

CHAPTER 68D-23 UNIFORM WATERWAY MARKERS IN FLORIDA WATERS

68D-23.003 Placement of Regulatory Markers in Waters of the State. (Repealed)

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68D-23.101 Intent.

(1) This Chapter is consistent with and conforms to 33 C.F.R. part 62 – The navigable waters of the United States and non-navigable State waters (which together include all waters of this state), are marked to assist navigation using the United States Aids to Navigation System, a system consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System is followed by most of the world's maritime nations and will improve maritime safety by encouraging conformity with buoyage systems used worldwide.

(2) It is the intent of this chapter:

(a) To provide for uniformity in design, construction and coloring of markers so that all vessel operators may readily recognize, identify and distinguish between authorized markers and unlawfully placed markers;

(b) To provide a means by which the Division and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked;

(c) To insure that regulatory markers noticing boating restricted areas created pursuant to Sections 327.22, 327.60 and 370.12, F.S., are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(3) It is further the intent of this chapter that no boating restricted area be established, continued in effect, or enforced for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), F.S., "vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property." The wake resulting from the reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

(4) The Division will not issue any permit authorizing the placement of regulatory markers for:

(a) Ordinances that apply within the Florida Intracoastal Waterway, in violation of Section 327.60(2), F.S.;

(b) Ordinances adopted pursuant to Section 370.12(2)(p), F.S., until such ordinances have been reviewed and approved by the commission, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel;

(c) Ordinances that discriminate against personal watercraft, in violation of Section 327.60(1), F.S.;

(d) Ordinances that discriminate against airboats, unless adopted by a two-thirds vote of the governing body enacting such ordinance, as provided in Section 327.60(1), F.S.

(e) Ordinances regulating the anchoring of non-live-aboard vessels in navigation, in violation of Section 327.60(2), F.S., when such vessels are outside the marked boundaries of mooring fields permitted as provided in Section 327.40, F.S., and this rule.

(5) Where conflicting speed or operational restrictions are established by law or pursuant to law, the more restrictive shall be posted and shall apply.

(6) Regulatory markers placed pursuant to a permit issued as provided herein shall be prima facie evidence of the boundaries of boating restricted areas and the speed or operational restrictions imposed therein.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.102 Scope.

The provisions of this chapter prescribe the procedures by which the Division permits and regulates the placement of markers in, on, and over the waters of this state and the shores thereof. This chapter also provides for the design, construction, characteristics and coloring of all markers placed in, on, and over the waters of this state and the shores thereof by adopting by reference the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01.

68D-23.103 Definitions.

(1) For purposes of this chapter and Chapters 68C-22 and 68D-24, F.A.C., the following definitions shall apply:

- (a) “Aid to navigation” means any device external to a vessel intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.
- (b) “Information marker” means a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters.
- (c) “Regulatory marker” means a device used to alert the mariner to various warnings or regulatory matters such as horsepower, speed, or wake restrictions.
- (d) “Mooring buoy” means a device that is permanently secured to the bottom of a body of water and to which a vessel may be secured when not underway.
- (e) “Buoy” means any device designed to float which is anchored in the waters of the state and which is used to convey a message or carry a sign.
- (f) “Sign” means an object which displays a message and which is attached to another object such as a piling, buoy, structure, or the land itself.
- (g) “Symbol” means the orange geometric shape displayed on an information or regulatory marker. The meanings associated with the orange geometric shapes are as follows:
 - 1. A vertical open-faced diamond signifies danger;
 - 2. A vertical diamond shape having a cross centered within indicates that all vessels or certain classes of vessels are excluded from the marked area;
 - 3. A circular shape indicates that certain operating restrictions are in effect within the marked area; and
 - 4. A square or rectangular shape will contain directions or instructions lettered within the shape.
- (h) “Display area” means the area on an information marker or regulatory marker within which the symbol is displayed.
- (i) “Boating restricted area” means an area of the waters of the state within which the operation of vessels is subject to specified restrictions or from which vessels are excluded.
- (j) “Shore” means that area of land immediately adjacent or contiguous to the waters of the state such that a sign or marker erected thereon is readily visible to the operator of a vessel who might reasonably believe that the sign or marker displays navigational, regulatory or other information relevant to the operation of the vessel.
- (k) “Florida Intracoastal Waterway” means:
 - 1. All waters within the right-of-way of the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway Route 1 across Lake Okeechobee; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; the Gulf Intracoastal Waterway, Carrabelle to Anclote open bay section (using the Gulf of Mexico); and the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and
 - 2. All waters from shoreline to shoreline within the Okeechobee Waterway, Stuart to Fort Myers, not including Route 1 across Lake Okeechobee; the St. Johns River, Jacksonville to Sanford; and, the Apalachicola, Chattahoochee, and Flint Rivers in Florida.
- (l) “Uniform State Waterway Marking System” means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 66 of Title 33 of the Code of Federal Regulations.

(m) “United States Aids to Navigation System” means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 62 of Title 33 of the Code of Federal Regulations.

(n) “Private Aid to Navigation” means an aid to navigation the establishment of which is authorized by a permit issued by the United States Coast Guard pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(o) “Maritime property” means vessels and their engines, tackle, gear, equipment, appurtenances, furnishings, cargoes, stores, personal property then on board belonging to the vessels’ occupants, and such other similar property as is consistent with the general maritime law of the United States. This definition does not include littoral or riparian property, the shores thereof, seawalls, docks, wharfs, or other property intentionally and permanently attached to the shore.

(p) “Inland lake” means a naturally occurring or man-made fresh water lake or pond. The term does not include reservoirs, impoundments, or any portion of the Florida Intracoastal Waterway.

(q) “Associated canal” means a man-made canal that is directly attached to an inland lake and that does not connect to other waters or that connects only to another inland lake. The term does not include any portion of a state or federally funded navigation project or any portion of the Florida Intracoastal Waterway.

(r) “In writing” means any written or printed form of communication and includes electronic mail, files transferred as attachments to electronic mail, and telefacsimiles.

(2) When used on markers, the terms:

(a) “Idle Speed No Wake” and “Idle Speed” may be used interchangeably and mean that a vessel must proceed at a speed no greater than that which will maintain steerageway and headway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

(b) “Slow Speed” and “Slow Speed Minimum Wake” may be used interchangeably and mean that a vessel must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. A vessel that is:

1. Operating on plane is not proceeding at this speed;
2. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed;
3. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed;
4. Completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.

“Slow Speed” and “Slow Speed Minimum Wake” are the preferred terms. “Slow Down Minimum Wake” markers may continue to be used for restricted areas authorized prior to January 1, 2001, except when such a restricted area is contiguous to an Idle Speed No Wake boating restricted area.

(c) “Caution zone” means an area presenting a significant risk of navigational hazard, an area frequently inhabited by manatees on a somewhat regular basis, or other area similarly requiring that vessels be operated with particular alertness and caution so as to avoid endangering life, limb, vessel traffic safety or maritime property, or manatees.

(d) “No Power-driven Vessels” – All vessels equipped with any mechanical means of propulsion must turn off the mechanical means of propulsion and, if possible to do so, tilt or raise the mechanical means of propulsion out of the water.

(e) “No Internal Combustion Motors” or “No Motor Zone” – All vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion must turn off the internal combustion motor and, if possible to do so, tilt or raise the internal combustion motor out of the water. The use of electric motors is not prohibited.

(f) “Vessel exclusion zone” means an area from which all vessels or certain classes of vessels are excluded. The following list includes the most common examples of vessel exclusion zones. Whenever the following messages are displayed on vessel exclusion zone markers, they have the meaning provided. Other messages on vessel exclusion zone markers are permissible, so long as the markers display language that accurately describes the vessels or classes of vessel that are excluded from the area. All vessel exclusion zones must be marked with the crossed-diamond symbol as specified in subparagraph (1)(g)2., above.

1. “No Vessels” or “Swim Area” – All vessels of any type are prohibited from entering the marked area.

2. "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited" – All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area, even if the mechanical means of propulsion is not in use.

3. "Manually Propelled Vessels Only" – All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with sails or a mechanical means of propulsion may enter the marked area only if the sails or mechanical means of propulsion is not in use and, if possible to do so, the mechanical means of propulsion is tilted or raised out of the water.

4. "No Entry Area" – All vessels and all persons, either in vessels or swimming, diving, or wading, are prohibited from entering the marked area.

(g) "Miles per hour" and "MPH" mean speed made good over the bottom measured in statute miles. A specific number will be posted in conjunction with "miles per hour" or "MPH" and is the maximum speed at which a vessel may lawfully be operated within the marked area. Although it is the intention of the Commission to allow those vessels capable of attaining a planing configuration at posted numerical speed limit to do so, this posted speed limit shall not be construed as permitting the reckless or careless operation of a vessel, in violation of Section 327.33, F.S., or authorizing any vessel to travel at an unsafe speed, in violation of navigation rule 6 as adopted pursuant to Section 327.33, F.S., by reason of:

1. Having an elevated bow which restricts visibility, or

2. Producing an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels, other persons using the waterway, or natural resources of the state.

(h) "Wake," when used in conjunction with a numerical size limit, means all changes in the vertical height of the water's surface caused by the passage of a vessel including, but not limited to, a vessel's bow wave, stern wake, and propeller wash, measured from the ambient tide level to the crest of the vessel's wake at a distance of not less than 25 feet from the vessel.

(i) "Holiday" means:

1. New Year's Day.

2. Birthday of Martin Luther King, Jr., the third Monday in January.

3. Memorial Day.

4. Independence Day, the Fourth of July.

5. Labor Day.

6. Columbus Day.

7. Veterans' Day, November 11.

8. Thanksgiving Day.

9. Friday after Thanksgiving.

10. Christmas Day.

If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(3) The division may authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

Specific Authority 327.04, 327.40, 327.41, 327.46, 370.12 FS. Law Implemented 327.40, 327.41, 327.46, 370.12 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.104 Placement of Markers.

(1)(a) Except as provided below, no person, municipality, county or other governmental entity shall place, cause to be placed, or maintain in place any marker in, on or over the waters of the state or the shores thereof without a permit from the division.

(b) Counties, municipalities and other government entities are exempt from permitting under this rule when placing:

1. Swimming Area Markers or Special Event Markers on inland lakes and their associated canals.

2. Informational markers other than Swimming Area Markers or Special Event Markers, when placed on the shores of inland lakes and their associated canals or on such waters within fifty feet (50') of the ordinary high water line.

(c) Nothing herein shall prevent counties, municipalities or other governmental entities from choosing to voluntarily apply for waterway marker permits.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall make application to the division on the Florida Uniform Waterway Marker Application form, FWC/DLE 153

(01/2006), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Management, 620 South Meridian Street, Tallahassee, Florida 32399-1600 or download the application from the Commission website at: <http://www.myfwc.com/boating/waterways/index.htm>.

Each application must include:

- (a) A scale drawing no larger than 8½ inches by 11 inches, reproducible on standard office photocopying equipment, showing the approximate placement of the proposed markers with each proposed marker labeled to correspond to the list required below. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the proposed boating restricted area.
 - (b) A list of the markers proposed, labeled to correspond to the drawing required above.
 - (c) A statement of the specifications for the markers proposed, including:
 1. A description giving the type, size, shape, color, material, height above mean high water for each marker sign or buoy, and the number, letter or message displayed thereon;
 2. A description of the type, size, and material used for:
 - a. Any structure which will support a marker sign;
 - b. Any anchor, anchoring system, chain, tether, rode, or other ground tackle which will secure a marker buoy, including a mooring buoy, to the bottom;
 3. A statement of the color, characteristic, height above mean high water, intensity, and nominal range of any light which will be placed on the markers;
 4. A statement of the type signal (whistle, horn, bell, etc.) and characteristic for any audible fog signal.
 5. The latitude and longitude expressed in degrees and decimal minutes of the location where each marker will be placed, and the datum in which the coordinates are expressed (WSG-84, NAD-83, etc.).
 - (d) A statement of the purpose for placing the proposed markers. If the application is for regulatory markers, this statement must include the purpose for regulating vessel operation and a statement of the facts and circumstances justifying the establishment of the restriction on speed or operation.
 - (e) A statement listing the names or titles of the individuals responsible for the placement and maintenance of the markers along with an address and a contact telephone number for each individual.
 - (f) If the application is for regulatory markers, the applicant must enclose therewith proof of the lawful imposition of restrictions on the speed or operation of vessels for which the regulatory markers are requested, as follows:
 1. A copy of an ordinance adopted pursuant to Section 327.22, F.S., which imposes the restriction only upon vessels resident within the county or municipality imposing the restriction; or
 2. A copy of an ordinance adopted pursuant to Section 327.60, F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or
 3. A copy of an ordinance adopted by a county or municipality and approved by the commission pursuant to paragraph 370.12(2)(p), F.S., which imposes the restriction for reasons of manatee protection; or
 4. A copy of the statute, special act, rule, regulation, order, or other instrument which imposes the restriction for reasons other than public safety or manatee protection, and a statement of the specific authority under which the restriction is imposed.
- (3) Upon receipt of all statements and other documents specified above, the division will:
- (a) Determine whether:
 1. The proposed markers conform to the United States Aids to Navigation System and this chapter; and
 2. The proposed markers and any support structures or moorings conform to the United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).
 - (b) Determine whether or not the placement of the proposed markers in the proposed locations would create an unreasonable hazard to navigation.
 - (c) For danger markers only, determine whether or not the markers as proposed would clearly mark the hazard or danger and adequately notice mariners of the hazard or danger.
 - (d) For regulatory markers only:
 1. Determine whether or not the markers as proposed would clearly mark the area as a boating restricted area and adequately notice mariners of the restriction imposed on vessel speed or operation.
 2. Based on the authority under which the restriction is imposed:
 - a. Determine whether or not the restriction applies only to vessels resident in the ordaining municipality or county, for ordinance adopted pursuant to Section 327.22, F.S.; or

- b. Determine whether or not there exists a conflict with the provisions of Chapter 327, F.S., or any amendments thereto or regulations thereunder, for ordinances adopted pursuant to Section 327.60, F.S.; or
 - c. Forward the request to the Imperiled Species Management Section for review and approval pursuant to paragraph 370.12(2)(o), F.S., for ordinances adopted thereunder; or
 - d. For all other regulatory markers, determine whether or not the restriction to be implemented by the proposed markers is supported by statute, special act, rule, ordinance, or other enactment or order.
- (4) The division may consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is requested.
- (5) After obtaining the requested permit, the applicant must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the division.
- (6) Discontinuance and removal. Any permitted waterway marker may be discontinued and removed by the owner after 30 days notice to the Boating and Waterways Section. Upon completion of the removal of the marker, the applicant must notify the Boating and Waterways Section in writing within 30 working days.
- Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06*

68D-23.105 Criteria for Approval of Regulatory Markers.

- (1) The division shall find a valid vessel traffic safety or public safety purpose is presented for ordinances adopted pursuant to Section 327.60, F.S., under the following facts and circumstances:
- (a) For an Idle Speed-No Wake boating restricted area, if the area is:
- 1. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet wide and within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet wide.
 - 2. Within 500 feet of fuel pumps or dispensers at any marine fueling facility which sells motor fuel to the general boating public on waterways more than 300 feet wide and within 300 feet of the fuel pumps or dispensers at any licensed terminal facility which sells motor fuel to the general boating public on waterways not exceeding 300 feet wide.
 - 3. Inside or within 300 feet of any lock structure.
 - 4. An area where boating accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate high risk of collision or where any significant vessel wake would be likely to endanger life, limb, vessel traffic safety or maritime property.
- (b) For a Slow Speed Minimum Wake boating restricted area if the area is:
- 1. Within 300 feet of any bridge fender system.
 - 2. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
 - 3. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area where an intervening obstruction to visibility may obscure other vessels or other users of the waterway.
 - 4. Subject to unsafe levels of vessel traffic congestion.
 - 5. Subject to hazardous water levels or currents, or containing other navigational hazards.
 - 6. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present significant risk of collision or a significant threat to public safety.
- (c) For a numerical speed limit boating restricted area if the area is:
- 1. Subject to unsafe levels of vessel traffic.
 - 2. Subject to hazardous water levels or currents or containing other navigational hazards.
 - 3. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present risk of collision or a risk to public safety.
 - 4. An area within which a proposed numerical speed limit is less restrictive than the speed limit in place for the surrounding area if hazardous tides or currents require that vessels operate faster than the surrounding speed limit in order to properly maintain maneuvering ability and headway or if the geographic configuration of the area and levels of vessel traffic density indicate that higher speeds do not pose a threat to life, limb, property, or manatees. Any dispute concerning the threat to manatees shall be resolved as provided in paragraph 370.12(2)(o), F.S.
- (d) For vessel exclusion zones if the area is:

1. Designated as a public bathing beach or swim area.
 2. Reserved exclusively as a canoe trail or otherwise limited to vessels under oars or under sail.
 3. Reserved exclusively for a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.
- (e) For other boating restricted areas (caution zone, no skiing, no parasailing, one-way vessel traffic, etc.) if the area is one that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a risk to vessel traffic safety or public safety.
- (2)(a) An ordinance for the protection of manatees, adopted pursuant to paragraph 370.12(2)(o), F.S., must be reviewed and approved by the commission before any regulatory marker implementing such an ordinance may be installed. Any disagreement on the provisions of such an ordinance shall be resolved as provided in said paragraph.
- (b) In order to avoid a duplicate review and approval process, the division shall defer to the findings of the commission. Therefore, upon the review of such an ordinance and the commission's approval of the ordinance upon a finding that manatees are frequently sighted, that manatees can be generally assumed to inhabit the area periodically or continuously, and that the restrictions imposed are justified and necessary for the protection of manatees or their habitat, the division shall find a valid manatee safety purpose is presented.
- Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History—New 12-23-01.*

68D-23.106 Marker Placement Conditions.

- (1) All markers must comply with the following requirements and all permits issued pursuant to this chapter are subject to the following conditions:
- (a) Placement of these markers must be as requested in the application. Any deviation will require that the applicant apply to have the permit amended.
 - (b) The applicant must display the permit number (except as provided below) on each marker and the ordinance number, code section number, statute number, regulation or rule number (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.
 1. On all regulatory markers, the permit number must be displayed in the lower left corner on the face of each regulatory marker. The ordinance number, code section number, statute number, regulation or rule number (etc.) must be displayed in the lower right corner on the face of each regulatory marker.
 2. On all markers other than regulatory markers, the permit number must be displayed on the marker at any location on the marker where it can easily be read, including the reverse side of a sign, provided that it does not interfere with the message of the marker.
 3. Informational markers placed by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this rule. Such markers, if not permitted, must display in lieu of a permit number, the name of the county, municipality, or other governmental entity that placed the marker.
 - (c) Upon completion of the installation of markers, the applicant must notify the Boating and Waterways Section in writing within 30 days. If the latitude and longitude of each marker, as installed, is different from that listed in the application, this notification must include the correct latitude and longitude in degrees and decimal minutes as installed and the datum in which the coordinates are expressed.
 - (d) All markers must be maintained in proper condition at all times. A discrepancy exists whenever a marker is not exactly as described in the approved application or is destroyed, damaged, moved, or is otherwise unserviceable or not watching properly. The applicant must immediately report any discrepancy in the marker to the Boating and Waterways Section by telephone, telefacsimile or other similarly rapid means of communication. Unless the applicant's permit expressly provides for a longer period, the applicant must correct any discrepancy within not more than 30 days and must notify the Boating and Waterways Section when the correction is accomplished.
 - (e) Authorization by the division for the placement of a marker does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other federal, state or local laws or regulations.
 - (f) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Army Corps of Engineers authorizing the placement of

structures for the support of the proposed markers. Consent may be by nationwide permit, regional permit, letter permit, authorization letter, statement of no objection, or other similar means.

(g) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Coast Guard authorizing the establishment of private aids to navigation pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(h) It is unlawful to place markers, buoys, or signs on submerged lands, or other property or structure not owned by the person or governmental entity placing them without first receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said markers, buoys, or signs. For markers, buoys, or signs placed pursuant to a permit issued under this rule, the permit is contingent upon the applicant providing a copy of such consent to the Boating and Waterways Section.

(i) By accepting any permit and placing the markers authorized therein, the applicant other than a governmental entity, to the extent authorized by law, agrees and promises to hold harmless the State of Florida and its agencies, employees, agents, or successors from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation and removal of any and all markers placed by applicants pursuant to such permits. The applicant other than a governmental entity further agrees to indemnify the State of Florida for any and all legal fees and costs incurred in defense of any suit brought against the State as a result of alleged negligence by applicant in the placement, maintenance, operation or removal of the markers.

(j) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of operating restrictions noticed by said markers.

(2) Additional conditions for regulatory markers.

(a) All regulatory markers must be supported by a statute, special act, rule, regulation, ordinance, order, or other similar regulatory instrument which imposes the restriction displayed on the marker.

(b) If the regulatory instrument supporting a regulatory marker is amended or if it is repealed, rescinded, revoked, or otherwise becomes a nullity, the permit holder must within 30 days notify the Boating and Waterways Section of the change and must also:

1. In the case of an amendment to the regulatory instrument, the file and amended permit application showing the markers that will be removed, replaced, modified, or added in order to implement the amendment to the regulatory instrument.

2. In the case of the repeal, rescission, revocation, or other nullification of the regulatory instrument, remove from the waters of this state and the shores thereof all regulatory markers implementing that regulatory instrument.

(3) The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any marker found in violation of the conditions imposed under this section or otherwise imposed in the permit authorizing the placement of the marker if the violation is not corrected within 30 days following notification of the permittee of the violation.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.107 Federal System Adopted.

(1) The following are adopted and incorporated by reference as they existed on December 23, 2001:

(a) The United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations;

(b) The United States Coast Guard Aids to Navigation – Administration Manual (Comdtinst M16500.7);

(c) The United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).

(2) All markers, including mooring buoys placed or maintained in, on or over the waters of the state or the shores thereof must conform to the United States Aids to Navigation System.

(a) All markers in, on or over the waters of the state or the shores thereof must conform to the United States Aids to Navigation System and all other provisions of this chapter, or be removed from the waters or shores of the state.

(b) No person, municipality, county, or other governmental entity shall place, maintain, or permit to remain in, on or over the waters of the state or shores thereof any nonconforming marker.

(c) All nonconforming markers in place in, on, or over the waters of the state or shores thereof are declared a nuisance. The division and its officers and all other law enforcement officers charged with the

enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any such nonconforming marker.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.108 Specifications for Markers.

- (1) A marker placed in, on or over the waters of the state or shores thereof may be displayed as a buoy bearing letters, numbers or a symbol on its surface, or as a sign mounted on a buoy, piling or other structure, or as a sign on the shore.
- (2) Buoyed signs and markers must extend not less than 36 inches above the surface of the water. A sign suspended above the water must have a minimum of 25 feet clearance from the mean high water mark to the bottom of the sign.
- (3) A buoy whose sole purpose is to carry a sign above it shall be marked with three horizontal bands of international orange alternating with two horizontal bands of white, each band placed completely around the circumference of the buoy and occupying approximately one-fifth of the total area of the buoy's surface above the waterline. All markers shall be made of materials which will retain, despite exposure to weather and other elements, their color, shape, legibility and position.
- (4) All letters on green or black backgrounds shall be white. All letters and numerals on red or white backgrounds shall be black, except that white retroreflective letters and numerals may be used on a red background. All letters and numerals shall be of block characters of good proportion, spaced in a manner which will provide maximum legibility and of a size proportionate to the size of the marker.
- (5) Retroreflective materials shall be used for all displays on markers that are required to be international orange and as otherwise required in the United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A). The white background dayboard film material for all information, danger, exclusion, and regulatory signs installed or replaced after July 1, 2006, shall be retroreflective. Retroreflective materials may be used for any other portion of a marker.
- (6) Every pile used in waters of this state to support signs for waterway marking purposes must have two bands of white tape placed around it. The bands of tape must be placed separately around each pile for dolphins, clusters, and other structures using multiple piles for support. The tape must be 6 inches wide and made of self-adhesive (pressure sensitive), diamond-grade, white, retroreflective material. The top of the first band must be placed 6" from the bottom of the sign; the top of the second band must be placed 8" from the bottom of the first band. The tape must be installed with a minimum overlap of 1 inch over the entire 6" width of the band. On wooden piles, the tape must be additionally secured using not less than 4 stainless steel, 1-inch staples driven through the area of the overlap. If the tape becomes delaminated, cracked, checked, weathered, or abraded so as to have a dull or roughened surface, it must be replaced. Any existing tape must be removed before applying the replacement tape.
- (7) All buoys other than mooring buoys must be attached to the waterbody bottom using anchors, sinkers, chain, shackles, swivels, and bridles that meet or exceed the specifications in the United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).
- (8) Mooring buoys are white cylindrical or spherical with a blue band located near the top of the buoy. All mooring buoys must be attached to the waterbody bottom using anchors, sinkers, chain, shackles, swivels, and must be equipped with pennants, that are of sufficient size, strength, and holding power for their intended purpose.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.109 Additional Specifications for Information and Regulatory Markers.

- (1) All information and regulatory markers shall be white in color and shall display international orange symbols.
- (2) When a buoy is used as an information or regulatory marker, it shall be white with horizontal bands of international orange placed completely around the circumference of the buoy. One band shall be at the top of the buoy body, the second band shall be placed just above the waterline so that both international orange bands are clearly visible to approaching vessels. The international orange bands shall be not less than two inches in width. The display area shall be that portion of the buoy body between the bands and shall be

white. Symbols shall be centered between the international orange bands. Only a cylindrical buoy may be used. The buoy shall have a diameter of not less than nine inches.

(3) When a sign is used for an information or regulatory marker it must be rectangular. It must be white with an international orange border. The display area is that portion of the sign within the border. Symbols must be centered within the display area. The size of the sign must be appropriate to the size of the waterway where the sign is located and the nature of the vessels transiting the waterway.

(4) Specifications for Display of Symbols.

(a) The thickness of the international orange line used to draw the borders and the symbols shall be not less than 2 inches.

(b) The height of the symbol shall be at least half and not more than two-thirds the height of the display area.

(c) The sides of the diamond shape shall slope at a thirty to forty-five degree angle from the vertical on a plane surface. Appropriate adjustments for curvature shall be made when applied to a cylindrical surface.

(d) In addition to the permit number required to be displayed under subsection 68D-23.106(1), F.A.C., every regulatory marker shall display the number of the statute, special act, rule, ordinance, or other governmental action that created the boating restricted area or other operating restriction, and the name of the municipality, county or other governmental agency which placed and maintains the marker. This number and name shall be displayed in characters not less than one inch in height and shall be placed in the lower right hand corner of the display area on each sign, and at any location on each buoy where it can easily be read, provided that it shall not interfere with the message of the marker.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.110 Inspections and Certification.

(1) Each person holding a permit to place and maintain one or more markers must inspect all markers for which the permit was issued triennially.

(2) The required inspection must be documented in writing and must include the following:

(a) The name of the permit holder and permit number of the markers being inspected;

(b) The name of the person or persons currently responsible for the placement and maintenance of the markers; and

(c) A photograph of each marker taken in close enough proximity to legibly show all symbols, borders, and letters and numbers, including the text of any message, the permit number, and the ordinance number, code section number, statute number, regulation or rule number, (etc.). For marker installations with two or more signs, a sufficient number of photographs must be taken to legibly show the information on each sign. Digital photography is acceptable for this purpose. Photographs must be labeled with the location of the marker depicted and the date the photograph was taken.

(d) A statement certifying that the markers placed pursuant to the permit have been inspected during the ninety days preceding the statement and that:

1. The markers are properly maintained and in serviceable condition;

2. The markers conform to the requirements of this chapter;

3. The markers are still properly on station; and

4. The date or dates on which the markers were inspected.

(3) The permit holder must maintain the inspection documentation until it is replaced by a subsequent inspection and documentation. Failure to inspect a marker and to maintain documentation of the results of the inspection during the specified time period is grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

(4) Dayboard and buoy surfaces and dayboard backing materials will deteriorate because of the effects of weathering. Wind, rain, freezing temperatures, and sunlight cause delamination (separation), cracking, peeling, and fading. Attention must be given to these conditions during inspections.

(a) Markers will be considered discrepant under the following guidelines:

1. Backing materials. Delamination of the plies on a plywood dayboard backing must not effect more than 25 percent of the surface area. Any warpage must not visibly detract from the signal or message presented to the mariner. The backing must not be softened or otherwise deteriorated around the mounting points to a degree that the board could come loose in a storm typical for the area in which the marker is placed.

2. Elastomeric films, numerals, letters, symbols, and borders. Delamination of films and retroreflective markings on dayboards and buoys must not affect more than 10 percent of the surface of the material. Films and retroreflective markings must not be cracked, checked, weathered, or abraded so as to have a dull or roughened surface. Peeling of the film or markings from the dayboard or buoy must not affect more than 10 percent of the surface area. Letters, numerals, symbols, and borders must not be faded or weathered so as to visibly detract from the signal or message presented to the mariner.

(c) A dayboard or buoy must be replaced if any of the deteriorations noted above is observed or, if for any reason, it cannot function as intended (including significant fading or other discoloration) until the next regularly scheduled inspection. Onsite repairs are permitted if they do not interfere with or detract from the intended signal function of the marker.

(5) All discrepancies documented during an inspection must be reported to the Boating and Waterways Section and corrected within 30 days, as provided in paragraph 68D-23.106(1)(d), F.A.C.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History—New 12-23-01, Amended 10-5-06.

68D-23.111 Enforcement.

This chapter shall be enforced by the division and its officers, and any other authorized law enforcement officer as provided in Section 327.70, F.S., all of whom shall have the authority to remove or cause the removal of any marker found to be in violation of this chapter.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, 327.22, 327.46, 327.60, 327.70, 370.12 FS. History—New 12-23-01.

68D-23.112 Exemptions.

(1) Nothing herein shall apply to the United States Government or its agencies, nor to any aid to navigation, marker, mooring buoy, or other similar device placed thereby.

(2) Persons establishing private aids to navigation other than regulatory markers and mooring buoys on waters of concurrent state/federal jurisdiction pursuant to the provisions of 33 CFR § 66.01 may submit to the Boating and Waterways Section a copy of their United States Coast Guard permit (CG-2554) in lieu of the materials required under Rule 68D-23.104, F.A.C. Upon receipt by this section of said copy of their permit, such private aids to navigation are exempt from further permitting and need not display a permit number.

(3) Except as provided in subparagraph 68D-23.106(1)(b)3., F.A.C., every regulatory marker without a permit number, in place in, on or over the waters of the state or shores thereof is declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the Boating and Waterways Section of the following:

(a) A copy of the correspondence authorizing placement of said markers;

(b) A statement of the specifications for the markers, including:

1. A list of the markers;

2. A description giving each marker's size and message, and

3. The latitude and longitude coordinates in degrees and decimal minutes of the location of each marker and the datum in which those coordinates are expressed;

4. A statement that the markers have been inspected during the ninety days preceding the instant request and that:

a. The markers are properly maintained and in serviceable condition;

b. The markers conform to the requirements of this chapter;

c. The markers are still properly on station; and

d. The date or dates on which the markers were inspected.

(4) Markers placed by local governments on inland lakes and their associated canals.

(a) The placement of information or danger markers by counties, municipalities, or other governmental entities, in, on, or over the waters or shores of inland lakes and their associated canals is exempt from permitting under this section and such markers need not display any permit number. These markers include,

but are not limited to, those providing information or warnings concerning: ends of boat ramps, no swimming, swimming area, lake names, canal names, trash receptacles, public health notices, underwater hazards, regulatory matters, emergencies, and special events.

(b) These markers, with the exception of swimming area and special event markers, must be placed on land or within 50 feet from the ordinary high-water line.

(c) This exception from the permitting requirement does not relieve any county, municipality, or other governmental entity from compliance with any other state or federal rule, regulation, or law.

(d) The Commission finds that federal law imposes less restrictive requirements than provided herein on the placement of markers indicating the ends of boat ramps, no swimming, swimming area, lake name, trash receptacle, public health notice, canal, emergency, and other similar markers directed to persons on land, swimmers, and other persons using the waters of this state who are not the operators or occupants of vessels. Such markers were not considered waterway markers prior to June 13, 2005, and were not subject to the provisions of this rule or Section 327.40, F.S., prior to that date. The Commission temporarily exempts such markers from the provisions of this rule and Section 327.40, F.S. This temporary exemption shall expire and this paragraph shall stand repealed on December 31, 2006, unless repromulgated.

(5) The restrictions displayed on regulatory markers shall not apply:

(a) In the case of an emergency;

(b) To law enforcement patrol vessels or firefighting vessels; or

(c) To any rescue vessel owned or operated by a governmental entity.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.46, 327.71, 370.12 FS. History—New 12-23-01, Amended 10-5-06.