

SYNOPSIS

Proposed Amendments to the Rules for Flint River Drought Protection, Chapter 391-3-28

The proposed amendments revise **Rules 391-3-28-.01 through .07** and add **Rules 391-3-28-.15 and .16** for consistency with the 2014 amendments to the Flint River Drought Protection Act (SB 213).

Purpose: To revise specific parts of the Rules for Flint River Drought Protection, and to add two new rules, to ensure consistency with the 2014 amendments to the Flint River Drought Protection Act (SB 213).

Main Features: As called for in SB 213, these proposed amendments incorporate specific updates to the purposes, definitions, drought fund, severe drought, and irrigation reduction auction provisions of the Rules for Flint River Drought Protection. Two new rules are being proposed to address two new provisions of the Flint River Drought Protection Act included in SB 213 relating to irrigation efficiency requirements and the management of augmented flows during the operation of state funded augmentation projects.

391-3-28-.01, "Purpose." is being amended to incorporate language from the 2014 amendments to the Flint River Drought Protection Act (SB 213); to provide the Director discretion to predict or declare severe drought conditions in the Flint River basins, in accordance with the 2014 amendments to Section 12-5-546(a) in SB 213; and to incorporate purpose statements for new rules 391-3-28-.15, "Irrigation Efficiency Requirements," and 391-3-28-.16, "Management of Augmented Flows."

391-3-28-.02, "Definitions." is being amended to provide consistency with the definitions set forth in the 2014 amendments to Section 12-5-542 of the Flint River Drought Protection Act (SB 213). Those definitions included revisions to the definitions for 'acceptable Flint River basin stream flows,' 'affected areas,' and 'stream flow,' and new definitions for 'augmentation' and 'irrigation efficiency.' This rule is also being amended to correct a grammatical error in the definition of 'candidate seller.'

391-3-28-.03, "Drought Fund Establishment and Operation." is being amended to incorporate specific language from the 2014 amendments to Section 12-5-546(e) of the Flint River Drought Protection Act (SB 213), making it clear that expenditures of funds for irrigation reduction auction purposes shall not be considered "full or partial compensation for any losses, financial or otherwise, experienced due to nonirrigation" by agricultural permittees.

391-3-28-.04, "Severe Drought Declaration." is being amended to provide consistency with the 2014 amendments to Section 12-5-546 of the Flint River Drought Protection Act (SB 213): to provide EPD the discretion to predict or declare when severe drought conditions exist or are expected to exist during a given year; to provide examples of the types of indicators or considerations the Director may base such prediction or declaration upon; and to provide EPD the discretion to implement the irrigated acreage reduction auction. The rule is also being amended to remove the requirement for the Director to publicly issue a no drought prediction on or before March 1 each year, and to remove statements that no further implementation of the Flint River Drought Protection rules may be considered where no severe drought is predicted or

declared (to avoid conflicts with new rules 391-3-28-.15, "Irrigation Efficiency Requirements," and 391-3-28-.16, "Management of Augmented Flows").

391-3-28-.05, "Eligibility." is being amended to reflect the changed definition of 'affected area' to 'affected areas' in the 2014 amendments to Section 12-5-542 of the Flint River Drought Protection Act (SB 213), and as reflected in amended rule 391-3-28-.02. Part (a) of the rule is being revised to specify that the first item of information agricultural permit holders must provide to be eligible for an auction certificate relates to their 'location within the affected areas.'

391-3-28-.06, "Irrigated Acreage Determination." is being amended, in accordance with the 2014 amendments to Section 12-5-546(b) of the Flint River Drought Protection Act (SB 213), to provide EPD with the discretion, when severe drought conditions are declared on or before March 1, to make the acreage determinations that are part of the irrigated acreage reduction auction. The rule is also being amended to add (1) and (2) numbering to the main paragraphs in the rule.

391-3-28-.07, "Irrigated Acreage Reduction Auction." is being amended to correct a reference to 391-3-28-.06, "Irrigated Acreage Determination;" to provide EPD the discretion to conduct an irrigation reduction auction, in accordance with the 2014 amendments to Section 12-5-546(b) of the Flint River Drought Protection Act (SB 213); and to modify all references to "severe drought year" to "severe drought and auction year" in contemplation of years where a severe drought may occur without implementation of an irrigation reduction auction.

391-3-28-.15, "Irrigation Efficiency Requirements." is a new rule that addresses the 2014 amendments to Section 12-5-546.1 of the Flint River Drought Protection Act (SB 213) regarding irrigation system efficiency requirements. The proposed rule provides certain definitions specific to these requirements, sets forth the irrigation system efficiency requirements identified in SB 213, specifies the method by which permittees will certify their achievement of the irrigation system efficiency requirements, and specifies the coordination that EPD will conduct to identify incentive programs that may assist permittees with achieving the irrigation efficiency requirements. The proposed rule recognizes the specific circumstances of animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) that withdraw from waste water lagoons for land application to spray fields at appropriate nutrient agronomic rates.

391-3-28-.16, "Management of Augmented Flows." is a new rule that addresses the 2014 amendments to Section 12-5-546.2 of the Flint River Drought Protection Act (SB 213) regarding management of augmented flows during the operation of state funded augmentation projects. The proposed rule provides certain definitions; recognizes the operation of state funded augmentation projects "for the sole purpose of maintaining the minimum stream flows sufficient to protect habitat critical for vulnerable aquatic life within the affected areas" of the Flint River basin; specifies the manner in which the Director will identify downstream permittees of such projects and inform them about such projects; provides the manner in which the Director will notify specified permittees downstream of such projects that they must let a specified proportion of the flow provided by such projects pass their point of withdrawal; provides the right of each affected permittee to petition the Director's notification and an opportunity for a timely hearing before an administrative law judge; and specifies requirements for permit holders responsible for the operation of any state funded augmentation project.

STATEMENT OF RATIONALE

Proposed Amendments to the Rules for Flint River Drought Protection, Chapter 391-3-28

The Rules for Flint River Drought Protection, Chapter 391-3-28, are proposed for amendment to ensure consistency between these rules and the 2014 amendments to the Flint River Drought Protection Act (SB 213).

The 2014 amendments to the Flint River Drought Protection Act included certain revisions relating to the purpose, definitions, drought fund, severe drought declaration, and irrigated acreage reduction auction provisions of the Act. In adopting the 2014 amendments to the Flint River Drought Protection Act, the legislature provided discretion to EPD and the EPD Director regarding: the prediction or estimation of severe drought conditions on or before March 1 of each year in the Flint River basin and the implementation of the irrigated acreage reduction auction. In passing two new provisions of the Flint River Drought Protection Act, the legislature also recognized the importance of implementing irrigation system efficiency requirements and managing augmented flows from the operation of state funded augmentation projects.

The proposed amendments to the Rules for Flint River Drought Protection, Chapter 391-3-28, will ensure consistency between these Rules and the 2014 amendments to the Flint River Drought Protection Act (SB 213) through the revision of seven specific rules (Rules 391-3-28-.01 through .07) and the addition of two new rules (Rules 391-3-28-.15 and .16).