

**Proposed Revisions to the State's
Surface Water Classification System
Jan. 7, 2010 Public Workshop**

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Summary of Presentation

- **A Few General Notes**
- **Overview of Scope of Rulemaking**
- **Review Latest Substantive Revisions**
 - **Created Class III-Limited subcategory**
 - **Added text to clarify which criteria apply in Class III-Limited, and scope of waters**
 - **Revised text regarding who may seek reclassification**
 - **Revised text about Input from Local Governments**
 - **Revised text to match 40 CFR 131.10(g) factors**
 - **Added text addressing SSACs for Class III-Limited**
 - **Revised text regarding impacts on OFWs**

General Notes

- We made additional revisions to the rule after it was e-mailed to interested parties
 - In response to comments received
- Latest version available as a hand-out, and will be e-mailed out to interested parties after the workshop
- Presentation will focus on substantive changes since previous Public Workshop and December version, but does not cover all changes
- Would like feedback on several issues

What we are doing with this rulemaking

- No longer proposing to break out uses into human and aquatic life uses
- Propose to refine the existing classification system by adding subclassification to Class III
 - Class III-Limited
- Subclassification of Class III more appropriate than Class IV
 - While expected use is lower, have same water quality criteria except for up to 8 parameters
 - Nutrients, bacteria, DO, alkalinity, specific conductance, transparency, turbidity, and pH
- Still revising process for reclassifications

Surface Water Classifications

Class I	Potable Water Supplies
Class II	Shellfish Harvesting or Propagation
Class III	Fish Consumption ; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife
Class III-Limited	Fish Consumption; Limited Recreation, and/or Propagation and Maintenance of a Limited Population of Fish and Wildlife
Class IV	Agricultural Water Supplies
Class V	Navigation, Utility, and Industrial Use

What we are NOT doing with this rulemaking

- **We are NOT reclassifying ANY waters**
 - **And we are NOT planning to allow categorical reclassifications in the future**
- **We are NOT establishing any new water quality criteria or Site Specific Alternative Criteria (SSAC) for the Class III-Limited subclassification**
 - **Scientifically justified Class III-Limited SSACs must accompany any reclassification petition, and would be separately reviewed and acted on by the ERC and EPA**

Revisions to Rule 62-302.400

- In subsection (1), added text to clarify that Class III waters include fish consumption use, and added new text for Class III-Limited
- In subsection (5), note that Class III-Limited waters have same water quality criteria as Class III, except for adopted SSACs, and limits Class III-Limited waters to
 - Wholly artificial waterbodies that were created by excavation, or
 - Altered waterbodies that were dredged prior to November 28, 1975.

Revisions to Rule 62-302.400(5)

(continued)

- This text is different than December version
 - Previous version stated “Class III-Limited waterbodies are restricted to those with human-induced physical or habitat conditions that prevent attainment of the Class III use.”
- Revised in response to questions received
 - Tried to clarify our intent to limit scope of waters eligible for Class III-Limited to “artificial waters”
 - New text is based on text in Technical Support Document (TSD), which provides more detail

TSD Language on Artificial Waterbodies

- “the term “artificial waterbody” as used in this document is different from the definition in Rule 62-302.700, F.A.C., that is used in OFW determinations. In this guidance document, wholly artificial waterbodies do not include those portions of a natural surface water that have been dredged, filled, or canalized. Natural surface waters are those waterbodies that, in their undisturbed state, originally were all or part of the Atlantic Ocean, Gulf of Mexico; a bay, bayou, sound, estuary, or lagoon, including natural channels and natural tributary thereto; a river, stream, or natural tributary thereto; a natural lake; and any natural wetland connected to any of the above waters.”

TSD Language on Altered Waterbodies

- **“In contrast, altered waterbodies are those portions of natural surface waters that were dredged, filled, or canalized prior to November 28, 1975, to an extent that such physical modifications have created separate and distinct hydrologic and environmental conditions from any waters to which it connects or is a part of. Altered waterbodies are generally only candidates for the Class III-Limited classification if the alteration occurred prior to November 28, 1975 because, consistent with the definition of “existing uses” in the federal Clean Water Act, waters that were altered after this date are presumed to have met Class III uses prior to modification.”**

Revisions to Rule 62-302.400

(continued)

- In subsection (7), we
 - Revised language about who may file a petition
 - Person with a substantial interest in the waterbody, rather than substantial interest in Chapter 62-302, F.A.C.
 - Updated the rule reference for the process for filing a reclassification petition
 - In accordance with Rule 28-103.006, instead of outdated reference to Section 120.57, F.S.

Revisions to Rule 62-302.400

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- **In subsection (9), text mentions that public notice includes notification to affected local governments**
 - **We did not make additional changes to lead paragraph, but received questions about who will be notified and process for notification in TSD**
 - **Addressed in TSD**

TSD Language on Public Involvement

- **“Public involvement is a cornerstone of UAA development. To gather local information, gauge public interest for the UAA, and engage interested parties, the applicant should involve local stakeholders early in the planning stages of the UAA. UAA applicants should contact local governments, tribes, local groups who use the waterbody, environmental groups, users of downstream waters, and state and federal agencies. Public involvement should continue throughout the UAA process, and recommendations made in the UAA should be reviewed by all interested parties.”**

TSD Language on Public Involvement

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- **“The public involvement process developed by the applicant will not replace DEP’s formal public rulemaking process if the UAA results in a proposed rule change. DEP will conduct its own public involvement process, according to federal and state requirements, which include public notice in the Florida Administrative Weekly, a public workshop held in the area of the candidate waterbody, and a public hearing with the ERC. When DEP receives a UAA petition, the Director of the Division of Environmental Assessment and Restoration (or designee) will provide written notification to the appropriate local elected official (e.g., mayor, commission chair, etc.). DEP will provide the petition to the local governmental entity and request feedback.”**

Revisions to Rule 62-302.400

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- Also in (9), revised text about input from local governments on public interest
 - “Such a reclassification is clearly in the public interest after considering public input, including special consideration of input submitted by elected city or county governing bodies who represent the public interest where the waters, and affected upstream and downstream waters, are located;”
- Intent is to provide “special” weight to input from local governments, but would like feedback on best wording and best way to implement

TSD Language on Special Consideration

- **“DEP will give special consideration to resolutions or other official written comments submitted by a body of local elected officials, because these governmental entities provide the best representation of local public interest.”**

Revisions to Rule 62-302.400

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- In subsection (11), revised text to match “factors” in 40 CFR 131.10(g) eligible for reclassification
 - Had previously made minor revisions meant to clarify, but edits raised other concerns
- We made one additional minor change to December version of (11)(b) to try to clarify that the uses that can be removed are “designated uses” that cannot be attained
 - Note that “Existing Uses”, which cannot be removed, are already defined in rule
 - "Existing Uses" shall mean any actual beneficial use of the water body on or after Nov. 28, 1975.

Revisions to Rule 62-302.400

(continued)

- Added and revised new subsection (12), which addresses SSACs for Class III-Limited waters
 - Petitions for Class III-Limited waters will include at least 1 SSAC (otherwise no need to reclassify), but
 - SSACs that will meet Class III-Limited use are restricted to 8 parameters with numeric criteria:
 - Nutrients (and nutrient response variables), bacteria, dissolved oxygen, alkalinity, specific conductance, transparency, turbidity, or pH

Revisions to Rule 62-302.400

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- Any SSAC for these parameters cannot be set at levels less stringent than existing water quality
 - Substantive revision from rule sent out previously, which would have allowed lowering if clearly in the public interest
- If a SSAC is needed for any other parameter, it must be set at levels that are protective of Class III use

Revisions to Rule 62-302.400

(continued)

- **In subsection (13), revised text clarifying that reclassifications cannot pre-empt more stringent criteria established by local pollution control programs**
 - **Nothing contained in subsections (8) through (12) above shall be deemed to pre-empt or prohibit the regulatory implementation, adoption, continuation or enforcement of more stringent criteria that are established by a local government through a local pollution control program.**
 - **Dropped reference to “local programs” under 403.182, F.S.**

Revisions to Rule 62-302.400

(continued)

- **Added text in subsection (14) to clarify that reclassifications cannot result in degradation of water quality in Outstanding Florida Waters or Outstanding National Resource Waters**

