

Section 120.745, Florida Statutes

¹120.745 Legislative review of agency rules in effect on or before November 16, 2010.—

(1) DEFINITIONS.—The following definitions apply exclusively to this section:

(a) “Agency” has the same meaning and application as provided in s. [120.52](#)(1), but for the purposes of this section excludes each officer and governmental entity in the state with jurisdiction in one county or less than one county.

(b) “Compliance economic review” means a good faith economic analysis that includes and presents the following information pertaining to a particular rule:

1. A justification for the rule summarizing the benefits of the rule; and

2. A statement of estimated regulatory costs as described in s. [120.541](#)(2); however:

a. The applicable period for the economic analysis shall be 5 years beginning on July 1, 2011;

b. For the analysis required in s. [120.541](#)(2)(a)3., the estimated regulatory costs over the 5-year period shall be used instead of the likely increase in regulatory costs after implementation; and

c. An explanation of the methodology used to conduct the analysis must be provided. A technical methodology need not be used to develop the statement of estimated regulatory costs, if the agency uses routine regulatory communications or its Internet website to reasonably survey regulated entities, political subdivisions, and local governments and makes good faith estimates of regulatory costs in conformity with recommendations from the Office of Fiscal Accountability and Regulatory Reform (“OFARR”), or from one or more legislative offices if requested by the agency and such request is approved by the President of the Senate and the Speaker of the House of Representatives.

(c) “Data collection rules” means those rules requiring the submission of data to the agency from external sources, including, but not limited to, local governments, service providers, clients, licensees, regulated entities, other constituents, and market participants.

(d) “Revenue rules” means those rules fixing amounts or providing for the collection of money.

(e) “Rule” has the same general meaning and application as provided in s. [120.52](#)(16), but for purposes of this section may include only those rules for which publication in the Florida Administrative Code is required pursuant to s. [120.55](#)(1). As used in this section, the term “rule” means each entire statement and all subparts published under a complete title, chapter, and decimal rule number in the Florida Administrative Code in compliance with Florida Administrative Code Rule 1B-[30.001](#).

(2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each agency shall complete an enhanced biennial review of the agency’s existing rules, which shall include, but is not limited to:

(a) Conduct of the review and submission of the report required by s. [120.74](#) and an explanation of how the agency has accomplished the requirements of s. [120.74](#)(1). This paragraph extends the October 1 deadline provided in s. [120.74](#)(2) for the year 2011.

(b) Review of each rule to determine whether the rule has been reviewed by OFARR pursuant to the Governor’s Executive Order 2011-01.

(c) Review of each rule to determine whether the rule is a revenue rule, to identify the statute or statutes authorizing the collection of any revenue, to identify the fund or account into which revenue collections are deposited, and, for each revenue rule, to determine whether the rule authorizes, imposes, or implements:

1. Registration, license, or inspection fees.

2. Transportation service tolls for road, bridge, rail, air, waterway, or port access.

3. Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
 4. Fines, penalties, costs, or attorney fees.
 5. Any tax.
 6. Any other amounts collected that are not covered under subparagraphs 1.-5.
- (d) Review of each rule to determine whether the rule is a data collection rule, providing the following information for each rule determined to be a data collection rule:
1. The statute or statutes authorizing the collection of such data.
 2. The purposes for which the agency uses the data and any purpose for which the data is used by others.
 3. The policies supporting the reporting and retention of the data.
 4. Whether and to what extent the data is exempt from public inspection under chapter 119.
- (e) Identification of each entire rule the agency plans to repeal and, if so, the estimated timetable for repeal.
- (f) Identification of each entire rule or subpart of a rule the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.
- (g) Identification of each rule for which the agency will be required to prepare a compliance economic review, to include each entire rule that:
1. The agency does not plan to repeal on or before December 31, 2012;
 2. Was effective on or before November 16, 2010; and
 3. Probably will have any of the economic impacts described in s. [120.541\(2\)\(a\)](#), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under 2paragraph (e).
- (h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as “Group 1” and “Group 2.” Such division shall be made at the agency’s discretion.
- (i) Written certification of the agency head to the committee verifying the completion of the report for all rules of the agency, including each separate part or subsection. The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. [120.52\(3\)](#) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.
- (3) PUBLICATION OF REPORT.—No later than December 1, 2011, each agency shall publish, in the manner provided in subsection (7), a report of the entire enhanced biennial review pursuant to subsection (2), including the results of the review; a complete list of all rules the agency has placed in Group 1 or Group 2; the name, physical address, fax number, and e-mail address for the person the agency has designated to receive all inquiries, public comments, and objections pertaining to the report; and the certification of the agency head pursuant to paragraph (2)(i). The report of results shall summarize certain information required in subsection (2) in a table consisting of the following columns:
- (a) Column 1: Agency name.
 - (b) Column 2: F.A.C. rule number, with subcolumns including:
 1. Column 2a: F.A.C. title and any subtitle or chapter designation; and
 2. Column 2b: F.A.C. number, excluding title and subtitle or chapter designation.
 - (c) Column 3: OFARR reviewed rule under Executive Order 2011-01. Entries should be “Y” or “N.”
 - (d) Column 4: Revenue rule/fund or account with subcolumns including:
 1. Column 4a: Licensure fees.

2. Column 4b: Transportation tolls.
3. Column 4c: Other fees.
4. Column 4d: Fines.
5. Column 4e: Tax.
6. Column 4f: Other revenue.

Entries should be “N” or the identification of the fund or account where receipts are deposited and provide notes indicating the statutory authority for revenue collection.

(e) Column 5: Data collection rule. Entries should be “Y” or “N.” If “Y,” provide notes supplying the information required in paragraph (2)(d).

(f) Column 6: Repeal. Entries should be “Y” or “N” for the entire rule. If “Y,” provide notes estimating the timetable for repeal.

(g) Column 7: Amend. Entries should be “Y” or “N,” based on the response required in paragraph (2)(f), and provide notes identifying each specific subpart that will be amended and estimating the timetable for amendment.

(h) Column 8: Effective on or before 11/16/2010. Entries should be “Y” or “N.”

(i) Column 9: Section [120.541](#)(2)(a) impacts. Entries should be “NA” if Column 8 is “N” or, if Column 6 is “Y,” “NP” for not probable, based on the response required in 3subparagraph (2)(f)3., or “1” or “2,” reflecting the group number assigned by the division required in paragraph (2)(h).

(4) PUBLIC COMMENT ON ENHANCED BIENNIAL REVIEW AND REPORT; OBJECTIONS.—Public input on reports required in subsection (3) may be provided by stating an objection to the information required in paragraphs (2)(b), (c), (d), and (g) and identifying the entire rule or any subpart to which the objection relates, and shall be submitted in writing or electronically to the person designated in the report.

(a) An objection under this subsection to a report that an entire rule or any subpart probably will not have, for 5 years beginning on July 1, 2011, any of the economic impacts described in s. [120.541](#)(2)(a), must include allegations of fact upon which the objection is based, stating the precise information upon which a contrary evaluation of probable impact may be made.

Allegations of fact related to other objections may be included.

(b) Objections may be submitted by any interested person no later than June 1, 2012.

(c) The agency shall determine whether to sustain an objection based upon the information provided with the objection and whether any further review of information available to the agency is necessary to correct its report.

(d) No later than 20 days after the date an objection is submitted, the agency shall publish its determination of the objection in the manner provided in subsection (7).

(e) The agency’s determination with respect to an objection is final but not a final agency action subject to further proceedings, hearing, or judicial review.

(f) If the agency sustains an objection, it shall amend its report within 10 days after the determination. The amended report shall indicate that a change has been made, the date of the last change, and identify the amended portions. The agency shall publish notice of the amendment in the manner provided in subsection (7).

(g) On or before July 1, 2012, the agency shall deliver a written certification of the agency head or designee to the committee verifying the completion of determinations of all objections under this subsection and of any report amendments required under paragraph (f). The certification shall be published as an addendum to the report required in subsection (3). Notice of the certification shall be published in the manner provided in subsection (7).

(5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED REPORT.—Each agency shall perform a compliance economic review and report for all rules, including separate reviews of subparts, listed under Group 1 “Group 1 rules” or Group 2 “Group 2 rules” pursuant to subparagraph (2)(g)3. Group 1 rules shall be reviewed and reported on in 2012, and Group 2 rules shall be reviewed and reported on in 2013.

(a) No later than May 1, each agency shall:

1. Complete a compliance economic review for each entire rule or subpart in the appropriate group.
2. File the written certification of the agency head with the committee verifying the completion of each compliance economic review required for the respective year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the required compliance economic reviews is the responsibility solely of the agency head as defined in s. [120.52](#)(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.
3. Publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the notice is published in the manner provided in subsection (7).
4. Publish notice of the publications required in subparagraphs 2. and 3. in the manner provided in subsection (7).
5. Submit each compliance economic review to the Small Business Regulatory Advisory Council for its review.

(b) Any agency rule, including subparts, reviewed pursuant to Executive Order 2011-01 are exempt from the compliance economic review if the review found that the rule:

1. Does not unnecessarily restrict entry into a profession or occupation;
2. Does not adversely affect the availability of professional or occupational services to the public;
3. Does not unreasonably affect job creation or job retention;
4. Does not place unreasonable restrictions on individuals attempting to find employment;
5. Does not impose burdensome costs on businesses; or
6. Is justifiable when the overall cost-effectiveness and economic impact of the regulation, including indirect costs to consumers, is considered.

(c) No later than August 1, the Small Business Regulatory Advisory Council may submit lower cost regulatory alternatives to any rule to the agency that adopted the rule. No later than June 15, other interested parties may submit lower cost regulatory alternatives to any rule.

(d) No later than December 1, each agency shall publish a final report of the agency’s review under this subsection in the manner provided in subsection (7). For each rule the report shall include:

1. The text of the rule.
2. The compliance economic review for the rule.
3. All lower regulatory cost alternatives received by the agency.
4. The agency’s written explanation for rejecting submitted lower regulatory cost alternatives.
5. The agency’s justification to repeal or amend the rule or to retain the rule without amendment.
6. The written certification of the agency head to the committee verifying the completion of the reviews and reporting required under this subsection for that year. The certification shall be

dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. [120.52\(3\)](#) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

(e) Notice of publication of the final report and certification shall be published in the manner provided in subsection (7).

(f) By December 1, each agency shall begin proceedings under s. [120.54\(3\)](#) to amend or repeal those rules so designated in the report under this subsection. Proceedings to repeal rules are exempt from the requirements for the preparation, consideration, or use of a statement of estimated regulatory costs under s. [120.54](#) and the provisions of s. [120.541](#).

(6) LEGISLATIVE CONSIDERATION.—With respect to a rule identified for retention without amendment in the report required in subsection (5), the Legislature may consider specific legislation nullifying the rule or altering the statutory authority for the rule.

(7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND REPORTS.—Agencies shall publish notices, determinations, and reports required under this section exclusively in the following manner:

(a) The agency shall publish each notice, determination, and complete report on its Internet website. If the agency does not have an Internet website, the information shall be published on the committee's Internet website using [www.japc.state.fl.us/\[agency name\]/](http://www.japc.state.fl.us/[agency name]/) in place of the address of the agency's Internet website. The following URL formats shall be used:

1. Reports required under subsection (3), including any reports amended as a result of a determination under subsection (4):

[Address of agency's Internet website]/2011 Rule review/[Florida Administrative Code (F.A.C.) title and subtitle (if applicable) designation for the rules included].

(Example: http://www.dos.state.fl.us/2011_Rule_review/1S).

2. The lists of Group 1 rules and Group 2 rules, required under subsection (3):

[Address of agency's Internet website]/2011 Rule review/Economic Review/Schedule.

(Example: http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/Schedule).

3. Determinations under subsection (4):

[Address of agency's Internet website]/2011 Rule review/Objection Determination/[F.A.C. Rule number].

(Example: http://www.dos.state.fl.us/2011_Rule_review/Objection_Determination/1S-1.001).

4. Completed compliance economic reviews reported under subsection (5):

[Address of agency's Internet website]/2011 Rule review/Economic Review/[F.A.C. Rule number].

(Example: http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/1S-1.001).

5. Final reports under paragraph (5)(d), with the appropriate year:

[Address of agency's Internet website]/2011 Rule review/Economic Review/[YYYY Final Report].

(Example: http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/2012_Final_Report).

(b)1. Each notice shall be published using the following URL format:

[Address of agency's Internet website] 2011 Rule review/Notices.

(Example: http://www.dos.state.fl.us/2011_Rule_review/Notices).

2. Once each week a copy of all notices published in the previous week on the Internet under this paragraph shall be delivered to the Department of State, for publication in the next available

issue of the Florida Administrative Weekly, and a copy shall be delivered by electronic mail to the committee.

3. Each notice shall identify the publication for which notice is being given and include:

a. The name of the agency.

b. The name, physical address, fax number, and e-mail address for the person designated to receive all inquiries, public comments, and objections pertaining to the publication identified in the notice.

c. The particular Internet address through which the publication may be accessed.

d. The date the notice and publication is first published on the agency's Internet website.

(c) Publication pursuant to this section is deemed to be complete as of the date the notice, determination, or report is posted on the agency's Internet website.

(8) **FAILURE TO FILE CERTIFICATION OF COMPLETION.**—If an agency fails to timely file any written certification required in paragraph (2)(i), paragraph (4)(g), subparagraph (5)(a)2., or subparagraph (5)(d)6., the entire rulemaking authority delegated to the agency by the Legislature under any statute or law shall be suspended automatically as of the due date of the required certification and shall remain suspended until the date that the agency files the required certification with the committee.

(a) During the period of any suspension under this subsection, the agency has no authority to engage in rulemaking under s. [120.54](#).

(b) A suspension under this subsection does not authorize an agency to promulgate any statement defined as a rule under s. [120.52](#)(16).

(c) A suspension under this subsection shall toll the time requirements under s. [120.54](#) for any rulemaking proceeding the agency initiated before the date of suspension, which time requirements shall resume on the date the agency files the written certification with the committee and publishes notice of the required certification in the manner provided in subsection (7).

(d) Failure to timely file a written certification required under paragraph (2)(i) tolls the time for public response, which period shall not begin until the date the agency files the written certification with the committee and publishes notice of the required certification in the manner provided in subsection (7). The period for public response shall be extended by the number of days equivalent to the period of suspension under this subsection.

(e) Failure to timely file a written certification required under subparagraph (5)(a)2. shall toll the deadline for submission of lower cost regulatory alternatives for any rule or subpart for which a compliance economic review has not been timely published. The period of tolling shall be the number of days after May 1 until the date of the certification as published.

(9) **EXEMPTION FROM ENHANCED BIENNIAL REVIEW AND COMPLIANCE ECONOMIC REVIEW.**—

(a) An agency is exempt from subsections (1)-(8) if it has cooperated or cooperates with OFARR in a review of the agency's rules in a manner consistent with Executive Order 2011-01, or any alternative review directed by OFARR; if the agency or OFARR identifies each data collection rule and each revenue rule; and if the information developed thereby becomes publicly available on the Internet by December 1, 2011. Each such agency is exempt from the biennial review required in s. [120.74](#)(2) for the year 2011.

(b) For each rule reviewed under this subsection, OFARR may identify whether the rule imposes a significant regulatory cost or economic impact and shall schedule and obtain or direct a reasonable economic estimate of such cost and impact for each rule so identified. A report on

each such estimate shall be published on the Internet by December 31, 2013. On or before October 1, 2013, the agency head shall certify in writing to the committee that the agency has completed each economic estimate required under this paragraph, and thereupon the agency is exempt from the biennial review required in s. [120.74\(2\)](#) for the year 2013.

(c) The exemption under this paragraph does not apply unless the agency head certifies in writing to the committee, on or before October 1, 2011, that the agency has chosen such exemption and has cooperated with OFARR in undertaking the review required in paragraph (a).

(10) REPEAL.—This section is repealed July 1, 2014.

History.—s. 5, ch. 2011-225.

¹**Note.**—Section 7, ch. 2011-225, provides that “[t]he amendment of section 120.74, Florida Statutes, and the creation of sections 120.745 and 120.7455, Florida Statutes, by this act do not change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.”

²**Note.**—Paragraph (e) relates to repeals; paragraph (f) relates to amendments.

³**Note.**—Paragraph (2)(f) is not divided into subparagraphs; the reference may be intended to be to subparagraph (2)(g)3.