## CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

**AGENCY:** Rhode Island Department of Administration

**DIVISION:** Division of Human Resources

**RULE IDENTIFIER:** 220-RICR-40-00-2

**RULE TITLE:** IRS Publication 1075 – Background Check Process and Criteria

**REASON FOR RULEMAKING:**

This amendment reflects an update made by the Internal Revenue Service (IRS) in its IRS Publication 1075 (rev. 2021), which now requires the State to conduct a national background check for existing employees with access to "Federal Tax Information," as defined by the IRS, every five (5) years instead of every ten (10) years.

**TESTIMONY AND COMMENTS:**

No testimony or public comment received.

**CHANGE TO TEXT OF THE RULE:**

The final rule is identical to the proposed rule and there were no changes.

**REGULATORY ANALYSIS:**

Amendment to 220-RICR-40-00-2 **--** IRS Publication 1075 – Background Check Process and Criteria

**Background and Introduction**

The Division of Human Resources (“HR”) is requesting a regulatory change to 220-RICR-40-00-2 (IRS Publication 1075 – Background Check Process and Criteria). This amendment is proposed to reflect a change by the IRS in their requirements to conduct

a national background check for certain employees every five (5) years instead of the original ten (10) year requirement.

These background checks are required for employees who have access to “Federal Tax Information (FTI),” as defined by the IRS. This is limited to the employees that have access to FTI directly through an IRS or other federal portal (i.e., the Division of Taxation, Child Support Services, etc.) and does not apply to tax information submitted by individual citizens to the State. These requirements were adopted by the IRS in the form of Publication 1075. In order to meet these requirements, the General Assembly passed 36-3-16, which requires criteria be established through regulation. As such the department adopted 220-RICR-40-00-2.

New employee applicants entering into positions with access to FTI receive the background check at their own expense as part of the hiring process. However, Publication 1075 also required existing employees to also have the background check completed initially and every ten (10) years thereafter. The initial checks were completed in the end of 2020 through 2021.There are approximately 850 current positions which are impacted by the FTI background check requirement. The cost to conduct a single national background check through the Office of the Attorney General is $45. Therefore, HR estimates a direct cost of $38,250 in FY2026 (see attached fiscal note). Additionally, there is a negligible indirect cost for each employee to go to the AG’s office in Cranston and complete the check (an hour or two per employee).

In 2021, the IRS updated publication 1075 to require employees with access to FTI to have a background check every 5 years, instead of 10 years as required by the 2016 version of Pub 1075. During a recent IRS audit, because the regulation reflects the ten (10) year requirement, a finding was issued that the State is out of compliance with Publication 1075.

Therefore, HR is proposing to update the regulation with a simple change to reflect a background recheck every five (5) years. Because there is no room for discretion in this situation and HR is amending the regulation to be consistent with federal requirements, HR is proposing this regulatory filing as direct final.

## Benefits and Costs of Regulatory Alternatives

The overall cost to implement this amendment is minimal (less than $40,000), while not making this change to meet federal requirements would be extremely costly. Not making this change would result in IRS audit findings and the potential for the IRS and

other federal agency partners to no longer provide vital tax information directly to the State. This IRS tax information is necessary to process State tax returns, verify income for child support purposes and other important functions. Thus, not meeting the minimum federal requirements is not a viable option.

Requiring that these searches be conducted more frequently than five (5) years would add significant administrative burden, additional cost and is unnecessary. While the State may conduct the background check more frequently under existing and proposed language, it is not required to do so.

**Alternative Approaches Considered During Rulemaking Proceedings**

This amendment is required to reflect the updated federal requirements. The updated requirement is expressly stated in IRS Publication 1075: A national background check of existing employees with access to FTI, as defined by the IRS, is required to be performed every five (5) years. Not making this change would result in IRS audit findings and the potential for the IRS and other federal agency partners to no longer provide vital tax information directly to the State. This IRS tax information is necessary to process State tax returns, verify income for child support purposes and other important functions. Thus, not meeting the minimum federal requirements is not a viable option.

Requiring that these searches be conducted more frequently than five (5) years would add administrative burden, additional cost and is unnecessary. While the State may conduct the background check more frequently under existing and proposed language, it is not required to do so.

**Final Determination and Request**

The are no alternatives to amending the regulation in this situation. The amendment is necessary for the regulation to reflect the updated federal requirements stated in Publication 1075. Therefore, HR respectfully requests approval to conduct a Direct Final regulatory process to update this regulation accordingly.