

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	TITLE	
	Regulatory Flexibility Act of 1980, as amended (P.L. 96-354) and the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L.104-121).	
	Directive Number:	Effective Date:
	FCCINST. 1158.3	December 21, 2018

- I. **PURPOSE:** To establish standard practices for implementation of the Regulatory Flexibility Act (“RFA”) and the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) within the Commission.
- II. **CANCELLATION:** FCCINST 1158.2, “Regulatory Flexibility Act of 1980 (P.L. 96-354),” dated September 15, 2011, is superseded by this directive.
- III. **BACKGROUND:** The RFA, as amended by SBREFA, is designed to focus agency consideration of the impact of proposed and final rules on small business, small non-profit organizations, and small government jurisdictions (collectively “small entities”). The RFA is a procedural statute that is designed to increase agency awareness and understanding of the impact of regulations on small business, to require agencies to communicate and explain their regulations to small entities, and to encourage agencies to provide flexibility and regulatory relief to small entities where appropriate. The RFA also has other requirements, including the publication of compliance guides, preparation of the semi-annual Unified Agenda, and an annual review of rules that are 10 years old and have a significant impact on a substantial number of small entities.
- IV. **SCOPE AND APPLICABILITY:** The procedures established herein apply to all proposed and final notice-and-comment rules that could have a “significant economic impact on a substantial number of small entities,” and existing rules that have such an effect.
- V. **CROSS-REFERENCES:** Additional guidance is provided in internal documents specific to the projects; *e.g.*, the document entitled “Memorandum on Regulatory Flexibility” (“RFA Memorandum”) which is part of the Agenda Handbook, as well as the Small Entity Compliance Guide, both of which can be found on the intranet page of the FCC’s Office of Communications Business Opportunities (OCBO).
- VI. **RESPONSIBILITIES:**
 - A. **Bureau and Office Chiefs:** Consistent with Commission internal guidelines, the following summarizes duties regarding the preparation of each Certification, rulemaking, Notice of Proposed Rule Making (“NPRM”) and Report and Order (“Order”):
 1. For certifications, if the proposed or final rule(s) appear to have a *de minimis* direct economic impact on small entities:
 - a. consult with OCBO;

- b. complete an initial certification, as described in the RFA Memorandum, and include it in the NPRM and the Federal Register summary; and
 - c. complete a final certification, as described in the RFA Memorandum, to accompany the final rule(s) and to be included in the *Federal Register* summary.
2. For all rulemakings, consult with OCBO during the drafting stage about issues which may affect small entities.
3. For NPRMs, determine whether the proposed rule(s) might have “a significant economic impact on a substantial number of small entities.” See 47 U.S.C. §§ 601, 603-605. Although the RFA and the courts have not defined the terms “significant” or “substantial,” the RFA Memorandum, at section IV, describes some considerations that can assist in assessing whether these thresholds have been met. These considerations include whether the proposed rules have a direct economic impact on small entities that cannot be described as *de minimis*. Proposed rules may have a direct economic impact by adversely affecting revenues or profit margins or by imposing undue administrative burdens. Agencies have broad discretion to determine the factors that should be considered in assessing the small business impacts of their regulations.
4. For all rulemakings where the proposed or final rule(s) could have a direct economic impact on small entities that cannot be described as *de minimis*:
 - a. consult with OCBO concerning any potential small entity issues;
 - b. for NPRMs, complete an initial regulatory flexibility analysis (IRFA) as described in the RFA Memorandum, and include it in the NPRM and the *Federal Register* summary;
 - c. for Orders, complete a final regulatory flexibility analysis (FRFA) as described in the RFA Memorandum, and include the agency’s response, in detail, to any comments filed by the Chief Counsel for Advocacy of the SBA to the proposed rule(s) and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments, See 5 U.S.C. Sec. 604(a)(3), *see also*, Secs. 604(a)(1) and 604(a)(2); also,
 - (i) publish the FRFA with the final rule(s) in the Order and in the *Federal Register* summary; and
 - (ii) complete a Compliance Guide for release on the same date as the date of publication of the final rule in the *Federal Register* (or as soon as possible after that date); and not later than the date on which the requirements of that rule become effective. Prior to release of the Compliance Guide, submit a draft to OCBO for review and coordination with the Enforcement Bureau and the Office of General Counsel. Compliance guides will be published on the FCC website, distributed to interested parties, and included in the agency’s annual Report to Congress. The internal guidance manual concerning Compliance Guides can be found on OCBO’s intranet page. See SBREFA, sections 211, 212, 215; 5 U.S.C. § 601 *note.*).
5. Submit semi-annually to OCBO a description of all current notice-and-comment rulemaking proceedings of the relevant Bureau or Office. See 5 U.S.C. § 602. All federal agencies are required to submit information, in a uniform format, to the General Services Administration (GSA) about regulations that are being considered or reviewed. GSA publishes a compilation of those submissions in a document

entitled the "Unified Agenda of Federal Regulatory and Deregulatory Actions," or "Unified Agenda."

6. Submit annually to OCBO a list of the existing rules that have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to Section 610 of the RFA during the succeeding 12 months. The rules to be reviewed are those promulgated 10 years prior to the year of the review. After publication of the list of rules, the Bureaus and Offices have the succeeding 12 months to review the rules utilizing the following factors:
 - a. the continued need for the rule;
 - b. the nature of complaints or comments received concerning the rule from the public;
 - c. the complexity of the rule;
 - d. the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
 - e. the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule (5 U.S.C. § 610 (b)).

B. Office of Communications Business Opportunities: The Office of Communications Business Opportunities ("OCBO") shall have the following responsibilities:

1. Serve as the principal small business advisor to the Commission, Bureaus and Offices as provided in the Commission's rules;
2. Develop, with the participation of Bureaus and Offices, policies, plans and programs to further the competitive concerns of small entities;
3. Manage the implementation of the RFA and SBREFA;
4. Advise Bureaus and Offices about whether the proposed and final rules may have a significant impact on a substantial number of small entities;
5. Act as the Commission's liaison with the SBA;
6. Review NPRMs, Orders, and other items for Commission action to ensure consistency and compliance with the requirements of the RFA and SBREFA;
7. Solicit information, on a semi-annual basis, about current rulemaking proceedings for inclusion in the Unified Agenda;
8. Coordinate the submission of the description of the Commission's current rulemaking proceedings to the GSA;
9. Review and coordinate the publication of Compliance Guides and distribute those guides to interested parties;
10. Prepare the agency's annual Small Entity Compliance Guide Report to Congress;
11. Ensure that small entities obtain an opportunity to participate in any applicable rulemakings;

12. Solicit information, on an annual basis, about rules that are subject to review pursuant to Section 610 of the RFA. OCBO should solicit information no later than December 31st each year;
13. Coordinate the *Federal Register* publication, by March 31st of each year, of the list of existing ten-year-old rules subject to review for continuation, modification, or elimination;
14. Maintain an electronic tracking system to monitor the resolution, by the Bureaus and Offices, of public comments filed in response to the publication of the Section 610 list of rules;
15. Provide training, advice, and guidance on matters relating to the RFA and SBREFA by offering annual training seminars and quarterly Regulatory Flexibility clinics and by inviting SBA to hold regular sessions for Commission rule writers;
16. Develop and implement a robust outreach strategy to inform and engage with small and diverse businesses through social media, newsletters, and other means of communications; and
17. Update this Directive to reflect changes in law or policy, as appropriate.

- C. Consumer and Governmental Affairs Bureau: After Commission adoption of a notice-and-comment rulemaking proposal or order, transmit a copy of the item with certification of non-applicability of the RFA or with the regulatory flexibility analysis, as appropriate, to the Chief Counsel for Advocacy, SBA.
- D. Office of General Counsel: Provide legal advice concerning administrative law and litigation to OCBO and the other Bureaus and Offices on issues relating to the Administrative Procedure Act, RFA and SBREFA.
- E. Office of Managing Director: Monitor Commission operations to ensure continued compliance with the policies and procedures specified in this Directive.

VII. EFFECTIVE DATE AND IMPLEMENTATION: This directive is effective immediately and shall be implemented promptly upon distribution.



Mark Stephens
Managing Director