

GENERAL COUNSEL'S REPORT
September 22, 2020

Consent Agenda

Administrative, Enforcement, and Litigation Activities that Require Governing Board Approval

Approve the District's Annual Regulatory Plan for 2020-2021

Executive Order No. 11-211 requires agencies under the direction of the Governor to submit to the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) "an annual regulatory plan that shall identify and describe each rule that the agency expects to begin promulgating during the next twelve-month period." Section 120.74, Florida Statutes (F.S.), requires each state agency to prepare an annual regulatory plan by October 1 of each year to identify each law enacted or amended during the previous twelve months which creates or modifies the duties or authorities of the agency, as well as each other law which the agency expects to implement by rulemaking before the following July 1, with the exception of emergency rulemaking. Additionally, the annual regulatory plan must include a certification executed on behalf of the agency by both the presiding officer and the principal legal advisor to the agency head, verifying that both persons have reviewed the plan and that the agency regularly reviews all of its rules to determine if the rules remain consistent with the agency's rulemaking authority and laws implemented. Finally, under Section 120.74(2)(a)(3), F.S., the District must publish a notice indicating that its Regulatory Plan is available in the Florida Administrative Register.

The District's proposed 2020-2021 Regulatory Plan lists upcoming rulemaking in the following categories:

1. Amendments to Procedural Rules – simplifying and clarifying rules, and increasing efficiency;
2. Amendments to Water Use Permitting Rules – simplifying and clarifying rules, deleting unnecessary rules, and in some cases reducing regulatory costs;
3. Amendments to Water Levels and Rates of Flow Rules – clarifying rules, increasing efficiency, deleting obsolete or unnecessary rules, and in some cases reducing regulatory costs; and
4. Amendments to Recovery and Prevention Strategies for Minimum Flows and Levels – reevaluating recovery strategies, clarifying rules, and increasing efficiency.

The District's Regulatory Plan will be published on the District's website, and a notice will be published in the Florida Administrative Register. In addition, the District will electronically deliver a copy of the certification executed by the Governing Board Chair and the General Counsel, as required by subsection 120.74(1)(d), F.S., to the Joint Administrative Procedures Committee. The District will continue to submit a copy of its Annual Regulatory Plan to the OFARR in accordance with Executive Order 11-211. Copies of the proposed regulatory plan and certification will be provided to the Governing Board in advance of this meeting.

Staff Recommendation

See Exhibits

Approve the District's Annual Regulatory Plan for 2020-2021 and execute the certification required by 120.74(1)(d), F.S.

Presenter: Christopher A. Tumminia, Deputy General Counsel

**CERTIFICATION OF ANNUAL REGULATORY PLAN FOR 2020-2021
FOR THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

We hereby certify:

That we have reviewed the Southwest Florida Water Management District's (District) Annual Regulatory Plan for 2020-2021, prepared in compliance with Section 120.74, F.S.; and

That the District regularly reviews all of its rules to determine if the rules remain consistent with the District's rulemaking authority and the laws implemented and conducted such a review on September 11, 2020.

KELLY S. RICE
CHAIR

KAREN E. WEST, ESQ.
GENERAL COUNSEL

Date

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
2020-2021 Annual Regulatory Plan

Section 120.74(1)(a), F.S., Rulemaking						
Rule Section	Law(s) Implemented	Rule Title	Must the Agency Adopt Rules to Implement the Law	Is Rulemaking Necessary to Implement the Law	Has a Notice of Rule Development Been Published and, if so, the citation to Such Notice in the Florida Administrative Register	The Date by Which the Agency Expects to Publish the Notice of Proposed Rule
None	None	None	None	None	None	None
Section 120.74(1)(b), F.S., Rulemaking						
Rule Section	Law(s) Implemented	Rule Title	Rulemaking Action	Reason for Rulemaking	Description of Changes/Additions to be Made in Rulemaking	Explain whether the rule is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules
40D-1.660	373.0361, 373.079(4)(a), 373.083(5), 373.114, 373.171, 373.403, 373.413, 373.4135, 373.4136, 373.414, 373.4144, 373.416, 373.429, 373.441 F.S.	Publications and Forms Incorporated by Reference	Rule Amendment	Update Rule	Incorporate updated publications, forms, or operating agreements.	The proposed rulemaking is intended to simplify, clarify, increase efficiency, and improve coordination with other agencies.
40D-2.091	373.036, 373.0363, 373.042, 373.0421, 373.079(4)(a), 373.083(5), 373.116, 373.117, 373.1175, 373.118, 373.149, 373.171, 373.185, 373.216, 373.217, 373.219, 373.223, 373.227, 373.228, 373.229, 373.236, 373.239, 373.243, 373.250, 373.705, 373.709, 373.715, F.S.	Publications and Forms Incorporated by Reference	Rule Amendment	Add and Update Incorporated Material	Update to Water Use Permit Applicant's Handbook, Parts B and D.	The proposed rulemaking is intended to simplify, clarify, increase efficiency, and reduce regulatory costs.
40D-2.101	373.0363, 373.116, 373.117, 373.1175, 373.216, 373.229, 373.236, 403.0877, F.S.	Content of Application	Rule Amendment	Update Rule	Conform the rule to updated Water Use Permit Applicant's Handbook, Parts B and D.	The proposed rulemaking is intended to simplify, clarify, increase efficiency, and reduce regulatory costs.
40D-2.302	373.0421, 373.223(4), F.S.	Reservations from Use	Rule Amendment	Update Rule	Adoption or repeal of reservations from use.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency, or delete unnecessary rules.
40D-8.021	373.036, 373.0361, 373.042, 373.0421, 373.086, 373.216, 373.219, 373.223, 373.229, 373.413, 373.414, 373.416, F.S.	Definitions	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency.
40D-8.041	373.036, 373.0361, 373.042, 373.0421, F.S.	Minimum Flows	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum, and adopt or amend minimum flows.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency, or delete unnecessary rules.
40D-8.623	373.036, 373.0361, 373.0395, 373.042, 373.0421, F.S.	Minimum Wetland Levels	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum, and adopt, amend, or repeal minimum levels.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency, or delete unnecessary rules.

**SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
2020-2021 Annual Regulatory Plan**

Rule Section	Law(s) Implemented	Rule Title	Rulemaking Action	Reason for Rulemaking	Description of Changes/Additions to be Made in Rulemaking	Explain whether the rule is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules
40D-8.624	373.036, 373.042, 373.0421, 373.086, 373.709, F.S.	Guidance and Minimum Levels for Lakes	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum, and adopt, amend, or repeal minimum levels.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency, or delete unnecessary rules.
40D-8.626	373.4131, F.S.	Minimum Aquifer Levels	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum, and adopt, amend, or repeal minimum levels.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency.
40D-80.073	373.036, 373.0361, 373.171, 373.0421, 373.0831, 373.1963, F.S.	Comprehensive Environmental Resources Recovery Plan for the Northern Tampa Bay Water Use Caution Area, and the Hillsborough River Recovery Strategy	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum, and amend or repeal the Comprehensive Environmental Resources Recovery Plan for the Northern Tampa Bay Water Use Caution Area and the Hillsborough River Recovery Strategy.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency.
40D-80.074	373.016, 373.023, 373.036, 373.0395, 373.042, 373.0421, 373.171, F.S.	Regulatory Portion of Recovery Strategy for the Southern Water Use Caution Area	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency.
40D-80.075	373.016, 373.023, 373.036, 373.0395, 373.042, 373.0421, 373.171, F.S.	Regulatory Portion of Recovery Strategy for the Dover/Plant City Water Use Caution Area	Rule Amendment	Update Rule	Update elevations from NGVD29 to NAVD88 datum, and amend or repeal the Regulatory Portion of Recovery Strategy for the Dover/Plant City Water Use Caution Area.	The proposed rulemaking is intended to simplify, clarify, and increase efficiency.