

<p>FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554</p> <p>FCC DIRECTIVE</p>	TITLE	
	<p>Regulatory Flexibility Act of 1980, as amended, Pub. L. No. 96-354, and the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121.</p>	
	<p>Directive Number:</p> <p style="text-align: center;">FCCINST 1158.4</p>	<p>Effective Date:</p> <p style="text-align: center;">February 2024</p>

- I. **PURPOSE:** To establish within the Federal Communications Commission (Commission) standard practices to implement the Regulatory Flexibility Act of 1980, Pub. L. No. 96-354 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121 (SBREFA), the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, and the Small Business Jobs Act of 2010, Pub. L. No. 111-240.
- II. **CANCELLATION:** FCCINST 1158.3, Regulatory Flexibility Act of 1980, Pub. L. No. 96-354, dated December 21, 2018, is superseded by this Directive.
- III. **BACKGROUND:** The RFA, as amended, is a procedural statute designed to implement Congress’ principle that federal agencies should tailor their regulatory requirements to the scale of small businesses, small non-profit organizations, and small government jurisdictions (collectively, small entities) that are subject to their regulation. The RFA requires federal agencies to examine the impact of proposed and final rules on small entities and to explore regulatory alternatives for reducing any significant economic impact on a substantial number of such entities. Federal agencies are required to communicate and explain their regulations to small entities, and to provide flexibility and regulatory relief to small entities where appropriate. The RFA also requires federal agencies to publish small entity compliance guides (SECGs), prepare the semi-annual Unified Agenda, and conduct an annual review of rules 10 years after publication in the *Federal Register* that have or will have a significant economic 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. Alternatively, Bureaus and Offices may certify that a rule will not have a significant economic impact on a substantial number of small entities.
- V. **CROSS-REFERENCES:** Additional guidance is provided in Office of Communications Business Opportunities’ (OCBO) reference documents. These documents are located on OCBO’s intranet page, e.g., the *Guide to Preparing Regulatory Flexibility Analyses (RFA Guide)* and SECGs.
- VI. **RESPONSIBILITIES:**
 - A. **Rulemaking Bureaus and Offices:** Consistent with Commission guidelines, the following summarizes responsibilities when drafting a Notice of Proposed

Rulemaking (NPRM), Report and Order (Order), or Public Notice (PN) that seeks comment on or adopts requirements that constitute “rules” within the meaning of the Administrative Procedure Act (APA), as well as other responsibilities related to the rulemaking process:

1. For all rulemakings, consult with OCBO during the very early stages of drafting an Order, NPRM, or PN that requires an RFA analysis (RegFlex) to begin discussing issues, proposed rules and reporting requirements, and costs that may potentially affect small entities.
2. Determine whether the proposed or final rule(s) might have “a significant economic impact on a substantial number of small entities.” *See* 5 U.S.C. §§ 601, 603-605. Although the RFA does not define the terms “significant economic impact” or “substantial number of entities,” the *RFA Guide* section III B., Analysis, Steps 4 and 5, describes factors that Bureaus and Offices may consider in assessing whether these thresholds have been met. These factors include whether the proposed rules have a direct economic impact on small entities that will have a greater than *de minimis* effect. Proposed rules may have a direct, positive economic impact, such as decreasing costs, increasing revenue, or lessening administrative burdens; or may have an adverse effect on these factors, for example, increasing costs, reducing revenues or gross profit margins, or increasing reporting requirements or imposing undue administrative burdens. Agencies have broad discretion to determine the factors that should be considered when assessing the economic impact of their regulations on small entities.
3. In all notice-and-comment proceedings where the proposed or final rule(s) could have a direct economic impact on small entities that can be described as greater than *de minimis*:
 - a. for NPRMs and PNs seeking comment on APA rules, complete an initial RegFlex (IRFA) as described in the *RFA Guide*, and publish the NPRM and IRFA (or summary thereof) in the *Federal Register*;
 - b. for Orders and PNs adopting APA rules, complete a final RegFlex (FRFA) as described in the *RFA Guide* and include the agency’s response, in detail, to any comments the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy filed regarding the proposed rule(s). Also, if applicable, provide a detailed explanation of any changes made to the proposed rule(s) as a result of public comments, *see* 5 U.S.C. §§ 604(a)(3), 604(a)(1), and 604(a)(2). Also,
 - (i) publish the Order with the final rule(s) and the FRFA (or summary thereof) in the *Federal Register*; and
 - (ii) complete an SECG 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 rules become effective. Forward the SECG to OCBO for review and coordination with the Enforcement Bureau (EB). After reviewing and approving EB’s comments, OCBO will forward the draft SECG to the Office of the Chairperson (OCH) for review and approval. Upon receiving OCH’s approval, the SECG will be published on OCBO’s webpage, included in the Commission’s annual Report to Congress, and

may be distributed to interested parties. The guidance manual concerning SECGs can be found on OCBO's intranet page. See SBREFA, sections 211, 212, 215; 5 U.S.C. § 601 *note*.

4. In all notice-and-comment proceedings where it has been determined the proposed or final rule(s) will not have a direct economic impact on a substantial number of small entities:
 - a. In an NPRM or PN seeking comment, complete an initial certification, as described in the *RFA Guide*, and include it in the NPRM and the *Federal Register* summary; and
 - b. In an Order or PN adopting APA rules, complete a final certification, as described in the *RFA Guide*, to accompany the final rule(s) and include it in the *Federal Register* summary.
5. In all notice-and-comment proceedings where the proposed or final rule(s) would prescribe using a size standard other than a size standard approved by the Small Business Administration (SBA) Office of Size Standards (*see* 13 CFR § 121.201):
 - a. At the NPRM stage, in coordination with OCBO, consult with the SBA regarding the proposed alternative size standard, in accordance with 13 CFR §§ 121.903(a)(1)-(4);
 - b. At the Order stage, in coordination with OCBO, obtain SBA approval of the alternative size standard in accordance with 13 CFR § 121.903(a)(5).
6. Submit semi-annually to OCBO a description of all current notice-and-comment rulemakings 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) and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) about regulations that are being considered or reviewed within the next 12 months or thereafter. GSA and OIRA publish a compilation of those submissions in a document entitled the "*Unified Agenda of Federal Regulatory and Deregulatory Actions*," or "*Unified Agenda*," which is available on OIRA's website, <https://www.reginfo.gov/public/>.
7. Submit annually to OCBO a list of existing rules that have a significant economic impact on a substantial number of small entities, which the Bureaus and Offices will review pursuant to section 610 of the RFA during the succeeding 12 months. The rules to be reviewed are those published in the *Federal Register* 10 years prior to the year of the review. After OCBO publishes the list of rules in the *Federal Register* for comment, Bureaus and Offices have the succeeding 12 months to review the rules considering 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: 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. Act as the Commission's liaison with the SBA, including matters involving alternative size standards;
5. Review NPRMs, Orders, and other items for Commission action to ensure consistency and compliance with the requirements of the RFA and SBREFA;
6. Advise Bureaus and Offices about whether the proposed or final rules may have a significant impact on a substantial number of small entities;
7. Ensure that small entities obtain an opportunity to participate in any applicable rulemakings;
8. Coordinate agency responses to small entity-related enforcement matters with the SBA's Office of National Ombudsman;
9. Review and coordinate the publication of SECGs and distribute those guides to interested parties;
10. Prepare the agency's annual SECG Report to Congress;
11. Solicit information from Bureaus and Offices, on a semi-annual basis, about current rulemaking proceedings to be included in the Unified Agenda;
12. Prepare and coordinate, on a semi-annual basis, the Commission's submission of its current regulatory agenda to the GSA and OIRA;
13. Solicit information from Bureaus and Offices no later than December 31st each year about rules that are subject to review pursuant to section 610 of the RFA;
14. Coordinate the *Federal Register* publication, by March 31st of each year, of the list of existing 10-year-old rules subject to review for continuation, modification, or elimination pursuant to section 610 of the RFA;
15. Monitor the Commission's Electronic Comment Filing System to track public comments filed by interested parties in response to the publication of the section 610 list of rules; collaborate with Bureaus and Offices to determine a resolution and response to comments and concerns filed by interested parties; maintain a record keeping process to track those responses;
16. Provide training, advice, and guidance on matters relating to the RFA and SBREFA by offering annual training seminars and Regulatory Flexibility Act clinics, and inviting the SBA's Office of Advocacy to jointly hold training sessions for Commission rule writers;

17. 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
18. Update this Directive to reflect changes in law or policy, as appropriate.

- C. Office of the Secretary: After the Commission adopts a notice-and-comment rulemaking proposal or order, transmit a copy of the item with either a RegFlex analysis or a certification of non-applicability of the RFA, as appropriate, to the SBA Chief Counsel for Advocacy.
- 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 the 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