

CHAPTER 62-41
REGULATION OF THE CONSUMPTIVE USES OF WATER

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62-41.300 Central Florida Water Initiative Area, Scope of Rules.

(1) Rules 62-41.300 through 62-41.305, F.A.C., and the Central Florida Water Initiative Area Supplemental Applicant's Handbook (Supplemental Applicant's Handbook), incorporated by reference in subsection 62-41.302(1), F.A.C., implements Section 373.0465(2)(d), F.S. These rules apply to consumptive use permit applicants and permittees with withdrawal points within the Central Florida Water Initiative (CFWI) Area as defined in Section 373.0465(2)(a), F.S, and supersede those portions of Chapters 40C-2, 40D-2 and 40E-2, F.A.C., regulating the consumptive use of water in the CFWI area explicitly identified in this chapter. These rules only supersede the rules of the St. Johns River Water Management District (SJRWMD), Southwest Florida Water Management District (SWFWMD) or South Florida Water Management District (SFWMD) (collectively, the "Districts") when explicitly provided in Rules 62-41.300 through 62-41.305, F.A.C., or the Supplemental Applicant's Handbook.

(2) The SJRWMD shall implement this chapter and the provisions of the Supplemental Applicant's Handbook in conjunction with provisions of Chapter 40C-2, F.A.C., and the SJRWMD Applicant's Handbook for the Consumptive Uses of Water, which is incorporated in paragraph 40C-2.101(1)(a), F.A.C., (<https://www.flrules.org/gateway/reference.asp?No=Ref-09818>).

(3) The SWFWMD shall implement this chapter and the provisions of the Supplemental Applicant's Handbook in conjunction with provisions of Chapter 40D-2, F.A.C., and the SWFWMD Water Use Permit Applicant's Handbook, Part B, which is incorporated in paragraph 40D-2.091(1)(a), F.A.C., (<https://www.flrules.org/Gateway/reference.asp?No=Ref-11553>).

(4) The SFWMD shall implement this chapter and the provisions of the Supplemental Applicant's Handbook in conjunction with provisions of Chapter 40E-2, F.A.C., and the Applicant's Handbook for Water Use Permit Applications, which is incorporated in subsection 40E-2.091(1), F.A.C., (<http://www.flrules.org/Gateway/reference.asp?No=Ref-05791>).

(5) Paragraph 373.0465(2)(e), F.S., directs the Districts to implement these rules within the CFWI Area without the need for further rulemaking.

(6) The phrases "Consumptive Use Permit," "Consumptive Use Permitting," or "Consumptive Use Applicants" are synonymous with "Water Use Permit," "Water Use Permitting," or "Water Use Applicants," respectively, as used by the Districts.

(7) The Central Florida Water Initiative region is a water resource caution area for purposes of Chapters 403 and 62-40, F.A.C.

(8) The water management districts shall develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of permits within the CFWI Area.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.019, 373.026, 373.036, 373.0363, 373.042, 373.0421, 373.0465, 373.171, 373.219, 373.223, 373.233, 373.229, 373.709 FS. History—New 6-21-21.

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

For consumptive use applicants with withdrawal points within the CFWI Area, this rule supersedes in their entirety subsections 40C-2.301(1) and (2); 40D-2.301(1) and (2); and 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) Will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible, except for those agricultural uses outlined in Section 2.9 of the Central Florida Water Initiative Area Supplemental Applicant's Handbook, incorporated in subsection 62-41.302(1), F.A.C.;
- (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 Section 373.223(4), F.S.

(3) The standards, criteria, and conditions in the Applicant's Handbooks identified in subsections 62-41.300(2)-(4), F.A.C., and the Supplemental Applicant's Handbook incorporated by reference in subsection 62-41.302(1), F.A.C., shall be used to determine whether the requirements of subsections (1) and (2) are met.

(4) Nothing in these rules shall create a presumption with regards to modification of any existing Consumptive Use Permit within the CFWI pursuant to Section 1.2 of the Supplemental Applicant's Handbook. Following the effective date of these rules, each District shall modify all applicable existing Consumptive Use Permits with withdrawal points within the CFWI to be consistent with Rules 62-41.301 through 62-41.305, F.A.C., and applicable permit conditions specified in Section 5.0, of the Supplemental Applicant's Handbook, incorporated by reference in Rule 62-41.302, F.A.C., are incorporated into all CUPs within the CFWI pursuant to Section 1.2 of the Supplemental Applicant's Handbook.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.019, 373.026, 373.036, 373.0363, 373.042, 373.0421, 373.0465, 373.171, 373.219, 373.223, 373.233, 373.229, 373.709 FS. History—New 6-21-21.

62-41.302 Central Florida Water Initiative Area, Supplemental Applicant's Handbook.

(1) Rules 62-41.302 through 62-41.305, F.A.C., shall be used in conjunction with the Central Florida Water Initiative Area Supplemental Applicant's Handbook (Supplemental Applicant's Handbook), effective June 21, 2021, which is hereby adopted and incorporated by reference herein, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-13145>). Materials adopted by reference in this chapter are available from the Department of Environmental Protection's Internet Site <https://floridadep.gov/water-policy>, or by contacting the Office of Water Policy, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 46, Tallahassee, Florida 32399, (850)245-3150)). Design Aids referenced within the Supplemental Applicant's Handbook are not incorporated by reference and are for information purposes only.

(2) Each chapter of the Supplemental Applicant's Handbook includes a statement indicating what section(s) of the Districts' Applicant's Handbooks, the Supplemental Applicant's Handbook supersedes and replaces. Any section of a Districts' Applicant's Handbooks that is not explicitly superseded and replaced by the Supplemental Applicant's Handbook shall remain in full force and effect for all users within that Districts' jurisdiction, including the CFWI Area.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.019, 373.026, 373.036, 373.0363, 373.042, 373.0421, 373.0465, 373.171, 373.219, 373.223, 373.233, 373.229, 373.709 FS. History—New 6-21-21.

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

(1) Scope. Applicants may seek a variance from Rules 62-41.301 and 62-41.302, F.A.C., and the provisions of the Supplemental Applicant's Handbook if there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical. A variance under this rule is as defined in Section 120.52(21), F.S. Variances under this rule shall not be

granted for any 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 and Ecosystem Restoration that it intends to grant the variance.

(3) An applicant seeking a variance under Section 373.0465, F.S., from the provisions of Rule 62-41.301 or 62-41.302, F.A.C., or the provisions of the Supplemental Applicant's Handbook must demonstrate that there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical. For the purposes of this rule, unrealistic or impractical shall mean compliance with the rule will create a substantial hardship or would violate the principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

(4) Applicants for a variance may not claim that compliance with another Department or District statute or rule justifies the need for a variance. Applicants may seek variances from those statutes or rule through the applicable variance procedures.

(5) The Districts shall only grant variances when the applicant demonstrates that it has achieved or will achieve the purpose of the underlying statute by other means.

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

(a) A caption, which shall read:

Petition for Variance from 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 or handbook;

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

(f) The type of action requested;

(g) The specific facts that demonstrate there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical;

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

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

(7) The District shall review a petition for a variance under Section 373.0465(2)(d), F.S., within 30 days after receipt to determine if the application is complete. If the petition is incomplete, the District shall request additional information and cite the applicable paragraph or subparagraph in this rule upon which it is making such request. Within 30 days after receipt of such additional information, the District shall review the additional information and may request any other information needed to clarify the additional information or to answer new questions raised by, or directly related to, the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule, the petitioner may direct the District to process the petition without the requested information. Upon the receipt of such direction, the District shall process the petition without the requested information.

(8) 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.

(9) If granted, a variance will be issued to run concurrently with the corresponding permit.

(10) Renewals of variances shall be applied for and reviewed in the same manner as set forth in Rule 62-41.303, F.A.C.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.019, 373.026, 373.036, 373.0363, 373.042, 373.0421, 373.0465, 373.171, 373.219, 373.223, 373.233, 373.229, 373.709 FS. History—New 6-21-21.

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 Section 373.042(3), F.S., each District proposing a Minimum Flow or Minimum Water Level (MFL) or Reservation in the Central Florida Water Initiative (CFWI) Area shall:

(a) Hold a meeting among staff of the Department, and the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District (the “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 the Districts to discuss each district’s proposed priority list applicable to the CFWI. Such notice shall affirmatively state that the Districts and the Department have held the meeting required by paragraph (1)(a), above.

(c) Priority Lists shall conform with the requirements set forth in Section 373.042(3), F.S., and subsection 62-40.473(9), F.A.C. In addition to those requirements, if there is an impact potential across Water Management District boundaries from withdrawals in the CFWI, the priority list shall specifically identify the cross-boundary impact potential as being from within the CFWI.

(2) Consistent Method for Establishing MFLs.

(a) When establishing or re-evaluating 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) When establishing or re-evaluating an MFL, the adopting District shall consider the unique characteristics of the waterbody and basin as determined using the best available information. 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 a Notice of Proposed Rule, whichever comes first.

(3) Status of the MFL Waterbody. When determining whether the flow(s) and/or level(s) of a specific MFL water body are below or projected to fall below the adopted MFL criteria, the District within which the MFL is located shall use the status assessment approach that includes a screening level analysis and a causation analysis, when applicable pursuant to the paragraphs 62-41.304(3)(a)-(c), F.A.C. 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 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 screening level analysis indicates 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. 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 may include:

- 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);
- h. Ecological assessment information; and,
- i. Other factors that can be reasonably shown to cause a change in the flow or level.

2. The tools used in the causation analysis shall be based on the use of best professional judgment and may include:

- 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);
- e. Ecological tools;
- f. Distribution of groundwater use and withdrawal rate history;
- g. Aquifer water level trend analysis; and
- h. Degree of aquifer confinement.

3. Based on the causation analysis, the District shall develop or amend a recovery or prevention strategy including any applicable rulemaking, 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.

(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.

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.019, 373.026, 373.036, 373.0363, 373.042, 373.0421, 373.0465, 373.171, 373.219, 373.223, 373.233, 373.229, 373.709 FS. History—New 6-21-21.

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 includes existing recovery strategies within the Central Florida Water Initiative (CFWI) Area adopted before July 1, 2016. This 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 inclusion, 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 adopts and incorporates by reference herein the following provisions of Chapters 40D-2 and 40D-80, F.A.C., which shall apply to all applicants located within the SWUCA or Dover/Plant City WUCA, as applicable:

(a) Paragraph 40D-2.801(3)(b), F.A.C., effective May 19, 2014, including all subparts, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12432>);

(b) Paragraph 40D-2.801(3)(c), F.A.C., effective May 19, 2014, including all subparts (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12438>);

(c) Rule 40D-80.074, F.A.C., effective May 19, 2014, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12433>), entitled “Regulatory Portion of Recovery Strategy for the Southern Water Use Caution Area”;

(d) Rule 40D-80.075, F.A.C., effective May 19, 2014, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12434>), entitled “Regulatory Portion of Recovery Strategy for the Dover/Plant City Water Use Caution Area”;

(e) Paragraph 40D-2.331(2)(b), F.A.C., effective September 29, 2015, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12435>), relating 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;

(f) Rule 40D-2.621, F.A.C., effective date May 19, 2014, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12436>), relating to individual consumptive use permits for irrigation;

(4) The Department hereby adopts and incorporates by reference the following provisions of the Southwest Florida Water Management District’s Applicant’s Handbook, Part B, effective date February 18, 2020,

(<https://www.flrules.org/Gateway/reference.asp?No=Ref-11553>), which shall apply to all applicants located within the SWUCA or Dover/Plant City WUCA, as applicable, and shall be used in addition to provisions of the Supplemental Applicant's Handbook, incorporated by reference in subsection 62-41.302(1), F.A.C., (<https://www.flrules.org/Gateway/reference.asp?No=Ref-13145>) where notated:

- (a) Section 2.1, relating to the demonstration of water need,
 - (b) Section 2.1.1.4, inclusive of all subsections, relating to Water Use Permits with alternative water supplies in the SWUCA or Dover/Plant City WUCA”;
 - (c) Section 2.2.4, regarding the loss of alternative water supplies;
 - (d) Sections 2.3.7, inclusive of all subsections and 2.4.8.4 inclusive of all subsections, relating to public supply use demand. For the purposes of implementing this Section, the Department hereby also incorporates by reference SWFWMD's Applicant's Handbook, Part D, effective date May 19, 2014, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-03840>);
 - (e) Section 2.4.3.1.1 and 2.4.3.1.7, providing for the calculation of allocation. For the purposes of implementing this section, the Department hereby also incorporates by reference SWFWMD's Agricultural Water Allotment Form, Form No. LEG-R.042.00, effective date May 19, 2014, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-13082>);
 - (f) Section 2.4.7.1.5, inclusive of all subsections, relating to golf course conservation requirements;
 - (g) Section 2.4.8.5, applicable to all wholesale public supply applicants located within the SWUCA;
 - (h) Section 3.9.2, inclusive of all subsections, providing regulatory requirements in the SWUCA;
 - (i) Section 3.9.4, inclusive of all subsections, providing regulatory requirements in the Dover/Plant City WUCA;
 - (j) Section 4.1.1, relating to water flow monitoring and calibration as applicable within the Dover/Plant City WUCA and SWUCA;
 - (k) Section 4.3.1, relating to groundwater level monitoring requirements within the SWUCA;
 - (l) Section 4.4.1, inclusive of all subsections; relating to irrigation crop reports within the SWUCA;
 - (m) Section 4.4.2, relating to irrigation pumpage compliance within the SWUCA; and
 - (n) Section 4.4.13, regarding reporting requirements for landscape/recreation irrigation water use within the SWUCA.
- (5) Application forms promulgated 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 subsection 40D-2.101(5), F.A.C., effective date May 19, 2014, adopted and incorporated by reference herein, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12430>).
 - (b) Within the Dover/Plant City WUCA, an Applicant shall submit the forms required by subsection 40D-2.101(6), F.A.C., effective date May 19, 2014, adopted and incorporated by reference herein, (<https://www.flrules.org/Gateway/reference.asp?No=Ref-12431>).

Rulemaking Authority 373.043, 373.0465, 373.171 FS. Law Implemented 373.016, 373.019, 373.026, 373.036, 373.0363, 373.042, 373.0421, 373.0465, 373.171, 373.219, 373.223, 373.233, 373.229, 373.709 FS. History—New 6-21-21.