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## **DEP ANNOUNCES ADOPTION OF IMPAIRED WATERS RULE**

**TALLAHASSEE** – The Environmental Regulation Commission has adopted by rule (Chapter 62-303, F.A.C., Identification of Impaired Surface Waters) a new scientific approach for guiding the Department of Environmental Protection's process for identifying and prioritizing impaired surface waters in Florida.

"After using informal and sometimes very subjective assessment methods for many years, this new rule will provide the Department a systematic approach for collecting and scientifically verifying actual water quality data," said DEP Secretary David B. Struhs. "This will go a long way towards making sure that Florida focuses first on those water bodies that are in the most trouble. This gives Florida a meaningful, accurate strategy for identifying and evaluating the condition of Florida's waters."

The Impaired Waters Rule (IWR), which received support from a wide range of stakeholders in Florida and from EPA, identifies impaired waters for listing on the State's "303(d) list" of impaired waters. This 303(d) list is named after section 303(d) of the Federal Clean Water Act, which requires states to submit lists of surface waters that do not meet applicable water quality standards ("impaired waters"). Section 303(d) also requires the Department to develop Total Maximum Daily Loads (TMDLs) for all impaired waters. A TMDL is a scientific determination of the maximum amount of a pollutant that a river, lake, or other surface water can tolerate without exceeding surface water standards that protect public health, wildlife, and habitat. As such, they provide clear, science-based targets to guide our restoration efforts.

The process by which Florida implements section 303(d) requirements is set forth in the Florida Watershed Restoration Act (FWRA) of 1999 (s. 403.067, Florida Statutes). As outlined in the FWRA, development of the State's 303(d) list will be a two-step process: Waters will first be identified as potentially impaired and then any impairment will be verified before listing the water. The IWR implements this statutory direction by providing a methodology to identify potentially impaired waters that will be included on a "planning list."

The Department will then evaluate the data used to place these waters on the planning list, verify that the data meets quality assurance and data sufficiency requirements of the "verified list," and collect additional data, as needed, to complete the assessment. The resulting verified list of impaired waters, which is the list of waters for which TMDLs will be developed by the Department, will be submitted to the EPA as the state's 303(d) list.

**(more)**

*"More Protection, Less Process"*

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In recognition of the importance of a science-driven process to identify impaired waters, the Department formed a Technical Advisory Committee (TAC) in July 1999 to help with this important rulemaking. The TAC consisted of experts in aquatic modeling, limnology, hydrology, analytical chemistry, statistics, and lake, wetland, and estuary ecology, and included representatives from EPA, the Water Management Districts, FSU and UF, the Florida Marine Research Institute, private consulting firms, DEP, and the environmental community. The TAC met monthly for over a year to develop the basic methodology for the rule.

The rule is a result of an extensive rulemaking process that included 13 TAC meetings, five public meetings, and two public workshops. All meetings were publicly noticed to provide interested parties an opportunity to participate in the process. The rulemaking also including active coordination with EPA. While EPA expressed concerns about the initial draft of the rule, the Department worked closely with EPA over the last year to address their concerns, and EPA now supports the rule.

The rule evaluates whether waters meet their designated uses, which includes aquatic life use support, primary contact and recreation use support, fish and shellfish consumption use support, and drinking water use support and protection of human health. Information that will be used to assess water bodies includes water quality data, bioassessment data, toxicity data, information about impairment due to nutrients, beach (swimming area) advisories, shellfish area reclassifications, and fish consumption advisories. Waters verified as not meeting any one or more of their designated uses will be listed on the state's 303(d) list.

1 CHAPTER 62-303

2 IDENTIFICATION OF IMPAIRED SURFACE WATERS

3  
4 PART I

5 GENERAL

6 62-303.100 Scope and Intent.

7 (1) This chapter establishes a methodology to identify surface waters of the state that  
8 will be included on the state's planning list of waters that will be assessed pursuant to  
9 subsections 403.067(2) and (3), Florida Statutes (F.S.). It also establishes a methodology to  
10 identify impaired waters that will be included on the state's verified list of impaired waters, for  
11 which the Department will calculate Total Maximum Daily Loads (TMDLs), pursuant to  
12 subsection 403.067(4), F.S., and which will be submitted to the United States Environmental  
13 Protection Agency (EPA) pursuant to subparagraph 303(d)(1)(C) of the Clean Water Act  
14 (CWA).

15 (2) Subsection 303(d) of the CWA and section 403.067, F.S., describe impaired waters  
16 as those not meeting applicable water quality standards, which is a broad term that includes  
17 designated uses, water quality criteria, the Florida antidegradation policy, and moderating  
18 provisions. However, as recognized when the water quality standards were adopted, many  
19 water bodies naturally do not meet one or more established water quality criteria at all times,  
20 even though they meet their designated use. Data on exceedances of water quality criteria will  
21 provide critical information about the status of assessed waters, but it is the intent of this  
22 chapter to only list waters on the verified list that are impaired due to point source or nonpoint  
23 source pollutant discharges. It is not the intent of this chapter to include waters that do not  
24 meet water quality criteria solely due to natural conditions or physical alterations of the water  
25 body not related to pollutants. Similarly, it is not the intent of this chapter to include waters  
26 where designated uses are being met and where water quality criteria exceedances are limited  
27 to those parameters for which permitted mixing zones or other moderating provisions (such as  
28 site-specific alternative criteria) are in effect. Waters that do not meet applicable water quality  
29 standards due to natural conditions or to pollution not related to pollutants shall be noted in the  
30 state's water quality assessment prepared under subsection 305(b) of the CWA [305(b)  
31 Report].

32 (3) This chapter is intended to interpret existing water quality criteria and evaluate  
33 attainment of established designated uses as set forth in Chapter 62-302, F.A.C., for the

1 purposes of identifying water bodies or segments for which TMDLs will be established. It is not  
2 the intent of this chapter to establish new water quality criteria or standards, or to determine the  
3 applicability of existing criteria under other provisions of Florida law. In cases where this  
4 chapter relies on numeric indicators of ambient water quality as part of the methodology for  
5 determining whether existing narrative criteria are being met, these numeric values are  
6 intended to be used only in the context of developing a planning list and identifying an impaired  
7 water pursuant to this chapter. As such, exceedances of these numeric values shall not, by  
8 themselves, constitute violations of Department rules that would warrant enforcement action.

9 (4) Nothing in this rule is intended to limit any actions by federal, state, or local  
10 agencies, affected persons, or citizens pursuant to other rules or regulations.

11 (5) Pursuant to section 403.067, F.S., impaired waters shall not be listed on the verified  
12 list if reasonable assurance is provided that, as a result of existing or proposed technology-  
13 based effluent limitations and other pollution control programs under local, state, or federal  
14 authority, they will attain water quality standards in the future and reasonable progress towards  
15 attainment of water quality standards will be made by the time the next 303(d) list is scheduled  
16 to be submitted to EPA.

17 Specific Authority 403.061, 403.067, FS.

18 Law Implemented 403.021(11), 403.062, 403.067, FS.

19 History -- New

20 62-303.150 Relationship Between Planning and Verified Lists.

21 (1) The Department shall follow the methodology in Section 62-303.300 to develop a  
22 planning list pursuant to subsection 403.067(2), F.S. As required by subsection 403.067(2),  
23 F.S., the planning list shall not be used in the administration or implementation of any regulatory  
24 program, and shall be submitted to EPA for informational purposes only. Waters on this  
25 planning list will be assessed pursuant to subsection 403.067(3), F.S., as part of the  
26 Department's watershed management approach. During this assessment, the Department  
27 shall determine whether the water body is impaired and whether the impairment is due to  
28 pollutant discharges using the methodology in Part III. The resultant verified list of impaired  
29 waters, which is the list of waters for which TMDLs will be developed by the Department  
30 pursuant to subsection 403.067(4), will be adopted by Secretarial Order and will be subject to  
31 challenge under subsection 120.569 and 120.57, F.S. Once adopted, the list will be submitted  
32 to the EPA pursuant to subparagraphs 303(d)(1)(A) and (C) of the CWA.

1       (2) Consistent with state and federal requirements, opportunities for public participation,  
2 including workshops, meetings, and periods to submit comments on draft lists, will be provided  
3 as part of the development of planning and verified lists.

4 Specific Authority 403.061, 403.067, FS.

5 Law Implemented 403.062, 403.067, FS.

6 History -- New \_\_\_\_\_.

7       62-303.200 Definitions.

8       As used in this chapter:

9       (1) "BioRecon" shall mean a bioassessment conducted following the procedures  
10 outlined in "Protocols for Conducting a Biological Reconnaissance in Florida Streams," Florida  
11 Department of Environmental Protection, March 13, 1995, which is incorporated by reference.

12       (2) "Clean techniques" shall mean those applicable field sampling procedures and  
13 analytical methods referenced in "Method 1669: Sampling Ambient Water for Trace Metals at  
14 EPA Water Quality Criteria Levels, July 1996, USEPA, Office of Water, Engineering and  
15 Analysis Division, Washington, D.C.," which is incorporated by reference.

16       (3) "Department" or "DEP" shall mean the Florida Department of Environmental  
17 Protection.

18       (4) "Designated use" shall mean the present and future most beneficial use of a body of  
19 water as designated by the Environmental Regulation Commission by means of the  
20 classification system contained in Chapter 62-302, F.A.C.

21       (5) "Estuary" shall mean predominantly marine regions of interaction between rivers and  
22 nearshore ocean waters, where tidal action and river flow mix fresh and salt water. Such areas  
23 include bays, mouths of rivers, and lagoons.

24       (6) "Impaired water" shall mean a water body or water body segment that does not meet  
25 its applicable water quality standards as set forth in Chapters 62-302 and 62-4, F.A.C. as  
26 determined by the methodology in Part III of this chapter, due in whole or in part to discharges  
27 of pollutants from point or nonpoint sources.

28       (7) "Lake Condition Index" shall mean the benthic macroinvertebrate component of a  
29 bioassessment conducted following the procedures outlined in "Development of Lake Condition  
30 Indexes (LCI) for Florida," Florida Department of Environmental Protection, July, 2000, which is  
31 incorporated by reference.

32       (8) "Natural background" shall mean the condition of waters in the absence of man-  
33 induced alterations based on the best scientific information available to the Department. The

1 establishment of natural background for an altered waterbody may be based upon a similar  
2 unaltered waterbody or on historical pre-alteration data.

3 (9) "Nuisance species" shall mean species of flora or fauna whose noxious  
4 characteristics or presence in sufficient number, biomass, or areal extent may reasonably be  
5 expected to prevent, or unreasonably interfere with, a designated use of those waters.

6 (10) "Physical alterations" shall mean human-induced changes to the physical structure  
7 of the water body.

8 (11) "Planning list" shall mean the list of surface waters or segments for which  
9 assessments will be conducted to evaluate whether the water is impaired and a TMDL is  
10 needed, as provided in subsection 403.067(2), F.S.

11 (12) "Pollutant" shall be as defined in subsection 502(6) of the CWA. Characteristics of  
12 a discharge, including dissolved oxygen, pH, or temperature, shall also be defined as pollutants  
13 if they result or may result in the potentially harmful alteration of downstream waters.

14 (13) "Pollution" shall be as defined in subsection 502(19) of the CWA and subsection  
15 403.031(2), F.S.

16 (14) "Predominantly marine waters" shall mean surface waters in which the chloride  
17 concentration at the surface is greater than or equal to 1,500 milligrams per liter.

18 (15) "Secretary" shall mean the Secretary of the Florida Department of Environmental  
19 Protection.

20 (16) "Spill" shall mean a short-term, unpermitted discharge to surface waters, not to  
21 include sanitary sewer overflows or chronic discharges from leaking wastewater collection  
22 systems.

23 (17) "Stream" shall mean a free-flowing, predominantly fresh surface water in a defined  
24 channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar  
25 water bodies.

26 (18) "Stream Condition Index" shall mean a bioassessment conducted following the  
27 procedures outlined in "Development of the Stream Condition Index (SCI) for Florida," Florida  
28 Department of Environmental Protection, May, 1996, which is incorporated by reference.

29 (19) "Surface water" means those waters of the State upon the surface of the earth to  
30 their landward extent, whether contained in bounds created naturally or artificially or diffused.  
31 Water from natural springs shall be classified as surface water when it exits from the spring  
32 onto the earth's surface.

1       (20) "Tier 2 Data Quality Assessment" shall mean an assessment of the quality controls  
2 used in generating water quality data, as outlined in the Department's Guidance Document, "A  
3 Tiered Approach to Data Quality Assessment" (DEP EAS 001-00, October 2000), which is  
4 incorporated by reference.

5       (21) "Total maximum daily load" (TMDL) for an impaired water body or water body  
6 segment shall mean the sum of the individual wasteload allocations for point sources and the  
7 load allocations for nonpoint sources and natural background. Prior to determining individual  
8 wasteload allocations and load allocations, the maximum amount of a pollutant that a water  
9 body or water segment can assimilate from all sources without exceeding water quality  
10 standards must first be calculated. A TMDL shall include either an implicit or explicit margin of  
11 safety and a consideration of seasonal variations.

12       (22) "Verified list" shall mean the list of impaired water bodies or segments for which  
13 TMDLs will be calculated, as provided in subsection 403.067(4), F.S., and which will be  
14 submitted to EPA pursuant to subparagraph 303(d)(1)(C) of the CWA.

15       (23) "Water quality criteria" shall mean elements of State water quality standards,  
16 expressed as constituent concentrations, levels, or narrative statements, representing a quality  
17 of water that supports the present and future most beneficial uses.

18       (24) "Water quality standards" shall mean standards composed of designated present  
19 and future most beneficial uses (classification of waters), the numerical and narrative criteria  
20 applied to the specific water uses or classification, the Florida antidegradation policy, and the  
21 moderating provisions (mixing zones, site-specific alternative criteria, and exemptions)  
22 contained in Chapter 62-302, F.A.C., and in Chapter 62-4, F.A.C., adopted pursuant to Chapter  
23 403, F.S.

24       (25) "Water segment" shall mean a portion of a water body that the Department will  
25 assess and evaluate for purposes of determining whether a TMDL will be required. Water  
26 segments previously evaluated as part of the Department's 1998 305(b) Report are depicted in  
27 the map titled "Water Segments of Florida," which is incorporated by reference.

28       (26) "Waters" shall be those surface waters described in Section 403.031(13), Florida  
29 Statutes.

30 Specific Authority 403.061, 403.067, FS.

31 Law Implemented 403.062, 403.067, FS.

1 History -- New

2  
3 PART II  
4 THE PLANNING LIST  
5

6 62-303.300 Methodology to Develop the Planning List.

7 (1) This part establishes a methodology for developing a planning list of waters to be  
8 assessed pursuant to subsections 403.067(2) and (3), F.S. A waterbody shall be placed on the  
9 planning list if it fails to meet the minimum criteria for surface waters established in Rule 62-  
10 302.500, F.A.C.; any of its designated uses, as described in this part; or applicable water quality  
11 criteria, as described in this part. It should be noted that water quality criteria are designed to  
12 protect either aquatic life use support, which is addressed in sections 62-303.310-353, or to  
13 protect human health, which is addressed in sections 62-303.360-380.

14 (2) Waters on the list of water segments submitted to EPA in 1998 that do not meet the  
15 data sufficiency requirements for the planning list shall nevertheless be included in the state's  
16 initial planning list developed pursuant to this rule.

17 Specific Authority 403.061, 403.067, FS.

18 Law Implemented 403.062, 403.067, FS.

19 History -- New

20 62-303.310 Evaluation of Aquatic Life Use Support.

21 A Class I, II, or III water shall be placed on the planning list for assessment of aquatic  
22 life use support (propagation and maintenance of a healthy, well-balanced population of fish  
23 and wildlife) if, based on sufficient quality and quantity of data, it:

24 (1) exceeds applicable aquatic life-based water quality criteria as outlined in section 62-  
25 303.320,

26 (2) does not meet biological assessment thresholds for its water body type as outlined in  
27 section 62-303.330,

28 (3) is acutely or chronically toxic as outlined in section 62-303.340, or

29 (4) exceeds nutrient thresholds as outlined in section 62-303.350.

30 Specific Authority 403.061, 403.067, FS.

31 Law Implemented 403.062, 403.067, FS.

32 History -- New

33 62-303.320 Exceedances of Aquatic Life-Based Water Quality Criteria.

1       (1) Water segments shall be placed on the planning list if, using objective and credible  
2       data, as defined by the requirements specified in this section, the number of exceedances of an  
3       applicable water quality criterion due to pollutant discharges is greater than or equal to the  
4       number listed in Table 1 for the given sample size. This table provides the number of  
5       exceedances that indicate a minimum of a 10% exceedance frequency with a minimum of an  
6       80% confidence level using a binomial distribution.

Table 1: Planning List

Minimum number of measured exceedances needed to put a water on the Planning list with at least 80% confidence that the actual exceedance rate is greater than or equal to ten percent.					
Sample sizes		Are listed if they have at least this # of exceedances	Sample sizes		Are listed if they have at least this # of exceedances
From	To		From	To	
10	15	3	246	255	30
16	23	4	256	264	31
24	31	5	265	273	32
32	39	6	274	282	33
40	47	7	283	292	34
48	56	8	293	301	35
57	65	9	302	310	36
66	73	10	311	320	37
74	82	11	321	329	38
83	91	12	330	338	39
92	100	13	339	348	40
101	109	14	349	357	41
110	118	15	358	367	42
119	126	16	368	376	43
127	136	17	377	385	44
137	145	18	386	395	45
146	154	19	396	404	46
155	163	20	405	414	47
164	172	21	415	423	48
173	181	22	424	432	49
182	190	23	433	442	50
191	199	24	443	451	51
200	208	25	452	461	52
209	218	26	462	470	53
219	227	27	471	480	54
228	236	28	481	489	55
237	245	29	490	499	56
			500	500	57

1       (2) The U.S. Environmental Protection Agency's Storage and Retrieval (STORET)  
2 database shall be the primary source of data used for determining water quality criteria  
3 exceedances. As required by rule 62-40.540(3), F.A.C., the Department, other state agencies,  
4 the Water Management Districts, and local governments collecting surface water quality data in  
5 Florida shall enter the data into STORET within one year of collection. Other sampling entities  
6 that want to ensure their data will be considered for evaluation should ensure their data are  
7 entered into STORET. The Department shall consider data submitted to the Department from  
8 other sources and databases if the data meet the sufficiency and data quality requirements of  
9 this section.

10       (3) When determining water quality criteria exceedances, data older than ten years shall  
11 not be used to develop planning lists. Further, more recent data shall take precedence over  
12 older data if:

13       (a) the newer data indicate a change in water quality and this change is related to  
14 changes in pollutant loading to the watershed or improved pollution control mechanisms in the  
15 watershed contributing to the assessed area, or

16       (b) the Department determines that the older data do not meet the data quality  
17 requirements of this section or are no longer representative of the water quality of the segment.

18       The Department shall note for the record that the older data were excluded and provide  
19 details about why the older data were excluded.

20       (4) To be assessed for water quality criteria exceedances using Table 1, a water  
21 segment shall have a minimum of ten, temporally independent samples for the ten year period.  
22 To be treated as an independent sample, samples from a given station shall be at least one  
23 week apart. Samples collected at the same location less than seven days apart shall be  
24 considered as one sample, with the median value used to represent the sampling period.  
25 However, if any of the individual values exceed acutely toxic levels, then the worst case value  
26 shall be used to represent the sampling period. The worst case value is the minimum value for  
27 dissolved oxygen, both the minimum and maximum for pH, or the maximum value for other  
28 parameters. However, when data are available from diel or depth profile studies, the lower  
29 tenth percentile value shall be used to represent worst case conditions. For the purposes of  
30 this chapter, samples collected within 200 meters of each other will be considered the same  
31 station or location, unless there is a tributary, an outfall, or significant change in the  
32 hydrography of the water. Data from different stations within a water segment shall be treated  
33 as separate samples even if collected at the same time. However, there shall be at least five

1 independent sampling events during the ten year assessment period, with at least one sampling  
2 event conducted in three of the four seasons of the calendar year. For the purposes of this  
3 chapter, the four seasons shall be January 1 through March 31, April 1 through June 30, July 1  
4 through September 30, and October 1 through December 31.

5 (5) Notwithstanding the requirements of paragraph (4), water segments shall be  
6 included on the planning list if:

7 (a) there are less than ten samples for the segment, but there are three or more  
8 temporally independent exceedances of an applicable water quality criterion, or

9 (b) there are more than one exceedance of an acute toxicity-based water quality  
10 criterion in any three year period.

11 (6) Outliers identified through statistical procedures shall be excluded from the  
12 assessment. However, the Department shall note for the record that the data were excluded  
13 and explain why they were excluded.

14 (7) The Department shall consider all readily available water quality data. However, to  
15 be used to determine water quality exceedances,

16 (a) data shall be collected and analyzed in accordance with Chapter 62-160, F.A.C., and

17 (b) for data collected after one year from the effective date of this rule, the sampling  
18 agency must provide the associated quality assurance data needed for a Tier 2 data quality  
19 assessment, with appropriate data fields entered into STORET.

20 (8) To be used to determine exceedances of metals criteria,

21 (a) surface water data for mercury shall be collected and analyzed using clean sampling  
22 and analytical techniques, and

23 (b) the corresponding hardness value shall be required to determine exceedances of  
24 freshwater metals criteria that are hardness dependent, and if the ambient hardness value is  
25 less than 25 mg/L as CaCO<sub>3</sub>, then a hardness value of 25 will be used to calculate the criteria.

26 If data are not used due to sampling or analytical techniques or because hardness data  
27 were not available, the Department shall note for the record that data were excluded and  
28 explain why they were excluded.

29 (9) Surface water data with values below the applicable practical quantification limit  
30 (PQL) or method detection limit (MDL) shall be assessed in accordance with Rules 62-  
31 4.246(6)(b)-(d) and (8), F.A.C.

32 (a) If sampling entities want to ensure that their data will be considered for evaluation,  
33 they should review the Department's list of approved MDLs and PQLs developed pursuant to

1 Rule 62-4.246, F.A.C., and, if available, use approved analytical methods with MDLs below the  
2 applicable water quality criteria. If there are no approved methods with MDLs below a criterion,  
3 then the method with the lowest MDL should be used. Analytical results listed as below  
4 detection or below the MDL shall not be used for developing planning lists if the MDL was  
5 above the criteria and there were, at the time of sample collection, approved analytical methods  
6 with MDLs below the criteria on the Department's list of approved MDLs and PQLs.

7 (b) If appropriate analytical methods were used, then data with values below the  
8 applicable MDL will be deemed to meet the applicable water quality criterion and data with  
9 values between the MDL and PQL will be deemed to be equal to the MDL.

10 (10) It should be noted that the data requirements of this rule constitute the minimum  
11 data set needed to assess a water segment for impairment. Agencies or groups designing  
12 monitoring networks are encouraged to consult with the Department to determine the sample  
13 design appropriate for their specific monitoring goals.

14 Specific Authority 403.061, 403.067, FS.

15 Law Implemented 403.062, 403.067, FS.

16 History -- New

17 62-303.330 Biological Assessment.

18 (1) Biological data must meet the requirements of paragraphs (3) and (7) in section 62-  
19 303.320.

20 (2) Bioassessments used to assess streams and lakes under this rule shall include  
21 BioRecons, Stream Condition Indices (SCIs), and the benthic macroinvertebrate component of  
22 the Lake Condition Index (LCI), which only applies to clear lakes with a color less than 40  
23 platinum cobalt units. Because of the complexity of bioassessment procedures, persons  
24 conducting the bioassessment will, in addition to meeting the quality assurance requirements of  
25 Chapter 62-160, F.A.C., be required to pass a Department sanctioned field audit before their  
26 bioassessment data will be considered valid for use under this rule.

27 (3) Water segments with at least one failed bioassessment or one failure of the  
28 biological integrity standard, Rule 62-302.530(11), shall be included on the planning list for  
29 assessment of aquatic life use support.

30 (a) In streams, the bioassessment can be an SCI or a BioRecon. Failure of a  
31 bioassessment for streams consists of a "poor" or "very poor" rating on the Stream Condition  
32 Index, or not meeting the minimum thresholds established for all three metrics (taxa richness,  
33 Ephemeroptera/Plecoptera/Trichoptera Index, and Florida Index) on the BioRecon.

1 (b) Failure for lakes consists of a "poor" or "very poor" rating on the Lake Condition  
2 Index.

3 (4) Other information relevant to the biological integrity of the water segment, including  
4 information about alterations in the type, nature, or function of a water, shall also be considered  
5 when determining whether aquatic life use support has been maintained.

6 Specific Authority 403.061, 403.067, FS.

7 Law Implemented 403.062, 403.067, FS.

8 History -- New \_\_\_\_\_.

9 62-303.340 Toxicity.

10 (1) All toxicity tests used to place a water segment on a planning list shall be based on  
11 surface water samples and shall be conducted and evaluated in accordance with Chapter 62-  
12 160, F.A.C., and subsections 62-302.200(1) and (4), F.A.C., respectively.

13 (2) Water segments with two samples indicating acute toxicity within a twelve month  
14 period shall be placed on the planning list. Samples must be collected at least two weeks apart  
15 over a twelve month period, some time during the ten years preceding the assessment.

16 (3) Water segments with two samples indicating chronic toxicity within a twelve month  
17 period shall be placed on the planning list. Samples must be collected at least two weeks  
18 apart, some time during the ten years preceding the assessment.

19 Specific Authority 403.061, 403.067, FS.

20 Law Implemented 403.062, 403.067, FS.

21 History -- New \_\_\_\_\_.

22 62-303.350 Interpretation of Narrative Nutrient Criteria.

23 (1) Trophic state indices (TSIs) and annual mean chlorophyll a values shall be the  
24 primary means for assessing whether a water should be assessed further for nutrient  
25 impairment. Other information indicating an imbalance in flora or fauna due to nutrient  
26 enrichment, including, but not limited to, algal blooms, excessive macrophyte growth, decrease  
27 in the distribution (either in density or areal coverage) of seagrasses or other submerged  
28 aquatic vegetation, changes in algal species richness, and excessive diel oxygen swings, shall  
29 also be considered.

30 (2) To be used to determine whether a water should be assessed further for nutrient  
31 enrichment.

32 (a) data must meet the requirements of paragraphs (2)-(4), (6), and (7) in rule 62-  
33 303.320.

1 (b) at least one sample from each season shall be required in any given year to  
2 calculate a Trophic State Index (TSI) or an annual mean chlorophyll a value for that year, and

3 (c) there must be annual means from at least four years, when evaluating the change in  
4 TSI over time pursuant to paragraph 62-303.352(3).

5 (3) When comparing changes in chlorophyll a or TSI values to historical levels, historical  
6 levels shall be based on the lowest five-year average for the period of record. To calculate a  
7 five-year average, there must be annual means from at least three years of the five-year period.

8 Specific Authority 403.061, 403.067, FS.

9 Law Implemented 403.062, 403.067, FS.

10 History -- New \_\_\_\_\_.

11 62-303.351 Nutrients in Streams.

12 A stream or stream segment shall be included on the planning list for nutrients if the  
13 following biological imbalances are observed:

14 (1) algal mats are present in sufficient quantities to pose a nuisance or hinder  
15 reproduction of a threatened or endangered species, or

16 (2) annual mean chlorophyll a concentrations are greater than 20 ug/l or if data indicate  
17 annual mean chlorophyll a values have increased by more than 50% over historical values for  
18 at least two consecutive years.

19 Specific Authority 403.061, 403.067, FS.

20 Law Implemented 403.062, 403.067, FS.

21 History -- New \_\_\_\_\_.

22 62-303.352 Nutrients in Lakes.

23 For the purposes of evaluating nutrient enrichment in lakes, TSIs shall be calculated  
24 based on the procedures outlined on pages 86 and 87 of the State's 1996 305(b) report, which  
25 are incorporated by reference. Lakes or lake segments shall be included on the planning list for  
26 nutrients if:

27 (1) For lakes with a mean color greater than 40 platinum cobalt units, the annual mean  
28 TSI for the lake exceeds 60, unless paleolimnological information indicates the lake was  
29 naturally greater than 60, or

30 (2) For lakes with a mean color less than or equal to 40 platinum cobalt units, the annual  
31 mean TSI for the lake exceeds 40, unless paleolimnological information indicates the lake was  
32 naturally greater than 40, or

1       (3) For any lake, data indicate that annual mean TSIs have increased over the  
2 assessment period, as indicated by a positive slope in the means plotted versus time, or the  
3 annual mean TSI has increased by more than 10 units over historical values. When evaluating  
4 the slope of mean TSIs over time, the Department shall use a Mann's one-sided, upper-tail test  
5 for trend, as described in Nonparametric Statistical Methods by M. Hollander and D. Wolfe  
6 (1999 ed.), pages 376 and 724 (which are incorporated by reference), with a 95% confidence  
7 level.

8 Specific Authority 403.061, 403.067, FS.

9 Law Implemented 403.062, 403.067, FS.

10 History -- New \_\_\_\_\_.

11       62-303.353 Nutrients in Estuaries.

12       Estuaries or estuary segments shall be included on the planning list for nutrients if their  
13 annual mean chlorophyll a for any year is greater than 11 ug/l or if data indicate annual mean  
14 chlorophyll a values have increased by more than 50% over historical values for at least two  
15 consecutive years.

16 Specific Authority 403.061, 403.067, FS.

17 Law Implemented 403.062, 403.067, FS.

18 History -- New \_\_\_\_\_.

19       62-303.360 Primary Contact and Recreation Use Support.

20       (1) A Class I, II, or III water shall be placed on the planning list for primary contact and  
21 recreation use support if:

22       (a) the water segment does not meet the applicable water quality criteria for  
23 bacteriological quality based on the methodology described in section 62-303.320, or

24       (b) the water segment includes a bathing area that was closed by a local health  
25 Department or county government for more than one week or more than once during a  
26 calendar year based on bacteriological data, or

27       (c) the water segment includes a bathing area for which a local health Department or  
28 county government has issued closures, advisories, or warnings totaling 21 days or more  
29 during a calendar year based on bacteriological data, or

30       (d) the water segment includes a bathing area that was closed or had advisories or  
31 warnings for more than 12 weeks during a calendar year based on previous bacteriological data  
32 or on derived relationships between bacteria levels and rainfall or flow.

1 (2) For data collected after August 1, 2000, the Florida Department of Health (DoH)  
2 database shall be the primary source of data used for determining bathing area closures.

3 (3) Advisories, warnings, and closures based on red tides, rip tides, sewage spills,  
4 sharks, medical wastes, hurricanes, or other factors not related to chronic discharges of  
5 pollutants shall not be included when assessing recreation use support. However, the  
6 Department shall note for the record that data were excluded and explain why they were  
7 excluded.

8 Specific Authority 403.061, 403.067, FS.

9 Law Implemented 403.062, 403.067, FS.

10 History -- New \_\_\_\_\_.

11 62-303.370 Fish and Shellfish Consumption Use Support.

12 A Class I, II, or III water shall be placed on the planning list for fish and shellfish  
13 consumption if:

14 (1) the water segment does not meet the applicable Class II water quality criteria for  
15 bacteriological quality based on the methodology described in section 62-303.320, or

16 (2) there is either a limited or no consumption fish consumption advisory, issued by the  
17 DoH, or other authorized governmental entity, in effect for the water segment, or

18 (3) for Class II waters, the water segment includes an area that has been approved for  
19 shellfish harvesting by the Shellfish Evaluation and Assessment Program, but which has been  
20 downgraded from its initial harvesting classification to a more restrictive classification. Changes  
21 in harvesting classification from prohibited to unclassified do not constitute a downgrade in  
22 classification.

23 Specific Authority 403.061, 403.067, FS.

24 Law Implemented 403.062, 403.067, FS.

25 History -- New \_\_\_\_\_.

26 62-303.380 Drinking Water Use Support and Protection of Human Health.

27 (1) A Class I water shall be placed on the planning list for drinking water use support if:  
28 (a) the water segment does not meet the applicable Class I water quality criteria based  
29 on the methodology described in section 62-303.320, or

30 (b) a public water system demonstrates to the Department that either:

31 1. Treatment costs to meet applicable drinking water criteria have increased by at least  
32 25% to treat contaminants that exceed Class I criteria or to treat blue-green algae or other  
33 nuisance algae in the source water, or

2. the system has changed to an alternative supply because of additional costs that would be required to treat their surface water source.

(c) When determining increased treatment costs described in paragraph (b), costs due solely to new, more stringent drinking water requirements, inflation, or increases in costs of materials shall not be included.

(2) A water shall be placed on the planning list for assessment of the threat to human health if the annual mean concentration for any year of the assessment period exceeds a human health-based criteria expressed as an annual average. To be used to determine whether a water should be assessed further for human-health impacts, data must meet the requirements of paragraphs (2), (3), (6), and (7) in rule 62-303.320.

Specific Authority 403.061, 403.067, FS.

**Law Implemented 403.062, 403.067, FS.**

## History – New

### PART III

## THE VERIFIED LIST

### 62-303.400 Methodology to Develop the Verified List.

(1) Waters shall be verified as being impaired if they meet the requirements for the planning list in Part II and the additional requirements of sections 62-303.420-.480. A water body that fails to meet the minimum criteria for surface waters established in Rule 62-302.500, F.A.C.; any of its designated uses, as described in this part; or applicable water quality criteria, as described in this part, shall be determined to be impaired.

(2) Additional data and information collected after the development of the planning list will be considered when assessing waters on the planning list, provided it meets the requirements of this chapter. In cases where additional data are needed for waters on the planning list to meet the data sufficiency requirements for the verified list, it is the Department's goal to collect this additional data as part of its watershed management approach, with the data collected during either the same cycle that the water is initially listed on the planning list (within 1 year) or during the subsequent cycle (six years). Except for data used to evaluate historical trends in chlorophyll a or TSIs, the Department shall not use data that are more than 7.5 years old at the time the water segment is proposed for listing on the verified list.

**Specific Authority 403.061, 403.067, FS.**

**Law Implemented** 403.062, 403.067, FS.

1 History -- New

2 62-303.410 Determination of Aquatic Life Use Support.

3 Failure to meet any of the metrics used to determine aquatic life use support listed in  
4 sections 62-303.420-.450 shall constitute verification that there is an impairment of the  
5 designated use for propagation and maintenance of a healthy, well-balanced population of fish  
6 and wildlife.

7 Specific Authority 403.061, 403.067, FS.

8 Law Implemented 403.062, 403.067, FS.

9 History -- New

10 62-303.420 Exceedances of Aquatic Life-Based Water Quality Criteria.

11 (1) The Department shall reexamine the data used in rule 62-303.320 to determine  
12 exceedances of water quality criteria.

13 (a) If the exceedances are not due to pollutant discharges and reflect either physical  
14 alterations of the water body that cannot be abated or natural background conditions, the water  
15 shall not be listed on the verified list. In such cases, the Department shall note for the record  
16 why the water was not listed and provide the basis for its determination that the exceedances  
17 were not due to pollutant discharges.

18 (b) If the Department cannot clearly establish that the exceedances are due to natural  
19 background or physical alterations of the water body but the Department believes the  
20 exceedances are not due to pollutant discharges, it is the Department's intent to determine  
21 whether aquatic life use support is impaired through the use of bioassessment procedures  
22 referenced in section 62-303.330. The water body or segment shall not be included on the  
23 verified list for the parameter of concern if two or more independent bioassessments are  
24 conducted and no failures are reported. To be treated as independent bioassessments, they  
25 must be conducted at least two months apart.

26 (2) If the water was listed on the planning list and there were insufficient data from the  
27 last five years preceding the planning list assessment to meet the data distribution  
28 requirements of section 303.320(4) and to meet a minimum sample size for verification of  
29 twenty samples, additional data will be collected as needed to provide a minimum sample size  
30 of twenty. Once these additional data are collected, the Department shall re-evaluate the data  
31 using the approach outlined in rule 62-303.320(1), but using Table 2, which provides the  
32 number of exceedances that indicate a minimum of a 10% exceedance frequency with a  
33 minimum of a 90% confidence level using a binomial distribution. The Department shall limit

- 1 the analysis to data collected during the five years preceding the planning list assessment and
- 2 the additional data collected pursuant to this paragraph.

Table 2: Verified List

Minimum number of measured exceedances needed to put on the Verified list with at least 90% confidence that the actual exceedance rate is greater than or equal to ten percent.					
Sample sizes		Are listed if they have at least this # of exceedances	Sample sizes		Are listed if they have at least this # of exceedances
From	To		From	To	
10	11	3	245	253	32
12	18	4	254	262	33
19	25	5	263	270	34
26	32	6	271	279	35
33	40	7	280	288	36
41	47	8	289	297	37
48	55	9	298	306	38
56	63	10	307	315	39
64	71	11	316	324	40
72	79	12	325	333	41
80	88	13	334	343	42
89	96	14	344	352	43
97	104	15	353	361	44
105	113	16	362	370	45
114	121	17	371	379	46
122	130	18	380	388	47
131	138	19	389	397	48
139	147	20	398	406	49
148	156	21	407	415	50
157	164	22	416	424	51
165	173	23	425	434	52
174	182	24	435	443	53
183	191	25	444	452	54
192	199	26	453	461	55
200	208	27	462	470	56
209	217	28	471	479	57
218	226	29	480	489	58
227	235	30	490	498	59
236	244	31	499	500	60

1       (3) If the water was placed on the planning list based on worst case values used to  
2 represent multiple samples taken during a seven day period, the Department shall evaluate  
3 whether the worst case value should be excluded from the analysis pursuant to subsections (4)  
4 and (5). If the worst case value should not be used, the Department shall then re-evaluate the  
5 data following the methodology in rule 62-303.420(2), using the more representative worst case  
6 value or, if all valid values are below acutely toxic levels, the median value.

7       (4) If the water was listed on the planning list based on exceedances of water quality  
8 criteria for metals, the metals data shall be validated to determine whether the quality  
9 assurance requirements of rule 62-303.320(7) are met and whether the sample was both  
10 collected and analyzed using clean techniques, if the use of clean techniques is appropriate. If  
11 any data cannot be validated, the Department shall re-evaluate the remaining valid data using  
12 the methodology in rule 62-303.420(2), excluding any data that cannot be validated.

13       (5) Outliers identified through statistical procedures, water quality criteria exceedances  
14 due solely to violations of specific effluent limitations contained in state permits authorizing  
15 discharges to surface waters, water quality criteria exceedances within permitted mixing zones  
16 for those parameters for which the mixing zones are in effect, and water quality data collected  
17 following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or  
18 rainfall in excess of the 25-year, 24-hour storm, shall be excluded from the assessment.  
19 However, the Department shall note for the record that the data were excluded and explain why  
20 they were excluded.

21       (6) Once the additional data review is completed pursuant to paragraphs (1) through (5),  
22 the Department shall re-evaluate the data and shall include waters on the verified list that meet  
23 the criteria in rules 62-303.420(2) or 62-303.320(5)(b).

24 Specific Authority: 403.061, 403.067, FS.

25 Law Implemented: 403.021(11), 403.062, 403.067, FS.

26 History -- New

27       62-303.430 Biological Impairment.

28       (1) All bioassessments used to list a water on the verified list shall be conducted in  
29 accordance with Chapter 62-160, F.A.C., including Department-approved Standard Operating  
30 Procedures. To be used for placing waters on the verified list, any bioassessments conducted  
31 before the adoption of applicable SOPs for such bioassessments as part of Chapter 62-160  
32 shall substantially comply with the subsequent SOPs.

33       (2) If the water was listed on the planning list based on bioassessment results, the water

1 shall be determined to be biologically impaired if there were two or more failed bioassessments  
2 within the five years preceding the planning list assessment. If there were less than two failed  
3 bioassessments during the last five years preceding the planning list assessment, the  
4 Department will conduct an additional bioassessment. If the previous failed bioassessment was  
5 a BioRecon, then an SCI will be conducted. Failure of this additional bioassessment shall  
6 constitute verification that the water is biologically impaired.

7 (3) If the water was listed on the planning list based on other information specified in  
8 rule 62-303.330(4) indicating biological impairment, the Department will conduct a  
9 bioassessment in the water segment, conducted in accordance with the methodology in rule 62-  
10 303.330, to verify whether the water is impaired. For streams, the bioassessment shall be an  
11 SCI. Failure of this bioassessment shall constitute verification that the water is biologically  
12 impaired.

13 (4) Following verification that a water is biologically impaired, a water shall be included  
14 on the verified list for biological impairment if:

15 (a) There are water quality data specifying the particular pollutant(s) causing the  
16 impairment and the concentration of the pollutant(s); and

17 (b) One of the following demonstrations is made:

18 1. if there is a numeric criterion for the specified pollutant(s) in Chapter 62-302, F. A. C.,  
19 but the criterion is met, an identification of the specific factors as to why the numeric criterion is  
20 not adequate to protect water quality, or

21 2. if there is not a numeric criterion for the specified pollutant(s) in Chapter 62-302,  
22 F.A.C., the specific factors concerning the particular pollutant(s) shall be identified which  
23 connect the specified pollutant to the observed biological effect.

24 Specific Authority 403.061, 403.067, FS.

25 Law Implemented 403.062, 403.067, FS.

26 History -- New

27 62-303.440 Toxicity.

28 (1) A water segment shall be verified as impaired due to surface water toxicity if:

29 (a) the water segment was listed on the planning list based on acute toxicity data, or

30 (b) the water segment was listed on the planning list based on chronic toxicity data and  
31 the impairment is confirmed with a failed bioassessment that was conducted within six months  
32 of a failed chronic toxicity test. For streams, the bioassessment shall be an SCI.

33 (2) Following verification that a water is impaired due to toxicity, a water shall be

1 included on the verified list if the requirements of paragraph 62-303.430(4) are met.

2 (3) Toxicity data collected following contaminant spills, discharges due to upsets or  
3 bypasses from permitted facilities, or rainfall in excess of the 25-year, 24-hour storm, shall be  
4 excluded from the assessment. However, the Department shall note for the record that the  
5 data were excluded and explain why they were excluded.

6 Specific Authority 403.061, 403.067, FS.

7 Law Implemented 403.062, 403.067, FS.

8 History -- New \_\_\_\_\_.

9 62-303.450 Interpretation of Narrative Nutrient Criteria.

10 (1) A water shall be placed on the verified list for impairment due to nutrients if there are  
11 sufficient data from the last five years preceding the planning list assessment, combined with  
12 historical data (if needed to establish historical chlorophyll a levels or historical TSIs), to meet  
13 the data sufficiency requirements of rule 62-303.350(2). If there are insufficient data, additional  
14 data shall be collected as needed to meet the requirements. Once these additional data are  
15 collected, the Department shall re-evaluate the data using the thresholds provided in rule 62-  
16 303.351-.353, for streams, lakes, and estuaries, respectively, or alternative, site-specific  
17 thresholds that more accurately reflect conditions beyond which an imbalance in flora or fauna  
18 occurs in the water segment. In any case, the Department shall limit its analysis to the use of  
19 data collected during the five years preceding the planning list assessment and the additional  
20 data collected in the second phase. If alternative thresholds are used for the analysis, the  
21 Department shall provide the thresholds for the record and document how the alternative  
22 threshold better represents conditions beyond which an imbalance in flora or fauna is expected  
23 to occur.

24 (2) If the water was listed on the planning list for nutrient enrichment based on other  
25 information indicating an imbalance in flora or fauna, as provided in Rule 62-303.350(1), the  
26 Department shall verify the imbalance before placing the water on the verified list for  
27 impairment due to nutrients and shall provide documentation supporting the imbalance in flora  
28 or fauna.

29 Specific Authority 403.061, 403.067, FS.

30 Law Implemented 403.062, 403.067, FS.

31 History -- New \_\_\_\_\_.

32 62-303.460 Primary Contact and Recreation Use Support.

1       (1) The Department shall review the data used by the DoH as the basis for bathing area  
2 closures, advisories or warnings and verify that the values exceeded the applicable DoH  
3 thresholds and the data meet the requirements of Chapter 62-160. If the segment is listed on  
4 the planning list based on bathing area closures, advisories, or warnings issued by a local  
5 health department or county government, closures, advisories, or warnings based on red tides,  
6 rip tides, sewer line breaks, sharks, medical wastes, hurricanes, or other factors not related to  
7 chronic discharges of pollutants shall not be included when verifying primary contact and  
8 recreation use support. The Department shall then re-evaluate the remaining data using the  
9 methodology in rule 62-303.360(1)(c). Water segments that meet the criteria in rule 62-  
10 303.360(1)(c) shall be included on the verified list.

11       (2) If the water segment was listed on the planning list due to exceedances of water  
12 quality criteria for bacteriological quality, the Department shall, to the extent practical, evaluate  
13 the source of bacteriological contamination and shall verify that the impairment is due to chronic  
14 discharges of human-induced bacteriological pollutants before listing the water segment on the  
15 verified list. The Department shall take into account the proximity of municipal stormwater  
16 outfalls, septic tanks, and domestic wastewater facilities when evaluating potential sources of  
17 bacteriological pollutants. For water segments that contain municipal stormwater outfalls, the  
18 impairment documented for the segment shall be presumed to be due, at least in part, to  
19 chronic discharges of bacteriological pollutants. The Department shall then re-evaluate the  
20 data using the methodology in rule 62-303.320(1), excluding any values that are elevated solely  
21 due to wildlife. Water segments shall be included on the verified list if they meet the  
22 requirements in rule 62-303.420(6).

23 Specific Authority 403.061, 403.067, FS.

24 Law Implemented 403.062, 403.067, FS.

25 History -- New

26 62-303.470 Fish and Shellfish Consumption Use Support.

27       (1) In order to be used under this part, the Department shall review the data used by the  
28 DoH as the basis for fish consumption advisories and determine whether it meets the following  
29 requirements:

30       (a) the advisory is based on the statistical evaluation of fish tissue data from at least  
31 twelve fish collected from the specific water segment or water body to be listed.

32       (b) starting one year from the effective date of this rule, the data are collected in  
33 accordance with DEP SOP FS6000 (General Biological Tissue Sampling) and FS 6200 (Finfish

1 Tissue Sampling), which are incorporated by reference, the sampling entity has established  
2 Data Quality Objectives (DQOs) for the sampling, and the data meet the DQOs. Data collected  
3 before one year from the effective date of this rule shall substantially comply with the listed  
4 SOPs and any subsequently developed DQOs.

5 (c) there are sufficient data from within the last seven years to support the continuation  
6 of the advisory.

7 (2) If the segment is listed on the planning list based on fish consumption advisories,  
8 waters with fish consumption advisories for pollutants that are no longer legally allowed to be  
9 used or discharged shall not be placed on the verified list because the TMDL will be zero for the  
10 pollutant.

11 (3) Waters determined to meet the requirements of this section shall be listed on the  
12 verified list.

13 Specific Authority 403.061, 403.067, FS.

14 Law Implemented 403.062, 403.067, FS.

15 History -- New \_\_\_\_\_.

16 62-303.480 Drinking Water Use Support and Protection of Human Health.

17 If the water segment was listed on the planning list due to exceedances of a human  
18 health-based water quality criterion and there were insufficient data from the last five years  
19 preceding the planning list assessment to meet the data sufficiency requirements of section  
20 303.320(4), additional data will be collected as needed to meet the requirements. Once these  
21 additional data are collected, the Department shall re-evaluate the data using the methodology  
22 in rule 62-303.380(2) and limit the analysis to data collected during the five years preceding the  
23 planning list assessment and the additional data collected pursuant to this paragraph (not to  
24 include data older than 7.5 years). For this analysis, the Department shall exclude any data  
25 meeting the requirements of paragraph 303.420(5). Any water segments that have a mean  
26 annual average that exceeds the applicable criterion shall be listed on the verified list.

27 Specific Authority 403.061, 403.067, FS.

28 Law Implemented 403.062, 403.067, FS.

29 History -- New \_\_\_\_\_.

30 62-303.500 Prioritization.

31 (1) When establishing the TMDL development schedule for water segments on the  
32 verified list of impaired waters, the Department shall prioritize impaired water segments  
33 according to the severity of the impairment and the designated uses of the segment, taking into

1 account the most serious water quality problems; most valuable and threatened resources; and  
2 risk to human health and aquatic life. Impaired waters shall be prioritized as high, medium, or  
3 low priority.

4 (2) The following waters shall be designated high priority:

5 (a) Water segments where the impairment poses a threat to potable water supplies or to  
6 human health.

7 (b) Water segments where the impairment is due to a pollutant regulated by the CWA  
8 and the pollutant has contributed to the decline or extirpation of a federally listed threatened or  
9 endangered species, as indicated in the Federal Register listing the species.

10 (3) The following waters shall be designated low priority:

11 (a) water segments that are listed before 2010 due to fish consumption advisories for  
12 mercury (due to the current insufficient understanding of mercury cycling in the environment).

13 (b) Man-made canals, urban drainage ditches, and other artificial water segments that  
14 are listed only due to exceedances of the dissolved oxygen criteria.

15 (c) Water segments that were not on a planning list of impaired waters, but which were  
16 identified as impaired during the second phase of the watershed management approach and  
17 were included in the verified list, unless the segment meets the criteria in paragraph (2) for high  
18 priority.

19 (4) All segments not designated high or low priority shall be medium priority and shall be  
20 prioritized based on the following factors:

21 (a) the presence of Outstanding Florida Waters.

22 (b) the presence of water segments that fail to meet more than one designated use.

23 (c) the presence of water segments that exceed an applicable water quality criterion or  
24 alternative threshold with a greater than twenty-five percent exceedance frequency with a  
25 minimum of a 90 percent confidence level.

26 (d) the presence of water segments that exceed more than one applicable water quality  
27 criteria.

28 (e) administrative needs of the TMDL program, including meeting a TMDL development  
29 schedule agreed to with EPA, basin priorities related to following the Department's watershed  
30 management approach, and the number of administratively continued permits in the basin.

31 Specific Authority 403.061, 403.067, FS.

32 Law Implemented 403.062, 403.067, FS.

33 History -- New \_\_\_\_\_.

1        62-303.600 Evaluation of Pollution Control Mechanisms.

2        (1) Upon determining that a water body is impaired, the Department shall evaluate  
3 whether existing or proposed technology-based effluent limitations and other pollution control  
4 programs under local, state, or federal authority are sufficient to result in the attainment of  
5 applicable water quality standards.

6        (2) If, as a result of the factors set forth in (1), the water segment is expected to attain  
7 water quality standards in the future and is expected to make reasonable progress towards  
8 attainment of water quality standards by the time the next 303(d) list is scheduled to be  
9 submitted to EPA, the segment shall not be listed on the verified list. The Department shall  
10 document the basis for its decision, noting any proposed pollution control mechanisms and  
11 expected improvements in water quality that provide reasonable assurance that the water  
12 segment will attain applicable water quality standards.

13 Specific Authority 403.061, 403.067, FS.

14 Law Implemented 403.062, 403.067, FS.

15 History -- New \_\_\_\_\_.

16        62-303.700 Listing Cycle.

17        (1) The Department shall, to the extent practical, develop basin-specific verified lists of  
18 impaired waters as part of its watershed management approach, which rotates through the  
19 State's surface water basins on a five year cycle. At the end of the first phase of the cycle,  
20 which is designed to develop a preliminary assessment of the basin, the Department shall  
21 update the planning list for the basin and shall include the planning list in the status report for  
22 the basin, which will be noticed to interested parties in the basin. If the specific pollutant  
23 causing the impairment in a particular water segment is not known at the time the planning list  
24 is prepared, the list shall provide the basis for including the water segment on the planning list.  
25 In these cases, the pollutant and concentration causing the impairment shall be identified  
26 before the water segment is included on the verified list to be adopted by Secretarial Order.  
27 During the second phase of the cycle, which is designed to collect additional data on waters in  
28 the basin, interested parties shall be provided the opportunity to work with the Department to  
29 collect additional water quality data. Alternatively, interested parties may develop proposed  
30 water pollution control mechanisms that may affect the final verified list adopted by the  
31 Secretary at the end of the second phase. To ensure that data or information will be  
32 considered in the preliminary basin assessment, it must be submitted to the Department or  
33 entered into STORET or, if applicable, the DoH database no later than September 30 during

1 the year of the assessment.

2 (2) Within a year of the effective date of this rule, the Department shall also prepare a  
3 planning list for the entire state.

4 Specific Authority 403.061, 403.067, FS.

5 Law Implemented 403.062, 403.067, FS.

6 History -- New

7 62-303.710 Format of Verified List and Verified List Approval.

8 (1) The Department shall follow the methodology established in this chapter to develop  
9 basin-specific verified lists of impaired water segments. The verified list shall specify the  
10 pollutant or pollutants causing the impairment and the concentration of the pollutant(s) causing  
11 the impairment. If the water segment is listed based on water quality criteria exceedances, then  
12 the verified list shall provide the applicable criteria. However, if the listing is based on narrative  
13 or biological criteria, or impairment of other designated uses, and the water quality criteria are  
14 met, the list shall specify the concentration of the pollutant relative to the water quality criteria  
15 and explain why the numerical criterion is not adequate.

16 (2) For waters with exceedances of the dissolved oxygen criteria, the Department shall  
17 identify the pollutants causing or contributing to the exceedances and list both the pollutant and  
18 dissolved oxygen on the verified list.

19 (3) For waters impaired by nutrients, the Department shall identify whether nitrogen or  
20 phosphorus, or both, are the limiting nutrients, and specify the limiting nutrient(s) in the verified  
21 list.

22 (4) The verified list shall also include the priority and the schedule for TMDL  
23 development established for the water segment, as required by federal regulations.

24 (5) The verified list shall also note any waters that are being removed from the current  
25 planning list and any previous verified list for the basin.

26 (6) The verified basin-specific 303(d) list shall be approved by order of the Secretary.

27 Specific Authority 403.061, 403.067, FS.

28 Law Implemented 403.062, 403.067, FS.

29 History -- New

30  
31 PART IV

32 MISCELLANEOUS PROVISIONS

1        62-303.720 Delisting Procedure.

2        (1) Waters on planning lists developed under this Chapter that are verified to not be  
3 impaired during development of the verified list shall be removed from the State's planning list.  
4 Once a water segment is verified to not be impaired pursuant to Part III of this chapter, the data  
5 used to place the water on the planning list shall not be the sole basis for listing that water  
6 segment on future planning lists.

7        (2) Water segments shall be removed from the State's verified list only after completion  
8 of a TMDL for all pollutants causing impairment of the segment or upon demonstration that the  
9 water meets the water quality standard that was previously established as not being met.

10       (a) For waters listed due to failure to meet aquatic life use support based on water  
11 quality criteria exceedances or due to threats to human health based on exceedances of single  
12 sample water quality criteria, the water shall be delisted when:

13       1. the number of exceedances of an applicable water quality criterion due to pollutant  
14 discharges is less than or equal to the number listed in Table 3 for the given sample size, with a  
15 minimum sample size of 30. This table provides the number of exceedances that indicate a  
16 maximum of a 10% exceedance frequency with a minimum of a 90% confidence level using a  
17 binomial distribution, or

18       2. following implementation of pollution control activities that are expected to be  
19 sufficient to result in attainment of applicable water quality standards, evaluation of new data  
20 indicates the water no longer meets the criteria for listing established in section 62-303.420., or

21       3. following demonstration that the water was inappropriately listed due to flaws in the  
22 original analysis, evaluation of available data indicates the water does not meet the criteria for  
23 listing established in section 62-303.420.

24       New data evaluated under rule 62-303.720(2)(a)1. must meet the following  
25 requirements:

26       a. they must include samples collected during similar conditions (same seasons and  
27 general flow conditions) that the data previously used to determine impairment were collected,  
28 with no more than 50% of the samples collected in any one quarter,

29       b. the sample size must be a minimum of 30 samples, and

30       c. the data must meet the requirements of paragraphs 62-303.320(4), (6) and (7).

31       (b) For waters listed due to failure to meet aquatic life use support based on biological  
32 data, the water shall be delisted when the segment passes two independent follow-up

1 bioassessments and there have been no failed bioassessments for at least one year. The  
2 follow-up tests must meet the following requirements:

3 1. For streams, the new data may be two BioRecons or any combination of BioRecons  
4 and SCIs.

5 2. The bioassessments must be conducted during similar conditions (same seasons and  
6 general flow conditions) under which the previous bioassessments used to determine  
7 impairment were collected.

8 3. The data must meet the requirements of Section 62-303.330(1) and (2), F.A.C.

9 (c) For waters listed due to failure to meet aquatic life use support based on toxicity  
10 data, the water shall be delisted when the segment passes two independent follow-up toxicity  
11 tests and there have been no failed toxicity tests for at least one year. The follow-up tests must  
12 meet the following requirements:

13 1. The tests must be conducted using the same test protocols and during similar  
14 conditions (same seasons and general flow conditions) under which the previous test used to  
15 determine impairment were collected.

16 2. The data must meet the requirements of rules 62-303.340(1), and the time  
17 requirements of rules 62-303.340(2) or (3).

18 (d) For waters listed due to fish consumption advisories, the water shall be delisted  
19 following the lifting of the advisory or when data complying with rule 62-303.470(1)(a) and (b)  
20 demonstrate that the continuation of the advisory is no longer appropriate.

21 (e) For waters listed due to changes in shellfish bed management classification, the  
22 water shall be delisted upon reclassification of the shellfish harvesting area to its original or  
23 higher harvesting classification. Reclassification of a water from prohibited to unclassified does  
24 not constitute a higher classification.

25 (f) For waters listed due to bathing area closure or advisory data, the water shall be  
26 delisted if the bathing area does not meet the listing thresholds in rule 62-303.360(1) for five  
27 consecutive years

28 (g) For waters listed based on impacts to potable water supplies, the water shall be  
29 delisted when applicable water quality criteria are met as defined in rule 62-303.380(1)(a) and  
30 when the causes resulting in higher treatment costs have been ameliorated.

31 (h) For waters listed based on exceedance of a human health-based annual average  
32 criterion, the water shall be delisted when the annual average concentration is less than the  
33 criterion for three consecutive years.

Table 3: Delisting

Maximum number of measured exceedances allowable to DELIST with at least 90% confidence that the actual exceedance rate is less than ten percent.					
Sample sizes		Maximum # of exceedances allowable for delisting	Sample sizes		Maximum # of exceedances allowable for delisting
From	To		From	To	
30	37	0			
38	51	1			
52	64	2			
65	77	3			
78	90	4			
91	103	5			
104	115	6			
116	127	7			
128	139	8			
140	151	9			
152	163	10			
164	174	11			
175	186	12			
187	198	13			
199	209	14			
210	221	15			
222	232	16			
233	244	17			
245	255	18			
256	266	19			
267	278	20			
279	289	21			
			290	300	22
			301	311	23
			312	323	24
			324	334	25
			335	345	26
			346	356	27
			357	367	28
			368	378	29
			379	389	30
			390	401	31
			402	412	32
			413	423	33
			424	434	34
			435	445	35
			446	456	36
			457	467	37
			468	478	38
			479	489	39
			490	500	40

1       (3) Any delisting of waters from the verified list shall be approved by order of the  
2       Secretary at such time as the requirements of this section are met.

3       Specific Authority 403.061, 403.067, FS.

4       Law Implemented 403.062, 403.067, FS.

5       History -- New \_\_\_\_\_.

6       62-303.810 Impairment of Interstate and Tribal Waters.

7       The Department shall work with Alabama, Georgia, and federally recognized  
8       Indian Tribes in Florida to share information about their assessment methodology and  
9       share water quality data for waters that form state boundaries or flow into Florida. In  
10      cases where assessments are different for the same water body, the Department shall,  
11      to the extent practical, work with the appropriate state, Indian Tribe and EPA to  
12      determine why the assessments were different.

13      Specific Authority 403.061, 403.067 FS.

14      Law Implemented 403.062, 403.067 FS.

15      History -- New \_\_\_\_\_.

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