

Regulatory Flexibility Frequently Asked Questions

1. Which state agencies are affected by Act 143 of 2007?

The act applies to every state agency, board or commission that has regulatory authority.

2. What is a “barrier to entry”?

A barrier to entry is a rule or regulation that creates a restriction on the ability of firms to enter into a market or industry.

3. Question 12 of the Economic Impact Statement asks that we provide a summary of input our agency has received from small business or small business advocates. Does this imply that we will already have completed the rule-making procedures outlined in the Administrative Procedures Act?

No. You should complete the process outlined in the regulatory flexibility process before taking the steps outlined in the Administrative Procedures Act. This question deals with informal feedback your agency has received.

4. Are there guidelines on how to estimate the cost to state government and cost of compliance, as referenced in questions 5 and 8 of the Economic Impact Statement?

We suggest each agency consider the cost of staff time, postage, etc. the state will incur as a result of implementing and monitoring new rules and regulations. The cost to small businesses can be determined by consulting with trade organizations or small business owners themselves.

5. How do we determine if a rule or regulation substantially codifies existing state or federal law?

If an existing state or federal statute implicitly or explicitly directs an agency to establish a specific rule or regulation and specifies how said rule or regulation should be written, then this exception to the executive order will apply.

In these cases the regulatory agency must send ADED a copy of the rule or regulation along with the corresponding state or federal law.

6. Does the executive order cover fee increases?

Yes it does. However, there is one exemption: For example; if the legislature has authorized your agency to set fees within a specific range, then those fee increases will not have to be submitted to ADED. In this case, anyone who had an issue with the fee range had ample opportunity to be heard through the legislative process.

However, if the legislature authorizes your agency to set fees but does not give a specific range, then those fee increases will have to follow the regulatory flexibility process.

7. Is it appropriate for state agencies to email their submissions to ADED?

Yes. While we originally wanted two copies mailed to us, we have found it more cost-effective and expedient to use email.

8. Do agencies need to file a request for exemption or notify ADED when they promulgate rules that are exempt?

Agencies are required to send ADED a copy of any exempt rule or regulation, and a letter explaining the exemption.

9. How do we make a comparison of rules and regulations in other states?

This can be done by taking a sampling of the rules and regulations in other states in our region.

10. Are rules of practice and procedure exempt from the executive order?

Yes. Small business owners are usually not directly affected by internal operating procedures, so these are normally going to be exempt.

11. Are de minimus (grammar, misplaced words, etc.) changes exempt?

Yes.

12. What is the time period for agencies to send rules or regulations to ADED?

Our only preference is that agencies submit the rules or regulations prior to beginning the process outlined in the Administrative Procedures Act. However, agencies should remember our 15 business day turn around period.