

## Notice of Proposed Rule

### **WATER MANAGEMENT DISTRICTS** **South Florida Water Management District**

RULE NO.: RULE TITLE:

[40E-21.221](#): Evaluating Water Conditions

[40E-21.251](#): Water Shortage Phases

[40E-21.271](#): General Water Use Restrictions

[40E-21.275](#): Variances

[40E-21.421](#): Enforcement

[40E-21.551](#): Phase IV Critical Water Shortage

PURPOSE AND EFFECT: The Joint Administrative Procedures Committee (JAPC) periodically reviews agency rules for consistency with the governing statutes. The District is undertaking rule development to amend several rules to address comments received from JAPC. The District will delete several references to “discretionary” language and amend various provisions to provide clarity to water users.

SUMMARY: The proposed rule amendments clarify language in Rules 40E-21.221, .251, .271, .275, and .551, F.A.C., and delete unnecessary language in Rule 40E-21.421, F.A.C.

#### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

This determination is based on the rule amendments do not result in an increase in the impact on small businesses and do not increase regulatory costs.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The District has completed the Governor’s Office of Fiscal Accountability and Regulatory Reform (OFARR) the “Is a SERC Required?” form, which is available upon request. Based on the completed “Is a SERC Required?” form, the proposed rule amendments are not expected to require legislative ratification pursuant to the subsection 120.541(3), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: [373.044](#), [373.113](#), F.S.

LAW IMPLEMENTED: [373.042](#), [373.0421](#), [373.119](#), [373.175](#), [373.246](#), [373.603](#), [373.609](#), F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: September 13, 2018, beginning at 9:00 a.m.

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: South Florida Water Management District Clerk @ (561) 682-6805. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Terrie Bates, Division Director, Water Resources, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, telephone: (561) 682-6952, email: [tbates@sfwmd.gov](mailto:tbates@sfwmd.gov). For procedural questions regarding the rulemaking process, contact Jan Sluth, CP, FRP, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, telephone: (561) 682-6299, email: [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov).

#### THE FULL TEXT OF THE PROPOSED RULE IS:

##### **40E-21.221 Evaluating Water Conditions.**

(1) and (2) No Change.

(3) (a) No Change.

(b) Present and anticipated user demands for each use and method of withdrawal class shall be periodically estimated for each source class. Factors considered in estimating the present and anticipated demands of the users

within a source class ~~may~~ include:

1. through 6. No Change.

(c) Estimated present and anticipated available water supply shall be periodically compared to estimated present and anticipated user demands to determine impact on the water resource. Factors ~~that may be~~ considered in determining whether serious harm to the water resource may occur include:

1. through 3. No Change.

(d) No Change.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History—New 5-31-82, Amended 1-26-86, 9-10-01,\_\_\_\_\_.*

#### **40E-21.251 Water Shortage Phases.**

(1) and (2) No Change.

(3) Each source class for which a water shortage has been declared shall be assigned a specific water shortage phase. More than one source class may be combined into a single class for this purpose. The water shortage phase selected for a source class is ~~may be~~ based upon:

(a) and (b) No Change.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.175, 373.246 FS. History—New 5-31-82, Amended \_\_\_\_\_.*

#### **40E-21.271 General Water Use Restrictions.**

(1) No Change.

~~(2) The Board will may order any combination of the water use restrictions specified in this Chapter Part V for the appropriate water shortage phase for each affected source class. The restricted area will may include for enforcement purposes, all or part of a county, municipality, surface water basin or utility service area which impacts a source class for which a water shortage is declared. Further, the Board may order any combination in lieu of or in addition to the restrictions specified in Part V of the restrictions described in subsection (3), by use or method of withdrawal class, within each source class, if necessary to achieve the percent reduction in overall demand.~~

(3) Additional restrictions to ~~which may be~~ considered include:

(a) through (j) No Change.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History—New 5-31-82, Amended 1-26-86, 9-10-01,\_\_\_\_\_.*

#### **40E-21.275 Variances.**

(1) through (4) No Change.

(5)(a) through (c) No Change.

(d) The Board will ~~may~~ revoke or modify a variance when it determines that the continued utilization of the variance is inconsistent with the objectives of the District.

(6) No Change.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.175, 373.246 FS. History—New 5-31-82, Amended 1-26-86, 2-14-91, 7-2-98, 6-12-00,\_\_\_\_\_.*

#### **40E-21.421 Enforcement.**

(1) through (5) No Change.

~~(6) In the event a water user is in violation of the water shortage plan or any water shortage order issued pursuant thereto, it shall be presumed that the person present at the premises where such unauthorized use is occurring who has a possessory interest in those premises, is responsible therefor. In the event that no one is present at the premises while such unauthorized use is occurring, it shall be presumed that the owner of the premises is responsible for such use. These presumptions shall not affect the burden of proof of the District to present a prima facie case as to each violation, and shall be rebuttable by the presentation of evidence to indicate that another person was responsible for the unauthorized water use.~~

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.119, 373.175, 373.246, 373.603, 373.609 FS. History—New 5-31-82, Amended \_\_\_\_\_.*

#### **40E-21.551 Phase IV Critical Water Shortage.**

The following restrictions shall apply when a Phase IV shortage is declared by the District.

- (1) (a) No Change.
- (b) Domestic Type Use.
  - 1. Residential type domestic use should ~~shall~~ be voluntarily reduced to 30 gallons per person per day.
  - 2. Domestic type use in industrial and commercial establishments should ~~shall~~ be voluntarily reduced to the minimum levels necessary to preserve public health and safety.
- (c) No Change.
- (d) Power Production Use. Water used for power production should ~~shall~~ be voluntarily reduced.
- (e) 1. No Change.
- (I) and (II) No Change.
- (III) Use equal to or less than 50 gallons per wash should ~~shall~~ be voluntarily reduced;
- b. No Change.
  - (I) and (II) No Change.
  - (III) Use equal to or less than 100 gallons per wash should ~~shall~~ be voluntarily reduced.
  - 2. Water used for commercial and industrial processes should ~~shall~~ be voluntarily reduced.
  - 3. No Change.
  - 4. Water use for pesticide application under the supervision of a licensed pest control operator should ~~shall~~ be voluntarily reduced. Under the provisions of this subparagraph, the applicator must be on the premises when water is applied outside of the hours allowed for irrigation.
  - 5. No Change.
  - 6. Water use for mobile equipment washing by a licensed person or entity should ~~shall~~ be voluntarily reduced.
- (f) Diversion and Impoundment into Non-District Facilities. Water used for diversion and impoundment into non-District facilities should ~~shall~~ be voluntarily reduced; however, the diversion of surface water from sources in the Lake Okeechobee Region as depicted on Figure 21-4 and described in subsection 40E-21.691(3), F.A.C., shall be subject to the restrictions described in subparagraph (2)(a)6., below.
  - (2) (a) No Change.
  - (b) Livestock Use. Livestock water use should ~~shall~~ be voluntarily reduced.
  - (c) Aquacultural Use. Aquacultural water use should ~~shall~~ be voluntarily reduced.
  - (d) Soil Flooding.
    - 1. Soil flooding for vegetable seed planting, rice planting, burning of sugarcane prior to harvest and to permit harvesting of sod should ~~shall~~ be voluntarily reduced.
    - 2. No Change.
  - (e) No Change.
  - (3) Nursery/Urban Irrigation/Recreation.
    - (a) Nursery Use.
      - 1. Low volume irrigation uses and low volume hand watering should ~~shall~~ be voluntarily reduced.
      - 2. and 3. No Change.
    - (b), (c), and (d) No Change.
    - (e) Golf Course Use.
      - 1. Irrigation of greens should ~~shall~~ be voluntarily reduced and shall be accomplished during non-daylight hours.
      - 2. through 4. No Change.
    - (f) No Change.
  - (4) No Change.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.175, 373.246 FS. History—New 5-31-82, Amended 1-26-86, 2-14-91, 11-19-07,\_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Terrie Bates, Division Director, Water Resources  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 12, 2018  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: May 18, 2018