**62-41.300** **Central Florida Water Initiative Area, Scope 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 to the Central Florida Water Initiative (CFWI) Area as defined in section 373.0465(2)(a), F.S.

(2) These rules shall supersede portions, but not all, of rules relating to the authorization of the consumptive use of water within the Central Florida Water Initiative (CFWI) Area. No rules of the Districts shall be superseded unless specifically provided in this Chapter.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 be synonymous 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 entity 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.

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 \_\_\_\_\_, 2017, incorporated by reference herein and available at [gateway link] and [DEP website link].

 (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 \_\_\_\_\_\_.

**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. Variances to those rules shall not include 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.

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

(2) Delegation. The Department hereby delegates to the water management districts the authority to grant variances to the rules set forth in Rules 62-41.301 and 62-41.302 to applicants/permittees within their district so long as at least 15 days prior to granting a request for variance, a district notifies the Executive Director of the South Florida, Southwest Florida, and St. Johns River Water Management Districts and the Director of the Department’s Office of Water Policy that it intends to grant the variance.

(3) Procedures.

(a) A consumptive use applicant must submit a request for variance to the applicable District prior to the District taking final agency action on the application. An applicant is encouraged to submit its request for variance prior to the District deeming the application complete. If an applicant wishes to request a variance after a District has deemed the application complete, the applicant must modify its application.

(b) A request for variance must include, at a minimum:

1. The name, address, any e-mail address, any facsimile number, and telephone number of the requestor;

2. The application or permit number, as applicable;

3. A statement of the specific rules the requestor contends warrant a variance;

4. A statement of the unique circumstances or hydrogeological factors that make application of the rules unrealistic or impractical; and

5. A statement of the relief sought by the requester, stating precisely the action requester wishes the agency to take with respect to the requester’s application.

(4) A applicant may apply for a variance from the rules set forth in Rules 62-41.301 – 62-41.305 if there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical.

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 \_\_\_\_\_\_.

**62-41.304: 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 joint meeting between District staff and Department staff to discuss what MFL and Reservation Waterbodies are being proposed;

 (b) Notice a joint workshop within the CFWI Area to discussed each Districts’ proposed priority list applicable to the CFWI. Such notice shall affirmatively state that the Districts 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.

 (c) 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 communicate information relating to the MFL with the non-adopting districts and the Department prior to seeking independent scientific peer review.

(3) Status of the MFL Waterbody. The purpose of this subsection is to provide the approach to determine 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 (along with the associated evaluations necessary to make such a determination). 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 incorporates change in rainfall trends and uncertainty in MFLs, will be performed approximately every five years to monitor the status of an adopted MFL, as well as when permit applications are considered that may impact an MFL.

(b) If the screening level analysis shows that the MFL is being met based on the rainfall-adjusted flows or levels, 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 rainfall-adjusted flows and levels, 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. Factors to be considered in the determination of causation 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. Geology/hydromorphology (e.g., sinkhole formation);

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

g. Ecological assessment information.

2. The types of tools used in the causation analysis include, but are not limited to:

a. Double-mass analyses;

b. Rainfall/flow statistical analysis or flow regression;

c. Stage/duration/frequency analysis;

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

e. Ecological tools.

3. Based on the causation analysis, the District will determine whether the status of the water body has changed since adoption or most recent status determination, whichever is later. If a waterbody status has changed, the District or Department, as applicable, shall expeditiously implement the appropriate rulemaking to adopt or amend a recovery or prevention strategy.

 (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 how it will address consumptive use applications following the adoption of an MFL for a waterbody that is in recovery or prevention.

(5) Consistent Method for Establishing 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) Paragraph 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 4.4.1, inclusive of all subsections, of the SWFWMD Applicant’s Handbook, effective date May 19, 2014, incorporated by reference herein.

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

(i) 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) 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.

(b) In addition to Section *[Ag Demands cite to be added]* of the CFWI Supplemental Applicant’s Handbook, 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. 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.

(c) Consistent with section 2.1. of the SWFWMD Applicant’s Handbook, the reasonable water needs of all Applicants for new Water Use Permits and renewals, and those for New Quantities and Self-Relocation within the SWUCA or the Dover/Plant City WUCA for crop protection will be closely evaluated by the SWFWMD. For Self-Relocations in the SWUCA or the Dover/Plant City WUCA for crop protection, the evaluation period will be the previous permit term, taking into account climate variability, market conditions, and other factors that influence water uses.

(d) 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 \_\_\_\_\_\_.