

CHAPTER 68D-23 UNIFORM WATERWAY MARKERS IN FLORIDA WATERS

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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 327.46 and 379.243 ~~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 Fish and Wildlife Conservation Commission ~~Division~~ will not issue any permit authorizing the placement of regulatory markers implementing municipal or county ordinances that for:

(a) Establish a vessel or associated equipment performance or other safety standard, in violation of section 327.60(2)(a), F.S.;

(b) Impose a requirement for associated equipment, in violation of section 327.60(2)(a), F.S.;

(c) Regulate the carrying or use of marine safety articles, in violation of section 327.60(2)(a), F.S.;

(d) Relate to the design, manufacture, installation, or use of any marine sanitation device on any vessel, in violation of section 327.60(2)(b), F.S.;

(e) Regulate any vessel ~~Ordinances that apply~~ within the Florida Intracoastal Waterway, in violation of section 327.60(2)(c), 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;~~

~~(f) (e) Ordinances that Discriminate against personal watercraft, in violation of section 327.60(2)(d) 327.60(1), F.S.;~~

~~(g) (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(2)(e) 327.60(1), F.S.~~

~~(h) Regulate (e) Ordinances regulating the anchoring of vessels other than live-aboard vessels as defined in section 327.02, F.S. non-live-aboard vessels in navigation, in violation of sections 327.60(2)(f) and 327.60(3), 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 chapter:-~~

~~(i) Establish boating-restricted areas pursuant to section 327.46(1)(c), F.S., until such ordinances have been reviewed and approved by the Boating and Waterways Section.~~

~~(j) Regulate vessel speed or operation for manatee protection purposes pursuant to section 379.2431(2)(p), F.S., until such ordinances have been reviewed and approved by this agency, 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;~~

~~(k) Conflict with any provision of chapter 327, F.S., or any amendment thereto, or rule adopted thereunder, in violation of section 327.60(2)(h), F.S.~~

(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 and maintained 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.

Rulemaking Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 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 of Law Enforcement's Boating and Waterways Section 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, construction, placement, and maintenance 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, and the United States Coast Guard's manuals pertaining to aids to navigation and other waterway markers.

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

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, or entry restrictions.

(d) ~~(d)~~ “Special mark” means a marker not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, mooring fields, park boundaries, cable or pipeline areas, marine events, etc.

(e) ~~(e)~~ “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.

(f) ~~(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, or support a mooring pennant.

(g) ~~(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.

(h) ~~(g)~~ “Symbol” means the orange geometric shape displayed on a danger, ~~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.

(i) ~~(h)~~ “Display area” means the area on an information marker or regulatory marker within which the symbol is displayed.

(j) ~~(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.

(k) ~~(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.

(l) ~~(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.

(m) ~~(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.

(n) ~~(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.

(o) ~~(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.

(p) ~~(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.

(q) ~~(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.

(r) ~~(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.

(s) ~~(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. 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. 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. The use of any motor, including an electric motor, is prohibited.

(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,” only 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 Boating and Waterways Section ~~will~~ ~~division may~~ authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

Rulemaking Specific Authority 327.04, 327.40, 327.41, 327.46, 370.12 FS. Law Implemented 327.40, 327.41, 327.46, 379.2431 370.12 FS. History—New 12-23-01, Amended 10-5-06,_____.

68D-23.104 Application for Permits Placement of Markers.

(Substantial rewording of Rule 68D-23.104 follows. See Florida Administrative Code for present text.)

(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 Boating and Waterways Section.

(b) Counties, municipalities and other government entities are exempt from permitting under this rule when placing information markers on inland lakes and their associated canals. However, nothing herein shall prevent counties, municipalities or other governmental entities from choosing to voluntarily apply for waterway marker permits for such information markers. This exception from the permitting requirement does not relieve any county, municipality, or other governmental entity from compliance with the remainder of this rule or any other state or federal rule, regulation, or law.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall make application to the Boating and Waterways Section on the Florida Uniform Waterway Marker Application form, FWCDLE 153 (04/2010), 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 Section, 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) One or more scale drawings no larger than 8½ inches by 11 inches, reproducible on standard office photocopying equipment, showing the intended location for the placement of each proposed markers with each proposed marker labeled to correspond to the list required in paragraph (b) below.

1. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the area within which regulation or restriction is to be in effect.

2. If the application is for a danger marker, isolated danger mark, or inland waters obstruction mark, the drawing must also depict the location of the danger, hazard to navigation, or obstruction.

3. If the application is for lateral marks, preferred channel marks, or safe water marks, the drawing must also depict water depths within and adjacent to the area being marked.

4. If the application is for mooring buoys, the drawing must also depict the watch circle and water depth for each mooring and any channels or fairways within 500 feet of the proposed mooring buoys.

5. If the application is for special marks, the drawing must also depict the location and boundaries of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed.

(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 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.

1. If the application is for regulatory markers, this statement must include the purpose for regulating or restricting vessel speed or operation in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the regulation or restriction on vessel speed or operation.

2. If the application is for a danger marker, isolated danger mark, or inland obstruction mark, this statement must include a description of the danger, hazard to navigation, or obstruction in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the danger, hazard to navigation, or obstruction.

3. If the application is for lateral marks, preferred channel marks, or safe water marks, this statement must include a description of the channel, fairway, or other area of safe water in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

4. If the application is for mooring buoys, this statement must include the following:

a. A statement of the type, maximum overall length, and maximum draft of vessels that will be allowed to moor at each buoy.

b. An estimate of the average daily week day traffic and average daily weekend and holiday traffic that will be arriving or departing the proposed moorings.

c. A description of any navigation channels or fairways within 500 feet of the proposed mooring buoys and a description of nature and volume of vessel traffic within such channels or fairways.

d. A description of any upland amenities that will be provided to vessel moored at the proposed mooring buoys.

e. A list of any rules, regulations, requirements, or prohibitions that will be imposed on vessels moored at the proposed mooring buoys.

f. A statement of whether the area in which the mooring buoys are proposed to be located has been designated by the United States Coast Guard as a special anchorage area (i.e., vessels moored there will not need to display anchor lights) or whether the applicant intends to seek such a designation.

g. A statement of whether the mooring buoys will be managed together as a mooring field and, if so, whether the applicant intends to seek the adoption of an ordinance prohibiting anchoring within the marked boundaries of the mooring field.

This information must be provided in sufficient detail to permit the Boating and Waterways Section to ascertain whether the placement of mooring buoys and the mooring of vessel at the proposed locations may be safety accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

5. If the application is for special marks, this statement must include a description of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

(e) A list of 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 a regulation or restriction on the speed or operation of vessels for which the regulatory markers are proposed, as follows:

1. For regulatory markers to implement boating-restricted areas established by a municipal or county ordinance:

a. A copy of an ordinance adopted pursuant to section 327.46(1)(b), F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or

b. A copy of an ordinance approved by the commission pursuant to paragraph 327.46(1)(c), F.S.; or

c. A copy of an ordinance approved by the commission pursuant to paragraph 379.2431(2)(p), F.S.

2. For all other regulatory markers, a copy of the statute, special act, rule, regulation, order, or other instrument which imposes the regulation or restriction and a statement of the specific authority under which the restriction is imposed.

Rulemaking Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, _____.

68D-23.105 Criteria for Approval of Regulatory Markers.

(Substantial rewording of Rule 68D-23.105 follows. See Florida Administrative Code for present text.)

(1) Upon receipt of a completed application, the Boating and Waterways Section will determine:

(a) For all markers, whether or not:

1. The proposed markers conform to the United States Aids to Navigation System and this chapter.

2. The proposed markers and any support structures or moorings conform to the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A) and the United States Coast Guard Aids to Navigation Manual – Structures (COMDTINST M16500.25).

3. The proposed markers, if placed in the proposed locations, would create an unreasonable hazard to navigation.

(b) For regulatory markers only, determine whether or not:

1. The markers as proposed would clearly mark the location in which the regulation or restriction is in effect and adequately notice mariners of the regulation or restriction imposed on vessel speed or operation.

2. The regulation or restriction to be implemented by the proposed markers and the message to be displayed thereon are supported by statute, special act, rule, ordinance, or other enactment or order.

(c) For danger markers, isolated danger marks, or inland obstruction marks only, whether or not the danger, hazard to navigation, or obstruction actually exists and, if so, whether or not there are a proper number of markers proposed to be installed in proper locations so that mariners are given adequate notice of the danger, hazard to navigation, or obstruction.

(d) For lateral marks, preferred channel marks, or safe water marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

(e) For mooring buoys only, whether the placement of mooring buoys and the mooring of vessel at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

(f) For special marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

(2) The Boating and Waterways Section is authorized to consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is applied.
Rulemaking Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended _____.

68D-23.106 Marker Placement Requirements Permit Conditions.

(1) All persons placing or maintaining in place any 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 exactly as requested in the application. Any deviation will require that the permittee applicant apply to have the permit amended.

(b) The permittee 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. ~~Information~~ ~~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 ~~permittee 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 along with a request for the permit to be amended.

(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 ~~permittee 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. ~~The permittee~~ 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) ~~A permit 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 ~~permittee 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 ~~permittee 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 the ~~permittee applicants~~ pursuant to such permits. The ~~permittee 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 the ~~permittee 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 requirements ~~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 an ~~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.

(c) 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 regulations or operating restrictions noticed by said markers. The issuance of a permit authorizing the placement of regulatory markers does not obligate the Fish and Wildlife Conservation Commission or its officers to enforce the regulations or operating restrictions noticed by said markers.

(3) After obtaining the requested permit, the permittee must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the Boating and Waterways Section.

(4) Discontinuance and removal. Any permitted waterway marker may be discontinued and removed by the permittee owner after 30 days notice to the Boating and Waterways Section. Upon completion of the removal of the marker, the permittee must notify the Boating and Waterways Section in writing within 30 days.

(5) 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 requirements ~~conditions~~ imposed under this section or conditions ~~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.

Rulemaking Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.70 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 (April 1, 2010);

(b) The United States Coast Guard Aids to Navigation Manual – Administration Manual (COMDTINST ~~Comdtinst~~ M16500.7A, March 2, 2005);

(c) The United States Coast Guard Aids to Navigation Manual – Technical Manual (COMDTINST ~~Comdtinst~~ M16500.3A, February 11, 2005);

(d) The United States Coast Guard Aids to Navigation Manual – Structures (COMDTINST M16500.25, November 7, 2005).

(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) Any marker ~~All markers~~ in, on or over the waters of the state or the shores thereof that does not ~~must~~ conform to the United States Aids to Navigation System and all ~~other~~ provisions of this chapter, must be brought into conformity 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.

Rulemaking 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) - (4) No Change.

(5) Retroreflective materials ~~must 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 ~~Manual~~ – Technical ~~Manual~~ (COMDTINST ~~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) No Change

(7) All buoys other than mooring buoys must be attached to the ~~water body~~ ~~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 ~~Manual~~ – Technical ~~Manual~~ (COMDTINST ~~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 permanently attached to the ~~water body~~ ~~waterbody~~ bottom using anchors, ~~sinkers~~, chain, shackles, and swivels, and must be equipped with pennants; that are of sufficient size, strength, and holding power for their intended purpose. Anchors or anchoring systems for mooring buoys must embed in the water body bottom. The use of a sinker (a weight, usually metal or concrete, that rests on the bottom without embedding) to anchor a mooring buoy is prohibited.

Rulemaking 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. The inspection documentation must be available for inspection by any law enforcement officer during the permittee's normal business hours. 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) Within 5 business days following the completion of the triennial inspection, the permittee must notify the Boating and Waterways Section that the inspection has been performed and where or not any markers were determined to be discrepant. 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.

Rulemaking 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, the sheriffs of the various counties and their deputies, municipal police officers, and any other ~~authorized~~ law enforcement officer as defined in s. 943.10, F.S., as provided in s. 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.

Rulemaking Specific Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, ~~327.22,~~ 327.46, 327.60, 327.70, 379.2431 ~~370.12~~ FS. History—New 12-23-01, Amended _____.

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 properly displayed 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.~~

Rulemaking 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,_____.

FWCC File No.:

FLORIDA UNIFORM WATERWAY MARKER APPLICATION
Office of Boating Safety & Waterway Management

FWCC Status:

1. Date:

2. Action Requested: A. Establish Boating Restricted Area B. Permit to Place & Maintain Uniform Waterway Marker(s)
C. Change/Amend FUMM Permit # D. Discontinue Request or Repeal Existing Permit # E. Transfer of Ownership

3. Name of Affected Waterway(s):

4. Locality: City

County

5. Intracoastal Waterway: Yes ___ No ___

6. Type of Regulatory, Special Purpose, or Other Buoy UMW(s) Requested (check all that apply):

- Slow Speed Minimum Wake
- Idle Speed No Wake
- Resume Normal Safe Operation
- Vessel Exclusion
- Danger
- Mooring Buoy
- Information
- Other (specify)
- Speed Zone ___ MPH
- Special Marine Event
- Aid to Navigation

7. Applicant:

Applicant Name:

Name:

Contact Person:

Title:

County:

Address w/zip code:

Address w/zip code:

Phone: () - ext. Suncom: -

Fax #: () -

E-MAIL ADDRESS:

E-MAIL ADDRESS:

10. Local Governmental Action Establishing Boating Restricted Area:

Ordinance # _____ Date / / Rule # _____ Date / /

9. Hold Harmless Agreement (Nongovernmental applicants only)

Other Agency Permits/Approval:

The applicant, to the extent authorized by law, agrees and promises to hold harmless the State of Florida, its employees, agents or successors, from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation, and removal any and all marker signs placed by the applicant pursuant to this permit. Applicant 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 the applicant in the placement, maintenance, operation, or removal of the marker signs.

Authorized Signature:

Print Name: _____

Title:

Your application package for placement of regulatory markers must include:

- #1 is not required when requesting a mooring buoy or placement of informational markers (Canoe/Kayak Trail, Marina, Seagrass, etc.)
- You must provide copies of your completed applications to USCG, USCOE & DEP @ the time you submit your completed application to this office
- **All permits must be received prior to installation of any markers), unless otherwise directed by the Boating Safety & Waterway Section**

1. A certified copy of the city/county ordinance, (only required for regulatory markers),
 2. A map of the body of water with the approximate location of each marker(s),
 3. The latitude/longitude coordinates (degrees, minutes, seconds) of each marker(s),
 4. The name and telephone number of the individual(s) responsible for placement and maintenance of marker(s).
- Ordinance not needed for canoe/kayak trails or informational markers (seagrass)

If you are completing this application for boating safety, private aids to navigation, moorings, and/or informational type markers; or markers for homeland security, please contact the individual below with any questions:

*Ms. Tara Alford, Management Analyst
Boating and Waterways Section
620 South Meridian Street
Tallahassee, Florida 32399
850-410-0656 ext. 17179 facsimile 850-488-9284
or via e-mail to: tara.alford@myfwc.com*

If you are completing this application for marine protection and/or informational type markers, please contact the individual below with any questions:

*Ms. Dawn Griffin, Management Analyst
Boating and Waterways Section
620 South Meridian Street
Tallahassee, Florida 32399
850-410-0656 ext. 17179 facsimile 850-488-9284
or via e-mail to: dawn.griffin@myfwc.com*

In addition to FWCG, you will need authorizations from the various agencies highlighted in yellow to the left of this column before a final permit can be issued.

