



THE FLORIDA LEGISLATURE



JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

2025 Annual Report

**Room 680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Phone: (850) 488-9110
japc@leg.state.fl.us
www.japc.state.fl.us**

BEN ALBRITTON
President



Senator Erin Grall, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Mack Bernard
Senator LaVon Bracy Davis
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ
Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 14, 2026

Honorable Ben Albritton
President, Florida Senate
The Capitol, Room 409
Tallahassee, Florida 32399-1100

Honorable Daniel Perez
Speaker, House of Representatives
The Capitol, Room 420
Tallahassee, Florida 32399-1300

Mr. President and Mr. Speaker:

Pursuant to Rule 4.6(6) of the Joint Rules of the Florida Legislature, I am pleased to submit the Joint Administrative Procedures Committee annual report, covering January 1, 2025 through December 31, 2025.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Senator Erin Grall, Chair
Representative Toby Overdorf, Vice Chair

Enclosure

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JOINT ADMINISTRATIVE PROCEDURES COMMITTEE MEMBERS

**Senator Erin Grall, Chair
Senator Mack Bernard
Senator LaVon Bracy Davis
Senator Don Gaetz
Senator Thomas J. “Tom” Leek
Senator Carlos Guillermo Smith
Senator Clay Yarborough**



**Representative Tobin Rogers “Toby” Overdorf, Vice Chair
Representative William “Bill” Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger**

THE JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

The Joint Administrative Procedures Committee is a standing committee of the Legislature created by Joint Rule Four of the Florida Legislature.

The committee is composed of fourteen members, seven from the Senate, appointed by the President of the Senate, and seven from the House of Representatives, appointed by the Speaker of the House.

The Chair of the committee is designated by the President of the Senate in odd-numbered years and by the Speaker of the House in even-numbered years. The committee staff is headed by a Coordinator, and includes reviewing attorneys and administrative support staff.

The committee is required to report annually to the Speaker and President. This report is provided at the start of the regular session and covers the preceding calendar year. It contains statistical information regarding rulemaking in the various state agencies as well as summaries of all objections voted by the committee during the preceding year. The committee voted to object to thirty-two agency rules in 2025.

The committee maintains a continuous review of the statutory authority upon which each administrative rule is based and notifies the agency if its authority is eliminated or significantly changed by repeal, amendment, or decision of a court of last resort. Following each session of the Legislature, the committee reviews each law signed by the Governor or

allowed to become law without his signature and determines whether the law will have a probable effect on an agency's rules. If so, the affected agency is notified.

If the reviewing attorneys have concerns that a proposed or existing rule may not be authorized or exceeds the delegated rulemaking authority, the agency is contacted. Often the agency agrees that there is no authority for the rule and withdraws or amends the rule to meet the staff concerns. If there is disagreement about whether or not there is authority for the rule, the rule is scheduled for consideration by the full committee. The agency may appear before the committee

and present argument and evidence in support of its rule. If, after hearing the agency's argument, the committee does not find statutory authority for the rule, an objection is voted and the agency has a period defined by statute in which to respond. If the agency refuses to modify or withdraw a rule to which the

committee has objected, public notice of the objection is given and a notation accompanies the rule when it is published in the Florida Administrative Code.

In the event that an agency fails to initiate administrative action to meet an objection voted by the committee, the committee is authorized to submit to the President of the Senate and Speaker of the House a recommendation that legislation be introduced to modify or suspend the adoption of a proposed rule, or amend or repeal an existing rule. If the committee



votes to recommend the introduction of legislation, the committee is required to notify the agency of its action, and may request that the agency temporarily suspend the rule or suspend the adoption of a proposed rule, pending consideration of proposed legislation during the next regular session of the Legislature. The agency must respond to the committee within a specified time either by temporarily suspending the rule or suspending the adoption of a proposed rule, or by notifying the committee that it refuses to suspend the rule or rule adoption. The committee is required to prepare bills to modify or suspend the adoption of a proposed rule, or to amend or repeal an existing rule, in accordance with rules of the Senate and the House of Representatives for introduction in the next regular legislative session. The proposed bill is then presented to the Senate President and Speaker of the House along with the committee recommendation.

The committee constantly monitors judicial decisions in administrative law and advises the agency when either its statutory rulemaking authority or its rules are affected by these decisions.

In its annual report, the committee has a duty to recommend needed legislation. These recommendations may be based upon the committee's review of judicial decisions as well as its daily interaction with executive agencies and with citizens as they participate in administrative procedures. Recommendations made by the committee relating to Chapter 120, F.S., in 2025 are included in this report.

Joint Rule 4.6 directs the committee to undertake and maintain a systematic and continuous review of the Florida Statutes that authorize agencies to adopt rules, and to make recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances.

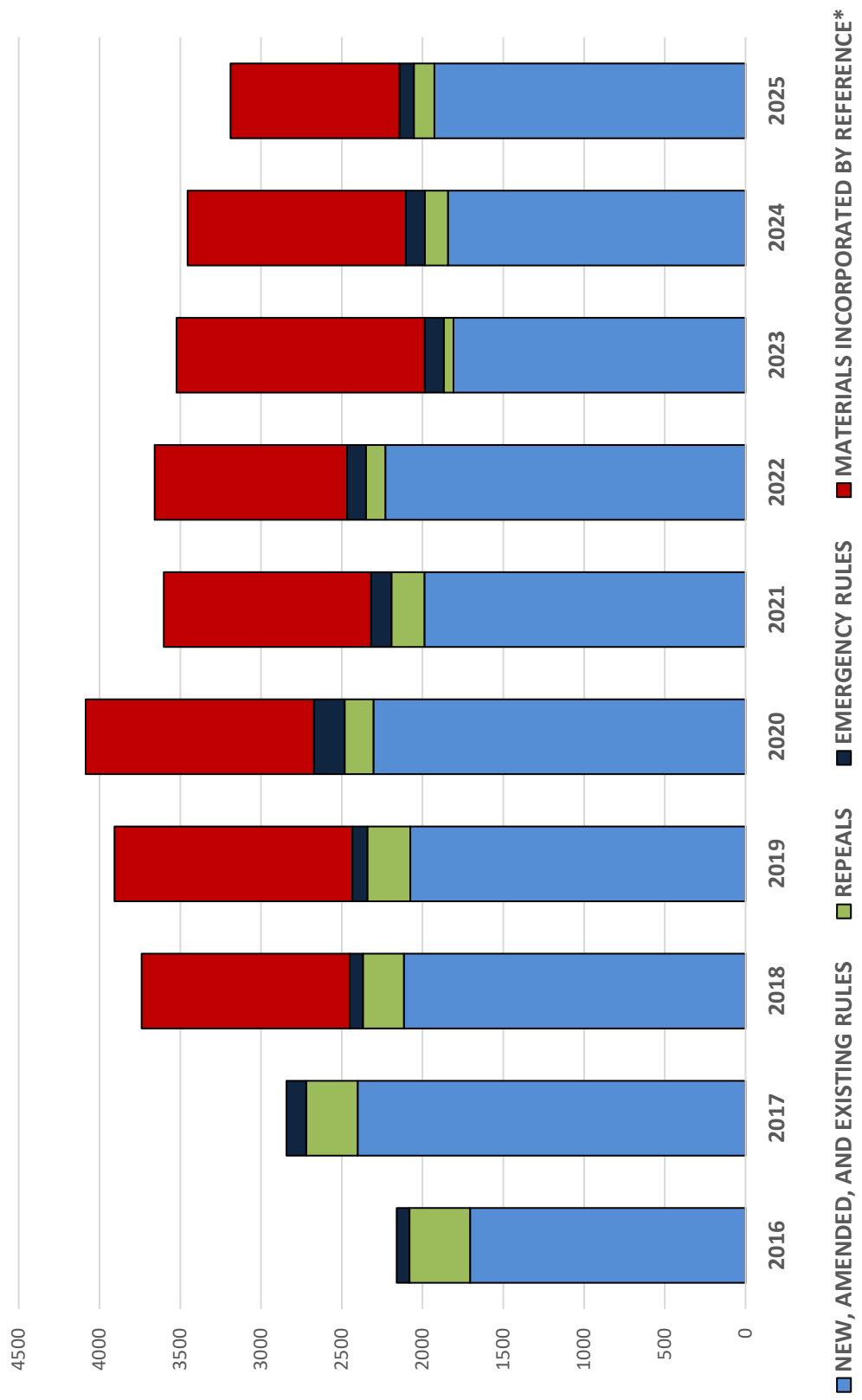
The committee has long had standing to seek judicial review of the validity of any rule to which it has objected and which has not been modified or repealed to meet the objection. To date, the committee has never found it necessary to exercise this power. Before judicial review, the committee must first notify the head of the agency involved and the Governor and provide an opportunity for consultation with the committee. If the issue cannot be resolved in this manner, the committee may bring an action in the appropriate court asking that the rule be declared invalid.

Thus, the committee performs services for the Legislature, the administrative agencies of the state and the people whom they regulate.



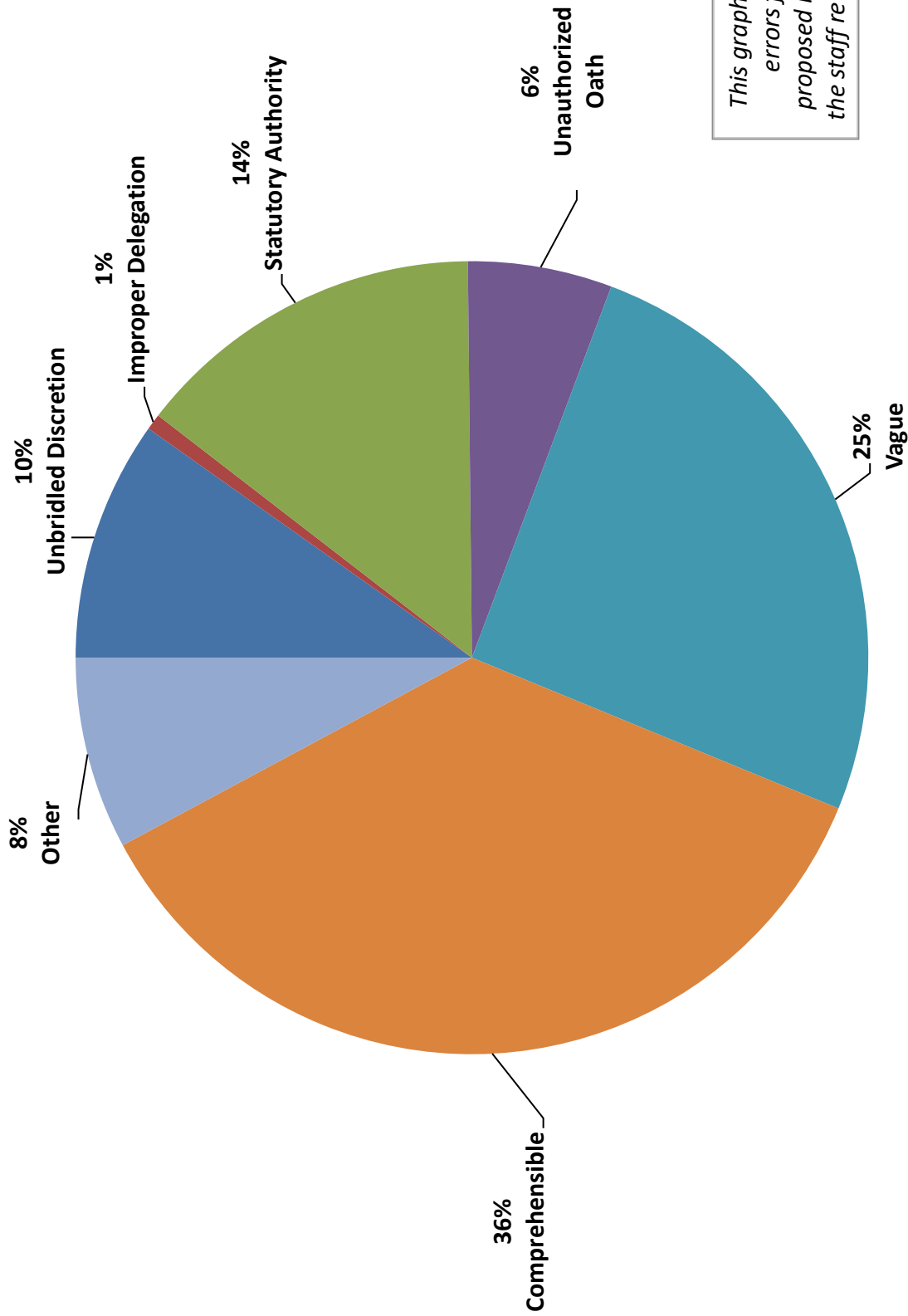
Statistical Information on Committee Review of Rules

NUMBER OF RULES UNDER REVIEW 2016 - 2025

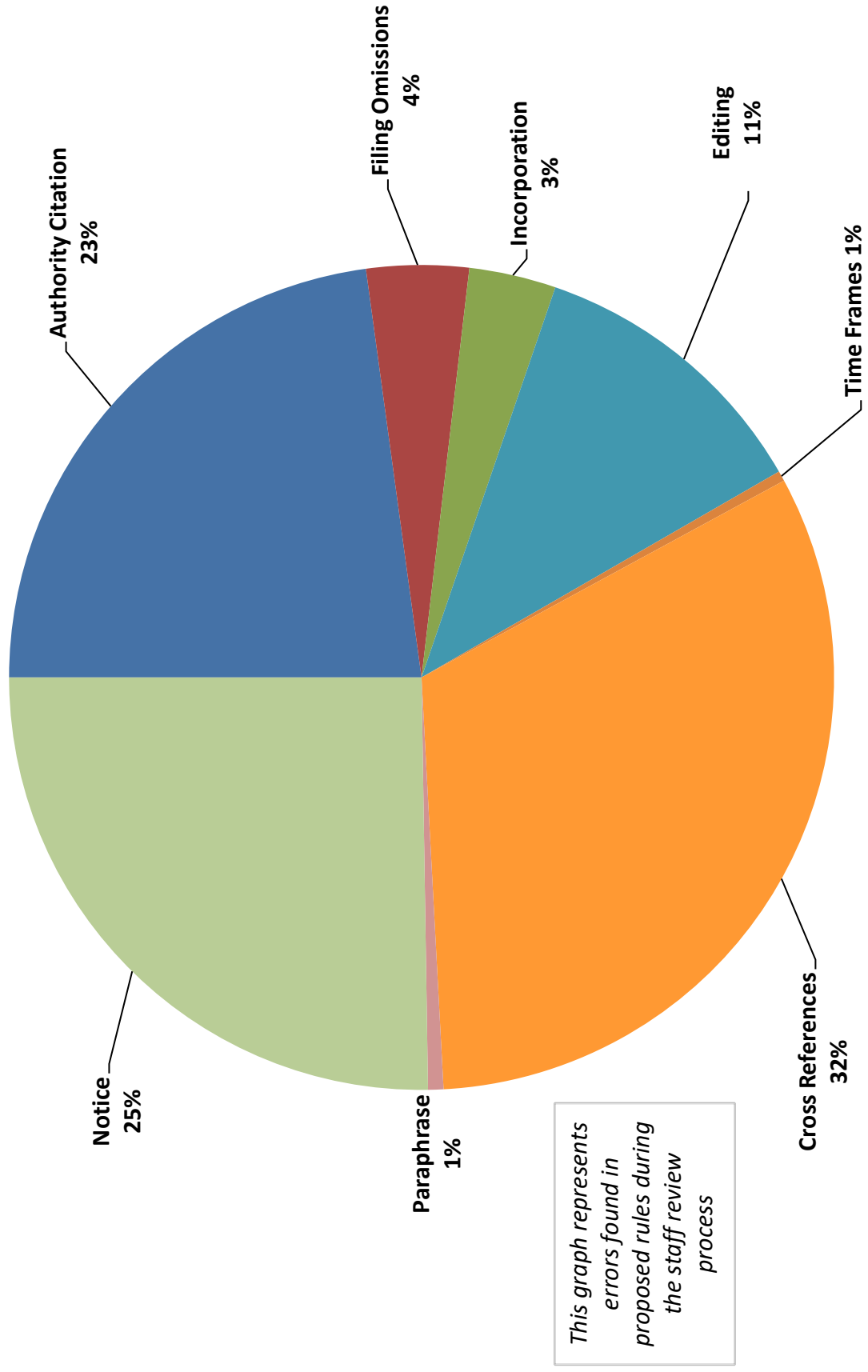


*Forms and other materials incorporated by reference that meet the definition of a "rule" pursuant to s.120.52(16). Statistics regarding the number of materials incorporated by reference reviewed were not collected prior to 2018.

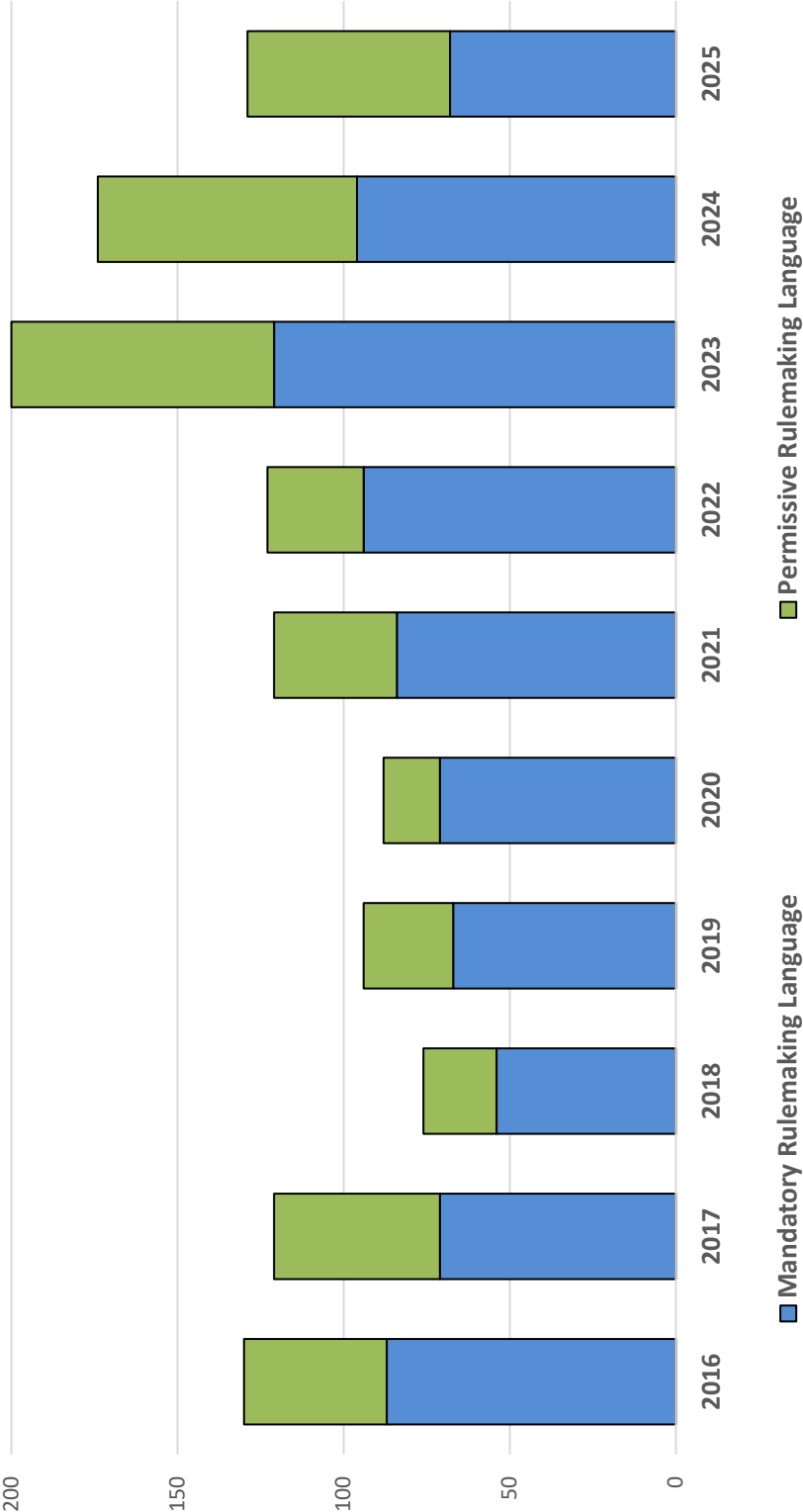
TYPES OF SUBSTANTIVE ERRORS - 2025



TYPES OF TECHNICAL ERRORS - 2025



**MANDATORY VS. PERMISSIVE
RULEMAKING LANGUAGE IN SESSION LAWS
2016 - 2025**





Proposed Rules (2016 - 2025)

PROPOSED RULES 2016 THROUGH 2025

CHPT #	Agency	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
01	State	18	12	11	16	15	15	12	14	11	3	127
02	Legal Affairs	9	17	8	17	23	5	4	2	14	2	101
05	Agriculture and Consumer Services	92	167	107	147	81	47	58	69	129	90	987
06	Education	130	105	90	61	62	61	141	134	103	81	968
11	Law Enforcement	35	34	29	29	24	21	23	20	53	29	297
12	Revenue	29	67	52	56	66	18	98	61	31	121	599
14	Transportation	18	18	40	8	3	3	15	1	18	1	125
15	Highway Safety and Motor Vehicles	2	26	0	7	0	0	0	9	1	26	71
18	Board of Trustees of the Internal Improvement Trust Fund	2	0	20	6	0	3	0	1	1	0	33
19	State Board of Administration	39	18	13	10	23	9	19	12	15	60	218
20	Citrus	4	25	78	8	12	102	5	1	6	0	241
23	Florida Commission on Offender Review	0	20	2	0	0	0	0	2	0	6	30
25	Public Service Commission	13	9	12	16	27	12	38	6	4	11	148
27	Executive Office of the Governor	0	0	1	7	10	0	7	18	3	0	46
28	Administration Commission	0	0	0	0	6	19	0	9	0	0	34
29	Regional Planning Councils	0	0	3	71	1	1	4	0	0	0	80
32	Florida State Fair Authority	0	0	0	0	0	0	0	0	0	0	0
33	Corrections	21	26	19	0	26	22	17	7	11	4	153

**Repealed*

PROPOSED RULES 2016 THROUGH 2025

CHPT #	Agency	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
34	Commission on Ethics	10	6	4	9	8	12	5	21	21	7	103
40	Water Management Districts	72	32	66	33	51	75	13	15	19	34	410
41	Commission for the Transportation Disadvantaged	0	1	3	0	2	1	0	0	1	1	9
42	Florida Land and Water Adjudicatory Commission	2	2	11	1	0	3	6	0	1	0	26
49	Regional Utility Authorities	0	0	0	0	0	0	0	0	0	18	18
53	Lottery	1	1	0	0	0	0	0	0	0	0	2
54	Interlocal Agencies	0	0	0	0	0	0	0	0	0	0	0
55	Veterans' Affairs	10	4	0	3	0	0	21	0	0	5	43
57	Space Florida	0	0	0	0	0	0	0	0	0	0	0
58	Elder Affairs	14	3	12	0	0	0	0	0	2	0	31
59	Agency for Health Care Administration	126	73	101	43	8	46	31	28	16	68	540
60	Management Services	68	134	18	16	3	53	38	21	15	14	380
61	Business and Professional Regulation	175	182	119	153	208	131	117	87	121	54	1,347
62	Environmental Protection	159	38	124	76	195	156	28	43	91	105	1,015
63	Juvenile Justice	4	16	15	15	67	37	4	8	63	18	247
64	Health	399	226	284	216	227	292	151	138	154	280	2,367
65	Children and Families	90	115	101	137	99	69	65	46	49	124	895

**Repealed*

PROPOSED RULES 2016 THROUGH 2025

CHPT #	Agency	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
66	Navigation Districts	0	0	0	0	35	4	4	6	6	15	70
67	Florida Housing Finance Corporation	61	71	64	62	63	60	61	49	9	49	549
68	Fish and Wildlife Conservation Commission	88	58	96	138	76	52	96	64	124	132	924
69	Financial Services	144	192	150	196	104	71	150	160	215	72	1,454
70	Military Affairs	0	0	0	0	0	0	0	0	0	0	0
71	Agency for Enterprise Information Technology*	33	0	0	0	0	0	0	0	0	0	33
72	Board of Governors	1	0	0	0	0	0	0	0	0	0	1
73	Commerce	38	59	32	16	11	2	28	21	19	1	227
74	Agency for State Technology*	11	3	6	0	0	0	0	0	0	0	20
75	Florida Gaming Control Commission	0	0	0	0	0	0	0	1	29	20	50
	TOTAL	1,918	1,760	1,691	1,573	1,536	1,402	1,259	1,074	1,355	1,451	15,019



Emergency Rules (2016 - 2025)

EMERGENCY RULES 2016 THROUGH 2025

CHPT #	Agency	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
01	State	0	0	0	0	3	0	0	0	0	0	3
02	Legal Affairs	1	0	1	0	0	1	1	1	0	3	8
05	Agriculture and Consumer Services	2	5	0	3	5	4	8	6	17	6	56
06	Education	0	0	0	1	0	2	0	2	0	0	5
11	Law Enforcement	0	0	0	0	0	0	0	0	0	7	7
12	Revenue	2	4	7	4	16	20	17	18	18	2	108
14	Transportation	0	0	0	0	0	0	0	0	0	0	0
15	Highway Safety and Motor Vehicles	0	0	0	0	0	0	0	0	0	0	0
18	Board of Trustees of the Internal Improvement Trust Fund	0	0	0	0	0	0	0	0	0	0	0
19	State Board of Administration	0	0	0	0	0	0	0	0	0	0	0
20	Citrus	2	5	1	0	0	0	1	1	5	0	15
23	Florida Commission on Offender Review	0	0	0	0	0	0	0	0	0	0	0
25	Public Service Commission	0	0	0	0	0	0	0	0	0	0	0
27	Executive Office of the Governor	0	0	0	0	0	0	0	0	1	0	1
28	Administration Commission	0	0	0	0	0	0	0	0	0	0	0
29	Regional Planning Councils	0	0	0	0	0	0	0	0	0	0	0
32	Florida State Fair Authority	0	0	0	0	0	0	0	0	0	0	0
33	Corrections	0	0	0	0	0	0	0	0	0	0	0

EMERGENCY RULES 2016 THROUGH 2025

CHPT #	Agency	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
34	Commission on Ethics	0	0	0	0	0	0	0	0	0	0	0
40	Water Management Districts	0	5	0	0	0	0	0	0	0	0	5
41	Commission for the Transportation Disadvantaged	0	0	0	0	0	0	0	0	0	0	0
42	Florida Land and Water Adjudicatory Commission	0	0	0	0	0	0	0	0	0	0	0
49	Regional Utility Authorities	0	0	0	0	0	0	0	0	0	0	0
53	Lottery	67	79	69	75	90	67	71	62	59	63	702
54	Interlocal Agencies	0	0	0	0	0	0	0	0	0	0	0
55	Veterans' Affairs	0	0	0	0	0	0	0	0	0	0	0
57	Space Florida	0	0	0	0	0	0	0	0	0	0	0
58	Elder Affairs	0	2	0	0	0	0	0	0	0	0	2
59	Agency for Health Care Administration	0	2	0	0	15	3	0	2	4	0	26
60	Management Services	1	2	2	2	0	0	4	4	6	0	21
61	Business and Professional Regulation	1	2	1	1	13	3	1	3	1	0	26
62	Environmental Protection	1	0	0	0	0	0	0	3	2	1	7
63	Juvenile Justice	0	0	0	0	0	0	0	0	0	0	0
64	Health	2	14	1	8	44	20	10	12	2	6	119
65	Children and Families	0	2	0	0	1	3	2	0	0	0	8

EMERGENCY RULES 2016 THROUGH 2025

CHPT #	Agency	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
66	Navigation Districts	0	0	0	0	0	0	0	0	0	0	0
67	Florida Housing Finance Corporation	0	0	0	0	1	0	0	0	0	0	1
68	Fish and Wildlife Conservation Commission	0	0	0	0	0	1	1	0	0	0	2
69	Financial Services	0	0	0	0	1	0	0	2	4	0	7
70	Military Affairs	0	0	0	0	0	0	0	0	0	0	0
72	Board of Governors	0	0	0	0	0	0	0	0	0	0	0
73	Commerce	0	0	0	0	2	2	0	2	0	2	8
75	Florida Gaming Control Commission	0	0	0	0	0	0	0	0	0	0	0
TOTAL		79	122	82	94	191	126	116	118	119	90	1,137



2025 Rule Objections

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-8.005

CHAPTER TITLE: CHAPTER 59A-8, MINIMUM STANDARDS FOR HOME HEALTH AGENCIES

OBJECTIONABLE PROVISION:

59A-8.005 Certificates of Exemption and Exempt Status

(17) This rule is in effect for five years from its effective date.

[Note: The most recent effective date of the rule is 2-27-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 400.497, F.S.

(b) Law Implemented

s. 400.464(5), (6), F.S.

SPECIFIC OBJECTION:

Rule 59A-8.005(17) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 400.497, Florida Statutes, authorizes the Agency for Health Care Administration to adopt rules establishing minimum standards for home health services. The statute does not authorize the Agency to adopt rules which expire in five years.

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 409.497, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the

OBJECTION REPORT
RULE 59A-8.005

Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-8.005(17) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-8.007

CHAPTER TITLE: CHAPTER 59A-8, MINIMUM STANDARDS FOR HOME HEALTH AGENCIES

OBJECTIONABLE PROVISION:

59A-8.007 Geographic Service Area

(4) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 1-12-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 400.497, F.S.

(b) Law Implemented

s. 400.497, F.S.

SPECIFIC OBJECTION:

Rule 59A-8.007(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 400.497, Florida Statutes, authorizes the Agency for Health Care Administration to adopt rules establishing minimum standards for home health services. The statute does not authorize the Agency to adopt rules which expire in five years.

An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Section 409.497, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the

OBJECTION REPORT
RULE 59A-8.007

Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-8.007(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-11.019

CHAPTER TITLE: CHAPTER 59A-11, BIRTH CENTER STANDARDS AND LICENSURE

OBJECTIONABLE PROVISION:

59A-11.019 Reports

(3) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 4-7-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 383.309, F.S.

(b) Law Implemented

s. 383.327, F.S.

SPECIFIC OBJECTION:

Rule 59A-11.019(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 383.309, Florida Statutes, provides, in part, that “the agency shall adopt rules and enforce rules to administer ss. 383.30-383.332 and part II of chapter 408. . . .”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Section 383.309, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and

OBJECTION REPORT
RULE 59A-11.019

each departmental unit.”); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration date does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-11.019(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-26.002

CHAPTER TITLE: CHAPTER 59A-26, MINIMUM STANDARDS FOR INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

OBJECTIONABLE PROVISION:

59A-26.002 Licensure Procedure, Fees and Exemptions

(6) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 2-27-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 400.967, 408.819 F.S.

(b) Law Implemented

ss. 400.962, 400.967, 408.804, 408.805,
408.806, 408.807, 408.809, 408.810,
408.811, F.S.

SPECIFIC OBJECTION:

Rule 59A-26.002(6) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating an expiration provision that is not authorized by statute.

Section 400.967, Florida Statutes, provides, in part, that “. . . the agency, in consultation with the Agency for Persons with Disabilities and the Department of Elderly Affairs, shall adopt and enforce rules to administer this part and part II of chapter 408. . . .” Further, the Agency is mandated to establish standards for facilities and equipment, adopt fair and reasonable rules setting forth conditions under which existing facilities can comply with updated or revised standards; and adopt rules for the classification of deficiencies “when the criteria established under this part and part II of chapter 408 are not met. . . .” Section 408.819, Florida Statutes, provides that “The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions].”

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An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." Neither section 400.967 nor 408.819, Florida Statutes, authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-26.002(6) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-35.040

CHAPTER TITLE: CHAPTER 59A-35, HEALTH LICENSING PROCEDURES

OBJECTIONABLE PROVISION:

59A-35.040 License Required: Display

(5) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 11-1-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 408.819 F.S.

(b) Law Implemented

ss. 408.804, 408.810, 408.813, F.S.

SPECIFIC OBJECTION:

Rule 59A-35.040(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 408.819, Florida Statutes, provides: “The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions].”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Section 408.819, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and

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each departmental unit.”); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-35.040(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-35.110

CHAPTER TITLE: CHAPTER 59A-35, HEALTH LICENSING PROCEDURES

OBJECTIONABLE PROVISION:

59A-35.110 Reporting Requirements: Electronic Submission

(3) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 10-4-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 395.0197, 408.806, 408.813,
408.819, 429.23, F.S.

(b) Law Implemented

ss. 408.806, 408.810, 408.813, 429.23,
395.0197, F.S.

SPECIFIC OBJECTION:

Rule 59A-35.110(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date that is not authorized by statute.

Section 395.0197, Florida Statutes, authorizes the Agency to “adopt rules governing the establishment of internal risk management programs to meet the needs of individual licensed facilities.” Section 408.806, Florida Statutes, states that “An application for licensure must be made to the agency on forms furnished by the agency,” and prescribes the information to be included on the form/application. Section 408.813, Florida Statutes, provides that the Agency may impose administrative fines. Section 401.819, Florida Statutes, states that “The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions].” Finally, section 429.23, Florida Statutes, provides “the agency may adopt rules necessary to administer this section [internal risk management and quality assurance program: adverse incidents and reporting requirements].”

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An agency's rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: "Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute." None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that "[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule."); *Dep't of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that "absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other 'state department, and each departmental unit.'"); *Gopman v. Dep't of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding "The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.").

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes ("After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter."). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-35.110(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-35.120

CHAPTER TITLE: CHAPTER 59A-35, HEALTH LICENSING PROCEDURES

OBJECTIONABLE PROVISION:

59A-35.120 Inspections

(5) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 5-17-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.811, 408.819, F.S.

(b) Law Implemented

ss. 408.806, 408.811, F.S.

SPECIFIC OBJECTION:

Rule 59A-35.120(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date that is not authorized by statute.

Section 408.811, Florida Statutes, entitled “Right of inspection; copies; inspection reports; plan for correction of deficiencies,” provides: The agency may adopt rules to waive any inspection including a relicensure inspection or grant an extended time period between relicensure based upon” certain enumerated factors. Section 401.819, Florida Statutes, states that “The agency is authorized to adopt rules as necessary to administer this part [Part II: Health Care Licensing: General Provisions].”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter

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120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-35.120(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.002

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.002 Definitions

(41) This rule is in effect for five years from its effective date.

[Note: The most recent effective date 10-7-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 429.41, 429.929, F.S.

(b) Law Implemented

ss. 429.07, 429.075, 429.11, 429.14, 429.19,
429.41, 429.47, 429.52, 429.905. F.S.

SPECIFIC OBJECTION:

Rule 59A-36.002(41) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date not authorized by statute.

Section 429.41, Florida Statutes, provides “that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated.” Section 429.929, Florida Statutes, states: “The agency shall adopt rules to implement this part.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does

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not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.002(41) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.006

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.006 Admission Procedures, Appropriateness of Placement and Continued Residency Criteria

(6) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 10-7-21].

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 429.07, 429.41, F.S.

(b) Law Implemented

ss. 429.07, 429.26, 429.28, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.006(6) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.07, Florida Statutes, entitled “License required; fees,” cited as rulemaking authority in rule 59A-36.006, relates to fees for licenses and states: “(4) . . . The amount of the fee shall be established by rule. Section 429.41, Florida Statutes, provides “that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st

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DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.006(6) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.007

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.007 Resident Care Standards

(12) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-16-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 429.41, F.S.

(b) Law Implemented

ss. 429.255, 429.26, 429.28, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.007(12) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date provision that is not authorized by statute.

Section 429.41, Florida Statutes, provides “that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” The statute cited by the Agency as rulemaking authority does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any

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statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.007(12) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.008

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.008 Medication Practices

(9) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-16-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 429.256, 429.41, F.S.

(b) Law Implemented

ss. 429.255, 429.256, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.008(9) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration date authorized by statute.

Section 429.256, Florida Statutes, states that “The agency may by rule establish facility procedures and interpret terms as necessary to implement this section.” Section 429.41, Florida Statutes, provides “that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the statutes cited by the Agency as rulemaking authority authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and*

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Family Services v. I.B., 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005)(holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.008(9) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.022

CHAPTER TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.022 Limited Nursing Services

(4) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 10-7-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 429.41, F.S.

(b) Law Implemented

ss. 429.07, 429.255, 429.26, 429.41, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.022(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.41, Florida Statutes, provides “that rules published and enforced [by the Agency] pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results may be demonstrated.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” The statute cited by the Agency as rulemaking authority does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every

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other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.022(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-36.028

TITLE: CHAPTER 59A-36, ASSISTED LIVING FACILITY

OBJECTIONABLE PROVISION:

59A-36.028 ALF Minimum Core Training Curriculum Requirements

(4) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-16-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 429.52, F.S.

(b) Law Implemented

s. 429.52, F.S.

SPECIFIC OBJECTION:

Rule 59A-36.028(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.52(12), Florida Statutes, states: “The agency shall adopt rules to establish core trainer registration and removal requirements.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” The statute cited by the Agency as rulemaking authority does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every

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other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-36.028(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-37.002

CHAPTER TITLE: CHAPTER 59A-37, ADULT FAMILY CARE HOMES

OBJECTIONABLE PROVISION:

59A-37.002 License Applications, Renewal and Conditional Licenses

(4) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 2-27-22].

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 429.67, 429.69, 429.71, 429.73, F.S.

(b) Law Implemented

ss. 429.67, 429.69, 429.71, 429.73, F.S.

SPECIFIC OBJECTION:

Rule 59A-37.002(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.67(10) provides that “The agency may adopt rules to establish procedures, identify forms, specify documentation, and clarify terms, as necessary, to administer this section.” Section 429.69 authorizes the agency to “deny, suspend, and revoke a license” for certain stated reasons. Section 429.71 authorizes the Agency to impose administrative fines, and “establish by rule notice requirements and procedures for correction of deficiencies.” Section 429.73 provides that “The agency in consultation with the Department of Health and the Department of Children and Families shall establish by rule minimum standards to ensure the health, safety, and well-being of each resident in the adult family-care home pursuant to this part.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or

OBJECTION REPORT
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otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-37.002(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59A-37.007

CHAPTER TITLE: CHAPTER 59A-37, ADULT FAMILY CARE HOMES

OBJECTIONABLE PROVISION:

59A-37.007 Staff Qualifications, Responsibilities and Training

(5) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 2-27-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 429.67, 429.73, 429.75, F.S.

(b) Law Implemented

ss. 429.67, 429.73, 429.75, F.S.

SPECIFIC OBJECTION:

Rule 59A-37.007(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 429.67(10) provides that “The agency may adopt rules to establish procedures, identify forms, specify documentation, and clarify terms, as necessary, to administer this section.” Section 429.73 provides that “The agency in consultation with the Department of Health and the Department of Children and Families shall establish by rule minimum standards to ensure the health, safety, and well-being of each resident in the adult family-care home pursuant to this part.” Finally, section 429.75(5), provides: “The agency may adopt rules as necessary to administer this section [Training and education programs].

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

OBJECTION REPORT
RULE 59A-37.007

See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59A-37.007(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.004

CHAPTER TITLE: CHAPTER 59C-1, PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND
SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.004 Projects Subject to Review

(3) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

ss. 408.033, 408.035, 408.036(1), (2),
408.037, 408.038, 408.039, F.S.

SPECIFIC OBJECTION:

Rule 59C-1.004(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency “to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[.]” while section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or

OBJECTION REPORT
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otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.004(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.005

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND
SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.005 Certificate of Need Exemption Procedures

(7) This rule is in effect for five years from its effective date.

[Note: The most recent effective date of the rule is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

s. 408.036(3), (4) F.S.

SPECIFIC OBJECTION:

Rule 59C-1.005(7) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency “to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[.]” while section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

OBJECTION REPORT
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See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic sunset of agency rules. Including a sunset provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.005(7) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.010

CHAPTER TITLE: CHAPTER 59C-1, PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, FLORIDA STATUTES, HEALTH
FACILITY AND SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.010 Certificate of Need Application Review Procedures

(8) This rule is in effect for five years from its effective date.

[Note: Most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

ss. 408.033(1), 408.036(2), 408.039(3), (4),
(5), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.010(8) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency “to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[.]” while section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or

OBJECTION REPORT
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otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.010(8) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.012

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND
SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.012 Administrative Hearing Procedures

(3) This rule is in effect for five years from this date.

[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.034(8), 408.15(8), F.S.

(b) Law Implemented

s. 408.039(5), (6), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.012(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency “to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[.]” while section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

OBJECTION REPORT
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See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.012(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.021

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND
SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.021 Certificate of Need Penalties

(5) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.040(2)(a), 408.034(8), 408.15(8), F.S.

(b) Law Implemented

ss. 408.034(8), 408.040(1)(b), (d),
(2)(a), 408.044, 408.061(6),
408.08(2), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.021(5) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.033(2)(a), 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.034(8) directs the Agency “to adopt rules necessary to implement ss. 408.031-408.045.” Section 408.040(2)(a) contains no rulemaking authority. Section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.”

OBJECTION REPORT
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None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is at odds with section 120.54, Florida Statutes, it is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.021(5) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.022

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND
SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.022 Health Care Facilities Fee Assessments and Fee Collection Procedures

(8) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

(b) Law Implemented

ss. 408.033(2), 408.034(8), 408.15(8), F.S.

ss. 408.033(2), F.S.

SPECIFIC OBJECTION:

Rule 59C-1.012(8) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.033(2), 408.034(8), and 408.15(8), Florida Statutes, as rulemaking authority. Section 408.033(2)(c) provides that “The agency shall, by rule, establish fees for hospitals and nursing homes. . . . [;] fees for assisted living facilities. . . . [;] an annual fee of \$150 for all other facilities and organizations listed in paragraph (a)[; and] establish a facility billing and collection process. . . .” Section 408.034(8) directs the Agency “to adopt rules necessary to implement ss. 408.031-408.045.” Section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.”

OBJECTION REPORT
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None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.022(8) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59C-1.030

CHAPTER TITLE: CHAPTER 59C-1 PROCEDURES FOR THE ADMINISTRATION OF
SECTIONS 408.031-408.045, F.S., HEALTH FACILITY AND
SERVICES DEVELOPMENT ACT

OBJECTIONABLE PROVISION:

59C-1.030 Criteria Used in Evaluation of Applications

(7) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-8-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 408.15(8), 408.034(3), (8), F. S.

(b) Law Implemented

ss. 408.035, 408.037, F.S.

SPECIFIC OBJECTION:

Rule 59C-1.030(7) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 408.034(3) and (8), and 408.15(8), Florida Statutes, as rulemaking authority. Sections 408.034(3) and (8) direct the Agency “to establish, by rule, uniform need methodologies for health facilities[, and] adopt rules necessary to implement ss. 408.031-408.045[.]” respectively. Section 408.15(8) authorizes the Agency to “Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

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See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59C-1.030(7) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-1.010

CHAPTER TITLE: CHAPTER 59G-1, GENERAL MEDICAID

OBJECTIONABLE PROVISION:

59G-1.010 Definitions

(3) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 6-17-24.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 409.919, 409.961, F.S.

(b) Law Implemented

ss. 409.901, 409.902, 409.90201, 409.9021, 409.9025, 409.903, 409.904, 409.905, 409.906, 409.9062, 409.9063, 409.90637, 409.90638, 409.9066, 409.907, 409.9071, 409.9072, 409.908, 409.9081, 409.9082, 409.9083, 409.910, 409.9101, 409.9102, 409.911, 409.9113, 409.9115, 409.91151, 409.9116, 409.9118, 409.91188, 409.9119, 409.91195, 409.91196, 409.912, 409.91206, 409.9121, 409.91212, 409.9122, 409.9123, 409.91235, 409.91255, 409.91256, 409.9126, 409.9127, 409.9128, 409.913, 409.9131, 409.9132, 409.9133, 409.9134, 409.914, 409.915, 409.916, 409.918, 409.919, 409.920, 409.973, F.S.

SPECIFIC OBJECTION:

Rule 59G-1.010(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

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Sections 409.919 and 409.961, Florida Statutes, provide that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements[,]” and “The agency shall adopt any rules necessary to comply with or administer this part [Part IV: Managed Medicaid Managed Care] and all rules necessary to comply with federal requirements[,]” respectively.

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Neither section 409.919 nor 409.961, Florida Statutes, authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-1.010(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-1.058

CHAPTER TITLE: CHAPTER 59G-1, GENERAL MEDICAID

OBJECTIONABLE PROVISION:

59G-1.058 Eligibility

(8) This rule is in effect for five years from its effective date.
[The most recent effective date is 8-19-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking
s. 409.919, F.S.

(b) Law Implemented
s. 409.903, F.S.

SPECIFIC OBJECTION:

Rule 59G-1.058(8) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 409.919, Florida Statutes, provides that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Section 409.919, Florida Statutes, does not authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the

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Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-1.058(8) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-1.060

CHAPTER TITLE: CHAPTER 59G-1, GENERAL MEDICAID

OBJECTIONABLE PROVISION:

59G-1.060 Provider Enrollment Policy

(4) This rule is in effect for five years from its effective date.
[The most recent effective date is 2-9-22.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 409.919, 409.961, F.S.

(b) Law Implemented

ss. 409.907, 409.973, F.S.

SPECIFIC OBJECTION:

Rule 59G-1.060(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

Section 409.919, Florida Statutes, provides that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.” Section 409.961, Florida Statutes, provides that “The agency shall adopt any rules necessary to comply with or administer this part [Part IV: Managed Medicaid Managed care] and all rules necessary to comply with federal requirements.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Neither section 409.919 nor 409.961, Florida Statutes, authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of

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itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including an expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-1.060(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-4.150

CHAPTER TITLE: CHAPTER 59G-4, MEDICAID SERVICES

OBJECTIONABLE PROVISION:

59G-4.150 Inpatient Hospital Services

(4) This rule is in effect for five years from its effective date.
[The most recent effective date is 4-3-24.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 409.919, 409.961, F.S.

(b) Law Implemented

ss. 409.902, 409.905, 409.907, 409.908,
409.912, 409.913, 409.973, F.S.

SPECIFIC OBJECTION:

Rule 59G-4.150(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 409.919 and 409.961, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.” Section 409.961 states that “The agency shall adopt any rule necessary to comply with or administer this part and all rules necessary to comply with federal requirements.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that

OBJECTION REPORT
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“[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-4.150(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-6.005

CHAPTER TITLE: CHAPTER 59G-6, REIMBURSEMENT TO PROVIDERS

OBJECTIONABLE PROVISION:

59G-6.005 Reimbursement Methodology for Services Provided by Medical School Faculty

(4) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 8-15-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

s. 409.919, F.S.

(b) Law Implemented

s. 409.908, F.S.

SPECIFIC OBJECTION:

Rule 59G-6.005(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites section 409.919, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the

OBJECTION REPORT
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Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-6.005(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-6.010

CHAPTER TITLE: CHAPTER 59G-6, REIMBURSEMENT TO PROVIDERS

OBJECTIONABLE PROVISION:

59G-6.010 Payment Methodology for Nursing Home Services

(7) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 9-14-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 409.919, 409.9082, F.S.

(b) Law Implemented

ss. 409.908, 409.9082, 409.913, F.S.

SPECIFIC OBJECTION:

Rule 59G-6.010(7) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 409.919 and 409.9082, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.” Section 409.9082 states that “The agency shall adopt rules necessary to administer this section.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891

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So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-6.010(7) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-6.045

CHAPTER TITLE: CHAPTER 59G-6, REIMBURSEMENT TO PROVIDERS

OBJECTIONABLE PROVISION:

59G-6.045 Payment Methodology for Services in Facilities Not Publicly Owned and Not Publicly Operated (Facilities Formerly Known as ICF-MR/DD Facilities)

(9) This rule is effective for 5 years after its effective date.

[Note: The most recent effective date is 10-24-21.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 409.919, 409.9083, F.S.

(b) Law Implemented

ss. 409.908, 409.9083, F.S.

SPECIFIC OBJECTION:

Rule 59G-6.045(9) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 409.919 and 409.9083, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.” Section 409.9083 states that “The agency shall adopt rules necessary to administer this section.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” None of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into

OBJECTION REPORT
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existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-6.045(9) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:
Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-13.070

CHAPTER TITLE: CHAPTER 59G-13, MEDICAID WAIVER PROGRAMS

OBJECTIONABLE PROVISION:

59G-13.070 Developmental Disabilities Individual Budgeting Waiver Services

(4) This rule is in effect for five years from its effective date.

[Note: The most recent effective date is 5-18-23.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 393.501, 409.919, F.S.

(b) Law Implemented

ss. 393.0662, 409.902, 409.906, 409.907,
409.908, 409.912, 409.913, F.S.

SPECIFIC OBJECTION:

Rule 59G-13.070(4) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 393.501 and 409.919, Florida Statutes, as rulemaking authority. Section 393.501 provides: “The agency may adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out its statutory duties.” Section 409.919 provides, in part, that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.”

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Neither of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes. *See, e.g., 4245 Corp. v Div. of Beverage*, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that

OBJECTION REPORT
RULE 59G-13.070

“[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-13.070(4) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary

Mr. Andrew T. Sheeran, General Counsel

Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: AGENCY FOR HEALTH CARE ADMINISTRATION

RULE NUMBER: 59G-13.081

CHAPTER TITLE: CHAPTER 59G-13, MEDICAID WAIVER PROGRAMS

OBJECTIONABLE PROVISION:

59G-13.081 Developmental Disabilities Individual Budgeting Waiver Services Provider Rate Table

(3) This rule is in effect for 5 years from its effective date.

[Note: The most recent effective date of the rule is 1-4-24.]

CITED AGENCY AUTHORITY:

(a) Rulemaking

ss. 393.0661, 409.919, F.S.

(b) Law Implemented

ss. 409.902, 409.906, 409.908, 409.912, 409.913, F.S.

SPECIFIC OBJECTION:

Rule 59G-13.081(3) is an invalid exercise of delegated legislative authority because the rule exceeds the grant of rulemaking authority by creating a rule expiration provision that is not authorized by statute.

The Agency cites sections 393.0661 and 409.919, Florida Statutes, as rulemaking authority. Section 409.919 provides, in part, that “The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements.” Section 393.0661 does not exist.

An agency’s rulemaking authority is governed by sections 120.52(8) and 120.536(1), Florida Statutes. Both sections provide: “Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.” Neither of the sections cited by the Agency authorize the Agency to adopt rules that contravene or otherwise exempt the Agency from the rulemaking requirements of chapter 120, Florida Statutes.

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RULE 59G-13.081

See, e.g., 4245 Corp. v Div. of Beverage, 371 So. 2d 1032, 1033 (Fla. 1st DCA 1978) (holding that “[t]he necessity for, or the desirability of, an administrative rule does not, of itself, bring into existence authority to promulgate such rule.”); *Dep’t of Children and Family Services v. I.B.*, 891 So. 2d 1168, 1173 (Fla. 1st DCA 2005) (holding that “absent any statutory exemption, the Administrative Procedure Act applies to DCFS, no less than to every other ‘state department, and each departmental unit.’”); *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005) (holding “The Administrative Procedure Act presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.”).

There is no provision in chapter 120, Florida Statutes, that provides for the automatic expiration of agency rules. Including a rule expiration provision does not cause a rule to be removed from the Florida Administrative Code. In order to remove a rule from the Florida Administrative Code, an agency must repeal the rule following the rulemaking procedures set forth in section 120.54(3)(d)5., Florida Statutes (“After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.”). *See also* Fla. Admin. Code R. 1-1.011. Until such time, the rule remains in effect.

The rule does not follow the rulemaking procedures contemplated in section 120.54, Florida Statutes, and is confusing to the general public. *See* § 120.545(1)(i), Fla. Stat. Therefore, rule 59G-13.081(3) is objectionable.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Jason Weida, Secretary
Mr. Andrew T. Sheeran, General Counsel
Mr. Stefan Grow, Chief of Staff

JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

OBJECTION REPORT

AGENCY: DEPARTMENT OF MANAGEMENT SERVICES

RULE NUMBER: 60G-1.001

TITLE: ORGANIZATION, MEETINGS AND RESPONSIBILITIES OF
GOVERNOR'S MANSION COMMISSION

OBJECTIONABLE PROVISION:

60G-1.001 Definitions

(1) The following definitions shall apply when used in Chapter 60G-1, F.A.C.:

* * *

(4) "Mansion and Grounds" means the following areas:

Lots Two (2), Three (3), Four (4), Nine (9), Ten (10), Eleven (11), Fourteen (14), Fifteen (15), Sixteen (16), Twenty-one (21), Twenty-two (22), Twenty-three (23) and Twenty-four (24) in the long grove addition to the City of Tallahassee, Florida, according to the Plat drawn by Overton Bernard, recorded in Deed Book 'BB', Page 592, Records of Leon County Florida, in the office of the Clerk of the Circuit Court of Leon County Florida, being a subdivision of a part of the southeast quarter, Section Twenty-five (25) Township one (1) North Range one (1) west.

Also: Lots One Hundred Seventy-three (173), One Hundred Seventy-four (174), One Hundred Seventy-five (175) in the North addition to the City of Tallahassee, Florida, according to the Plat as recorded in Plat Book 1, Page 11, Records of Leon County Florida, in the Office of the Clerk of the Circuit Court of Leon County Florida.

Also: That portion of the right of way of First Avenue in the City of Tallahassee, vacated in accordance with law by the City Commission of the City of Tallahassee on April 23, 1974, bounded on the west by the east right of way line of Duval Street; on the south by the North boundary of lots Twenty-one (21) and Twenty-two (22) in the long grove addition to the City of Tallahassee; on the east by the west right of way line of Adams Street, and on the north by the property known as "The Grove".

Also: Any lands acquired by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for the express purpose of expanding the supporting land holding around the Governor's Mansion.

CITED AGENCY AUTHORITY:

(a) Rulemaking

(b) Law Implemented

s. 272.18(2)(a), (3)(f), (g), F.S.

s. 272.18, F.S.

OBJECTION REPORT
RULE 60G-1.001

SPECIFIC OBJECTION:

The rule is vague and provides no meaningful information to the general public with respect to any past or future acquisitions by the Board of Trustees of the Internal Improvement Trust Fund (“Board of Trustees”) and is therefore contrary to sections 120.52(8)(d) and 120.545(1)(i), Florida Statutes. A rule is impermissibly vague if persons of common understanding and intelligence must guess at its meaning. *State, DHRS v. Health Care and Ret. Corp.*, 593 So.2d 539 (Fla. 1st DCA 1992).

The rule ostensibly refers to land acquired by, or may be acquired by, the Board of Trustees and further suggests that future acquisitions may, or may not, be acquired at the request of the Department of Management Services or on the Board of Trustees’ own initiative. At best, the rule is an attempt to incorporate by reference descriptions of land acquired by the Board of Trustees on an ongoing basis. Material incorporated by reference into a rule is limited to the material as it exists at the time of incorporation, and changes in the material are not effective unless the rule is amended to incorporate the changes. *See* § 120.54(1)(i)1., Fla. Stat.; *cf. Abbott Laboratories v. Mylan Pharm., Inc.*, 15 So. 3d 642 (Fla. 1st DCA 2009) (holding that a rule in which an agency has incorporated by reference the edition of the Orange Book after the effective date of the statute referencing that document is invalid; Florida courts interpret statutes as incorporating the federal law in effect on the date of adoption of the Florida Statute).

Section 120.54(3)(d)5., Florida Statutes, states: “After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.” The rule has not been amended to include property that has been acquired since the latest effective date of the rule, October 14, 1998. Accordingly, the reference to any lands since acquired by the Board of Trustees is not effective. The rule is an invalid exercise of delegated authority pursuant to section 120.52(8) and 120.545(1)(a), Florida Statutes.

NOTE: If the Committee votes an objection, copies will be sent to the following:

Mr. Pedro Allende, Secretary
Ms. Kristin Larson, General Counsel



Recommended Legislation (2025 Session)

2/3/2025 JAPC MEETING - RECOMMENDED LEGISLATION

Joint Rule 4.6, Special Powers and Duties of the Administrative Procedures Committee, provides that the Administrative Procedures Committee shall: “Maintain a continuous review of statutes that authorize agencies to adopt rules and shall make recommendations to the appropriate standing committees of the Senate and House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances.” To this end, based upon a review of the current practices relating to the rulemaking procedures under chapter 120, Florida Statutes, the following changes to chapter 120, Florida Statutes, are recommended.

Recommendation 1: Require timeframe for rule adoption.

Prior to 2015, section 120.54, Florida Statutes, directed agencies to notice proposed rules within 180 days after the effective date of an act requiring mandatory rulemaking. The provision was removed with the enactment of section 120.74, Florida Statutes, which requires agencies to file annual regulatory plans outlining proposed rulemaking for the coming year and allows agencies to unilaterally extend any rulemaking plans/notices. Adding the 180-day rulemaking requirement back to section 120.54, Florida Statutes, will give the Committee greater oversight authority to ensure that agencies adopt rules mandated by the Legislature in a timely manner.

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

* * *

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within ~~the times provided in s. 120.74(4) and (5)~~ 180 days after the effective date of the act granting rulemaking authority.

Recommendation 2: Define the term "technical change."

Technical changes proposed or existing rules do not require the publication of a notice in the Florida Administrative Register. The term is not defined in the Department of State's rules, leading to inconsistent interpretation by agencies and interested parties. Including a definition of “technical change” and requiring their publication will clarify the rulemaking process. The proposed amendment also requires the Department of State to include the date of any technical changes in the rule's history note. The amendment would allow for a more complete record of any rule changes.

120.52 Definitions.—As used in this act:

(21) “Technical change” means a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of a rule.

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) Notices.—

* * *

5. If any of the information, other than substantive changes to the rule text, which is required to be included in the notice required by subparagraph 1., is omitted or is incorrect, the agency must publish a notice of correction in the Florida Administrative Register at least 7 days prior to the intended agency action. The publication of a notice of correction does not affect the timeframes for filing the rule for adoption as set forth in paragraph (e). Technical changes must be published as a notice of correction.

Recommendation 3: Provide the Committee with copies of lower cost regulatory alternatives.

Sections 120.54(3)(b) and 120.541(1)(a), Florida Statutes, provide for the submission of lower cost regulatory alternatives to agencies for consideration. The submission of a lower cost regulatory alternative results in a 21-day extension to the rulemaking procedure timeframe, and in some cases will require an agency to prepare a new or revised statement of estimated regulatory costs (SERC). Under the current procedures, there is no requirement that the Committee be provided with a copy of the regulatory alternative. The proposed amendment would require that a copy of any regulatory alternative be provided to the Committee by the agency, thereby enabling the Committee to keep an accurate record of the rulemaking timeframe.

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

* * *

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—

* * *

2. Small businesses, small counties, and small cities.—

* * *

b.(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. Before filing the rule for adoption, the agency must provide a copy of any regulatory alternative offered to the agency to the committee within 7 days of receipt by the agency.

Recommendation 4: Add a “sunset provision.”

In November 2019, Governor DeSantis issued a letter to all of the Governor’s agency heads requiring that “All agencies must include a sunset provision in all proposed or amended rules unless otherwise directed by applicable law.” This requirement resulted in some confusion as there is currently no provision in chapter 120, Florida Statutes, for the automatic sunset of a rule. Adding a definition of “sunset provision” would create a process whereby a rule could sunset upon ratification by the Legislature.

120.52 Definitions. – As used in this act:

(23) “Sunset provision” means a provision included in a rule whereby the entire rule, or a portion thereof, automatically expires at the end of a specified date set forth in the rule, subject to the ratification of the rule in the next legislative session following adoption as set forth in s. 120.54(3)(d)6., unless the rule is amended or repealed pursuant to the procedures specified in this chapter.

120.545 Committee review of agency rules. –

(1) . . . the committee shall examine each proposed rule, . . . and may examine any existing rule, for the purpose of determining whether:

* * *

(m) The rule contains a sunset provision requiring legislative ratification.

120.54 Rulemaking. –

(3) ADOPTION PROCEDURES. –

* * *

(d) Modification or withdrawal of proposed rules.

* * *

6. If a rule contains a sunset provision, the rule containing the sunset provision shall be submitted to the President of the Senate and the Speaker of the House of Representative for ratification prior to the date specified in the sunset provision of the rule and no later than 30 days prior to the next regular legislative session following the effective date of the rule. The agency shall notify the Committee when the rule is submitted for ratification by the legislature.

If the sunset provision is ratified, the agency shall initiate rulemaking to repeal the rule pursuant to the procedures specified in this chapter prior to the expiration date of the rule. If the rule is not repealed as required herein, the Committee shall notify the Department of State to remove the rule from the Florida Administrative Code.

If the sunset provision is not ratified, or if no action is taken by the legislature during the legislative session at which the rule was submitted for ratification, the agency shall, within 30 days of the close of the legislative session, initiate rulemaking to amend or

repeal the sunset provision of the rule pursuant to the procedures specified in this chapter. The rule shall be adopted within 180 days after the close of the legislative session. If the rule is not amended or repealed as required herein, the Committee shall notify the Department of state to remove the rule from the Florida Administrative Code.

Recommendation 5: Renewal of emergency rules.

Section 120.54(4), Florida Statutes, allows an agency to renew an emergency rule where a challenge to the proposed rule addressing the subject of the emergency rule has been filed or where the proposed rule is awaiting ratification by the legislature. Currently, chapter 120, Florida Statutes, does not prescribe the procedure for the renewal of emergency rules. The proposed amendment would require an agency to publish notice of the renewal of an emergency rule in the Florida Administrative Register prior to the expiration of the emergency rule.

Recommendation 6: Publication of emergency rules.

Notice of the adoption of an emergency rule is published in the Florida Administrative Register along with the text of the rule. The emergency rule is not, however, published in the Florida Administrative Code. Therefore, unless an individual is aware of the publication of an emergency rule and the date of its publication, the rule is effectively hidden from the public. This practice is especially problematic for emergency rules that are the subject of litigation or are on appeal, have been renewed by an agency, or have an effective period of more than 90 days. The proposed amendment would require the text of emergency rules to be published in the Florida Administrative Code.

Recommendation 7: Changes to emergency rules.

Section 120.54(4), Florida Statutes, does not provide a procedure to amend an emergency rule, nor does it specifically prohibit amending an emergency rule. The proposed amendment recognizes that technical changes may be necessary and would allow for technical changes to be made within the first seven days after the adoption of the emergency rule and preserves the 90-day integrity of the emergency rule. Additionally, the proposed amendment clarifies that an agency may make changes to an emergency rule by superseding the previous emergency rule, while maintaining the original 90-day timeframe of the rule.

120.54 Rulemaking.—

(4) EMERGENCY RULES.—

* * *

(d) Notice of the renewal of an emergency rule must be published in the Florida Administrative Register before the expiration of the existing emergency rule. The notice of renewal must state the specific facts and reasons for such renewal.

(e) For emergency rules with an effective period greater than 90 days which are intended to replace existing rules, a note must be added to the history note of the existing rule

which specifically identifies the emergency rule that is intended to supersede the existing rule and includes the date that the emergency rule was filed with the Department of State.

(f) Emergency rules must be published in the Florida Administrative Code.

(g) An agency may supersede an emergency rule in effect through adoption of another emergency rule before the superseded rule expires. The reason for adopting the superseding rule must be stated in accordance with the procedures set forth in paragraph (a), and the new rule is in effect during the effective period of the superseded rule.

(h) An agency may make technical changes to an emergency rule within the first 7 days after the rule is adopted and must be published in the Florida Administrative Register as a Notice of Correction.

Recommendation 8: Statements of Estimated Regulatory Costs.

Section 120.541, Florida Statutes, provides for the submission of lower cost regulatory alternatives to agencies for consideration. The submission of a lower cost regulatory alternative results in a 21-day extension to the rulemaking procedure timeframe, and in some cases will require an agency to prepare a new or revised statement of estimated regulatory costs (SERC). Under the current procedures, there is no requirement that the Committee be provided with a copy of the regulatory alternative. The proposed amendment would require that a copy of any regulatory alternative be provided to the Committee by the agency, thereby enabling the Committee to keep an accurate record of the rulemaking timeframe.

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency must provide to the committee a copy of any proposal for a lower cost regulatory alternative before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative and the agency's response thereto is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person's reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses that was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency must provide a copy to the committee and shall prepare a statement of estimated regulatory costs as provided in subsection (2), or must ~~shall~~ revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule and provide the committee with a copy of the revised statement of estimated regulatory cost or the reason for rejecting the alternative.

BEN ALBRITTON

President



Representative Tobin Rogers "Toby" Overdorf, Chair
Senator Erin Grall, Vice Chair
Senator Mack Bernard
Senator Don Gaetz
Senator Thomas J. "Tom" Leek
Senator Tina Scott Polsky
Senator Carlos Guillermo Smith
Senator Clay Yarborough
Representative William "Bill" Conerly
Representative Chad Johnson
Representative Kim Kendall
Representative Leonard Spencer
Representative Debra Tendrich
Representative Meg Weinberger

DANIEL PEREZ

Speaker



KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
japc@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

March 4, 2025

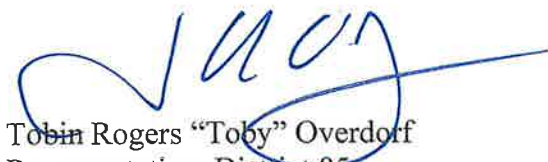
Honorable Ben Albritton
President, Florida Senate
The Capitol, Room 409
Tallahassee, Florida 32399-1100


Honorable Daniel Perez
Speaker, House of Representatives
The Capitol, Room 420
Tallahassee, Florida 32399-1300

Mr. President and Mr. Speaker:

Pursuant to Joint Rule 4.6(6) of the Joint Rules of the Florida Legislature, enclosed please find recommended amendments to sections 120.534, 120.541, and 120.65 Florida Statutes, adopted by the Joint Administrative Procedures Committee on February 17, 2025. Please let us know if you have any questions.

Sincerely,


Tobin Rogers "Toby" Overdorf
Representative, District 85
Chair


Erin Grall
Senator, District 29
Vice-Chair

Enclosures

120.534 Rulemaking. -

(4) EMERGENCY RULES. –

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3). If the rule is not ratified during the next regular legislative session, the proposed rule shall be withdrawn from further legislative action and the emergency rule shall expire and shall not be renewed.

Section 120.541 Statement of estimated regulatory costs. -

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate, the ~~and~~ Speaker of the House of Representatives and the committee no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature. The agency shall provide the committee with a copy of the letter submitted to the President of the Senate and the Speaker of the House of Representatives. If the rule is not ratified during the next regular legislative session, the rule shall be withdrawn from further legislative action.

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by a director who shall be appointed by the Administration Commission for a term of 4 years from a list of three names submitted by the statewide nominating commission created under subsection (2) and confirmed by the Senate. The director, who shall also serve as the chief administrative law judge, and any deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division. The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2)(a) The Administration Commission shall appoint full-time administrative law judges to conduct proceedings as required by this chapter or other law. No person may be nominated to serve as an administrative law judge unless he or she has been a member of The Florida Bar in good standing for the previous 5 years. No administrative law judge shall engage in the private practice of law during a term of office.

(b) Except as provided in paragraph (c), the Administration Commission shall appoint an administrative law judge from a list of three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of the following:

1. Six members, at least one of whom must be a member of a minority group as defined in s. 288.703, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members engaged in the practice of law. Each member shall be appointed for a 4-year term;

2. Six members, at least one of whom must be a member of a minority group as defined in s. 288.703, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor. Each member shall be appointed for a 4-year term; and

3. Six members, at least one of whom must be a member of a minority group as defined in s. 288.703, one of each who resides in the territorial jurisdictions of the district courts of appeal, selected and appointed by a majority vote of the other 12 members of the commission. Each member shall be appointed for a 4-year term.

A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term. An attorney who appears before any administrative law judge more than four times a year is not eligible to serve on the statewide nominating commission. The meetings and determinations of the nominating commission as to the nomination of administrative law judges shall be open to the public.

(c) Each administrative law judge shall be appointed for a term of 4 years, but during the term of office may be removed by the Administration Commission for cause. Prior to the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. In determining whether a judge's performance is satisfactory, the nominating commission shall consider the extent to which the judge has met the requirements of this chapter. If the judge's performance is deemed satisfactory, the nominating commission shall report its finding to the Administration Commission no later than 6 months prior to the expiration of the judge's term of office. The Administration Commission shall review the nominating commission's report and may reappoint the judge for an additional 4-year term. If the Administration Commission does not reappoint the judge, the Administration Commission shall inform the nominating commission. The judge shall remain in office until the Administration Commission has appointed a successor judge in accordance with paragraphs (a) and (b). If a vacancy occurs during a judge's unexpired term, the nominating commission does not find the judge's performance is satisfactory, or the Administration Commission does not reappoint the judge, the Administration Commission shall appoint a successor judge for a term of 4 years in accordance with paragraph (b).

(d) The Administration Commission may appoint any attorney who has at least 5 years of experience in the practice of law in this state to serve as an administrative law judge pro hac vice in the absence or disqualification of any full-time administrative law judge to serve temporarily as an additional administrative law judge. However, an attorney who is so appointed may not serve for a period of more than 120 successive days.

(e) The director of the Division of Administrative Hearings may receive or initiate complaints, conduct investigations, and dismiss complaints against any administrative law judge on the basis of the Code of Judicial Conduct. The director may recommend to the Administration Commission the removal of an administrative law judge or recommend the discipline of a judge whose conduct during his or her term of office warrants such discipline. For purposes of this section, the term “discipline” includes reprimand, fine, and suspension with or without pay. At the conclusion of each investigation, the director shall submit preliminary findings of fact and recommendations to the administrative law judge who is the subject of the complaint. The administrative law judge has 20 days within which to respond to the preliminary findings. The response and the director’s rebuttal to the response must be included in the final report submitted to the Administrative Commission.

(3) The director shall establish training and continuing education for new and sitting judges.

(4) The Division of Administrative Hearings shall adopt rules to carry out the purposes of this section. Such rules must include procedural rules governing hearings, and uniform criteria for measuring and evaluating the performance of the administrative law judges, including, but not limited to, the number of cases assigned and resolved, the age of pending and resolved cases, timeliness of decisions, extraordinary fee awards, and other data necessary for the judicial nominating commission to review the performance of judges as required in paragraph (2)(c).

Paragraphs 2 through 8 renumbered 5 through 11.



Legislative Report:

2025 Session

Changes in

Chapter 120, F.S.

2025 Summary of Amendments to Chapter 120

Chapter 2025-189, L.O.F., amends several sections of Chapter 120, F.S.:

Section 120.52

- Subsection (1) defines the term “technical change.”

Section 120.536

- Subsection (5) prohibits a provision whereby a rule automatically expires or is repealed at a later date unless expressly authorized in law.

Section 120.54

- Paragraph 120.54(1)(b) is amended to require an agency to publish a notice of rule development within 30 days after the effective date of a rule that requires rulemaking and provides a grant of rulemaking authority.
- Subparagraphs 120.54(1)(i)3. and 4. prohibit materials from being incorporated by reference after a specified date unless electronically published in a text-searchable format.
- Subparagraph 120.54(1)(i)7. is created to require an agency to use specific coding when updating or making changes to certain documents incorporated by reference by underlining new text and striking through deleted text.
- Subparagraph 120.54(2)(a)1. requires that a notice of rule development must be published at least 7 days before publication of the notice of proposed rulemaking. The notice must cite the grant of rulemaking authority and the law being implemented. The notice must contain certain information including incorporated documents, a proposed rule number, and specified statements.
- Subparagraph 120.54(2)(a)2. is created to require that a notice of proposed rule must be published within 180 days after the most recent rule development notice, unless a different date is expressly provided. The agency may only exceed this timeframe if it submits to the committee, at least 7 business days before the end of the 180-day timeframe, a statement that identifies the reasons for the delay. The agency must update this statement each quarter thereafter until it has filed a notice of proposed rule.
- Paragraph 120.54(2)(c) is amended to revise the scope of public workshops to include information gathered for the preparation of statements of estimated regulatory cost and specifies that notice of such workshops must be published not less than 14 days prior to the date the workshop is scheduled to be held.
- Paragraph 120.54(3)(a) is amended to revise the notices required to be filed by agencies prior to adoption, amendment, or repeal of certain rules:
 - Requires certain information to be included in the notices:
 - The proposed rule number.
 - The name, email address, and the telephone numbers of the agency employee who may be contacted regarding the intended action.
 - A concise summary of the agency’s statement of the estimated regulatory costs, if prepared, that describes the regulatory impact of the rule in readable language.

- An agency website address where the statement of estimated regulatory costs can be viewed in its entirety, if one has been prepared.
 - A description of the procedure for requesting a public hearing on the proposed rule.
- Requires that notices of proposed rulemaking be published at least 7 days after the notice of rule development.
- Requires that specified information be available for public inspection and materials incorporated by reference be made available in a specified manner.
- Permits certain notices to be delivered electronically to all persons who made request for such notice.
- Requires agencies to publish a notice of correction for certain technical changes at least 7 days before adoption and requires that all technical changes be published as a notice of correction.
- Paragraph 120.54(3)(b) is amended to remove separate definitions of the terms “small business,” “small county,” and “small city,” and require that:
 - Agencies consider certain factors.
 - Agencies provide copies of any offered regulatory alternatives to the Joint Administrative Procedures Committee within 7 days after delivery to the agency and before the agency files the rule for adoption.
- Paragraph 120.54(3)(d) is amended to:
 - Revise the requirements for the contents of a notice of change.
 - Require that certain materials incorporated by reference be made available in a specified manner.
 - Require the department to publish a notice of withdrawal of the proposed rule under certain circumstances:
 - Requires the Joint Administrative Procedures Committee to notify the Department of State that the date for adoption of the rule has expired, if 30 days after notice by the committee the agency has not given notice of the withdrawal of the proposed rule. The Department of State must publish a notice of withdrawal of the proposed rule.
 - Requires the Joint Administrative Procedures Committee to notify the Department of State if an agency has published a proposed rule for which the agency has failed to submit the concise statement required under subparagraph (2)(a)2., if 30 days after notice by the committee the agency has not given notice of the withdrawal of the proposed rule. The Department of State must publish a notice of withdrawal of the proposed rule.
 - Require agencies to restart rulemaking following a notice of withdrawal within 30 days after adjournment sine die if the mandatory grant of rulemaking the agency relied upon as authority to pursue the original rule action is still in effect at the time of the original rule’s withdrawal.
 - Require that certain rules be withdrawn if not ratified within the legislative session immediately following the filing for adoption.

- Authorize or require that agencies initiate rulemaking under specified circumstances within a specified timeframe of the adjournment of the legislative session.
- Require the Joint Administrative Procedures Committee to compile and post on its website certain information, including a list of each failure by an agency to file a notice of proposed rulemaking that has occurred within the last quarter within 15 days after the end of each calendar quarter.
- Reduce the number of certified copies of a proposed rule that must be filed electronically with the Department of State.
- Subsection 120.54(4) is amended to:
 - Authorize agencies to adopt emergency rules under specified circumstances.
 - Require that emergency rules renewed pending the ratification of proposed rules expire at adjournment sine die of the next regular session if the proposed rule addressing the subject is not ratified; the proposed rule must then be withdrawn from ratification.
 - Require that a notice of renewal of an emergency rule be published in the Florida Administrative Register before the expiration of the existing emergency rule. The notice must state the specific facts and reasons for the renewal.
 - Require that when an emergency rule with an effective period of greater than 90 days which is intended to replace an existing rule, a note must be added to the history note of the existing rule specifically identifying the emergency rule that is intended to supersede the existing rule and includes the date the emergency rule was filed with the Department of State.
 - Require that emergency rules be published in the Florida Administrative Code.
 - Authorize an agency to supersede an emergency rule in effect through the adoption of another emergency rule before the superseded rule expires. The reason for adopting the superseding rule must be stated and the superseding rule may not be in effect longer than the duration of the effective period of the superseded rule.
 - Authorize an agency to make technical changes to an emergency rule within the first 7 days after the rule is adopted through publication of a notice of correction in the Florida Administrative Register.
 - Authorize an agency to repeal an emergency rule before it expires by providing notice in the Florida Administrative Register with specified information.
- Subsection 120.54(7) is amended to require that agencies provide copies of petitions to initiate rulemaking within 7 days of receipt and notify the committee of its intended action within 7 days.

Section 120.541

- Paragraph 120.541(1)(a) is amended regarding proposals for a lower cost regulatory alternative submitted after a notice of change. The agency is required to provide to the committee a copy of any lower cost regulatory alternative within 7 days of receipt as well as a copy of the agency's response within 7 days of release before filing a rule for adoption.
- Paragraph 120.541(2)(d) is amended to revise the definition of "transactional costs."

- Paragraph 120.541(2)(f) is revised to require an agency to include specified market impacts that may result from compliance with a proposed rule.
- Subsection 120.541(3) is revised to require that agencies notify the committee that a rule has been submitted to the Legislature for ratification within 3 business days after submittal.
- Subsection 120.541(4) provides an exemption for the ratification of emergency rules.
- Paragraph 120.541(6)(a) is created to require that the Department of State include on the Florida Administrative Register website agency website addresses where statements of estimated regulatory cost can be viewed.
- Paragraph 120.541(6)(b) is created to require that agencies that prepare a statement of estimated regulatory costs provide notice to the Department of State for publication in the Florida Administrative Register, including the agency website address where the statement can be viewed.
- Paragraph 120.541(6)(c) is created to require that agencies provide notice when revising a statement of estimated regulatory costs, including the agency website address where the revision can be viewed.
- Subsection 120.541(7) is created to require that the rules ombudsman in the Executive Office of the Governor prescribe and post on a publicly available website a specified form that agencies must use in the preparation of statements of estimated regulatory costs.

Section 120.5435

- Subsection 120.5435(1) is created to define the term “rule” for the purposes of the review.
- Subsection 120.5435(2) is created to require that:
 - By July 1, 2030, each agency, in coordination with the committee, review all existing rules adopted by the agency before July 1, 2025.
 - Beginning October 1, 2025, each agency shall include a list of its existing rules in its annual regulatory plan. The agency shall include a schedule of the rules it will review each year during the 5-year rule review period. The agency may amend its yearly schedule in subsequent regulatory plans but must provide for the completed review of at least 20 percent of the agency’s rules per year until all rules have been reviewed.
- Subsection 120.5435(3) is created to require that any rule adopted after July 1, 2025, must be reviewed during the fifth year following adoption.
- Subsection 120.5435(4) is created to require that agencies make certain determinations during rule review.
- Subsection 120.5435(5) is created to require that each agency submit a report to the President of the Senate, the Speaker of the House of Representatives, and the Joint Administrative Procedures Committee by January 1 of each year summarizing the agency’s intended action on each rule under review during the current fiscal year.
- Subsection 120.5435(6) is created to require that agencies take one of certain specified actions by a specified date and provides that certain determinations during rule review are not subject to challenge as a proposed rule.
 - Paragraph 120.5435(6)(a) provides the option to make no change to the rule. If no change is necessary, the agency must submit to the Joint Administrative Procedures

Committee by April 1 a copy of the reviewed rule, a written statement of its intended action, and its assessment of specified factors.

- Paragraph 120.5435(6)(b) provides the option to make a technical change to a rule. If the agency determines that one or more technical changes are necessary, the agency must submit to the committee by April 1 a copy of the reviewed rule and the recommended technical change or changes coded by underlining new text and striking through deleted text, a written statement of its intended action, its assessment of the factors specified in subsection (4), and the facts and circumstances justifying the technical change or changes to the reviewed rule.
- Paragraph 120.5435(6)(c) provides the option to make a substantive change to the rule. If the agency determines that the rule requires a substantive change, the agency must make all changes, including any technical changes, to the rule in accordance with Chapter 120, F.S. The agency shall publish a notice of rule development in the Florida Administrative Register by April 1. The agency shall also submit to the Joint Administrative Procedures Committee by April 1 a copy of the reviewed rule and the recommended change or changes coded by underlining new text and striking through deleted text, a written statement of its intended action, and its assessment of specified factors. This submission to the committee does not constitute a notice of rule development as contemplated by s. 120.54(2)(a) and is not required to be in the same form as the rule that will be proposed by the agency.
- Paragraph 120.5435(6)(d) provides the option to repeal the rule. If an agency determines that the rule should be repealed, the agency must repeal the rule in accordance with this Chapter 120, F.S., and publish the required notice in the Florida Administrative Register by April 1. The agency shall also submit to the Joint Administrative Procedures Committee by April 1 a written statement of its intended action and its assessment of factors specified in subsection (4). This submission to the committee does not constitute a notice of proposed rule as contemplated by s. 120.54(3)(a).
- Subsection 120.5435(7) is created to require the Joint Administrative Procedures Committee to review each agency's rule review submissions by July 1. The committee must certify if the agency has responded in writing to all material and timely written comments if the agency recommends no change or a technical change to a rule.
- Subsection 120.5435(8) is created to specify circumstances under which rule review is considered to be complete:
 - The agency, upon approval of the agency head or his or her designee, electronically filing a certified copy of the reviewed rule to which no changes or only technical changes were made, and the committee's certification granted pursuant to subsection (7), with the Department of State; or
 - The agency, for a reviewed rule subject to substantive change or repeal, timely filing the appropriate notice pursuant to s. 120.54.

Section 120.545

- Subsection 120.545(1) is amended to require the Joint Administrative Procedures Committee to review each rule being reviewed and permits the committee to review certain materials and documents.
- Paragraph 120.545(1)(m) is created to provide that the Joint Administrative Procedures Committee may examine rules to determine if certain unauthorized provisions are included whereby the entire rule, or a provision thereof, automatically expires or is repealed on a specific date or at the end of a specified period.

Section 120.55

- Paragraph 120.55(1)(a) is amended to revise the contents of the Florida Administrative Code to include materials incorporated by reference.
- Subparagraph 120.55(1)(a)5. is amended to require that after December 31, 2025, the Department of State shall require any material incorporated by reference be filed with the department in a specified electronic format.
- Subparagraph 120.55(1)(a)6. is created to provide that the Department of State must include the date of any technical changes in the history note of the rule in the Florida Administrative Code; specifies that a technical change does not affect the effective date of the rule; states that a technical change made after the adoption of a rule must be published as a notice of correction.
- Subparagraph 120.55(1)(b)5. is created to require that the Florida Administrative Register contain a list of all rules that were not timely reviewed by an agency to be updated at least annually.
- Subparagraph 120.55(1)(b)9. is created to require that the Florida Administrative Register contain the full text of each emergency rule in effect on the date of the publication.
- Paragraph 120.55(1)(c) is amended to require that the Department of State prescribe coding for certain documents incorporated by reference.

Section 120.74

- Paragraph 120.74(1)(e) is created to require that regulatory plans submitted by agencies include certain schedules for rule review and certain desired updates to such plans. The plan should include:
 - A list of the agency's existing rules scheduled for review pursuant to s. 120.5435.
 - A 5-year schedule for the review of all existing rules as of July 1, 2025.
 - A yearly schedule for the rules it will review each year during the 5-year rule review. The agency may amend this schedule, if necessary.
- Paragraph 120.74(1)(f) is created to:
 - Require that agency regulatory plans include any desired update to the prior year's regulatory plan or supplement, thereof, published pursuant to s.120.74(5). If in a prior year's regulatory plan the agency identified a rule requiring review pursuant to s.120.5435 but the review has not been completed:
 - The agency must identify and list such rule in its regulatory plan as an untimely rule review and notify the committee of such action; or

- If the agency subsequently determined that the rule review is not necessary, the agency must identify the rule and provide a concise written explanation of the reason why the rule does not require a rule review.
 - Require that beginning October 1, 2025, each agency issuing licenses in accordance with s. 120.60 shall track the agency's compliance with the licensing timeframes established in s. 120.60, and beginning October 1, 2026, must include in the regulatory plan required by subsection (1), all of the following information regarding its licensing activities of the prior fiscal year, categorized by type of license:
 - The number of license applications submitted to the agency.
 - The number of license applications that required one or more requests for additional information.
 - The number of license applications for which the applicant was nonresponsive to one or more requests for additional information.
 - The number of license applications that were not completed by the applicant.
 - The number of license applications for which the agency requested that the applicant grant an extension of time for the agency to issue a request for additional information, determine that an application is complete, or issue a decision to approve or deny an application.
 - The number of license applications for which an extension was requested by the applicant and for which an extension was required by the state agency or judicial branch.
 - The number of license applications that were not approved or denied within the statutory timeframe.
 - The average and median number of days it takes the agency to approve or deny an application after receipt of a completed application.
 - The number of license applications for which final agency action was appealed and the number of informal and formal hearings requested.
 - The number of employees dedicated to processing license applications, if available.
 - Require that no later than December 31 of each year, the Joint Administrative Procedures Committee must submit a consolidated annual agency licensing performance report that provides all of the information required by subparagraph 1. The Department of State must publish a hyperlink to these reports in the first available issue of the Florida Administrative Register.
 - Delete provisions related to deadlines for rule development and proposed rules; delete provisions that require agencies to file certain certifications with the committee regarding these deadlines.
 - Authorize agencies to correct a regulatory plan by identifying certain rules.
- Subsection 120.74(5) revises timeframes within which agencies must publish certain notices:
 - Requires that agencies publish a notice of rule development no later than 30 days after the effective date of the act that requires rulemaking and provides a grant of

rulemaking authority for each rule reported in the supplement to the regulatory plan, if rulemaking is necessary to implement the law.

- Requires that a notice of proposed rule be published no later than 180 days after the publication of the applicable notice of rule development.

Effective date: July 1, 2025



Administrative Determinations and Petitions for Judicial Review

2025 ADMINISTRATIVE DETERMINATIONS AND PETITIONS FOR JUDICIAL REVIEW FILED ON THE INVALIDITY OF PROPOSED AND EXISTING RULES*

NUMBER OF CASES FILED AT DOAH IN 2025:

	CLOSED CASES	ACTIVE CASES
PROPOSED RULES	2	10
EXISTING RULES	5	6

JUDICIAL REVIEW CASES:

CASE NUMBER: 25-0274RP

STYLE: FLORIDA SPRINGS COUNCIL, INC. vs. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE: 62-41.400, 62-41.401, 62-41.402

DOAH FINAL ORDER DATE: 5/5/2025

CASE SUMMARY: The proposed Outstanding Florida Springs consumptive use permitting rules are not invalid exercises of delegated legislative authority.

DCA CASE: 1D2025-1369 filed 6/4/2025.

CASE NUMBER: 25-4667RX

STYLE: COALITION FOR INDEPENDENT LIVING OPTIONS, INC., A FLORIDA NONPROFIT vs. FLORIDA DEPARTMENT OF EDUCATION, DIVISION OF VOCATIONAL REHABILITATION

RULE: 6A-25.021

DOAH FINAL ORDER DATE: 11/6/2025

CASE SUMMARY: Petitioner lacked standing because its alleged injury is based not on the rule but rather an executed agreement with the agency. Therefore, the case is dismissed for lack of jurisdiction.

DCA CASE: 4D2025-3634 filed 12/5/2025; dismissed 12/11/2025.

*Note: As of January 6, 2026. Data obtained from the [Division of Administrative Hearings \(DOAH\)](#).



Joint Rule Four of the Florida Legislature: Joint Committees

Joint Rule Four—Joint Committees

4.1—Standing Joint Committees

(1) The following standing joint committees are established:

- (a) Administrative Procedures Committee.
- (b) Committee on Public Counsel Oversight.
- (c) Legislative Auditing Committee.

(2) No other joint committee shall exist except as agreed to by the presiding officers or by concurrent resolution approved by the Senate and the House of Representatives.

(3) Appointments to each standing joint committee shall be made or altered and vacancies shall be filled by the Senate and the House of Representatives in accordance with their respective rules. There shall be appointed to each standing joint committee no fewer than five and no more than seven members from each house.

(4)(a) The President of the Senate shall appoint a member of the Senate to serve as the chair, and the Speaker of the House of Representatives shall appoint a member of the House of Representatives to serve as the vice chair, for:

1. The Legislative Auditing Committee and the Committee on Public Counsel Oversight, for the period from the Organization Session until noon on August 1 of the calendar year following the general election.

2. The Administrative Procedures Committee for the period from noon on August 1 of the calendar year following the general election until the next general election.

(b) The Speaker of the House of Representatives shall appoint a member of the House of Representatives to serve as the chair, and the President of the Senate shall appoint a member of the Senate to serve as the vice chair, for:

1. The Legislative Auditing Committee and the Committee on Public Counsel Oversight, for the period from noon on August 1 of the calendar year following the general election until the next general election.

2. The Administrative Procedures Committee for the period from the Organization Session until noon on August 1 of the calendar year following the general election.

(c) A vacancy in an appointed chair or vice chair shall be filled in the same manner as the original appointment.

4.2—Procedures in Joint Committees

The following rules shall govern procedures in joint committees other than conference committees:

(1) A quorum for a joint committee shall be a majority of the appointees of each house. No business of any type may be conducted in the absence of a quorum.

(2)(a) Joint committees shall meet only within the dates, times, and locations authorized by both the President of the Senate and the Speaker of the House of Representatives.

(b) Joint committee meetings shall meet at the call of the chair. In the absence of the chair, the vice chair shall assume the duty to convene and preside over meetings and such other duties as provided by law or joint rule. During a meeting properly convened, the presiding chair may temporarily assign the duty to preside at that meeting to another joint committee member until the assignment is relinquished or revoked.

(c) Before any joint committee may hold a meeting, a notice of such meeting shall be provided to the Secretary of the Senate and the Clerk of the House of Representatives. When the Legislature is not in session, notice must be provided no later than 4:30 p.m. of the 7th day before the meeting. When the Legislature is in session, notice must be provided no later than 4:30 p.m. of the 3rd day before the meeting. For purposes of effecting notice to members of the house to which the chair does not belong, notice to the Secretary of the Senate shall be deemed notice to members of the Senate and notice to the Clerk of the House shall be deemed notice to members of the House of Representatives. Noticed meetings may be canceled by the chair with the approval of at least one presiding officer.

(d) If a majority of its members from each house agree, a joint committee may continue a properly noticed meeting after the expiration of the time called for the meeting. However, a joint committee may not meet beyond the time authorized by the presiding officers without special leave granted by both presiding officers.

(3) The presiding officers shall interpret, apply, and enforce rules governing joint committees by agreement when the rule at issue is a joint rule. Unless otherwise determined or overruled by an agreement of the presiding officers, the chair shall determine all questions of order arising in joint committee meetings, but such determinations may be appealed to the committee during the meeting.

(4) Each question, including any appeal of a ruling of the chair, shall be decided by a majority vote of the members of the joint committee of each house present and voting.

4.3—Powers of Joint Committees

(1) A joint committee may exercise the subpoena powers vested by law in a standing committee of the Legislature. A subpoena issued under this rule must be approved and signed by the President of the Senate and the Speaker of the House of Representatives and attested by the Secretary of the Senate and the Clerk of the House.

(2) A joint committee may adopt rules of procedure that do not conflict with the Florida Constitution or any law or joint rule, subject to the joint approval of the President of the Senate and the Speaker of the House of Representatives.

(3) A joint committee may not create subcommittees or workgroups unless authorized by both presiding officers.

4.4—Administration of Joint Committees

(1) Within the monetary limitations of the approved operating budget, the expenses of the members and the salaries and expenses of the staff of each joint committee shall be governed by joint policies adopted under Joint Rule 3.2.

(2) Subject to joint policies adopted under Joint Rule 3.2, the presiding officers shall appoint and remove the staff director and, if needed, a general counsel and any other staff necessary to assist each joint committee. All joint committee staff shall serve at the pleasure of the presiding officers. Upon the initial adoption of these joint rules in a biennium, each joint committee staff director position shall be deemed vacant until an appointment is made.

* * * * *

4.6—Special Powers and Duties of the Administrative Procedures Committee

The Administrative Procedures Committee shall:

(1) Maintain a continuous review of the statutory authority on which each administrative rule is based and, whenever such authority is eliminated or significantly changed by repeal, amendment, holding by a court of last resort, or other factor, advise the agency concerned of the fact.

(2) Maintain a continuous review of administrative rules and identify and request an agency to repeal any rule or any provision of any rule that reiterates or paraphrases any statute or for which the statutory authority has been repealed.

(3) Review administrative rules and advise the agencies concerned of its findings.

(4) Exercise the duties prescribed by chapter 120, Florida Statutes, concerning the adoption and promulgation of rules.

(5) Generally review agency action pursuant to the operation of chapter 120, Florida Statutes, the Administrative Procedure Act.

(6) Report to the President of the Senate and the Speaker of the House of Representatives at least annually, no later than the first week of the regular session, and recommend needed legislation or other appropriate action. Such report shall include the number of objections voted by the committee, the number of suspensions recommended by the committee, the number of administrative determinations filed on the

invalidity of a proposed or existing rule, the number of petitions for judicial review filed on the invalidity of a proposed or existing rule, and the outcomes of such actions. Such report shall also include any recommendations provided to the standing committees during the preceding year under subsection (11).

(7) Consult regularly with legislative standing committees that have jurisdiction over the subject areas addressed in agency proposed rules regarding legislative authority for the proposed rules and other matters relating to legislative authority for agency action.

(8) Subject to the approval of the President of the Senate and the Speaker of the House of Representatives, have standing to seek judicial review, on behalf of the Legislature or the citizens of this state, of the validity or invalidity of any administrative rule to which the committee has voted an objection and that has not been withdrawn, modified, repealed, or amended to meet the objection. Judicial review under this subsection may not be initiated until the Governor and the head of the agency making the rule to which the committee has objected have been notified of the committee's proposed action and have been given a reasonable opportunity, not to exceed 60 days, for consultation with the committee. The committee may expend public funds from its appropriation for the purpose of seeking judicial review.

(9) Maintain a continuous review of the administrative rulemaking process, including a review of agency procedure and of complaints based on such agency procedure.

(10) Establish measurement criteria to evaluate whether agencies are complying with the delegation of legislative authority in adopting and implementing rules.

(11) Maintain a continuous review of statutes that authorize agencies to adopt rules and shall make recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances.

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**Joint Administrative Procedures Committee
Room 680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Phone: (850) 488-9110
japc@leg.state.fl.us
www.japc.state.fl.us**