

ERP "GLITCH" RULE REQUIRED PURSUANT TO §120.74, FLA. STAT.

Governing Board Meeting
October 13, 2011

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Modifications are Required by §120.74, Fla. Stat.

Section 120.74, Fla. Stat., requires each agency to perform a formal review of its rules every two years. This shall include:

- Correction of deficiencies**
- Clarification and simplification of rules**
- Deletion of obsolete, unnecessary, duplicative and redundant rules**

Overview of Rule Modifications

- Update rules based on statutory amendments, i.e. include hyperlinks to forms and materials incorporated by reference, incorporate forms into rule requiring its use, delete the term “general” from standard permits pursuant to §373.118, Fla. Stat.
- Minor changes, i.e. update citations, titles, addresses, and make non substantive corrections
- Non-substantive changes to forms including deleting those no longer used

Rulemaking History

- Initiated rule development June, 2010 and published notice in September, 2010
- Rule was scheduled for rule adoption in early 2011, but adoption was postponed due to Executive Order 11-01
- Coordination with OFARR and addressed OFARR comments, July 2011
- Received minor JAPC changes in September, 2011 to be addressed in Notice of Change
- Published notice of rulemaking /adoption September, 2011

Public Comment on Rule 40E-4.381(1)(f), Fla. Admin. Code

- Comment received from Mr. Meadows, a landscape architect September 16, 2011, followed by other correspondence
- Currently Rule 40E-4.381(1)(f) allows construction completion certification forms to be certified by a “professional engineer or other individual authorized by law”
- Proposed amendments to this rule pertain only to clarification of the place where a document is incorporated by reference

Requested Modification

Public comment requests the rule be amended to state only “Registered or Licensed Professional” because as currently written, the commenter believes it creates an “implied preference for a professional engineer”

Options to Address Public Comments

- Adopt rules as currently proposed and commit to address the landscape architecture issue in November with other scheduled rule making, allowing for full public notice
- Adopt rules as currently proposed. Leave the landscape architecture issue as an item to be addressed in proposed DEP statewide ERP legislation and rule making
- Continue this rule adoption hearing until November and address the landscape architecture issue as part of this rule or in the newly proposed rules
- Adopt the changes proposed by Mr. Meadows now

Recommended Action

Adopt amendments, to rules specified on the Board agenda for Chapters 40E-1, 40E-4, 40E-40, 40E-41, 40E-400, F.A.C., and the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District” to “clean up” the District’s rules and update the rules to be consistent with statutory amendments, incorporate forms in the appropriate rules, include hyperlinks to forms and materials incorporated by reference, amend forms to update titles and organizational structure, update addresses for service centers, and include incorporation language. Publish notice of change to address minor JAPC comments.

Additional Notice of Change if Comment is Addressed Now

- Authorize publication of an additional notice of change to Rules 40E-4.101(4); 40E-4.361(2) and 40E-4.381(f) , F.A.C. to delete the words “professional engineer or other individual authorized by law”
- Replace with “appropriate Registered Professional”