

**Florida Department of Environmental Protection
Statement Of Estimated Regulatory Costs (SERC)**

Division: Division of Environmental Assessment and Restoration

Board: N/A

Rule Number: Chapter 62-302, Chapter 62-303 and Chapter 62-4, F.A.C.

Rule Description: Surface water Quality Standards, Identification of Impaired Surface Waters, and Permits.

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**Please remember to analyze the impact of the rule, NOT the statute, when
completing this form.**

Background

Under the Federal Clean Water Act (CWA), all states and tribes are required to periodically conduct a comprehensive review of their surface water quality standards. The CWA requires the review to be conducted at least once every three years, and the review is known as the “Triennial Review.” Under the current Triennial Review, the department is proposing revisions to Chapter 62-302, Florida Administrative Code (F.A.C.) (Surface Water Quality Standards), Chapter 62-303, F.A.C. (Identification of Impaired Surface Waters), and Chapter 62-4, F.A.C. (Permits). The proposed updates, revisions, and additions to Chapter 62-302, F.A.C., Chapter 62-303, F.A.C., and Chapter 62-4, F.A.C., were discussed during a virtual public workshop held on September 10, 2024.

The Department is amending Chapter 62-302, F.A.C., to: 1) revise the definition for “stream” to clarify the process to demonstrate a waterbody is non-perennial, 2) update rule references, 3) replace outdated standard operating procedure (SOP) and Primer references with cross-references to Chapter 62-160, F.A.C., the Quality Assurance Rule, 4) add language incorporating compliance schedule authorization provisions for NPDES permits, 5) revise and rename the Department’s numeric nutrient criteria (NNC) implementation document to “Implementation of Florida’s Numeric Nutrient Standards for Streams” and only include sections determined to be changes to Florida water quality standards by the U.S. Environmental Protection Agency (EPA), 6) add text to subsection 62-302.400(17), F.A.C., to notify readers that waters listed as Class I-Treated have not been submitted to or approved by EPA and will remain Class III until the classification and reclassification are approved by EPA, 7) clarify rule language describing the spatial extent of Class II waters (shellfish propagation or harvesting) and incorporate 23 maps by reference of Class II waters in Bay, Charlotte, Collier, Duval, Escambia, Flagler, Gulf, Hillsborough, Jefferson, Lee, Manatee, Martin, Monroe, Nassau, Okaloosa, Palm Beach, Pinellas, Santa Rosa, Sarasota, St. Johns, and Wakulla Counties, 8) add language and update the equation to clarify the range of temperature values used to calculate the applicable Total Ammonia Nitrogen criterion, 9) revise the fecal coliform bacteria criterion applicable to Class II waters, 10) add minimum sample collection requirements for the monthly geometric mean E.coli and Enterococci criteria, 11) clarify the implementation of the ten percentile threshold value (TPTV) E. coli criterion applicable to Class I and III freshwaters to address small sample sizes, 12) clarify the implementation of the TPTV Enterococci criterion applicable to Class II and III marine waters to address small sample sizes, 13) revise the Estuary Nutrient Region (ENR) maps for Blackwater Bay, Lower Halifax River,

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St. Marks River Estuary, Clam Bay, Lower St. Johns River and Tributaries, and Upper South Fork St. Lucie River, 14) revise the Florida Coastal Segment map, 15) add language to clarify when a nutrient TMDL will be considered a site- specific interpretation of the narrative nutrient criteria, 16) add time-of-day adjustments for ambient dissolved oxygen data to mirror the text in the Impaired Water Rule (Chapter 62-303, F.A.C.), 17) minor revision to Appendix I of the dissolved oxygen technical support document, 18) add the Nature Coast Aquatic Preserve, which was designated an Outstanding Florida Water (OFW) by the Florida legislature effective July 1, 2020, to the table of OFWs, 19) revise references to definitions of “canals” and “channels” in the descriptions of Special Waters OFWs to reference statutory definitions, 20) add requirements for entities to provide information about the occurrence of threatened and endangered species and critical habitat within the waters proposed for Type II site specific alternative criteria (SSACs), and 21) add a Total Ammonia Nitrogen (TAN) SSAC for the FPL Martin County Northwest Mitigation Area Wetlands and Barly Barber Swamp and incorporate a map by reference displaying the SSAC extent. None of these revisions are anticipated incur costs to the Department or other external entities.

Chapter 62-303, F.A.C., sets forth a scientific assessment methodology for the identification of impaired surface waters. The amendments made to Chapter 62-303, F.A.C., are primarily designed to simply clarify existing assessment methodologies. Several more substantive revisions include: 1) addition of language to note that for assessments of numeric interpretations of the narrative nutrient criterion in Rule 62-303.350, F.A.C., values between the MDL and PQL will be assessed as reported, consistent with the criteria derivation, 2) adding waters on the Planning List if: The average score of all SCIs is below 40, the average score of all the temporally independent LVI scores is below 43 for a lake segment, or if one of the two most recent temporally independent LVI scores is a score less than 30, 3) incorporation of the Implementation of Florida’s Numeric Nutrient Standards for Streams document by reference, 4) clarification of the recreational use support assessment process for E. coli and enterococci, 5) adding language to list streams on the Study List if they fail the LVS and the LVS results cannot be linked to anthropogenic nutrient inputs rather than the Verified List, 6) revision of the trend test methodology, 7) addition of language to place waters on the Planning List based on Algal Health Alert notifications that total at least 21 days during a calendar year, and 8) addition of language to clarify the delisting methodology. Changing the assessment process to list streams on the Study List for LVS failures rather than the Verified List will likely result in a cost savings, although that cost savings cannot be readily quantified.

The addition of language to place waters on the Planning List based on Algal Health Alert notifications that total at least 21 days during a calendar year will be implemented with existing Department staff and will not incur additional costs. Waters that are placed on the Planning List for algal health alert notifications will be prioritized for monitoring during development of the Department’s Strategic Monitoring Plan (SMP) on an annual basis.

It was determined that 8 additional waters would be added to the Verified List based on a statistically significant increasing trend in nutrients or nutrient response variables and the

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presence of a contiguous downstream water impairment or TMDL as outlined in subparagraph 62-303.450(5)(a)2., F.A.C. No new waters were determined to have a reasonable expectation of impairment for these parameters within 4 years as outlined in subparagraph 62-303.450(5)(a)1., F.A.C., under the revised methodology.

“(a) a statistically significant increasing trend at the 95 percent confidence level for a given nutrient or nutrient response variable using the Mann-Kendall Trend Test; and either:

- 1. There is a reasonable expectation that the water will become impaired within 4 years, taking into consideration the Sen-Theil fitted line based on the annual geometric means in the assessment period and the magnitude of the applicable criterion, or*
- 2. The contiguous downstream waterbody segment is impaired and either is included on the Verified List or has a total maximum daily load for a given nutrient, nutrient trend, or nutrient response variable. In cases where there is no contiguous downstream waterbody segment, the department will evaluate this subparagraph for the receiving waterbody.”*

Although the 8 additional waters will be added to the Verified List based on increasing trend in nutrients or nutrient response variables and the presence of a contiguous downstream water impairment or TMDL, there is not a reasonable expectation of impairment in the near future. Thus, the 8 waters identified for listing based on subparagraph 62-303.450(5)(a)2., F.A.C., would only require TMDL development if, at some point in the future, they no longer attain surface water quality standards and are determined to be impaired. Due to this, the Department has determined these 8 waters would be a low priority for TMDL development.

For surface waters that do not attain surface water quality standards and are determined to be impaired under Chapter 62-303, F.A.C., the Department adopts TMDLs by rule in Chapter 62-304, F.A.C. Costs to develop TMDLs for verified impaired waters will be borne by the Department using existing staff, and costs to implement resultant TMDLs will be addressed as part of individual TMDL rulemakings. There are no anticipated costs associated with the proposed revisions to Chapter 62-303, F.A.C., at this time.

The Department is amending Rule 62-4.242, F.A.C., within Chapter 62-4, F.A.C., to allow for the permitting of environmental restoration and enhancement projects within or upstream of an Outstanding Florida Waters (OFW). Environmental Restoration and Enhancement Projects are specifically defined in subsection 62-4.020(6), F.A.C. All Environmental Restoration and Enhancement projects will be required to meet all other applicable anti-degradation requirements and water quality standards. This amendment will likely lead to cost savings due to the fact that these projects will no longer have to meet the more stringent OFW permitting requirements. Specific cost saving cannot be estimated at this time.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

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|------------------------------------------------------------|------------------------------|----------------------------------------|
| 1. Is the rule likely to reduce personal income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the rule likely to reduce total non-farm employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the rule likely to reduce private housing starts? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the rule likely to reduce visitors to Florida? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the rule likely to reduce wages or salaries? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Is the rule likely to reduce property income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation: Rule revisions proposed as part of this Triennial Review are primarily meant to clarify water quality standards and impaired waters assessment methodologies currently in place and are not anticipated to have any costs. Thus, these revisions are not anticipated to directly or indirectly reduce personal income, total non-farm employment, private housing starts, visitors to Florida, wages or salaries, or property income.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

☐ Yes ☒ No

2. Is the rule likely to add regulation that is not present in other states or markets?

☐ Yes ☒ No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

☐ Yes ☒ No

4. Is the rule likely to cause Florida businesses to reduce workforces?

☐ Yes ☒ No

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5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

☐ Yes ☒ No

6. Is the rule likely to make illegal any product or service that is currently legal?

☐ Yes ☒ No

Explanation: Rule revisions proposed as part of this Triennial Review are primarily meant to clarify water quality standards and impaired waters assessment methodologies currently in place and are not anticipated to have any costs. Thus, these revisions are not anticipated to raise the price of goods or services provided by Florida business, add regulation that is not present in other states or markets, reduce the quantity of goods or services Florida businesses are able to produce, cause Florida businesses to reduce workforces, increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation, or make illegal any product or service that is currently legal.

If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

Rule revisions proposed as part of this Triennial Review are primarily meant to clarify water quality standards and impaired waters assessment methodologies currently in place and are not anticipated to have any costs.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule.

The Department’s surface water quality standards located in Chapter 62-302, 62-303 and 62-4, F.A.C., are applicable and would require compliance statewide. There are no anticipated costs associated with the proposed revisions to these rules.

2. A general description of the types of individuals likely to be affected by the rule.

The Department’s surface water quality standards located in Chapter 62-302, 62-303 and 62-4, F.A.C., are applicable and would require compliance statewide. Surface water quality standards are primarily implemented through various department permitting programs. The rule revisions proposed as part of this Triennial Review are primarily meant to clarify water quality standards and impaired waters assessment

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methodologies currently in place. There are no anticipated costs associated with the proposed revisions to these rules.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

☒ **None. The department intends to implement the proposed rule within its current workload, with existing staff.**

☐ **Minimal.** *(Provide a brief explanation).*

☐ **Other.** *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

☒ **None. This proposed rule will only affect the department.**

☐ **Minimal.** *(Provide a brief explanation).*

☐ **Other.** *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

3. Cost to the department of enforcing the proposed rule:

☒ **None. The department intends to enforce the proposed rule within its current workload with existing staff.**

☐ **Minimal.** *(Provide a brief explanation).*

☐ **Other.** *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

☒ **None. This proposed rule will only affect the department.**

☐ **Minimal.** *(Provide a brief explanation).*

☐ **Other.** *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

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F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

☒ None. **This proposed rule will only affect the department.**

☐ Minimal. *(Provide a brief explanation).*

☐ Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- *The type of small businesses that would be subject to the rule;*
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

☐ 1-99

☐ 100-499

☐ 500-999

☐ 1,000-4,999

☐ More than 5,000

☒ Unknown, please explain: **The Department's surface water quality standards located in Chapter 62-302, 62-303 and 62-4, F.A.C., are applicable and would require compliance statewide. Surface water quality standards are primarily implemented through various department permitting programs. Although it is not possible to estimate the number of**

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small businesses that would be subject to these rules at this time, the revisions proposed as part of this Triennial Review are primarily meant to clarify water quality standards and impaired waters assessment methodologies currently in place. There are no anticipated costs associated with the proposed revisions to these rules.

☐ Analysis of the impact on small business:

☒ There is no small county or small city that will be impacted by this proposed rule.

☐ A small county or small city will be impacted. Analysis:

☐ Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

☒ None.

☐ Additional.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

☒ No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

☐ See attachment "A".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "B".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

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☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "C".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "D".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

☐ See attachment "E".

☐ Adopted in entirety.

☐ Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

☐ Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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