

FLORIDA SMALL BUSINESS REGULATORY ADVISORY COUNCIL

PROCEDURAL GUIDELINES

Submitted: July 10, 2009

I. Definitions

A. In the Small Business Regulatory Advisory Council's Procedural Guidelines the following definitions apply:

1. "Act" means the Small Business Regulatory Relief Act, as enacted in H. B. 7109, effective July 1, 2008.
2. "Advocate" means the Small Business Advocate, a designated staff member of the Florida Small Business Development Center Network, or his or her designee.
3. "Agency" means as defined in F. S. §120.52(1).
4. "Chair" means the Chairperson as elected by Council members.
5. "Coordinator" means the Council's Program Coordinator, a designated staff member of the Florida Small Business Development Center Network, who provides support services to the Council and the Advocate.
6. "Council" means the Small Business Regulatory Advisory Council.
7. "Council Member" means any one of the nine members appointed by the Florida Governor, Senate President, or Speaker of the House.
8. "Electronic Submission" means a document and/or comment submitted via email or web site.
9. "Emergency Rule" means a rule which an agency may promulgate without complying with the notice, hearing, and publication requirements, if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.
10. "Ex-officio Member" means any non-voting representative to the Council appointed by the Florida Small Business Development Center Network.
11. "JAPC" means the Joint Administrative Procedure Committee of the Florida legislature.
12. "Law Implemented" means as defined in F. S. §120.52(9).
13. "OPPAGA" means the Florida Office of Program Policy Analysis and Government Accountability of the Florida legislature.
14. "OTTED" means the Florida Office of Tourism, Trade, and Economic Development.
15. "Open Meeting" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times, in accordance with Article I, Section 24 of the Florida Constitution.
16. "Proposed Rule" means as defined in F. S. §120.52(16).
17. "Public Notice" means providing a public notice of an open meeting as provided in Article I, Section 24 of the Florida Constitution.
18. "Rulemaking Authority" means as defined in F. S. §120.52(17).
19. "Scope Statement" means the first document indicating the intention of the agency to draft a rule.
20. "Small Business" means as defined in F. S. §228.7001 and 288.703.

II. Meetings

- A. The Chair, in consultation with the Council, will set regular meeting dates of the Council, for each calendar year.
- B. The Coordinator will post the public meeting notice according to the Open Meeting law, as well as posting to the Small Business Regulatory Advisory Council web site, <http://floridasbrac.org>.
- C. The Council may schedule a special meeting to consider any matter it may consider at a regular meeting. The Council and/or Coordinator will post notice of a special meeting at least 48 hours before the special meeting.

- D. The Council may recess a regular or special meeting to a later date if, before recessing, the Chair gives notice of the date and time of the resumption of the meeting and a notice of resumption of the meeting is posted.
- E. A quorum of the Council shall consist of five (5) council members without regard to Council member's representation.
- F. Each Council member will be allowed one vote. Council policy encourages any agency representative appointed to the Council to abstain from voting on rules of the agency he/she represents as a Council member.
- G. The Coordinator will provide each Council member with the meeting agenda and other information related to the meeting. Such information may include, but is not limited to:
 - 1. Briefings on proposed rules and emergency rules that an Agency has certified to have an impact on small business.
 - 2. Briefings on Scope Statements that indicated a rule may have an impact on small business.
 - 3. Briefings on proposed rules and emergency rules that agencies have not certified to have an impact on small business, but are rules upon which there has been comment received from the regulated business community, or statistical data indicate the agency did or did not properly certify the impact or lack thereof.
 - 4. Background information regarding public appearances by small business(es), speakers, or the general public.

III. Placing a Proposed Rule on the Council's Agenda

- A. An agency submits a proposed rule it has certified to have an impact on small business, or the Coordinator has located a proposed rule the agency did not certify, but the Coordinator requests the Council to review.
- B. If an agency submits the rule, it can be provided to the Council either by:
 - 1. Mailing to State of Florida Small Business Regulatory Advisory Council, care of Florida Office of Small Business Advocate, 401 East Chase Street, Suite 100-A, Pensacola, FL 32502.
 - 2. Electronic submission via email to vicky.baker@Floridasbrac.org.
- C. The paper and/or electronic submission may contain, but is not limited to, the following (See Suggested Transmittal Form to Small Business Regulatory Advisory Council of Proposed Administrative Rule, prepared in accordance with FL HB 7109, titled : Small Business Advisory Relief Act, attached):
 - 1. The date of submittal to the Council.
 - 2. The subject of the rule.
 - 3. Statutory authority for the rule.
 - 4. A plain language analysis of the rule as required by statute.
 - 5. A statement of compliance with considerations for small business as required by statute.
 - 6. A detailed explanation of the means used for public outreach by the Agency, if any, to encourage participation by small businesses in the rule-making process. This explanation may include, but is not limited to, the inclusion in the hearing notice of a statement that the rule may have an impact on small business, direct notification of small businesses that may be affected by the rule, conduction of public hearings concerning such an impact, inclusion of written comments received by the Agency, a statement regarding the use of any special hearing procedures aimed at reducing the cost or complexity of participation by small businesses, and/or inclusion of any rules proposed, or requests to review rules, by small businesses or their representatives.

- D. After a proposed rule is placed on the Council's agenda, the Coordinator will notify the Agency, Council, and the public by posting notice of the meeting date on the Small Business Regulatory Advisory Council's web site, as well as posting notice in the Florida Administrative Weekly. Council members will also be notified via email.
- E. Agencies should notify the Council of any changes made to the rule or analysis of the rule as a result of comments the agency received from OPPAGA, JAPC, or OTTED.
- F. The Coordinator will prepare and post to the Small Business Regulatory Advisory Council's and Florida Administrative Weekly's web sites an agenda for each meeting. Additionally, the Coordinator will provide to the Council a brief synopsis of the proposed rule, together with any information obtained from the Agency, businesses potentially affected, and public commentary.

IV. Filing of a Reviewed Proposed Rule by the Council

- A. When the Council, by majority vote, determines that the proposed rule does not have an impact on small business that can be reduced or eliminated and still meet the objective of the rule, and that the Agency followed all applicable procedural rules outlined in F. S. §120.54 and 288.7001, the Coordinator will so note the "no-action" vote and file the proposed rule appropriately.
- B. When the Council, by majority vote, determines that the proposed rule has an adverse affect on small business, or that the Agency did not follow procedural rules outlined in F.S. §120.54 and 288.7001, the Council may instruct staff as to its recommended response and/or may issue its own response to the Agency. The Council's response may be any of the following, in addition to any other response the Council deems to be appropriate:
 - 1. Request that the Agency comply with appropriate statutory procedures/rules.
 - 2. Request that the Agency provide an explanation as to how it will enforce the proposed rule.
 - 3. Request that the Agency reduce language in the proposed rule that conflicts, overlaps, or duplicates other state and/or federal rules.
 - 4. Request that the Agency provide fee information and fee schedules as part of its analysis of the impact on small business, including why fees are necessary and for what purpose the fees will be used.
 - 5. Request that the Agency verify the accuracy, integrity, objectivity, and consistency of the data that is used in its analysis.
 - 6. Recommend discontinuation of the rule promulgation procedure regarding a particular rule.
 - 7. Provide reasonable alternatives to the Agency that will meet the Agency's objectives while at the same time will reduce adverse impacts on small business.

V. Placing an Emergency Rule on the Council's Agenda

- A. If an Agency's emergency rule, filed pursuant to F. S. §120.54, may have a significant impact on small business, the Council should receive such rule from the Agency on the same day that the rule is posted on the Florida Administrative Weekly web site.
- B. The emergency rule package should contain the same information as that of a rule promulgated under normal circumstances to the extent possible. (See Suggested Transmittal of Emergency Administrative Rule to the Small Business Regulatory Advisory Council Form, attached)
- C. Submission process for the Agency is the same as for normal rule promulgation submissions.

- D. The Coordinator will place on the Council's agenda any emergency rule certified by the Agency, or determined by the Coordinator, to have an impact on small business.
- E. After an emergency rule is placed on the Council's agenda, the Coordinator will follow notification procedures outlined above.

VI. Filing of Reviewed Emergency Rules by the Council

- A. When the Council, by majority vote, determines that the proposed rule does not have an impact on small business that can be reduced or eliminated and still meet the objective of the rule, and that the Agency followed all applicable procedural rules outlined in F. S. §120.54 and 288.7001, the Coordinator will so note the "no-action" vote and file the proposed rule appropriately.
- B. When the Council, by majority vote, determines that the proposed rule has an adverse affect on small business, or that the Agency did not follow procedural rules outlined in F.S. §120.54 and 288.7001, the Council may instruct staff as to its recommended response and/or may issue its own response to the Agency. The Council's response may be any of the following, in addition to any other response the Council deems to be appropriate:
 - 1. Request that the Agency comply with appropriate statutory procedures/rules.
 - 2. Request that the Agency provide an explanation as to how it will enforce the proposed rule.
 - 3. Request that the Agency reduce language in the proposed rule that conflicts, overlaps, or duplicates other state and/or federal rules.
 - 4. Request that the Agency provide fee information and fee schedules as part of its analysis of the impact on small business, including why fees are necessary and for what purpose the fees will be used.
 - 5. Request that the Agency verify the accuracy, integrity, objectivity, and consistency of the data that is used in its analysis.
 - 6. Recommend discontinuation of the rule promulgation procedure regarding a particular rule.
 - 7. Provide reasonable alternatives to the Agency that will meet the Agency's objectives while at the same time will reduce adverse impacts on small business.

VII. Response to Council from Agency

- A. An Agency can submit a response to the Council's response to the proposed rule by submitting such response as provided in Section III.B.(1) or (2).
 - 1. Such submissions may include identification of rule changes made in response to the report, such as:
 - a. The establishment of less stringent compliance and reporting requirements for small businesses.
 - b. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
 - c. The consolidation of performance standards for small businesses to replace design or operational standards required in the rule.
 - d. The exemption of small businesses from any or all requirements of the rule.
 - 2. Alternatively, the response may contain explanations of how the rule changes meet the statutory requirements and takes into consideration the recommendations of the Council. This type of response may also focus on the inability of the Agency to modify the proposed rule and still meet the objectives of the rule.

VIII. Council Action on Rules Received from the Coordinator and/or Advocate

- A. The Coordinator and/or Advocate will notify the Council of any rule that may not have been properly certified by the regulating Agency or which a small business, small business representative, or the chairman seeks to have reviewed.
- B. Based upon the majority vote of the Council, the Council may request that the Coordinator obtain information from the rule-writing Agency that supports the Agency's certification that the rule does not have an adverse affect on small business.
- C. Based upon the majority vote by the Council, the Council may request the Coordinator to obtain information from affected businesses/associations that would be used by the council in determining whether the rule has an impact on small business.
- D. The Council may, by majority vote, send to the Agency Secretary a written response, notifying of the concerns the Council has regarding the Agency's certification on the rule's impact on small business, or the affect on business of the contents of the proposed rule itself.
- E. The Coordinator will provide a copy of the Council's written response to any concerned parties or persons/entities statutorily required.

IX. Oral and Written Comments Received from Small Businesses, Representatives of Small Businesses and/or Associations of Small Businesses

- A. Any person may submit written comments to the Council regarding an Agency's existing or proposed administrative rule or guideline. Comments may be submitted in the same manner outlined in Section III.B.(1) or (2).
- B. The public will be made aware by the Council of the hearing process and the method for commenting directly to the Agency regarding current or proposed rules or guidelines, as appropriate.
- C. Comments made to the Council may become a part of the Council's initial or follow-up response to an Agency regarding any proposed rule.
- D. Anyone attending an in-person meeting of the Small Business Regulatory Advisory Council will be asked to sign in, and indicate whether he or she wishes to be heard by the Council.
- E. Comments received from small businesses regarding a rule that is on the Council's agenda will be heard prior to any Council action on the rule.
- F. The time period for public comment regarding rules or guidelines on the agenda will be announced by the Chair at the beginning of the meeting. Any extension of time will be at the discretion of the Chair.
- G. A person who makes written comments to the Council is requested to include:
 - 1. Name, address and telephone number/email address, as well as name, address and telephone number/email address of any entity/person on whose behalf the comments are submitted.
 - 2. If the person/entity is requesting the Council's review of an existing rule or guideline, the person/entity must include enough information to identify the rule and what particular aspect of the rule is troublesome. For example:
 - a. A statement of the proposed rule, including its citation.
 - b. A statement of how the comment relates to the rule.
 - c. A statement of why the existing rule is troublesome (i.e. unreasonable, unduly burdensome, unlawful).
 - d. A list of other persons/entities likely to be affected by the rule or guideline, and how each might be affected.
- H. The Council will determine by majority vote whether the rule or guideline places an unnecessary burden on the ability of small businesses to conduct their affairs. If the Council is unable to make such determination based on the information provided, the Council may

request that the Agency provide them with information with which to make a decision. All such requests will be sent to the Agency contact person listed on the rule proposal, or to the appropriate Agency official in the case of proposed guidelines.

- I. When the Council determines that a rule or guideline places an unnecessary burden on small businesses, it may issue a report and recommendation regarding the rule or guideline to OPPAGA, OTTED and/or JAPC. A copy of this report will be provided to the Agency's Secretary, and to the Coordinator and Advocate. A copy will also be provided to identified affected persons when their identities are ascertainable.
- J. The report to OPPAGA, OTTED and/or JAPC may include, but is not limited to:
 1. A statement that the Agency needs to comply with statutory requirements for rule promulgation.
 2. A statement that there is a continued need for the rule or guideline.
 3. A statement as to what the Agency's enforcement policy is, including whether there is current enforcement, and if so, whether there are problems with the enforcement.
 4. A statement as to the clarity, complexity, and/or conciseness of the proposed rule.
 5. A statement as to current complaints and/or comments received from the public.
 6. A statement regarding the extent to which the rule or guideline overlaps, duplicates or conflicts with federal regulations, other state rules or local ordinances.
 7. A statement regarding the length of time since the rule or guideline has been evaluated.
 8. A statement regarding the degree to which technology, economic conditions or other factors have changed in the subject area affected since the rule or guideline was promulgated.

X. The Council Website <http://floridasbrac.org>

A. The Coordinator and/or Advocate will post and maintain the following information on the Council's website:

1. A listing of Council members and staff
2. Procedural Guidelines
3. Council Reports to State Agencies, OPPAGA, OTTED and JAPC
4. Frequently Asked Questions
5. Small Business Feedback Form
6. Small Business Complaint Form on Existing Rules
7. Council Forms, as needed
8. Success Stories and Press Releases about the SBRAC
9. Florida Administrative Weekly link

Appendix

Transmittal to Small Business Regulatory Advisory Council of Proposed Administrative Rule, in accordance with FL HB 7109 Bill Title: Small Business Advisory Relief Act

Subject:

Statutory Authority (including citation authorizing new or increased fees):

Small Business Impact Certification Statement:

Analysis per Florida Statutes:

Forms, Definitions and Acronyms: (include or list where they can be found)

Agency Small Business Outreach:

Comments Received on Rule (include where they can be found):

Names and Phone Numbers of Agency Contacts:

Transmittal of Emergency Administrative Rule to the Small Business Regulatory Advisory Council Small Business

Subject:

Statutory Authority (including citation authorizing new or increased fees):

Analysis per Florida Statute:

Forms, Definitions and Acronyms: (include or list where they can be found)

Agency Small Business Outreach:

Explanation on how Agency Responded to Comments Received:

Names and Phone Numbers of Agency Contacts:

Authorized Agency Signature/Telephone No.:

Date: