**62-41.300** **Central Florida Water Initiative Area, Applicability of Rule**

(1) Rules 62-41.300 through 62-41.305 are established by the Department to implement section 373.0465(2)(d), F.S. These rules shall only apply to the Central Florida Water Initiative (CFWI) Area as defined in section 373.0465(2)(a), F.S.

(2) These rules supersede those portions of Chapters 40C-2, 40D-2 and 40E-2, F.A.C., relating to the regulation of consumptive uses of water that are explicitly identified in this chapter. No rules of the Districts shall be superseded unless specifically provided in this Chapter.

(3) The South Florida, Southwest Florida, and St. Johns River Water Management Districts shall implement these rules within the CFWI Area without the need for further rulemaking.

(4) In all cases, the phrases “Consumptive Use Permit,” “Consumptive Use Permitting,” or “Consumptive Use Applicants” as used in this Chapter shall have the same meaning as with “Water Use Permit,” “Water Use Permitting,” or “Water Use Applicants,” respectively, as used in a district rule.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421, 373.0465, 373.223, 373.229, FS. History–New \_\_\_\_\_\_.

**62-41.301 Central Florida Water Initiative Area, Uniform Conditions for Issuance of Permits**

For consumptive use applicants within the CFWI Area, this rule shall supersede in their entirety Paragraphs 40C-2.301(1) and (2); Paragraphs 40D-2.301(1) and (2); and Rule 40E-2.301(1), F.A.C.

(1) To obtain a consumptive use permit, renewal, or modification within the CFWI Area, an applicant must provide reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis:

(a) Is a reasonable-beneficial use;

(b) Will not interfere with any presently existing legal use of water; and

(c) Is consistent with the public interest.

(2) In order to provide reasonable assurances that the consumptive use is reasonable-beneficial, an applicant shall demonstrate that the consumptive use:

(a) Is a quantity that is necessary for economic and efficient use;

(b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest;

(c) Will utilize a water source that is suitable for the consumptive use;

(d) Will utilize a water source that is capable of producing the requested amount;

(e) Except when the use is for human food preparation or direct human consumption, will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible;

(f) Will not cause harm to existing offsite land uses resulting from hydrologic alterations;

(g) Will not cause harm to the water resources of the area in any of the following ways:

1. Will not cause harmful water quality impacts to the water source resulting from the withdrawal or diversion;

2. Will not cause harmful water quality impacts from dewatering discharge to receiving waters;

3. Will not cause harmful saline water intrusion or harmful upconing;

4. Will not cause harmful hydrologic alterations to natural systems, including wetlands or other surface waters; and

5. Will not otherwise cause harmful hydrologic alterations to the water resources of the area;

(h) Is in accordance with any minimum flow or level and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S.; and

(i) Will not use water reserved pursuant to Subsection 373.223(4), F.S.

(3) The standards, criteria, and conditions in the Applicant’s Handbooks referenced in Rule 62-41.302, F.A.C., shall be used in determining whether the requirements of subsections (1) and (2), above, are met. Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421, 373.0465, 373.223, 373.229, FS. History–New \_\_\_\_\_\_.

**62-41.302: Central Florida Water Initiative Area, Supplemental Applicant’s Handbook**

(1) The Department hereby incorporates by reference the Central Florida Water Initiative Area Supplemental Applicant’s Handbook, effective \_\_\_\_\_, 2019, incorporated by reference herein and available at [gateway link] and [DEP website link]. Design Aids referenced within the Supplemental Applicant’s Handbook are not incorporated by reference in this Chapter and are for information purposes only.

 (2) Each section of the CFWI Area Supplemental Applicant’s Handbook includes a statement clearly indicating what section(s) of the districts’ Applicant’s Handbook it supersedes. Any section of a district’s Applicant’s Handbook that is not explicitly superseded by the CFWI Area Supplemental Applicant’s Handbook shall remain in full force and effect for all users within that district’s jurisdiction, including the CFWI Area.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421, 373.0465, 373.223, 373.229, FS. History–New \_\_\_\_\_\_.

**SUBSTANTIAL RE-WRITE – Changes not in tracked changes.**

**62-41.303: Central Florida Water Initiative Area, Variances to the Uniform Rules**

(1) Scope. This variance provision shall be applicable only to variances from Rules 62-41.301 and 62-41.302, F.A.C., including the provisions of the CFWI Area Supplemental Applicant’s Handbook. A variance under this rule shall mean a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Variances under this section shall not be granted for any of the following:

(a) Water quality standards as established in Chapter 62-302, F.A.C.

(b) Any specific statutorily-mandated provisions in Chapter 373, F.S.

(c) Requirements relating to the Southern Water Use Caution Area or the Dover/Plant City Water Use Caution Area, provisions of which are incorporated by reference in Rule 62-41.305, F.A.C.

Nothing in this rule shall preclude a petitioner from applying for variances or other relief mechanisms under other provisions of law.

(2) Delegation. The Department hereby delegates to the South Florida, Southwest Florida, and St. Johns River Water Management Districts the authority to grant or deny variances under this section to applicants/permittees within their district. At least 15 days prior to granting a request for variance, a district must notify the Executive Director of the other two Water Management Districts and the Director of the Department’s Office of Water Policy that it intends to grant the variance.

(3) A applicant may apply for a variance from the rules set forth in Rules 62-41.301 – 62-41.302 if there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical.

(4) Variances shall only be granted when the applicant demonstrates that it has achieved or will achieve the purpose of the underlying statute by other means.

(5) Petitions for variance must include the following information:

(a) A caption, which shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by an attorney or a qualified representative;

(c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;

(d) The applicable rule or portion of the rule;

(e) The citation to the statute the rule is implementing;

(f) The type of action requested;

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

 (6) The District shall review a petition for a variance under Section 373.0465(2)(d), F.S., within thirty days after receipt to determine if the application is complete. If the petition is determined to be incomplete, the petitioner shall be afforded an opportunity to supply additional information before the District evaluates the merits of the request.

(7) The District shall publish in the Florida Administrative Register a notice of availability of the intended agency action on the petition for a variance under Section 373.0465(2)(d), F.S. The petitioner shall publish notice of intended agency action on the petition once, at his own expense, in a newspaper of general circulation (as defined in Section 50.031, F.S.) in the county or counties in which its withdrawal is located.

(8) Renewals of variances shall be applied for in the same manner as the initial variance.

Rulemaking Authority 373.016, 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.036, 373.042, 373.0421, 373.0465, 373.223, 373.229, FS. History–New \_\_\_\_\_\_.

**62-41.304: Central Florida Water Initiative Area, Uniform Process for Setting Minimum Flows and Minimum Water Levels and Water Reservations**

 (1) Priority List. Prior to submittal to the Department for approval pursuant to 373.042(3), F.S., each District proposing a Minimum Flow or Minimum Water Level (MFL) or Reservation in the CFWI Area shall:

 (a) Hold a meeting among staff of the Department, and the St. Johns River, Southwest Florida and South Florida Water Management Districts to discuss the CFWI waterbodies proposed for inclusion on the Priority List;

 (b) Notice and hold at least one joint public workshop within the CFWI Area with all three districts to discuss each Districts’ proposed priority lists applicable to the CFWI. Such notice shall affirmatively state that the Districts and the Department have held the meeting required by (1)(a), above.

 (c) Priority Lists shall conform with the requirements set forth in section 373.042(3), F.S. and Paragraph 62-40.473(9), F.A.C.

 (2) Consistent Method for Establishing MFLs.

 (a) In establishing an MFL, the districts shall comply with the requirements of sections 373.042 and 373.0421, F.S., and Rule 62-40.473, F.A.C.

 (b) MFLs shall be expressed consistently amongst the districts.

 (b) In establishing an MFL, the District shall consider the unique characteristics of the waterbody and basin as determined using the best available science and professional judgment. The adopting district shall provide the technical information supporting any proposed MFL to the non-adopting districts and the Department. Sharing of information shall take place prior to seeking independent scientific peer review or prior to publishing Notice of Proposed Rule, whichever comes first.

(3) Status of the MFL Waterbody. In determining whether the flow(s) and/or level(s) of a specific MFL water body is/are below or projected to fall below the adopted MFL criteria, the District shall use the following status assessment approach. This status assessment is independent from and not a determination of consumptive use permit compliance or environmental resource permit compliance. Permit compliance is a regulatory function that is not within the scope of this subsection.

(a) A screening level analysis, which includes, but is not limited to, the incorporation of changes in rainfall trends, must be performed for waterbodies in the CFWI area periodically following adoption to monitor the status of an adopted MFL.

(b) If the screening level analysis shows that the MFL is being met based on the flows or levels adjusted by rainfall trends, then no further actions are required beyond continued monitoring.

(c) If the analysis shows that the MFL is not being met, or is trending toward not being met based on the flows and levels adjusted by rainfall trends, the District will conduct a causation analysis to independently evaluate the potential impacts of various stressors on the MFL water body being assessed.

1. It is recognized that factors other than consumptive uses of water (e.g., long-term drought) can cause the flow or level of a surface watercourse, aquifer, surface water, or spring to drop below an adopted minimum flow or level. The factors to be considered in the determination of causation shall be based on the use of best professional judgment and include, but are not limited to:

 a. Rainfall or other climatic variables;

b. Consumptive use;

c. Land use changes or development;

d. Surface water drainage;

e. Changes in hydrology and hydraulics

f. Geology/hydromorphology (e.g., sinkhole formation);

g. Water levels/flows in other appropriate water resources (e.g., nearby wells, lakes, streams, wetlands); and,

h. Ecological assessment information.

2. The tools to be used in the causation analysis shall be based on the use of best professional judgment and include, but are not limited to:

a. Double-mass analyses;

b. Statistical analysis of climate variables and flow and/or water level;

c. Stage and/or flow duration and frequency analysis;

d. Modeling (groundwater/surface water, ecological or water budget models); and,

e. Ecological tools.

3. Based on the causation analysis, the District shall develop or amend a recovery or prevention strategy, as appropriate, consistent with the provisions of section 373.0421(2), F.S.

 (4) Development of MFL Recovery and Prevention Strategies.

 (a) Recovery and Prevention Strategies shall be developed when required pursuant to and consistent with section 373.0421, F.S., and Rule 62-40.473, F.A.C.

(b) When required, Recovery and Prevention Strategies shall either be developed for individual waterbodies or regionally, where the strategy is designed to recover all waterbodies in a region.

(c) Recovery and Prevention Strategies may contain regulatory and non-regulatory provisions, as appropriate.

(d) The Recovery or Prevention Strategy must address existing uses, renewals or modifications of existing uses, and new uses that may impact the subject MFL.

(5) Consistent Method to Set Reservations.

(a) Water reserved from use shall comply with the requirements of section 373.223(4), F.S., and Rule 62-40.474, F.S.

(b) A reservation adopted after the effective date of this rule shall specifically state, as applicable, whether the reservation is being used for the protection of fish and wildlife or public health and safety.

(c) Reservations shall be expressed consistently amongst the Districts.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421, 373.0465, 373.223, 373.229, FS. History–New \_\_\_\_\_\_.

**62-41.305: Central Florida Water Initiative Area, Applicability of the Dover/Plant City and Southern Water Use Caution Area Recovery Strategies**

(1) Pursuant to section 373.0465(d), F.S., this rule adopts existing recovery strategies within the CFWI Area that were adopted before July 1, 2016. For the CFWI Area, that includes only the Southern Water Use Caution Area (SWUCA) and the Dover/Plant City Water Use Caution Area (Dover/Plant City WUCA) Recovery Strategies.

(2) By adoption, the Department ensures that these recovery strategies remain in effect in the areas currently covered by these strategies within the Southwest Florida Water Management District (SWFWMD). Nothing in this rule shall be interpreted to apply these recovery strategies to other areas within the CFWI Area.

(3) The Department hereby incorporates by reference the following:

(a) Sub-paragraphs 40D-2.801(3)(b) and 40D-2.801(3)(c), F.A.C., effective date May 19, 2014.

(b) Rules 40D-80.074 and 40D-80.073, F.A.C., effective date May 19, 2014.

(c) Section 2.1.1.4, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(d) Section 2.2.4 of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(e) Section 3.9.2, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(f) Section 3.9.4, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(g) Section 4.1.1 of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein as applicable within the Dover/Plant City WUCA and SWUCA.

(h) Section 4.4.1, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(i) Section 4.4.2, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(j) Section 4.4.13, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

(4) Additionally, the following provisions currently applicable to these recovery strategies shall apply to all applicants located within the SWUCA or Dover/Plant City WUCA, as applicable.

(a) Rule 40D-2.331(2)(b), F.A.C., effective date May 19, 2014, incorporated by reference herein, shall apply within the SWUCA to all requests to self-relocate or to increase withdrawals that impact or are projected to impact a water body with an established Minimum Flow or Level.

(b) Rule 40D-2.621, F.A.C., effective date May 19, 2014, incorporated by reference herein, shall apply within the SWUCA to all permittees with an individual consumptive use permit for irrigation, in addition to the requirements of Rule 62-41.301, F.A.C

(c) Section 2.1. of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, shall apply within the SWUCA and Dover/Plant City WUCA to all permittees, in addition to Section *[Ag Demands cite to be added]* of the CFWI Supplemental Applicant’s Handbook.

(d) Section 2.3.7. of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein, shall apply to all applicants located within the SWUCA, in addition to Section *[Public Supply Demands cite to be added]* of the CFWI Supplemental Applicant’s Handbook. For the purposes of implementing that paragraph, the Department hereby also incorporates by reference SWFWMD’s Applicant’s Handbook, Part D, effective date May 19, 2014.

(e) Section 2.4.8.4. of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein, shall apply to all applicants located within the SWUCA, in addition to Section *[Public Supply Demands cite to be added]* of the CFWI Supplemental Applicant’s Handbook. For the purposes of implementing that paragraph, the Department hereby also incorporates by reference SWFWMD’s Applicant’s Handbook, Part D, effective date May 19, 2014.

(f) Section 2.4.3.1.7 of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein, shall apply to all applicants located within the SWUCA, in addition to Section *[Ag Demands cite to be added]* of the CFWI Supplemental Applicant’s Handbook. For the purposes of implementing that paragraph, the Department hereby also incorporates by reference SWFWMD’s Applicant’s Handbook, Part C, Design Aid 4, and the Agricultural Water Allotment Form, Form No. LEG-R.042.00, effective date May 19, 2014.

(g) Section 2.4.7.1.5.1. of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein, shall apply to all applicants located within the SWUCA.

(h) Section 2.4.8.5 of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein, shall apply to all wholesale public supply applicants located within the SWUCA..

(i) Consistent with section 4.3.1. of the SWFWMD Applicant’s Handbook, an permittee may be required to implement a groundwater level monitoring program when withdrawals are made from the Floridan Aquifer and such withdrawal is located in SWUCA where minimum levels for the Floridan Aquifer have been established in Chapter 40D-8, F.A.C.

(5) Application forms used by the SWFWMD to implement this strategy are hereby incorporated by reference as below. These forms shall be in addition to the application and forms otherwise provided as part of a consumptive use permit application.

(a) Within the SWUCA, an Applicant shall submit the forms required by Rule 40D-2.101(5), F.A.C., effective date May 19, 2014.

(b) Within the Dover/Plant City WUCA, an Applicant shall submit the forms required by Rule 40D-2.101(6), F.A.C., effective date May 19, 2014.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421, 373.0465, 373.223, 373.229, FS. History–New \_\_\_\_\_\_.