

TO: Bureau/Office Chiefs and Assistants for Management

SUBJECT: 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).

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 CANCELLATION: FCCINST 1158.1, "Regulatory Flexibility Act of 1980 (P.L. 96-354)," dated August 24, 1993, is superseded by this directive.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 Unified Agenda and a requirement for regular review of rules that are 10 years old.

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.

VI. RESPONSIBILITIES:

A. Bureau and Office Chiefs.

1. Consistent with Commission internal guidelines, for each Notice of Proposed Rulemaking (NPRM):

- a. Consult with OCBO during the drafting stage about issues which may affect small entities; and
- b. 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.

If the proposed or final rule(s) would not have a direct economic impact on small entities that cannot be described as *de minimis*:

- (i) consult with the Office of Communications Business Opportunities ("OCBO");
- (ii) complete an initial certification, as described in the RFA Memorandum, to be

included in the NPRM and the *Federal Register* summary; and included in the NPRM and the *Federal Register* summary; and
(iii) 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.

If the proposed or final rule(s) could have a direct economic impact on small entities that cannot be described as *de minimis*:

- (i) consult with OCBO, in general, concerning any potential small entity issues;
- (ii) complete an initial regulatory flexibility analysis (“IRFA”) as described in the RFA Memorandum, and include it in the NPRM and the *Federal Register* summary;
- (iii) complete a final regulatory flexibility analysis (“FRFA”) as described in the RFA Memorandum, to accompany the final rule and include in the Order and the *Federal Register* summary; and
- (iv) complete a Compliance Guide for release following the publication of the rule(s) in the *Federal Register*. Prior to release of the Compliance Guide, submit it to OCBO for review and coordination with the Enforcement Bureau. Compliance guides will be published on the FCC website.

2. 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.”

a) OCBO should solicit this information semi-annually.

3. 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. In reviewing rules, the following factors must be considered:

- 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.

1. Serve as the principal small business advisor to the Commission, Bureaus and Offices as provided in the Commission’s rules, 47 C.F.R. §§ 0.101, 0.371;
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 with regard to 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;
10. Ensure that small entities obtain an opportunity to participate in any applicable rulemakings;
11. Solicit information, on an annual basis, about rules that are subject to review pursuant to Section 610 of the RFA;
- a) OCBO should solicit information no later than December 31st each year.
12. 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;
13. 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; and
14. Provide training, advice, and guidance on matters relating to the RFA and SBREFA by offering annual training seminars and quarterly Reg Flex clinics and by inviting SBA to hold regular sessions for Commission rulewriters.

C. Consumer and Governmental Affairs Bureau, Reference and Information Center.

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. General Counsel.

Provide legal advice concerning administrative law and litigation to OCBO and the other Bureaus and Offices on issues relating to the RFA and SBREFA.

E. Office of Managing Director

1. Update FCC Directive to reflect changes in law or policy, as appropriate.
2. Monitor Commission operations to ensure continued compliance with the policies and procedures specified in this Directive.

Anthony J. Dale
Managing Director