

Office of Fiscal Accountability and Regulatory Reform  
Executive Order 11-01 (Suspending Rulemaking and Establishing the Office of Fiscal  
Accountability and Regulatory Reform)  
Interim Rulemaking Guidelines

Pursuant to Executive Order 11-01, agencies within the purview of the Governor have been directed to immediately suspend all rulemaking. This memorandum provides interim guidelines for rulemaking pending the implementation of a system and formal procedures. Continue to utilize these guidelines and forms until permanent guidelines are issued.

**Scope of Executive Order 11-01**

Executive Order 11-01 applies to all rulemaking activities beginning with the Notice of Rule Development. The order does not apply to pre-rulemaking activity. For rules that were already in the formal rulemaking process prior to the issuance of Executive Order 11-01, authorization to notice (or conduct an already noticed) workshop or hearing must be requested using the Rulemaking Authorization Request Form (described below and attached). After the Office of Fiscal Accountability and Regulatory Reform (Office) has authorized a Notice of Rule Development or Notice of Proposed Rule, no authorization is required to notice a workshop or a hearing for that rule.

**Procedures for Rulemaking Authorization**

Use of the attached Rulemaking Authorization Request Form (Form) is required to receive authorization to initiate or proceed with rulemaking. If the initial request for authorization includes rules that must be submitted to the Legislature for ratification in the 2011 Session, the Form should be completed and submitted by 9 a.m., January 25, 2011. Initial requests should be limited to requests for authorization where immediate action is needed: 1) rules requiring legislative ratification, 2) rules that further the goals of Executive Order 11-01 by promoting business, reducing taxes, fees, costs, or removing barriers to job creation, or 3) rules where authorization to proceed with rulemaking in the next 3 weeks is essential to agency operations. Additional Forms may be submitted as soon as needed to request rulemaking authorization; however, priority will be placed on review of each agency's initial authorization request.

**Completion of Rulemaking Authorization Request Form**

Section I should include rules for which rulemaking is complete other than the requirement for the rule to be ratified by the Legislature pursuant to Chapter 2010-279, Laws of Florida (HB1565). The Legislature is expected not to consider ratification of a rule unless the rulemaking process is complete. Presently, it is expected such rules will be listed in the Florida Administrative Weekly (FAW) under the heading "List of Rules Awaiting Legislative Approval Pursuant to (Chapter 2010-279, Laws of Florida)." If a Section I request is not already on the FAW list, such a request will be treated as a request for Certification for Adoption and Ratification. Because these rules by definition have an adverse impact or significant regulatory costs, a detailed explanation must be provided supporting the request for Section I authorization.

Section II should include requests for authorization to withdraw or repeal rules. It should also indicate if the impetus for the request to withdraw or repeal is based on furthering the goals of

Executive Order 11-01. Finally, it should provide sufficient details explaining why the rule is to be withdrawn or repealed.

Sections III and IV should include all requests for authorization to begin or to continue a stage of rulemaking that are not included in Sections I or II. Section III should be used for all requests that you believe further the goals of Executive Order 11-01. If you are requesting authorization for Notice of Rule Development, you should answer the legislative ratification question based on your best understanding of the purpose of the rule development. Section IV should be used for all requests that you believe should be authorized although they may or may not be beneficial to business but are either mandated by statute or are necessary to protect the public. If an agency rejects a Lower Cost Regulatory Alternative, a request to Continue Rulemaking after Rejection of a Lower Cost Regulatory Alternative must be made in Section IV. Section IV requests will be subject to a high level review and may require further information before authorization is approved or denied.

### **General Guidance Including Required Documents**

Requests for Notice of Rule Development are not required to include rule text, but requests without rule text are more likely to require follow up or additional information. All requests for Notice of Proposed Rule must include a "Proposed Rule: Is a SERC Required" (Checklist) certified by the agency head, if submitted by an agency within the purview of the Governor; otherwise, by the agency head, agency's legal counsel, or other appropriate person, even if a determination has been made that a Statement of Estimated Regulatory Cost (SERC) is not required. If a Notice of Proposed Rule was published on or before January 7, 2011, a Checklist and a completed SERC template (if required) must be submitted with the next rulemaking authorization request for that rule. All requests for Notice of Proposed Rule where a SERC is required must include a completed copy of the attached SERC template; however, an agency may supplement the attached form as deemed appropriate. Any agency rejecting a lower cost regulatory alternative must provide the Office with a copy of the statement of the reasons for rejecting the alternative (Alternative Rejection Statement) with the request to Continue Rulemaking. All electronic submissions, e.g., Rulemaking Authorization Request Form, Rule Text, Proposed Rule: Is a SERC Required Checklist, Statement of Estimated Regulatory Costs, Alternative Rejection Statement, must be submitted to [Reg.Reform@MyFlorida.com](mailto:Reg.Reform@MyFlorida.com).

Even if you have already communicated the name of your Accountability and Regulatory Affairs Officer, please send a separate email to [Reg.Reform@MyFlorida.com](mailto:Reg.Reform@MyFlorida.com) with his or her name and contact information.

The Office will review the authorization requests expeditiously and may request additional information. If you have any questions or situations not addressed by these guidelines, please contact me at [Ned.Luczynski@laspbs.state.fl.us](mailto:Ned.Luczynski@laspbs.state.fl.us) or 850-922-5154.

#### **Attachments:**

RulemakingAuthorizationForm.doc  
SERCRequiredChecklist.doc  
SERC Template.doc