road are and how to comply with them.
- The Office of the Secretary of State is responsible in Rhode Island for publishing and maintaining the RICR online.

### **What can the public expect over the next two years as a result of this effort?**

- Stakeholders can expect to see an increase in the number of agency regulatory actions noticed through the APA process. Over the next two years, agencies will be:
  - Repealing outdated or obsolete rules,
  - Consolidating regulations to better present requirements to regulated entities,
  - Promulgating new regulations as required by new state laws, and
  - Amending regulations to improve the clarity of the requirements.

### **What is the role of the Office of Regulatory Reform (ORR)?**

- The Office of Regulatory Reform (ORR) is responsible for coordinating this effort across executive branch agencies and for establishing a phased approach for codification.
- ORR provides agencies with:
  - Technical assistance in the structuring and writing of regulations,
  - Policy analysis, specifically addressing unintended consequences of regulatory requirements, and
  - Assistance in analyzing the costs and benefits of proposed regulations.

### **There seems to be a lot of language being removed from some regulations. Why is this occurring?**

- Some regulatory language will disappear due to repeals and consolidations of outdated or obsolete rules.
- Some of the language currently in agency regulations was never intended to have the force of law, and will therefore be removed as the regulations transition into the new code. Before the widespread use of the internet, agencies used the regulatory process as a convenient and reliable way to disseminate non-regulatory information to the public. That informational content can now be removed from regulation as agencies take advantage of other outlets to share material about an agency's internal process, policies, and procedures. By removing this type of language from older regulations we can clarify and streamline the legal requirements. Examples of non-regulatory language that can now be posted on agencies' websites include:
  - **Guidance Documents**—A tax regulation may be promulgated with a related guidance document that provides examples for accountants on how to calculate tax formulas.
  - **Internal operating procedures and policies**—A document that provides DCYF staff with a required set of rules and procedures to follow when processing licensing applications for child care facilities.
  - **Communications material**— An informational brochure about a specific program, posters, or issue briefs on a policy area.
- Distinguishing between regulatory language that has the force of law and non-regulatory language will make the regulations clearer to the public and strengthen the agencies' ability to make appropriate regulatory decisions.

**NOTE:** *Agencies should consult legal counsel and ORR before deciding whether to reclassify an existing regulation as a guidance document. If there is any doubt as to whether a document constitutes a regulation or a guidance document, the agency should err on the side of promulgating the document as a regulation.*

### **What will be the end result of this effort?**

- All state regulations will be organized and easily searchable in a single location, reducing the costs and uncertainty to businesses and citizens of locating applicable laws.
- The streamlined and improved regulations will provide individuals and businesses with clear information about the requirements for their activities and industries.
- The state will reduce regulatory red tape, making it easier to do business in Rhode Island.