

**NEW COLLEGE OF FLORIDA
REGULATIONS MANUAL**

CHAPTER 1 - General Provisions and Executive Affairs

1-1005 Regulation Challenge Process

Challenges to regularly adopted regulations, unpromulgated regulations, and emergency regulations shall be initiated and maintained in accordance with this regulation and the BOG Regulation Development Process.

- (1) Challenges to Regularly Adopted Regulations. A substantially affected person may seek a determination of the invalidity of an existing NCF regulation any time after the adoption of the regulation. The petition seeking such determination must state with particularity the grounds for alleging that the regulation is an invalid exercise of authority, and a sufficient explanation of the facts showing that the person challenging a regulation is substantially affected by it.
 - (a) A regulation is an invalid exercise of authority only if one of the following applies:
 1. The BOT materially failed to follow regulation development procedures set forth herein;
 2. The regulation does not comply with the law or contravenes the policies of the BOG as specified in resolution, regulation, or strategic plan;
 3. The regulation vests unbridled discretion in the BOT, or
 4. The regulation is arbitrary or capricious.
 - (b) A petition challenging an NCF regulation shall be filed with the NCF-Clerk. If the filed petition is not of sufficient specificity or does not state sufficient grounds to challenge a regulation, the petition may be dismissed, with or without leave to amend. If the petition is of sufficient specificity and states sufficient grounds to challenge a regulation, the BOT shall assign a hearing officer within fifteen (15) days after receiving the petition; if there are any disputed issues or material facts. The hearing officer shall conduct a hearing within 60 days thereafter unless the petition is withdrawn or a continuance is granted by agreement of the parties for good cause shown. If there are no disputed issues of material fact, the matter shall be referred to the BOT for resolution.
 - (c) The failure of the BOT to follow the regulation development procedures set forth in this procedure or in the Regulation Development Process adopted by the BOG shall be presumed to be material; however, NCF may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.
 - (d) Hearings shall be de novo in nature and shall be conducted pursuant to the Model Rules of Procedure, Chapter 28-106, Florida Administrative Code, except if there is any conflict, this procedure controls. The petitioner must demonstrate by clear and convincing evidence that a regulation is invalid. The petitioner shall be adverse to NCF. Other substantially affected persons may join the proceedings as interveners on appropriate terms which shall not unduly delay the proceedings.
 - (e) Within 30 days after the hearing, the hearing officer shall issue a recommended order directed to the BOT, which shall timely issue a final decision whether all or part of a regulation is invalid. If

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a regulation is declared invalid in whole or in part notice of the decision shall be given on the NCF internet website.

- (2) Challenges to Unpromulgated Regulations. A petition challenging a statement of general applicability to guide the conduct or action of constituents or the public that has not been promulgated as a regulation shall be filed with the NCF Clerk. The petition shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a regulation as defined in this procedure and that NCF has not adopted the statement by regulation development procedures adopted by NCF or by the BOG.
- (a) Within fifteen (15) days after receipt of the petition, NCF shall assign a hearing officer who shall conduct a hearing in compliance with paragraph (1) (d) and (e) of this regulation within thirty (30) days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties for good cause shown. If a hearing is held and the petitioner proves the allegations of the petition, the BOT shall have the burden of proving that regulation development is not feasible. Regulation development shall be presumed feasible unless:
1. NCF has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by regulation development; or
 2. Related matters are not sufficiently resolved to enable NCF to address a statement by regulation development.
- (b) Within thirty (30) days after the hearing, the hearing officer shall issue a recommended order directed to the BOT, which may determine that all or part of a statement should have been promulgated as a regulation under procedures set forth in this regulation. The decision shall be published on the NCF internet website and all reliance on the statement or any substantially similar statement as a basis for action shall be discontinued.
- (c) If, prior to a recommended order of a hearing officer, the BOT begins regulation development under this procedure to address the statement, a presumption is created that the BOT is acting expeditiously and in good faith to adopt regulation(s) that address the statement, and reliance upon the statement or any substantially similar statement as a basis for action shall be permitted.
- (d) If the BOT fails to approve regulations that address the statement within one hundred and eighty (180) days after publishing notice of proposed regulation(s), for the purposes of the regulation challenge proceeding, a presumption is created that NCF is not acting expeditiously and in good faith to adopt regulation, and the case should proceed to a final hearing.
- (3) Challenges to Emergency Regulations. Within seven (7) days after receiving a petition from a substantially affected person challenging an emergency regulation, if the petition complies with the requirements of paragraph (1) of this Regulation, the BOT shall assign a hearing officer. The hearing officer shall conduct a hearing in compliance with paragraph (1) (d) of this regulation within twenty (20) days, unless the petition is withdrawn. Within Ten (10) days of the hearing, the hearing officer shall issue a recommended order directed to the BOT, which shall timely issue a final decision.

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- (4) Appeals. Final decisions of the BOT may be challenged in a court of law pursuant to certiorari review under Florida Rule of Appellate Procedure 9.030(b)(2) only after exhausting the available administrative remedies under this procedure.

Authority: Article IX, Sec. 7, Fla. Constitution; Fla. Board of Governors Regulation 1.001; Fla. Board of Governors Regulation Development Procedure 03-23-06

History: Adopted 11-05-05; Revised and renumbered 06-29-10; Revised 09-11-10, 03-11-17 (technical amendment)