

US EPA ARCHIVE DOCUMENT

EPA Determination as to Whether Sections of the IWR That were Amended in 2007 Constitute New or Revised Water Quality Standards		
Impaired Surface Waters Rule F.A.C. 62-303	Current Water Quality Standards F.A.C. 62-302, 62-4, 62-611	Analysis/Conclusion
PART I GENERAL 62-303.100 Scope and Intent.		
(1) This chapter establishes a methodology to identify surface waters of the state that will be included on the state's planning list of waters that will be assessed pursuant to subsections 403.067(2) and (3), Florida Statutes (F.S.). It also establishes a methodology to identify impaired waters <u>based on representative data</u> that will be included on the state's verified list of impaired waters, for which the Department will calculate Total Maximum Daily Loads (TMDLs), pursuant to subsection 403.067(4), F.S., and which will be submitted to the United States Environmental Protection Agency (EPA) pursuant to paragraph 303(d) (1) of the Clean Water Act (CWA).	No language.	The amended provision includes a non-substantive change as it relates to defining a water quality standard. The provision does not constitute a new or revised WQS, consistent with the 2005 Determination.
(2) Subsection 303(d) of the CWA and section 403.067, F.S., describe impaired waters as those not meeting applicable water quality standards, which is a broad term that includes designated uses, water quality criteria, the Florida antidegradation policy, and moderating provisions. However, as recognized when the water quality standards were adopted, many water bodies naturally do not meet one or more established water quality criteria at all times, even though they meet their designated use. Data on exceedances of water quality criteria will provide critical information about the status of assessed	No language.	The amended provision includes a non-substantive change as it relates to defining a water quality standard. The provision does not constitute a new or revised WQS, consistent with the 2005 Determination.

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waters, but it is the intent of this chapter to only list waters on the verified list that are impaired due to point source or nonpoint source pollutant discharges. It is not the intent of this chapter to include waters that do not meet <u>otherwise applicable</u> water quality criteria solely due to natural conditions or physical alterations of the water body not related to pollutants. Similarly, it is not the intent of this chapter to include waters where designated uses are being met and where water quality criteria exceedances are limited to those parameters for which permitted mixing zones or other moderating provisions (such as site-specific alternative criteria) are in effect. Waters that do not meet <u>otherwise applicable</u> water quality standards due to natural conditions or to pollution not related to pollutants shall be noted in the state's water quality assessment prepared under subsection 305(b) of the CWA [305(b) Report].		
(3) This chapter is intended to interpret existing water quality criteria and evaluate attainment of established designated uses <u>water quality standards</u> as set forth in Chapter 62-302, F.A.C., for the purposes of identifying water bodies or segments for which TMDLs will be established. It is not the intent of this chapter to establish <u>requirements that would apply solely for purposes of assessment and listing under CWA sections 303(d) and 305(b)</u>. However, it is not the intent of this chapter new water quality criteria or standards, or to	No language.	The amended provision includes a non-substantive change as it relates to defining a water quality standard. The provision does not constitute a new or revised WQS, consistent with the 2005 Determination.

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establish requirements for determine the applicability of existing criteria under other purposes under provisions of Florida law. In cases where this chapter relies on numeric indicators of ambient water quality as part of the methodology for determining whether existing narrative criteria are being met, these numeric values are intended to be used only in the context of developing a planning list and identifying an impaired water pursuant to this chapter. As such, exceedances of these numeric values shall not, by themselves, constitute violations of Department rules that would warrant enforcement action.		
PART I GENERAL 62-303.200 Definitions.		
(1) <u>“Bioassessment” shall mean a BioRecon, Lake Condition Index, or Stream Condition Index.</u>	No language.	Analysis: This definition creates an umbrella term for three other terms used in the IWR, each of which is a new or revised WQS in their own right. Conclusion: EPA has concluded that IWR provision 62-303.200(1) constitutes a new or revised water quality standard because it creates a term that serves to make the component terms and definitions operable in the rule.
(2)(4) <u>“BioRecon” shall mean a biological evaluation assessment conducted in accordance with standard operating procedures (SOPs) FT 3000, FS 7410, and LT 7100, as promulgated in Rule 62-160.800 F.A.C. following the procedures outlined in</u>	62-302.530(10) Biological Integrity criterion – Units – percent reduction of Shannon-Weaver Diversity Index. Class I – The Index for benthic macroinvertebrates shall not be reduced to less than 75% of background	Analysis: The definition for BioRecon is applied in IWR provision 62-303.330 and .430 which establishes a new biological assessment criterion. This provision, as applied in 62-303.330 and .430, defines a measurement of designated use support for

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“Protocols for Conducting a Biological Reconnaissance in Florida Streams,” Florida Department of Environmental Protection, March 13, 1995, which is incorporated by reference.	levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class II - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm². Class III Fresh - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class III Marine - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm².	aquatic life and therefore establishes a level of protection that is applied to a water body. Those provisions add or further define a new biological assessment criterion to Florida’s currently approved water quality criteria contained in 62-302.530(10). The 2007 amendment includes an updated reference and a non-substantive editorial change. Conclusion: EPA has concluded that IWR provision 62-303.200(2) constitutes a new or revised water quality standard because it adds or further defines a new water quality criterion that the State uses when making attainment decisions to identify water quality limited segments.
(6) (5) “Estuary” shall mean predominantly marine regions of interaction between rivers and nearshore	No language.	Analysis: This term, together with “open coastal waters” and “open ocean waters”, defines the

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ocean waters, where tidal action and river flow mix fresh and salt water. Such areas include bays, mouths of rivers, and lagoons.		physical extent to which a provision which constitutes a new or revised WQS (62-303.353) applies to state waters. This is the same language found in the 2001 IWR. However, at that time EPA did not find that this constituted a new or revised water quality. This current evaluation finds that this term, and related definitions, work to define where certain criteria apply and thus help set expectations for ambient waters. Conclusion: EPA has concluded that IWR provision 62-303.200(6) constitutes a new or revised water quality standard because it adds or further defines a new water quality criterion that the State uses when making attainment decisions to identify water quality limited segments.
(8) (7) “Lake Condition Index” shall mean the benthic macroinvertebrate component of a <u>biological evaluation assessment</u> conducted following the procedures outlined in “Development of Lake Condition Indexes (LCI) for Florida,” Florida Department of Environmental Protection, July, 2000, which is incorporated by reference.	62-302.530(10) Biological Integrity criterion – Units – percent reduction of Shannon-Weaver Diversity Index. Class I – The Index for benthic macroinvertebrates shall not be reduced to less than 75% of background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class II - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and	Analysis: The definition for Lake Condition Index is applied in IWR provision 62-303.330 and .430 and establishes a new biological assessment criterion. This provision, as applied in 62-303.330 and .430, defines an ambient condition of water that supports and aquatic life designated use and therefore establishes a level of protection that is applied to a water body. Those provisions add or further define a new biological assessment criterion to Florida’s currently approved water quality criteria contained in 62-302.530(10). The 2007 amendment includes a no-substantive editorial change. Conclusion: EPA has concluded that IWR

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	collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm². Class III Fresh - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class III Marine - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm².	provision 62-303.200(8) constitutes a new or revised water quality standard because it adds or further defines a new water quality criterion that the State uses when making attainment decisions to identify water quality limited segments.
(11) <u>“Open coastal waters” shall mean all gulf or ocean waters that are not classified as estuaries or open ocean waters.</u>	No language.	Analysis: This term, together with “estuaries” and “open ocean waters”, defines the physical extent to which a provision which constitutes a new or revised WQS (62-303.353) applies to state waters. Conclusion: EPA has concluded that IWR provision 62-303.200(11) constitutes a new or revised water quality standard because it adds or further defines a new water quality criterion that the State uses when making attainment decisions to identify water quality limited segments.

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(12) <u>“Open ocean waters” means all surface waters extending seaward from the most seaward natural 90-foot (15-fathom) isobath. Contour lines may be determined from National Oceanic and Atmospheric Administration Charts.</u>	No language.	Analysis: This term, together with “estuaries” and “open coastal waters”, defines the physical extent to which a provision which constitutes a new or revised WQS (62-303.353) applies to state waters. Conclusion: EPA has concluded that IWR provision 62-303.200(12) constitutes a new or revised water quality standard because it adds or further defines a new water quality criterion that the State uses when making attainment decisions.
(18) <u>“Reference water” means a waterbody that exhibits a range of physical, chemical and biological characteristics approximating the natural background conditions of the same, or similar, type of waterbody within an ecologically similar region. A reference water may be representative of the water quality and structure and function of biological communities of natural background conditions even if there is evidence of limited human disturbance in the waterbody or watershed, as long as anthropogenic sources do not produce a significant measurable or predicted effect on the parameter of concern in the waterbody.</u>	62-302.200(15) "Natural Background" shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data.	Analysis: This term is used in 62-303.420(1)(b) to describe how the state further interprets the term “natural background”, as separately defined in the IWR and Florida’s WQS, in particular for nitrogen and phosphorus, and dissolved oxygen. Although the definition of “natural background” in the IWR is not a new or revised WQS because it is consistent with the definition in the currently applicable WQS, the definition of reference water includes a substantive modification. The term “reference waters” refers to “limited human disturbance” that does not “produce a significant measured or predicted effect on the parameter of concern in the waterbody”, whereas the term “natural background” refers to “the absence of man-induced alterations”. As such, waters where conditions exist that might be construed as a man-induced alteration, yet where there is not a significant measurable or predicted effect on the parameter of concern can now be examined in the context of the natural background

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		provision of the WQS. Conclusion: EPA has concluded that IWR provision 62-303.200(18) constitutes a new or revised water quality standard because it potentially expands the applicability of a WQS provision that the State uses when making attainment decisions to identify water quality limited segments.
(22) (18) "Stream Condition Index" shall mean a <u>biological evaluation assessment</u> conducted <u>in accordance with SOPs FT 3000, FS 7420, and LT 7200, as promulgated in Rule 62-160. 800, F.A.C. following the procedures outlined in "Development of the Stream Condition Index (SCI) for Florida," Florida Department of Environmental Protection, May, 1996, which is incorporated by reference.</u>	62-302.530(10) Biological Integrity criterion – Units – percent reduction of Shannon-Weaver Diversity Index. Class I – The Index for benthic macroinvertebrates shall not be reduced to less than 75% of background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class II - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm². Class III Fresh - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30	Analysis: The definition for Stream Condition Index is applied in IWR provision 62-303.330 and .430 and establishes a new biological assessment criterion. This provision, as applied in 62-303.330 and .430, defines an ambient condition of water that supports and aquatic life designated use and therefore establishes a level of protection as applied to a water body. These provisions add or further define a new biological assessment criterion to Florida's currently approved water quality criteria contained in 62-302.530(10). The 2007 amendment includes an updated reference and a non-substantive editorial change. Conclusion: EPA has concluded that IWR provision 62-303.200(22) constitutes a new or revised water quality standard because it adds or further defines a new water quality criterion that the State uses when making attainment decisions to identify water quality limited segments.

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	sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class III Marine - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm².	
(25) <u>“Trophic State Index” or “TSI” means the trophic state index for lakes, which is based on lake chlorophyll a, Total Nitrogen, and Total Phosphorus levels, and is calculated following the procedures outlined on pages 86 and 87 of the State’s 1996 305(b) report, which are incorporated by reference.</u>	(47)(b) Nutrients “In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.” for Class I, II, III Fresh and Marine.”	Analysis: The definition for Trophic State Index is applied in IWR provision 62-303.352 and .450(1) and establishes a new quantitative translator of the narrative criterion for nutrients at 62-302.530(47)(b) of the applicable WQS. This provision, as applied in 62-303.352 and .450(1), defines a new mechanism for establishing an ambient condition that is not expected to be consistent with the level of protection described by the narrative criterion. Specific levels of this index are used to execute decisions that waters do not meet the narrative criterion and thus do not attain WQS. Conclusion: EPA has concluded that IWR provision 62-303.200(25) constitutes a new or revised water quality standard because it adds or further defines a quantitative translator for a narrative water quality criterion that the State uses

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		when making attainment decisions to identify water quality limited segments.
PART II THE PLANNING LIST 62-303.300 Methodology to Develop the Planning List.		
EPA determines that provisions of the IWR solely relating to Florida's planning list are not new or revised water quality standards because they do not affect an attainment decision related to a level of protection afforded by Florida to its ambient waters. Pursuant to the IWR, Florida makes such attainment decisions when the State decides whether to place waters on the verified list. To the extent, however, that provisions concerning the State's development of the verified list that also relate to magnitude, duration and frequency of criteria cross reference to aspects of a planning list provision (including delisting procedures), EPA will review those provisions as they relate to how the State makes an attainment decision to establish its verified, 303(d) impaired waters list.		
(1) This part establishes a methodology for developing a planning list of waters to be assessed pursuant to subsections 403.067(2) and (3), F.S. A waterbody shall be placed on the planning list if it 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. It should be noted that water quality criteria are designed to protect either aquatic life use support, which is addressed in sections 62-303.310-353, or to protect human health, which is addressed in sections 62-303.360-380.	No language.	Analysis: IWR provision 62-303.300 establishes the methodology for developing planning lists of waters that may be potentially impaired because of the failure to meet the State's current minimum criteria for surface waters, designated uses, or applicable water quality criteria. However, this provision does not, in and of itself, establish a level of protection related to the magnitude, duration, or frequency of water quality criteria that is then utilized to make an attainment decision to identify water quality limited segments nor does it establish a designated use. Therefore, this provision does not relate to the implementation of CWA Section 303(c) or the regulations in 40 CFR Part 131. The amended IWR merely deleted some of the descriptive language. Conclusion: EPA has concluded that IWR provision 62-303.300 does not constitute a new or revised water quality standard.

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PART II THE PLANNING LIST 62-303.310 Evaluation of Aquatic Life Use Support.		
(1) Exceeds applicable aquatic life-based thresholds water quality criteria as outlined in section 62-303.320, F.A.C.	No language.	Analysis: IWR provision 62-303.310 describes when a water body shall be placed on the planning list for assessment of aquatic life use support by referencing another IWR provision (FAC 62-303.320). However, this provision does not establish a level of protection related to the magnitude, duration, or frequency of water quality criteria that is then utilized to make an attainment decision to identify water quality limited segments nor does it establish a designated use. Conclusion: EPA has concluded that IWR provision 62-303.310(1) does not constitute a new or revised water quality standard.
(3) Is acutely or chronically toxic as outlined in section 62-303.340, or	No language.	Analysis and Conclusion: This change in the amended IWR removes a provision that was determined not be a new or revised water quality standard for the same reason as above for 62-303.310(1).
PART II THE PLANNING LIST 62-303.320 Exceedances of Aquatic Life-Based Water Quality Criteria Assessment.		
62-303.320 Exceedances of Aquatic Life-Based Water Quality Criteria Assessment.	The entirety of section 320 is referenced in a verified list provision that executes an attainment decision and thus may be determined to be new or revised water quality standards if they relate to a level of protection Florida affords its ambient waters. Section 420(6) includes waters on the verified list if certain conditions are met once a data review pursuant to 420(1) through 420(5). 420(1) refers to re-examining data used in rule 62-303.320, F.A.C.	

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(1) Water segments shall be placed on the planning list if, using objective and credible data, as defined by the requirements specified in this section, the number of <u>samples that do not meet exceedances</u> of an applicable water quality criterion due to pollutant discharges is greater than or equal to the number listed in Table 1 for the given sample size. <u>For sample sizes up to 500, waters are placed on the planning list when This table provides the number of exceedances that indicate a minimum of a 10% or more of the samples do not meet the applicable criteria exceedance frequency with a minimum of an 80% confidence level using a binomial distribution. For sample sizes greater than 500, the Department shall calculate the number of samples not meeting the criterion that are needed to list the waterbody with an 80% confidence level for the given sample size using the binomial distribution.</u> Table 1: Planning List Minimum number of <u>samples not meeting an applicable water quality criterion measured exceedances</u> needed to put a water on the Pplanning list with at least 80% confidence that the actual exceedance rate is greater than or equal to ten percent. Table Follows...	No language.	Analysis: The IWR employs a statistical test based on the binomial distribution to evaluate data sets of water quality parameter measurements. The binomial statistical test has two key components, a probability value and a confidence value. The 2007 amended IWR differs from the 2001 IWR with respect to the binomial statistical package in both the wording of the rule language and the supporting rationale the state submitted. In the 2001 IWR, it was unclear whether the probability value changed the underlying expectations for ambient water. Therefore, EPA acted expansively and identified the provision as a change of standards in its 2005 determination. The terminology in the amended IWR better conveys the objective of the provision as data reliability rather than ambient expectation. This interpretation is further clarified in the written materials submitted by FDEP. Under this interpretation, the underlying expectations for the ambient water are unchanged: the criteria are not to be exceeded. It is just the strength of the signal, from data that may include a proportion of unreliable measures, which is necessary to conclude that the criteria have in fact been exceeded. The resulting meaning of the regulatory language represents either a change in intent or a clarification of the original intent of the provision from 2001. Regardless, it is now clear that the probability value of 10% serves as a data reliability provision related to the number of samples necessary to conclude that criteria have

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		been exceeded rather than a new allowable frequency of exceedance. The confidence value represents the desired certainty that small sample sizes are truly representative of the entire population and does not affect expectations for the underlying level of protection. EPA does not find the minimum sample size aspect of this provision to be a water quality standard. This provision relates to the exclusion of data for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). This aspect of the provision is not a water quality standard because it does not describe the ambient condition of a water body. This provision contains policy choices about what data is reliable, but it does not describe the condition of the water body that is assessed. EPA interprets CWA Section 303(c)(2)(A), and its implementing regulations at 40 CFR Part 131, not to include such a provision as a “water quality standard” as that term is used in CWA Section 303(c)(2)(A) and its implementing regulations. This is because water quality standards consist of “designated uses” and “criteria” that are defined as descriptions of the ambient conditions of a water body. See CWA Section 303(c)(2)(A) and 40 CFR Part 131.3(i) (definition of water quality standard); Part 131.3(b) (definition of water quality “criteria”); Part 131.3(f) (definition of “designated uses”); and

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		Part 131.3(i) (definition of water quality limited segment) that is also defined at 40 CFR Part 130.2(j). A listing policy provision, such as the one contained in this section, is not a water quality standard because it is not a “criterion.” It is not a “criterion” because it does not establish an ambient condition or level of protection by specifying a magnitude, duration, or frequency of water quality criteria exceedance that the State uses to identify water quality limited segments. It also does not establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.320(1) does not constitute a new or revised water quality standard.
(2) The Department’s U.S. Environmental Protection Agency’s Florida Storage and Retrieval (FLASTORET) database, or its successors, shall be the primary source of data used for determining whether samples do not meet water quality criteria exceedances. As required by subsection 62-40.540(3), F.A.C., the Department, other state agencies, the Water Management Districts, and local governments collecting surface water quality data in Florida shall enter the data into FLASTORET within one year of collection. Other sampling entities that want to ensure their data will be considered for	No language.	Analysis: IWR provision 62-303.320(2) describes the primary source of water quality data and consideration of other sources of data. This provision does not establish a level of protection related to the magnitude, duration, or frequency of water quality criteria that is then used by the State to make an attainment decision to identify water quality limited segments nor does it establish a designated use. This provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131.

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evaluation should ensure their data are entered into FLASTORET. The Department shall consider data submitted to the Department from other sources and databases if the data meet the sufficiency and data quality requirements of this section.		Conclusion: EPA has concluded that IWR provision 62-303.320(2), as applied to the verified list, does not constitute a new or revised water quality standard because it relates to data reliability and sufficiency.
(3) When determining water quality criteria exceedances, Unless information presented to the Department demonstrates otherwise, data older than ten years at the time the water segment is proposed for listing on the planning list are not representative of current conditions and shall not be used to develop planning lists, except to evaluate historical trends in chlorophyll a or TSIs. Any determinations by the Department to use data older than 10 years shall be documented, and the documentation shall include the basis for the decision that the data are representative of current conditions. Further, more recent data shall take precedence over older data if...[rest unchanged]	No language.	Analysis: IWR provision 62-303.320(3) describes how the age of data shall be considered when determining water quality criteria exceedances for planning list purposes only, and is superseded in this regard by 62-303.420(2), F.A.C. EPA determines that provisions of the IWR solely relating to Florida's planning list are not water quality standards because they do not affect an attainment decision related to a level of protection afforded by Florida to its ambient waters. Pursuant to the IWR, Florida makes such attainment decisions when the State decides whether to place waters on the verified list. For a discussion about EPA's determination relating to age of data provisions used in developing the verified list see 62-303.420(2). Conclusion: EPA has concluded that IWR provision 62-303.320(3) does not constitute a new or revised water quality standard because it does not apply to the verified list and it relates solely to data reliability and sufficiency.
(4) To place a water segment on the planning list be assessed for water quality criteria exceedances using Table 1, a water segment shall have a		Analysis: IWR provision 62-303.320(4) establishes data distribution requirements for the planning and verified lists and provides in subsection (a):

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minimum of ten, temporally independent samples for the ten-year period, <u>with at least five temporally independent samples</u>. To be treated as a temporally independent sample, samples from a given station shall be at least one week apart, <u>regardless whether the samples are collected at different locations within the segment</u>. (a) Samples collected at the same location less than four <u>seven</u> days apart shall be considered as one sample, with the median value used to represent the sampling period. However, if any of the individual <u>dissolved oxygen (DO) values are less than 1.5 mg/l</u> or, for other parameters, individual values exceed acutely toxic levels <u>as listed in Table 2</u>, then the worst-case value shall be used to represent the sampling period. The worst-case value is the minimum value for <u>DO dissolved oxygen</u>, both the minimum and maximum for pH, or the maximum value for other parameters. However, when <u>DO data</u> are available from diel or depth profile studies, the lower tenth percentile value shall be used to represent worst-case conditions <u>for comparison against the minimum criteria</u>. (b) For the purposes of this chapter, S samples collected within 200 meters of each other will be considered the same station or location, unless there is a tributary, an outfall, or significant change in the hydrography of the water. (c) Samples collected Data from different stations within a water segment shall be <u>assessed</u>	62-302.530 “Unless otherwise stated, all criteria express the maximum not to be exceeded at any time...In applying the water quality standards, the Department shall take into account the variability occurring in nature and shall recognize the statistical variability inherent in sampling and testing procedures.” See also, specific criteria for dissolved oxygen at 62-302.530(30).	<i>“Samples collected at the same location less than four days apart shall be considered as one sample, with the median value used to represent the sampling period.”</i> This provision changes or further defines the duration of Florida’s currently approved water quality criteria from “<i>not to be exceeded at any time</i>” or instantaneous value to a four day period, represented by a median value for assessment and listing purposes. An exception to use of the median as the representative value of the four day period occurs when individual measures exceed “worst case” values provided in a new Table 2 in the amended IWR. There is a further qualification for determining the worst case value for dissolved oxygen, specifying that “<i>...when data are available from diel or depth profile studies, the lower tenth percentile value shall be used to represent worst case conditions.</i>” This provision changes or further defines the spatial and temporal (duration) applicability of the established magnitude value of Florida’s currently approved Dissolved Oxygen water quality criterion found at 62-302.530(30) from a “<i>shall not be less than 5.0</i>” (instantaneous value) or “<i>shall not average less than 5.0 in a 24 hour period and shall never be less than 4.0</i>” (24 hour average value and instantaneous value) to a length of time dictated by the diel study and/or a spatial extent represented by the depth profile study.

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treated as separate samples even if collected at the same time. However, there shall be at least five independent sampling events during the ten year assessment period, with at least one sampling event conducted in three of the four seasons of the calendar year. For the purposes of this chapter, the four seasons shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. <u>(d) In making the determination to list water segments, the Department shall consider ambient background conditions, including seasonal and other natural variations.</u> Table follows . . .	62-302.200(15) “ ‘Natural Background’ shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data.”	On its face, this planning list provision would not be a new or revised standard for reasons stated in the introduction to the analysis for 62-303.300. However, since verified list provision 62-302.420(6) references this provision through provision 62-303.420(1); EPA has determined this provision changes or further defines Florida’s currently approved water quality criterion contained in 62-302.530 under certain circumstances. Conclusion: IWR provision 62-303.320(4)(a) constitutes a new or revised water quality standard, to the extent it is used by the State, to identify impaired waters for Aquatic Life Use Support for the verified list. This is because it changes or further defines the duration of the water quality criteria contained in 62-302.530, under certain circumstances, that the state uses when making attainment decisions to identify water quality limited segments. IWR provision 62-303.320(4)(b) and (c) refer only to conditions which establish spatial representativeness for defining a sample station, and do not constitute a new or revised water quality standard. IWR provision 62-303.320(4)(d) is consistent with currently applicable water quality standards at 62-302.200(15) and 62-302.530.
(5) <u>For predominantly marine waters, the Department shall evaluate both the minimum</u>	62-302.530(30) Dissolved oxygen. Units “Milligrams/L.”	Analysis: IWR provision 62-303.320(5) changes or further defines the duration of Florida’s currently

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allowable DO of 4.0 mg/l and the daily average DO criterion of 5.0 mg/l using Table 1. At least four temporally independent samples are required to calculate the daily average for any given day. For DO, temporally independent shall be defined as at least 4 hours apart. If there are sufficient data to determine daily averages for more than one day within a four-day period, the Department shall use the median value of the daily averages to represent the sampling period.	Class III Marine: Shall not average less than 5.0 in a 24-hour period and shall never be less than 4.0. Normal daily and seasonal fluctuations above these levels shall be maintained.	approved water quality criteria from “ <i>shall not average less than 5.0 in a 24-hour period</i> ” to a four day period, represented by a median value of daily averages for assessment and listing purposes. Conclusion: IWR provision 62-303.320(5) constitutes a new or revised water quality standard , to the extent it is used by the State, to identify impaired waters for Aquatic Life Use Support for the verified list. This is because it changes or further defines the duration of the water quality criteria contained in 62-302.530, under certain circumstances, that the state uses when making attainment decisions to identify water quality limited segments.
(6)(5) Notwithstanding the requirements of paragraph (4), water segments shall be included on the planning list if: (a) There are less than ten samples for the segment, but there are three or more temporally independent samples that do not meet exceedances of an applicable water quality criterion, or (b) There are more than one sample does not meet exceedance of <u>There are more than one sample does not meet exceedance of</u> an acute toxicity-based water quality criterion <u>listed in Chapter 62-302.530, F.A.C., or a water quality criterion for a synthetic organic compound or synthetic pesticide</u> in any three year period.	Individual “max” criteria for Class II and Class III for pesticides and herbicides (62-302.530(50) subsections c, e, f, g, h, I, j, k, l, m, n, o, p, q, r), chlorophenols (62-302.530(52) subsections b, c1, c2, c3, c5, c6), phthalate esters (62-302.530(54)), PCBs (62-302.530(55)), and silver (62-302.530(59)).	Analysis: IWR provision 62-303.320(6)(b) establishes the requirements for including water segments on the planning list for any acute toxicity-based water quality criterion (silver is the sole acute numeric criterion from currently applicable Florida water quality standards) and for any synthetic organic compound and synthetic pesticide water quality criterion, based on more than one sample not meeting the criterion in any three year period. This provision changes or further defines the frequency of several of Florida’s currently approved criteria from a maximum value not to be exceeded and replaces it with a more than one in any three year period exceedance rate for assessment and listing purposes.

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		On its face, this planning list provision would not be a new or revised standard for reasons stated in the introduction to the analysis for 62-303.320. However, since verified list provision 62-302.420(6) references this provision; EPA has determined this provision changes or further defines Florida's currently approved water quality criteria. IWR provision 62-302.320(6)(b) qualifies how the state will manage small data sets with sufficient exceedances of applicable criteria to place waters on the planning list if the sample size were larger. This provision relates only to the planning list and relates only to data reliability and sufficiency. Conclusion: EPA has concluded that IWR provision 62-303.320(6)(b) constitutes a new or revised water quality standard to the extent it is used by the State to identify impaired waters for Aquatic Life Use Support for the verified list. This is because it changes the frequency of water quality criteria that the State uses when making attainment decisions to identify water quality limited segments.
(8)(7) The Department shall consider all readily available water quality data However, to be used to determine water quality exceedances, (a) Data shall be collected and analyzed in accordance with Chapter 62-160, F.A.C., and (b) For data collected after one year from the effective date of this rule, If requested, the sampling	No language.	Analysis: IWR provision 62-303.320(8) defines that all readily available water quality data shall be considered by the Department. This provision, as applied to the verified list, does not establish an ambient condition of the water or a level of protection related to the magnitude, duration, or frequency of water quality criteria that is then used

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agency must provide to the Department, either directly or through entry into FLASTORET, all of the data quality assessment elements listed in Table 2 of the Department's Guidance Document "Data Quality Assessment Elements for Identification of Impaired Surface Waters" (DEP EAS 01-01, April 2001), which is incorporated by reference.		by the State to make an attainment decision to identify water quality limited segments nor does it establish a designated use. This provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.320(8), as applied to the verified list, does not constitute a new or revised water quality standard
(9)(8) For the assessment To be used to determine exceedances of metals criteria, (a) Surface water data for mercury shall be collected and analyzed using clean sampling and analytical techniques, and (b) The corresponding hardness value shall be required for to determine exceedances of freshwater metals criteria that are hardness dependent, and If the ambient hardness value is less than 25 mg/L as CaCO₃, then a hardness value of 25 will be used to calculate the criteria. If data are not used due to sampling or analytical techniques or because hardness data were not available, the Department shall note for the record that data were excluded and explain why they were excluded.	62-302.530 Criteria for Surface Water Quality Classifications table's "Notes: (1) " . . . the hardness shall be set at 25 mg/L if actual hardness is <25 mg/L . . ."	Analysis: IWR provision 62-303.320(9) defines how surface water data for mercury shall be collected and analyzed and the required corresponding hardness values to determine exceedances of freshwater metals criteria that are hardness dependent. As applied to the verified list, this provision, only restates and does not change, Florida's currently approved water quality standards Criteria for Surface Water Quality Classifications table's "Notes"(1) " . . . the hardness shall be set at 25 mg/L if actual hardness is <25 mg/L . . ." with similar language stated as " . . . if the ambient hardness value is less than 25 mg/L as CaCO₃, then a hardness value of 25 will be used to calculate the criteria." Conclusion: EPA has concluded that the revised language in IWR provision 62-303.320(9) is not a substantive change as it relates to the verified list;

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		and therefore, does not constitute a new or revised water quality standard.
PART II THE PLANNING LIST 62-303.330 Biological Assessment.		
(3) Water segments with at least one failed bioassessment or one failure of the biological integrity standard, Rule 62-302.530(10), F.A.C., shall be included on the planning list for assessment of aquatic life use support. (a) In streams, the bioassessment shall can be either an SCI or a BioRecon. Failure of a bioassessment for streams consists of a “poor” or “very poor” rating on the Stream Condition Index, or a “fail” rating not meeting the minimum thresholds established for all three metrics (taxa richness, Ephemeroptera/Plecoptera/Trichoptera Index, and Florida Index) on the BioRecon. (b) Failure for lakes consists of a “poor” or “very poor” rating on the Lake Condition Index.	62-302.530(10) Biological Integrity criterion – Units – percent reduction of Shannon-Weaver Diversity Index. Class I – The Index for benthic macroinvertebrates shall not be reduced to less than 75% of background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated for a period of four weeks. Class II - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm². Class III Fresh - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three Hester-Dendy type artificial substrate samplers of 0.10 to 0.15 m² area of each, incubated	Analysis: IWR provision 62-303.330(3) describes when a water segment shall be included on the planning list for biological assessments and the existing Biological Integrity criterion. It also defines what a stream bioassessment can be and when failure of a bioassessment occurs and provides that: <i>“In streams, the bioassessment shall be either an SCI or a BioRecon. Failure of a bioassessment for streams consists of a “poor” or “very poor” rating on the Stream Condition Index, or a “fail” rating on the BioRecon and “ Failure for lakes consists of a “poor” or “very poor” rating on the Lake Condition Index.”</i> Although this is a planning list provision, it is linked to verified list provision 62-303.430(2) that provides: <i>“If the water was listed on the planning list based on bioassessment results, the water shall be determined to be biologically impaired . . .”</i> Therefore, this provision establishes new magnitudes for the new SCI stream bioassessment criterion as a rating of poor or very poor, for the BioRecon as a rating of fail, and for the new LCI lake bioassessment criterion as a rating of poor or very poor.

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	for a period of four weeks. Class III Marine - The Index for benthic macroinvertebrates shall not be reduced to less than 75% of established background levels as measured using organisms retained by a U.S. Standard No. 30 sieve and collected and composited from a minimum of three natural substrate samples, taken with Ponar type samplers with minimum sampling area of 225 cm².	With regard to the current Florida Biological Integrity criterion found at 62-302.530(10), there is no companion verified list provision contained in 62-303.430. IWR provision 62-303.400(1) addresses this scenario by providing that: “ <i>Waters shall be verified as being impaired if they meet the requirements for the planning list in Part II and the additional requirements of Rules 62-303.420-.480, F.A.C.</i> Therefore, EPA has determined that this planning list provision serves as the verified list requirement for the current Florida Biological Integrity criterion, without substantively changing its current ambient condition or level of protection. See further analysis at 62-303.400(1). Conclusion: EPA has concluded to the extent that IWR provision 62-303.330(3)(a) and (b) are used to establish the verified list, they constitute new or revised water quality standards because they establish or further define a new magnitude for the new biological assessment criterion that the State uses when making attainment decisions to identify water quality limited segments.
(4) Other information relevant to the biological integrity of the water segment, including <u>toxicity tests</u> and information about alterations in the type, nature, or function of a waterbody, shall also be considered when <u>assessing-determining whether aquatic life use support has been maintained</u> .	No language.	Analysis: IWR provision 62-303.330(4) describes what other information relevant to biological integrity shall be considered when determining whether aquatic life use support has been maintained for CWA section 303(d) listing purposes. This is a planning list provision and is not a water quality criterion because it does not establish a level of

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		protection afforded to waters by relating to the magnitude, duration, or frequency of water quality criteria that is then used by the State to identify water quality limited segments nor does it establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.330(4) does not constitute a new or revised water quality standard.
PART II THE PLANNING LIST 62-303.350 Interpretation of Narrative Nutrient Criteria.		
(2) To be used to determine whether a waterbody should be assessed further for nutrient enrichment, (a) Data must meet the requirements of paragraphs (2)-(4), (76) and (87) in rule 62-303.320, F.A.C. (b) At least one sample from each season shall be required in any given year to calculate a Trophic State Index (TSI) or an annual mean chlorophyll a value for that year <u>(for the purposes of this chapter, the four seasons shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, October 1 through December 31), and</u> (c) <u>If there are multiple chlorophyll a or TSI values within a season, the average value for that</u>	62-302.530(47)(b) Nutrients. "In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna." for Class I, II, III Fresh and Marine."	Analysis: Most of the provisions within 62-303.350 are data reliability and sufficiency provisions as described in Appendix B of the 2005 Determination. Sub-paragraphs (b) and (e) address the need for seasonal representation for accurate comparisons to established thresholds. Sub-paragraph (d) addresses the need for synoptic measurement of TSI components for optimal representativeness. Sub-paragraph (f) establishes a sample size requirement for evaluating an assessment threshold. Sub-paragraph (g) specifies a type of chlorophyll a measurement for reliability. However, sub-paragraph (c) establishes a seasonal averaging period for individual measurements within an annual averaging period. As such, this procedure represents

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<u>season shall be calculated from the individual values and the four quarterly values shall be averaged to calculate the annual mean for that calendar year.</u> <u>(d) For data collected after the effective date of this rule, individual TSI values shall only be calculated when the nitrogen, phosphorus, and chlorophyll data were collected at the same time and location.</u> <u>(e) If there are insufficient data used to calculate a TSI or an annual mean chlorophyll a value in the planning period, but there are data from at least four consecutive seasons, the mean TSI or mean chlorophyll a value for the consecutive seasons shall be used to assess the waterbody.</u> <u>(f) There must be annual means from at least four years when evaluating the change in TSI over time pursuant to paragraph 62-303.352(3), F.A.C., and</u> <u>(g) To be assessed under this rule, chlorophyll a data collected after the effective date of this rule shall be corrected chlorophyll a, except for data used to establish historical chlorophyll a levels. Corrected chlorophyll a is the calculated concentration of chlorophyll a remaining after the chlorophyll degradation product, phaeophytin a, has been subtracted from the uncorrected chlorophyll a measurement.</u>		a criterion duration for comparison to the assessment thresholds in later provisions. Conclusion: IWR provision 62-303.350(2)(c) constitutes a new or revised water quality standard because it establishes how seasonal representation will be determined independently.
(3) When comparing changes in chlorophyll a or TSI values to historical levels, historical levels	62-302.530(47)(b) Nutrients. "In no case shall nutrient concentrations of a body of water be altered	Analysis: This provision has not changed since 2001, when EPA determined it was not a new or

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shall be based on the lowest five-year average for the period of record. To calculate a five-year average, there must be annual means from at least three years of the five-year period.	so as to cause an imbalance in natural populations of aquatic flora or fauna.” for Class I, II, III Fresh and Marine.”	revised water quality standard. However, EPA’s current evaluation is that this provision establishes the lowest five year average for the period of record as a basis for comparison to “historical values” provided in paragraphs 351, 352, and 353. Thus, this provision effectively establishes a “baseline” magnitude value to help translate the narrative criterion. Conclusion: IWR provision 62-303.350(3) constitutes a new or revised water quality standard because it establishes a magnitude component of a translator procedure for a narrative criterion that executes an attainment decision via cross references to assessment thresholds in the planning list that are carried forward in the verified list provisions.
PART II THE PLANNING LIST 62-303.352 Nutrients in Lakes.		
(3) For any lake, data indicate that annual mean TSIs have increased over the assessment period, as indicated by a positive slope in the means plotted versus time, or the annual mean TSI has increased by more than 10 units over historical values. When evaluating the slope of mean TSIs over time, the Department shall <u>require at least a 5 unit increase in TSI over the assessment period and</u> use a Mann’s one-sided, upper-tail test for trend, as described in Nonparametric Statistical Methods by M. Hollander	62-302.530(47)(b) Nutrients. “In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.” for Class I, II, III Fresh and Marine.”	Analysis: IWR provision 62-303.352 defines the ambient condition of the water by defining how lakes or lake segments shall be included on the planning list for nutrients and provides: “ <i>For lakes with a mean color greater than 40 platinum cobalt units, the annual mean TSI for the lake exceeds 60, unless paleolimnological information indicates the lake was naturally greater than 60</i> ”, or “ <i>For lakes with a mean color less than or equal to 40 platinum cobalt units, the annual mean TSI for the lake</i>

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and D. Wolfe (1999 ed.), pages 376 and 724 (which are incorporated by reference), with a 95% confidence level.		<i>exceeds 40, unless paleolimnological information indicates the lake was naturally greater than 40”, or “For any lake, data indicate that annual mean TSIs have increased over the assessment period, as indicated by a positive slope in the means plotted versus time, or the annual mean TSI has increased by more than 10 units over historical values.”</i> On its face, this planning list provision would not be a new or revised standard. However, since verified list provision 62-303.450 references this provision; EPA has determined this provision changes or further defines Florida’s currently approved narrative Nutrient criterion found at 62-302.530(47)(b) because it changes or further defines the form of this criterion from a narrative to a new narrative with numeric values. Specifically, this provision adds a numeric magnitude of “<i>TSI exceeds 60</i>” with a duration of “<i>annual mean</i>” for lakes with a mean color greater than 40 platinum cobalt units; it adds a numeric magnitude of “<i>TSI exceeds 40</i>” with a duration of “<i>annual mean</i>” for lakes with a mean color less than or equal to 40 platinum cobalt units. For any lake, it adds a magnitude of “<i>TSIs have increased over the assessment period as indicated by a positive slope in the means plotted versus time</i>” and a duration of “<i>annual mean</i>” or it adds a numeric magnitude of “<i>TSI that has increased by more than 10 units over historical values</i>” and a duration of “<i>annual mean</i>”.

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		Thus, because this provision changes the ambient condition for a water body or level of protection of the criteria, this provision is a new or revised water quality standard as that term is used in CWA Section 303(c) and its implementing regulations at 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.352 constitutes a new or revised water quality standard because it further defines or adds numeric magnitudes and durations to the narrative water quality criteria contained in 62-302.530(47)(b) that the State uses to make attainment decisions to identify water quality limited segments.
PART II THE PLANNING LIST 62-303.353 Nutrients in Estuaries and Open Coastal Waters.		
<u>Estuaries, estuary segments, or open coastal waters</u> shall be included on the planning list for nutrients if their annual mean chlorophyll a for any year is greater than 11 ug/l or if data indicate annual mean chlorophyll a values have increased by more than 50% over historical values for at least two consecutive years.	(47)(b) Nutrients “In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.” for Class I, II, III Fresh and Marine.”	Analysis: IWR provision 62-303.353 defines the ambient condition of the water by defining how estuaries or estuary segments shall be included on the planning list for nutrients and provides: <i>“Estuaries, estuary segments, or open coastal waters shall be included on the planning list for nutrients if their annual mean chlorophyll a for any year is greater than 11 ug/l or if data indicate annual mean chlorophyll a values have increased by more than 50% over historical values for at least two consecutive years.”</i>

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		On its face, this planning list provision would not be a new or revised standard. However, since verified list provision 62-303.450 references this provision; EPA has determined this provision changes or further defines Florida's currently approved narrative Nutrient criterion found at 62-302.530 (47)(b) because it executes the attainment decision, and in doing so, changes the form of this criterion from a narrative to a narrative with numeric values. Specifically, this provision adds a numeric magnitude of "<i>is greater than 11 ug/l</i>" a duration of "<i>annual mean</i>" and a frequency of "<i>for any year</i>" for chlorophyll a. Or it adds a numeric magnitude of "<i>have increased by more than 50% over historical values</i>", a duration of "<i>annual mean</i>", and a frequency of "<i>for at least two consecutive years</i>" for chlorophyll a values. Thus, because this provision changes or further defines the ambient condition for a water body or level of protection of the criteria, this provision is a new or revised water quality standard as that term is used in CWA Section 303(c) and its implementing regulations at 40 CFR Part 131. See Definitions for "estuary" and "open coastal waters" analysis. Conclusion: EPA has concluded that IWR provision 62-303.353 constitutes a new or revised water quality standard because it further defines or

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		adds a numeric magnitude, a duration, and a frequency of exceedance for the narrative water quality criteria contained in 62-302.530(47)(b) that the State uses to make attainment decisions to identify water quality limited segments.
PART II THE PLANNING LIST 62-303.360 Primary Contact and Recreation Use Support.		
(1) A Class I, II, or III water shall be placed on the planning list for <u>evaluating</u> primary contact and recreation use support if: (a) <u>There is a sufficient number of samples from</u> the water segment <u>that does not meet the applicable water quality criteria for bacteriological quality based on the methodology described in section 62-303.320, F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as daily samples, or</u> (b) The water segment includes a bathing area that was closed by a local health Department or county government for more than one week or more than once during a calendar year based on bacteriological data, or (c) The water segment includes a bathing area for which a local health Department or county government has issued closures, advisories, or warnings totaling 21 days or more during a calendar year based on bacteriological data, or (d) The water segment includes a bathing area	62-302.530 (6) Bacteriological Quality (Fecal Coliform Bacteria). Units – “Number per 100 ml (Most Probably Number (MPN) or Membrane Filter (MF)).” “Class I: MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 5 samples taken over a 30 day period.” “Class II: MPN shall not exceed a median value of 14 with not more than 10% of the samples exceeding 43, nor exceed 800 on any one day.” “Class III Fresh: MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period.” “Class III Marine: MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one	Analysis: IWR provision 62-303.360(1) explains when a Class I, II, or III water shall be placed on the planning list for primary contact and recreation use support. Only paragraph 62-303.360(1)(c) is applicable to listing decisions because of a cross-reference to this provision contained in verified list provision 62-303.460(1). This IWR subsection as it relates to bathing closure or advisory data is applicable to delisting decisions because of a cross-reference to this provision contained in the delisting procedure provision 62-303.720(2)(e). In its 2005 Determination, EPA described IWR provisions 62-303.360(1)(b), (c), and (d) in terms of changes to the frequency aspect of criteria. However, the applicable numeric criteria remain the same in all aspects. These provisions are more properly categorized as characterizations of the designated recreational use. Closures, advisories, and warnings represent a quantification of loss of use separate and apart from the applicable numeric criteria. Whereas criteria describe a condition that will protect a use, a quantification of closures, advisories, and warnings

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that was closed or had advisories or warnings for more than 12 weeks during a calendar year based on previous bacteriological data or on derived relationships between bacteria levels and rainfall or flow, or- (e) <u>The water segment includes a sampling location that has one or more monthly geometric mean values above the monthly geometric mean fecal coliform or enterococci criterion during the planning period. To calculate a monthly geometric mean, there shall be at least ten samples collected within that month, with at least one sample from each full week of the month.</u> (2) <u>When evaluating a water segment for bacteriological quality under paragraph (1)(a), the criterion used for fecal coliforms shall be that the Most Probable Number (MPN) or Membrane Filter (MF) shall not exceed 400 counts per 100 ml.</u>	day. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period."	that constitute unacceptable loss of use is a further elaboration of the use itself. Conclusion: EPA has concluded that 62-303.360(1)(c) constitutes a new or revised water quality standard because it changes or further defines the designated use as it pertains to assessment of unacceptable loss of use from closures, advisories, and warnings. This provision has a companion provision for the verified list at 62-303.460(1), which is a new or revised water quality standard for the same reason. IWR provisions 62- 303.360(1)(e) and (2) restate the currently applicable water quality criteria with some data distribution requirements that are not magnitude, duration, or frequency components.
(4)(3) <u>Advisories, warnings, and closures based on red tides, rip tides, sewage spills, sharks, and medical wastes, hurricanes, or short-term releases of pollutants, such as sewage spills that have been repaired and medical wastes, shall not be included when assessing recreation use support. However, the Department shall note for the record that data were excluded and explain why they were excluded.</u>	No language.	Analysis: IWR provision 62-303.360(4) defines when data will be excluded for listing based on factors related to certain atypical events leading to discharges of pollutants and describes the consideration of data for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). This provision relates to the reliability of data but does not establish a new or revised criterion because it does not describe the ambient condition of the water or establish a level of protection related to the magnitude, duration, or

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		frequency of water quality criteria that the State uses to identify water quality limited segments nor does it establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that 62-303.360(4) does not constitute a new or revised water quality standard.
PART II THE PLANNING LIST 62-303.370 Fish and Shellfish Consumption Use Support.		
62-303.370 Fish and Shellfish Consumption Use Support. A Class I, II, or III water shall be placed on the planning list for fish and shellfish consumption if: (1) <u>There is a sufficient number of samples from the water segment that does not meet the applicable Class II water quality criteria for bacteriological quality based on the methodology described in section 62-303.320, F.A.C., with the exception that paragraph 62-303.320(4)(a) does not apply and samples collected on different days within any four day period will be assessed as daily samples, or</u> (2) There is either a limited or no consumption fish consumption advisory, issued by the DOH, or other authorized governmental entity, in effect for the water segment, or	62-302.530 (6) Bacteriological Quality (Fecal Coliform Bacteria). Units – “Number per 100 ml (Most Probably Number (MPN) or Membrane Filter (MF)).” Class II: “MPN shall not exceed a median value of 14 with not more than 10% of the samples exceeding 43, nor exceed 800 on any one day.” 62-302.530 (7) Bacteriological Quality (Total Coliform Bacteria). Units – “Number per 100 ml (Most Probably Number (MPN) or Membrane Filter (MF)).” Class II: “Median MPN shall not exceed 70, and not more than 10% of the samples shall exceed an MPN of 230.”	Analysis: IWR provision 62-303.370(1), (2), and (3) describes how waters shall be placed on the planning list based on bacteriological data, fish consumption advisories, and Shellfish Evaluation and Assessment Program status as it relates to fish and shellfish consumption use support. IWR provision 62-303.370(1) references 62-303.320, the planning list provision for Aquatic Life-Based Water Quality Criteria Assessment, excluding the only otherwise applicable provision at 62-303.320(4)(a) that constitutes a new or revised water quality standard (see discussion in 62-303.320). These provisions previously did not have corresponding elements in the verified list provisions, but the amended 2007 IWR does have companion provisions. As components of the planning list methodology, these provisions do not

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(3) For Class II waters, the water segment includes an area that <u>is classified</u> has been approved for shellfish harvesting by the <u>Department of Agriculture and Consumer Services' Shellfish Environmental Evaluation and Assessment Section (SEAS) Program, in one of the following shellfish harvesting classifications: but which has been downgraded from its initial harvesting classification to a more restrictive classification. Changes in harvesting classification from prohibited to unclassified do not constitute a downgrade in classification.</u> (a) <u>Restricted or conditionally restricted.</u> (b) <u>Conditionally approved, excluding any areas for which SEAS identified only wildlife as the potential source of bacteriological contamination for the shellfish harvesting area, or</u> (c) <u>Prohibited, unless the prohibited classification is precautionary and not based on water quality data.</u>	Federally promulgated dioxin criterion contained in 40 CFR Part 131.36 (d)(6)(ii) states that: Class I: water and organisms "0.000000013 micrograms per liter." Class II, III fresh and marine waters: organisms only "0.000000014 micrograms per liter."	execute attainment decisions and do not constitute new or revised water quality standards. EPA previous analysis, expressed in Appendix C of the 2005 Determination, that IWR provision 62-303.370(2) changed or further defined the magnitude of current dioxin criterion that EPA promulgated for Florida has been negated by the inclusion of IWR provision 62-303.470(2) which allows Florida to use scientifically credible and compelling information that indicates applicable human health-based criteria are not met to place waters on the verified list. EPA's previous analysis, expressed in Appendix C of the 2005 Determination, that IWR provision 62-303.370(3) changed or further defined the magnitude of the current Class II fecal coliform bacteria criterion has been negated by the revisions to IWR provision 62-303.370(3) and the inclusion of IWR provision 62-303.470(4), which clearly use SEAS status in a manner consistent with Florida's underlying uses and criteria. Conclusion: EPA has concluded that IWR provisions 62-303.370(1)-(3) do not constitute new or revised water quality standards because they specify how information will be applied to consistently reflect Florida's current water quality standards.

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(4) <u>For Class II waters, the water segment includes a sampling location that has a median fecal coliform MPN value that exceeds 14 counts per 100 ml for the planning period. To calculate a median value for a sampling location, there shall be at least 10 samples collected during the planning period.</u>	Class II: "MPN shall not exceed a median value of 14 with not more than 10% of the samples exceeding 43, nor exceed 800 on any one day."	Analysis: IWR provision 62-303.370(4) restates the current applicable water quality criterion. EPA does not find the minimum sample size aspect of this provision to be a water quality standard, as further explained for IWR 62-303.320(1). Conclusion: EPA concludes that IWR provision 62-303.370(4) is not a substantive change to the magnitude, duration, or frequency of Florida's current water quality criteria and is thus does not constitute a new or revised water quality standard.
(5) <u>When evaluating a water segment for bacteriological quality under paragraph (1), the criterion in Rule 62-302.530(6), F.A.C. used for fecal coliform shall be that the MPN shall not exceed 43 counts per 100 ml.</u>	Class II: "MPN shall not exceed a median value of 14 with not more than 10% of the samples exceeding 43, nor exceed 800 on any one day."	Analysis: IWR provision 62-303.370(5) restates the current applicable water quality criterion. Conclusion: EPA concludes that IWR provision 62-303.370(5) is not a substantive change to the magnitude, duration, or frequency of Florida's current water quality criteria and is thus does not constitute a new or revised water quality standard
PART II THE PLANNING LIST		
62-303.380 Drinking Water Use Support and Protection of Human Health.		
(1) A Class I water shall be placed on the planning list for drinking water use support if: (a) <u>There is a sufficient number of samples from the water segment that does not meet the applicable Class I water quality criteria based on the methodology described in section 62-303.320, F.A.C., with the exception that paragraph 62-303.320(4)(a) does not apply and samples collected</u>	62-302.530, Criteria for Surface Water Quality Classifications. All Class I Human Health-based criteria expressed as maximums.	Analysis: IWR provision 62-303.380(1), (2), (3) and (4) describes how waters shall be placed on the planning list based on water quality data as it relates to drinking water use support. IWR provision 62-303.380(1) references 62-303.320, the planning list provision for Aquatic Life-Based Water Quality Criteria Assessment, excluding the only otherwise applicable provision at 62-303.320(4)(a) that

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<u>on different days within any four day period will be assessed as daily samples, or</u> (b) A public water system demonstrates to the Department that either: 1. Treatment costs to meet applicable drinking water criteria have increased by at least 25% to treat contaminants that exceed Class I criteria or to treat blue-green algae or other 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) <u>The water segment includes a sampling location that has one or more monthly geometric mean values above the monthly geometric mean fecal coliform criterion during the planning period. To calculate a monthly geometric mean value for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month.</u>		constitutes a new or revised water quality standard (see discussion in 62-303.320). As components of the planning list methodology, these provisions do not execute attainment decisions and do not constitute new or revised water quality standards. IWR provision 62-303.380(1) was previously considered a new or revised water quality standard because it did not have a corresponding element in the verified list provisions and the provision in this subsection was determined to be new or revised water quality standards. The amended 2007 IWR does have companion provisions. However, these provisions are not new or revised water quality standards (see discussion in 62-303.480). IWR provision 62-303.380(2) and (3) are unchanged from 2001 and were not considered water quality standards then because they do not execute attainment decisions. Conclusion: EPA has concluded that 62-303.380(1), (2), and (3) do not constitute a new or revised water quality standard because it does not change or further define the Class I human health-based water quality criteria expressed as maximums that the State uses to make delisting decisions for water quality limited segments.
(4) <u>When evaluating whether a water segment for bacteriological quality under paragraph (1)(a),</u>	No language.	Analysis: This provision re-states a currently applicable criterion and does not constitute a new or revised water quality standard.

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the criterion used for fecal coliforms shall be that the MPN or MF shall not exceed 400 counts per 100 ml.		Conclusion: EPA concludes that IWR provision 62-303.370(4) is not a substantive change to the magnitude, duration, or frequency of Florida's current water quality criteria and is thus does not constitute a new or revised water quality standard.
PART III THE VERIFIED LIST 62-030.400 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, F.A.C. 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.	No language.	Analysis: IWR provision 62-303.400(1) establishes the methodology for developing verified lists of waters that are impaired because of the failure to meet the State's current minimum criteria for surface waters, designated uses, or applicable water quality criteria described in this part. This provision does not itself establish a new or revised criterion by changing the magnitude, duration or frequency. Conclusion: EPA has concluded that IWR provision 62-303.400(1) does not constitute a new or revised water quality standard.
(3) <u>Unless information presented to the Department demonstrates otherwise, data 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 are not representative of current conditions and shall not be used except to evaluate historical trends in chlorophyll a or TSIs. Any determinations by the Department to use data older than 7.5 years shall be</u>	No language.	Analysis: IWR provision 62-303.400(3) is not a water quality standard because it is does not relate to describing the ambient condition of a water body. This provision contains policy choices about what data is reliable, including a provision excluding certain data due to the age of the data, but it does not describe the condition of the water body that is assessed. EPA interprets CWA Section 303(c)(2)(A), and its implementing regulations at 40 CFR Part 131, not to include such a provision as a

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<u>documented, and the documentation shall include the basis for the decision.</u>		“water quality standard” as those terms are used in CWA Section 303(c)(2)(A) and its implementing regulations. This is because water quality standards consist of “designated uses” and “criteria” that are defined as descriptions of the ambient conditions of a water body. See CWA Section 303(c)(2)(A) and 40 CFR Part 131.3(i) (definition of water quality standard); Part 131.3(b) (definition of water quality “criteria”); Part 131.3(f) (definition of “designated uses”); and Part 131.3(i) (definition of water quality limited segment) that is also defined at 40 CFR Part 130. 2(j). A listing policy provision, such as the one contained in this section, is not a water quality standard because it is not a “criterion.” It is not a “criterion” because it does not establish an ambient condition or level of protection by specifying a magnitude, duration, or frequency of water quality criteria exceedance that the State uses to identify water quality limited segments. It also does not establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.400(3) does not constitute a new or revised water quality standard.

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PART III THE VERIFIED LIST 62-303.420 Exceedances of Aquatic Life-Based Water Quality Criteria Assessment.		
(1) The Department shall reexamine the data used in rule 62-303.320, F.A.C., to determine <u>whether exceedances of water quality criteria are met.</u> (a) If <u>values exceeding the criteria the exceedances</u> are not due to pollutant discharges and reflect either physical alterations of the water body that cannot be abated or reflect natural background conditions, <u>including seasonal or other natural variations,</u> the water shall not be listed on the verified list. In such cases, the Department shall note for the record why the water was not listed and provide the basis for its determination that the exceedances were not due to pollutant discharges. (b) If the Department <u>has information suggesting cannot clearly establish</u> that the <u>values not meeting the criterion</u> exceedances are due to natural background <u>conditions, including information about the in-stream concentrations of TN, TP, and BOD relative to comparable reference waters for waterbodies with values below the DO criterion, or physical alterations of the water body</u> but the Department believes the exceedances are not due to pollutant discharges, it is the Department's intent to <u>support that conclusion determine whether aquatic life use support is impaired</u> through the use of bioassessment procedures referenced in section	62-302.530 "Unless otherwise stated, all criteria express the maximum not to be exceeded at any time... In applying the water quality standards, the Department shall take into account the variability occurring in nature and shall recognize the statistical variability inherent in sampling and testing procedures." 62-302.200(15) " 'Natural Background' shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data."	Analysis: IWR provision 62-303.420(1) defines how to reexamine the data used in Rule 62-303.320, F.A.C., to determine whether water quality criteria are met. Provision 420(1)(a) simply refers to the natural background provision of Florida's current water quality standards and re-iterates the ability to determine that if values exceeding criteria are not the result of pollutant discharges (point or nonpoint) or if they reflect natural background conditions, then the state does not need to place such waters on the verified list for TMDL development. With regard to language contained in IWR paragraph 62-303.420(1)(b); EPA determines that use of biological assessment information is a confirmatory step to an independent evaluation of the natural background provision of Florida's current water quality standards. In this respect, the use of biological information reflects additional detail and brings additional meaning to the evaluation of natural background. As such, it represents a new or revised water quality standard. In addition, this provision introduces use of the term "reference waters" as a means of evaluating natural background conditions. This term is defined in IWR provision 62-302.200(18). And is used in 62-303.420(1)(b) to describe how the state further interprets the term

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62-303.330, F.A.C. The water body or segment shall not be included on the verified list for the parameter of concern if two or more independent bioassessments are conducted and no failures are reported. To be treated as independent bioassessments, they must be conducted at least two months apart, <u>within the assessed segment downstream of where the samples were measured, and after the samples were measured.</u>		“natural background”, as separately defined in the IWR and Florida’s WQS, in particular for nitrogen and phosphorus, and dissolved oxygen. Although the definition of “natural background” in the IWR is not a new or revised WQS because it is consistent with the definition in the currently applicable WQS, the definition of reference water includes a substantive modification. The term “reference waters” refers to “limited human disturbance” that does not “produce a significant measured or predicted effect on the parameter of concern in the waterbody”, whereas the term “natural background” refers to “the absence of man-induced alterations”. As such, waters where conditions exist that might be construed as a man-induced alteration, yet where there is not a significant measurable or predicted effect on the parameter of concern can now be examined in the context of the natural background provision of the WQS. Conclusion: EPA has concluded that IWR provision 62-303.420(1)(b) constitutes a new or revised water quality standard because it adds detail applicable to establishing natural background during waterbody assessment that the state uses to identify water quality limited segments.
(2) If the water was listed on the planning list and there were insufficient data from the last five years preceding the planning list assessment to meet the data distribution requirements of section	No language.	Analysis: The IWR employs a statistical test based on the binomial distribution to evaluate data sets of water quality parameter measurements. The binomial statistical test has two key components, a

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303.320(4) and to meet a minimum sample size for verification of twenty samples, additional data will be collected as needed to provide a minimum sample size of twenty. Once these additional data are collected, the Department shall re-evaluate the data using the approach outlined in rule 62-303.320(1), F.A.C., but using Table 32, <u>and place waters on the verified list when which provides the number of exceedances that indicate a minimum of a 10% or more of the samples do not meet the applicable criteria, exceedance frequency</u> with a minimum of a 90% confidence level using a binomial distribution. The Department shall limit the analysis to data collected during the five years preceding the planning list assessment and the additional data collected pursuant to this paragraph. <u>For sample sizes greater than 500, the Department shall calculate the number of samples not meeting the criterion that are needed for the given sample size using the binomial distribution.</u> Table follows . . .		probability value and a confidence value. The 2007 amended IWR differs from the 2001 IWR with respect to the binomial statistical package in both the wording of the rule language and the supporting rationale the state submitted. In the 2001 IWR, it was unclear whether the probability value changed the underlying expectations for ambient water. Therefore, EPA acted expansively and identified the provision as a change of standards in its 2005 determination. The terminology in the amended IWR better conveys the objective of the provision as data reliability rather than ambient expectation. This interpretation is further clarified in the written materials submitted by FDEP. Under this interpretation, the underlying expectations for the ambient water are unchanged: the criteria are not to be exceeded. It is just the strength of the signal, from data that may include a proportion of unreliable measures, which is necessary to conclude that the criteria have in fact been exceeded. The resulting meaning of the regulatory language represents either a change in intent or a clarification of the original intent of the provision from 2001. Regardless, it is now clear that the probability value of 10% serves as a data reliability provision related to the number of samples necessary to conclude that criteria have been exceeded rather than a new allowable frequency of exceedance. The confidence value represents the desired certainty that small sample sizes are truly representative of the entire population

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		and does not affect expectations for the underlying level of protection. EPA does not find the minimum sample size or age of data aspect of this provision to be a water quality standard. This provision relates to the exclusion of data for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). This aspect of the provision is not a water quality standard because it does not describe the ambient condition of a water body. This provision contains policy choices about what data is reliable, but it does not describe the condition of the water body that is assessed. EPA interprets CWA Section 303(c)(2)(A), and its implementing regulations at 40 CFR Part 131, not to include such a provision as a “water quality standard” as that term is used in CWA Section 303(c)(2)(A) and its implementing regulations. This is because water quality standards consist of “designated uses” and “criteria” that are defined as descriptions of the ambient conditions of a water body. See CWA Section 303(c)(2)(A) and 40 CFR Part 131.3(i) (definition of water quality standard); Part 131.3(b) (definition of water quality “criteria”); Part 131.3(f) (definition of “designated uses”); and Part 131.3(i) (definition of water quality limited segment) that is also defined at 40 CFR Part 130.

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		2(j). A listing policy provision, such as the one contained in this section, is not a water quality standard because it is not a “criterion.” It is not a “criterion” because it does not establish an ambient condition or level of protection by specifying a magnitude, duration, or frequency of water quality criteria exceedance that the State uses to identify water quality limited segments. It also does not establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.420(2) does not constitute a new or revised water quality standard.
(3) If the water was placed on the planning list based on worst case values used to represent multiple samples taken during a four <u>seven</u>-day period, the Department shall evaluate whether the worst case value should be excluded from the analysis pursuant to subsections (4) and (5). If the worst case value should not be used, the Department shall then re-evaluate the data following the methodology in rule 62-303.420(2), F.A.C., using the more representative worst case value or, if all valid values are below acutely toxic levels, the median value.	No language.	Analysis: In light of the analysis for 62-303.420(2), IWR Provision 62-303.420(3) solely relates to data reliability and sufficiency in excluding data from participating in the analysis as representatives of a four day exposure period if it is found to be the result of erroneous collection, analysis, or transcription methods Conclusion: EPA concludes that IWR provision 62-303.420(3) does not constitute a new or revised water quality standard because it does not change or further define the magnitude, duration, and frequency of the water quality criteria that the State

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		uses when making attainment decisions to identify water quality limited segments.
(4) If the water was listed on the planning list based on <u>samples that do not meet exceedances of</u> water quality criteria for metals, the metals data shall be <u>excluded if it is validated to determined that</u> whether the quality assurance requirements of rule 62-303.320(8)(7), F.A.C., <u>were not are met or that</u> and whether the sample was <u>not both</u> collected and analyzed using clean techniques, if the use of clean techniques is appropriate. If any data cannot be validated, <u>The Department shall re-evaluate the</u> remaining valid data using the methodology in rule 62-303.420(2), F.A.C., excluding any data that cannot be validated.	No language.	Analysis: IWR provision 62-303.420(4) defines how metals data shall be validated to ensure quality assurance requirements were met. This provision does not establish a new or revised criterion by defining the level of protection related to the magnitude, duration, or frequency of water quality criteria that is used by the State to identify water quality limited segments nor does it establish a designated use. Instead, it describes water quality data considerations for CWA Section 303(d) listing purposes pursuant to 40 CFR Part 130.7(b)(5). Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that 62-303.420(4) does not constitute a new or revised water quality standard.
(5) Values that exceed possible physical or chemical measurement constraints (pH greater than 14, for example) or that represent data transcription errors, outliers the Department determines are not valid measures of water quality, water quality criteria exceedances due solely to violations of specific effluent limitations contained in state permits authorizing discharges to surface waters, water quality criteria exceedances within permitted	No language.	Analysis: IWR provision 62-303.420(5) defines what data will be excluded for assessment purposes and for subsequent CWA Section 303(d) listing purposes pursuant to 40 CFR Part 130.7(b)(5) and (6)(b)(ii) and (iii). This provision does not establish a revised criterion by defining the level of protection related to the magnitude, duration, or frequency of water quality criteria that is used by the State to identify water quality limited segments nor does it

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mixing zones for those parameters for which the mixing zones are in effect, and water quality data collected following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or rainfall in excess of the 25-year, 24-hour storm, shall be excluded from the assessment <u>carried out under this rule</u>. However, the Department shall note for the record that the data were excluded and explain why they were excluded.		establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that 62-303.420(5) does not constitute a new or revised water quality standard.
(6) Once the additional data review is completed pursuant to paragraphs (1) through (5), the Department shall re-evaluate the data and shall include waters on the verified list that meet the criteria in rules 62-303.420(2) or 62-303.320(6)(b), F.A.C.	No language.	Analysis: IWR provision 62-303.420(6) describes how the Department shall re-evaluate data and what waters shall be included on the verified list and provides that: <i>“Once the additional data review is completed pursuant to subsections (1) through (5), the Department shall re-evaluate the data and shall include waters on the verified list that meet the criteria in subsection 62-303.420(2) or paragraph 62-303.320(6)(b), F.A.C.”</i> This provision specifically references IWR provision 62-303.420(1) that references IWR provision 62-303.320 as a whole and brings certain planning list provisions to the process of developing the verified list. This provision references IWR provision 62-303.320(6)(b), a planning list provision, to make an attainment decision. Thus, although planning lists provisions that are used solely for planning list purposes are not water quality standards, they may

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		be a standard (if they relate to magnitude, duration or frequency) if they are used to identify impaired waters for the verified list. EPA has concluded that 62-302.320(6)(b) is a new or revised standard because it changes or further defines the frequency of exceedance of Florida's currently approved water quality criteria. See analysis at 62-303.320(6)(b). Conclusion: EPA has concluded that 62-303.420(6) constitutes a new or revised water quality standard because it changes or further defines the frequency of water quality criteria contained in 62-302.530 that the State uses when making attainment decisions to identify water quality limited segments.
(7) <u>Notwithstanding the requirements of paragraph (2), water segments shall also be included on the verified list if, based on representative data collected and analyzed in accordance with Chapter 62-160, F.A.C.:</u> (a) <u>There are less than twenty samples, but there are five or more samples that do not meet an applicable water quality criterion based on data from at least five temporally independent sampling events,</u> or (b) <u>Scientifically credible and compelling information regarding the magnitude, frequency, or duration of samples that do not meet an applicable water quality criterion provides overwhelming evidence of impairment. Any determinations to list</u>	No language.	Analysis: IWR provision 62-303.420(7) qualifies how the state will manage small data sets with sufficient exceedances of applicable criteria to place waters on the verified list if the sample size were larger, defines how scientifically credible and compelling information will be used for assessment purposes and for subsequent CWA Section 303(d) listing purposes pursuant to 40 CFR Part 130.7(b)(5) and (6)(b)(ii) and (iii). This provision does not establish a revised criterion by defining the level of protection related to the magnitude, duration, or frequency of water quality criteria that is used by the State to identify water quality limited segments nor does it establish a designated use. Therefore, this provision is not a water quality standard as that term

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<u>waters based on this provision shall be documented, and the documentation shall include the basis for the decision.</u> (c) For any water chemistry data used to list waters under this paragraph, the Department shall include in the administrative record all of the applicable data quality assessment elements listed in Table 2 of the Department's Guidance Document "Data Quality Assessment Elements for Identification of Impaired Surface Waters" (DEP EAS 01-01, April 2001).		is used in CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that 62-303.420(7) does not constitute a new or revised water quality standard.
PART III THE VERIFIED LIST 62-303.430 Biological Impairment.		
(1) All bioassessments used to list a water on the verified list shall be conducted in accordance with Chapter 62-160, F.A.C., including Department approved Standard Operating Procedures. To be used for placing waters on the verified list, any bioassessments conducted before the adoption of applicable SOPs for such bioassessments as part of Chapter 62-160, F.A.C., shall substantially comply with the subsequent SOPs.	62-302.530(10) Biological Integrity criterion – Units – percent reduction of Shannon-Weaver Diversity Index...	Analysis: EPA previously concluded in its 2005 Determination that this provision did not relate to an ambient condition or level of protection afforded to waters and did not constitute a new or revised water quality standard. However, subsequent analysis reveals that significant detail related to determining what constitutes various ratings (poor, fair, good, etc.) is contained in the SOPs. These ratings effectively represent magnitude values for the new bioassessment standards. Conclusion: EPA has concluded that IWR provision 62-303.430(1) constitutes a new or revised water quality standard by adopting by reference specific protocols that define the

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		magnitude of bioassessments used to place waters on the verified list.
(4) Following verification that a waterbody is biologically impaired, a water shall be included on the verified list for biological impairment if:	No language.	Analysis and Conclusion: This revision represents a non-substantive change to a provision previously determined to not constitute a new or revised water quality standard.
PART III THE VERIFIED LIST 62-303.450 Interpretation of Narrative Nutrient Criteria.		
(1) A water shall be placed on the verified list for impairment due to nutrients if there are sufficient data from the last five years preceding the planning list assessment, combined with historical data (if needed to establish historical chlorophyll a levels or historical TSIs), to meet the data sufficiency requirements of rule 62-303.350(2), F.A.C. If there are insufficient data, additional data shall be collected as needed to meet the requirements. Once these additional data are collected, the Department shall <u>determine if there is sufficient information to develop a site-specific threshold that better reflects conditions beyond which an imbalance in flora or fauna occurs in the water segment. If there is sufficient information, the Department shall re-evaluate the data using the site-specific thresholds. If there is insufficient information, the Department shall re-evaluate the data using the thresholds provided in rule 62-303.351-.353, F.A.C., for streams, lakes, and estuaries, respectively, or</u>	(47)(b) Nutrients “In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora and fauna.” for Class I, II, III Fresh and Marine.”	Analysis: IWR provision 62-303.450 describes when waters shall be placed on the verified list for impairment due to nutrients. It defines the data requirements and the evaluating thresholds, or newly established magnitude, duration and frequency, for that data by cross-referencing to IWR planning list provisions 62-303.351, .352, and .353. EPA has determined that this provision changes or further defines Florida’s currently approved narrative nutrient criterion found at 62-302.530(47)(b) because it changes the form of the criterion from being a strict narrative criterion to being a narrative criterion with numeric values with additional narrative requirements. See analyses at 62-303.351, .352, and .353. Thus, because this provision changes or further defines the ambient condition for a water body or level of protection of the criteria, this provision is a new or revised water quality standard as that term is used in CWA Section 303(c) and its implementing regulations at 40 CFR Part 131.

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accurately reflect conditions beyond which an imbalance in flora or fauna occurs in the water segment. In any case, the Department shall limit its analysis to the use of data collected during the five years preceding the planning list assessment and the additional data collected in the second phase. If alternative thresholds are used for the analysis, the Department shall provide the thresholds for the record and document how the alternative threshold better represents conditions beyond which an imbalance in flora or fauna is expected to occur.		Conclusion: EPA has concluded that IWR provision 62-303.450(1) constitutes a new or revised water quality standard because it adds or further defines additional narrative requirements and adds numeric magnitudes and durations for the narrative water quality criteria contained in 62-302.530(47)(b) that the State uses to make attainment decisions to identify water quality limited segments.
(3) <u>The thresholds for impairment due to nutrients used under this section are not required to be used during development of wasteload allocations or TMDLs.</u>	No language.	Analysis: This provision re-iterates the scope of the Impaired Waters Rule as a whole. Conclusion: This provision does not constitute a new or revised water quality standard.
PART III THE VERIFIED LIST 62-303.460 Primary Contact and Recreation Use Support.		
(2) If the water segment was listed on the planning list due to <u>samples that do not meet exceedances of</u> water quality criteria for bacteriological quality, the Department shall, to the extent practical, evaluate the source of bacteriological contamination and shall verify that the impairment is due to chronic discharges of human-induced bacteriological pollutants before listing the water segment on the verified list. The Department shall take into account the proximity of municipal stormwater outfalls, septic tanks, and	No language.	Analysis: IWR provision 62-303.460(2) defines how FDEP shall evaluate sources of bacteriological contaminations and allows the exclusion of values elevated solely due to wildlife. EPA understands this to mean that if the result is waters would be left off the verified list, they would still be identified as impaired with respect to meeting water quality standards, yet they would appear in category 4 of an Integrated Report of assessment results. This means that a TMDL would not be necessary because the interpretation is the impairment is a result of

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domestic wastewater facilities when evaluating potential sources of bacteriological pollutants. For water segments that contain municipal stormwater outfalls, the impairment documented for the segment shall be presumed to be due, at least in part, to chronic discharges of bacteriological pollutants. The Department shall then re-evaluate the data using the methodology in rule 62-303.320(1), F.A.C., excluding any values that are elevated solely due to wildlife, <u>or for enterococci in coastal recreational waters, adjusting the values based on the human health-related risk factors for wildlife-based enterococci upon meeting the relevant requirements of 40 CFR 131.41(c) (2).</u> Water segments shall be included on the verified list if they meet the requirements in subsection 62-303.420(6), F.A.C.		pollution rather than pollutants. This provision exercises state discretion to refrain from placing waters impaired by pollution in the Integrated Report category 5 (waters needing a TMDL, i.e., the verified list), but is not itself a change to the underlying water quality standards. This provision also echoes a provision in a Federally promulgated water quality standard for Florida to not apply enterococci values based on human health related factors for wildlife-based enterococci upon meeting the relevant requirements of the Federal promulgation of Beach Act. These include an epidemiological study showing indicator densities are not indicative of a human health risk and a sanitary survey to document that sources are from wildlife. This final statement in IWR provision 62-303.460(2) represents a water quality standard as it sets up a procedure for applying a magnitude value of an applicable criterion. Conclusion: The phrase “or for enterococci in coastal recreational waters, adjusting the values based on the human health-related risk factors for wildlife-based enterococci upon meeting the relevant requirements of 40 CFR 131.41(c) (2)” represents a new or revised water quality standard as it provides a provision under state regulations to apply a water quality criterion necessary to support a designated use.

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(3) <u>Water segments shall be included on the verified list if:</u> (a) <u>The number of samples that do not meet the applicable single-sample bacteriological water quality criteria they meet the requirements in rule 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as daily samples or</u> (b) <u>There are one or more exceedances of a bacteriological water quality criterion expressed as a monthly geometric mean during the verified period. To assess the monthly data for a sampling location, there shall be at least ten samples collected within that month, with at least one sample from each full week of the month.</u> (4) <u>When evaluating a water segment for bacteriological quality under paragraph 62-303.460(3)(a), F.A.C., the criterion used for fecal coliforms shall be that the Most Probable Number (MPN) or Membrane Filter (MF) shall not exceed 400 counts per 100 ml.</u> (5) <u>When assessing waters pursuant to paragraphs 62-303.460(3)(a) and (b), F.A.C., the Department shall evaluate whether the samples are representative and are not biased toward collecting samples at times either under the influence of wet weather conditions or absent the influence of wet weather conditions. Representative sampling generally reflects a consistent number of samples</u>	62-302.530 (6) Bacteriological Quality (Fecal Coliform Bacteria). Units – “Number per 100 ml (Most Probable Number (MPN) or Membrane Filter (MF)).” MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period.”	Analysis: IWR provisions 62-303.460(3) and (4) provides FDEP the ability to utilize bacteriological data, in a manner consistent with their currently applicable water quality standards, for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). This provision excludes the only otherwise applicable provision at 62-303.320(4)(a) that constitutes a new or revised water quality standard (see discussion in 62-303.320). Minimum sample size aspect is not a water quality standard (see discussion for 62-303.320(1)). Conclusion: EPA has determined that 62-303.460(3) and (4) are not new or revised water quality standards.
	No language.	Analysis: IWR provision 62-303.460(5) relates to evaluations and determinations of data representativeness, and is akin to other provisions in the IWR that set out data distribution requirements. These provisions concern data reliability and sufficiency and do not establish ambient expectations or levels of protection as a criterion

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<u>evenly spaced over regular intervals. Any determinations to exclude waters based on this provision shall be documented, and the documentation shall include the basis for the decision.</u>		magnitude, duration, or frequency or a designated use. Conclusion: EPA concludes that IWR provision 62-303.460(5) does not constitute a new or revised water quality standard.
PART III THE VERIFIED LIST 62-303.470 Fish and Shellfish Consumption Use Support.		
(1) In order to be used under this part, the Department shall review the data used by the DOH as the basis for fish consumption advisories and determine whether it meets the following requirements: (a) The advisory is based on the statistical evaluation of fish tissue data from at least twelve fish collected from the specific water segment or water body to be listed, (b) Starting one year from the effective date of this rule, the data are collected in accordance with DEP SOP FS6000 (General Biological Tissue Sampling) and FS 6200 (Finfish Tissue Sampling), which are incorporated by reference, the sampling entity has established Data Quality Objectives (DQOs) for the sampling, and the data meet the DQOs. Data collected before one year from the effective date of this rule shall substantially comply with the listed SOPs and any subsequently developed DQOs, and; (c) There are sufficient data <u>or other</u>	No language.	Analysis: IWR provision 62-303.470(1) provides that FDEP shall review data used by DOH as the basis for fish consumption advisories to determine if the data are appropriate to use under this part by meeting additional specified data requirements for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). Conclusion: EPA has determined that 62-303.470(1) is not a new or revised water quality standard.

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<u>information from within the last 7.5 years that would</u> to support the continuation of the advisory. <u>The</u> <u>Department shall document any decision to list</u> <u>waters with advisories older than 7.5 years, including</u> <u>the data supporting the continuation of the advisory</u> <u>or information demonstrating that older data are</u> <u>representative of current conditions.</u>		
(2) If the segment is listed on the planning list based on fish consumption advisories, waters with fish consumption advisories for pollutants that are no longer legally allowed to be used or discharged shall not be placed on the verified list because the TMDL will be zero for the pollutant.	No language.	Analysis and Conclusion: This version of IWR provision 62-303.470(2) has been deleted.
(2)(3) Waters <u>with advisories</u> determined to meet the requirements of this section <u>or waters where</u> <u>scientifically credible and compelling information</u> <u>meeting the requirements of Chapter 62-160, F.A.C.,</u> <u>indicates the applicable human health-based water</u> <u>quality criteria are not met</u> shall be listed on the verified list. <u>Any determinations to list waters based</u> <u>on this provision shall be documented, and the</u> <u>documentation shall include the basis for the</u> <u>decision.</u>	No language.	Analysis: IWR provision 62-303.470(2) [note revised numbering] provides FDEP the ability to utilize fish consumption advisory and other information, in a manner consistent with their currently applicable water quality standards, for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). Conclusion: EPA has determined that 62- 303.470(2) is not a new or revised water quality standard.
(3) Class II waters shall be included on the verified list for coliform impairment if, following review of the available data as described in 62- 303.460(2), F.A.C.	Class II: "MPN shall not exceed a median value of 14 with not more than 10% of the samples exceeding 43, nor exceed 800 on any one day."	Analysis: IWR provision 62-303.470(3) provides FDEP the ability to utilize bacteriological data, in a manner consistent with their currently applicable water quality standards, for CWA 303(d) listing purposes pursuant to implementing regulations at 40
(a) The number of samples above 43 counts per		

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<u>100 ml meet the requirement in rule 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as daily samples, or,</u> <u>(b) The water segment includes a sampling location that has a median fecal coliform MPN value that exceeds 14 counts per 100 ml for the verified period. To calculate a median value for a sampling location, there shall be at least 20 samples collected during the verified period.</u>		CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). This provision excludes the only otherwise applicable provision at 62-303.320(4)(a) that constitutes a new or revised water quality standard (see discussion in 62-303.320). Minimum sample size aspect is not a water quality standard (see discussion for 62-303.320(1)). Conclusion: EPA has determined that 62-303.470(3) is not a new or revised water quality standard.
<u>(4) Waters that qualify for placement on the planning list based on shellfish harvesting classification information shall be verified as impaired for fecal coliforms.</u>	No language.	Analysis: IWR provision 62-303.470(4) provides FDEP the ability to utilize shellfish harvesting classification information, in a manner consistent with their currently applicable water quality standards, for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). Conclusion: EPA has determined that 62-303.470(4) is not a new or revised water quality standard.
PART III THE VERIFIED LIST		
62-303.480 Drinking Water Use Support and Protection of Human Health.		
62-303.480 Drinking Water Use Support and Protection of Human Health. If the water segment was listed on the planning list due to exceedances of a human health-based water quality criterion and there were insufficient data from the last five years	62-302.530, Criteria for Surface Water Quality Classifications. All Class I Human Health-based criteria expressed as maximums.	Analysis: In light of the analysis for 62-303.400(3) and 420(2), IWR Provision 62-303.480 solely relates to data reliability and sufficiency. IWR provision 62-303.480(1) now refers to IWR provision 62-303.420(7). EPA assumes this will be implemented

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preceding the planning list assessment to meet the data sufficiency requirements of section 303.320(4), additional data will be collected as needed to meet the requirements. Once these additional data are collected, the Department shall re-evaluate the data using the methodology in rule 62-303.380(2), F.A.C., and limit the analysis to data collected during the five years preceding the planning list assessment, and the additional data collected pursuant to this paragraph (not to include data older than 7.5 years), <u>and data older than 7.5 years if it is demonstrated to be representative of current conditions. Any determinations to use older data shall be documented by the Department, and the documentation shall provide the basis for the decision that the data are representative of current conditions.</u> For this analysis, the Department shall exclude any data meeting the requirements of paragraph 62-303.420(5), F.A.C. The following water segments shall be listed on the verified list: (1) For human health-based criteria expressed as maximums, water segments that meet the requirements in subsection 62-303.420(67), F.A.C., or (2) For human health-based criteria expressed as annual averages, water segments that have an annual average that exceeds the applicable criterion. (3) <u>For bacteriological water quality criteria, water segments shall be included on the verified list if, following review of the available data as</u>		in a similar manner as described for comparable provisions in sections 380, 460, and 470, consistent with <i>“the requirement in rule 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as daily samples”</i>. IWR provision 62-303.480(2) is unchanged from the 2001 IWR and it restates Florida’s currently approved Class I human health-based criteria. Conclusion: EPA concludes that IWR provision 62-303.480 does not constitute a new or revised water quality standard because it does not change or further define the magnitude, duration, and frequency of the water quality criteria that the State uses when making attainment decisions to identify water quality limited segments.
(3) <u>For bacteriological water quality criteria, water segments shall be included on the verified list if, following review of the available data as</u>	62-302.530 (6) Bacteriological Quality (Fecal Coliform Bacteria). Units – “Number per 100 ml (Most Probable Number (MPN) or Membrane Filter	Analysis: IWR provision 62-303.480(3) provides FDEP the ability to utilize bacteriological water quality data, in a manner consistent with their

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described in subsections 62-303.460(2) and (5), F.A.C.: (a) The number of samples that do not meet the applicable single-sample bacteriological water quality criteria meet the requirements in subsection 62-303.420(6), F.A.C., with the exception that paragraph 62-303.320(4)(a), F.A.C., does not apply and samples collected on different days within any four day period will be assessed as daily samples, or (b) There are one or more exceedances of a bacteriological water quality criterion expressed as a monthly geometric mean during the verified period. To assess the monthly data for a sampling location there shall be at least five samples collected within that month, with at least one sample from each full week of the month.	(MF)).” MPN or MF counts shall not exceed a monthly average of 200, nor exceed 400 in 10% of the samples, nor exceed 800 on any one day. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period.”	currently applicable water quality standards, for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). Conclusion: EPA has determined that 62-303.480(3) is not a new or revised water quality standard.
PART III THE VERIFIED LIST 62-303.500 Prioritization.		
(4) All segments not designated high or low priority shall be medium priority and shall be prioritized based on the following factors: (a) The presence of Outstanding Florida Waters. (b) The presence of water segments that fail to meet more than one designated use. (c) The presence of water segments that exceed an applicable water quality criterion or alternative threshold with a greater than twenty-five percent of the samples not meeting an applicable water quality criterion or alternative threshold exceedance	No language.	Analysis: IWR provision 62-303.500 defines what facts, including reference to current underlying standards (criteria and designated uses), FDEP shall take into consideration to prioritize impaired water body segments for subsequent TMDL development. Prioritization is required by 40 CFR Part 130.7(b)(4) which implements Section 303(d) of the CWA, and does not relate to the implementation of CWA Section 303(c) or the regulations at 40 CFR Part 131. This provision does not establish a level of protection related to the magnitude, duration, or frequency of water quality criteria that is then

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frequency with a minimum of a 90 percent confidence level. (d) The presence of water segments that exceed more than one applicable water quality criteria. (e) Administrative needs of the TMDL program, including meeting a TMDL development schedule agreed to with EPA, basin priorities related to following the Department's watershed management approach, and the number of administratively continued permits in the basin.		utilized to make an attainment decision to identify water quality limited segments nor does it establish a designated use. Therefore, this provision does not relate to the implementation of CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.500 does not constitute a new or revised water quality standard.
PART III THE VERIFIED LIST 62-303.710 Format of Verified List and Verified List Approval.		
(1) The Department shall follow the methodology established in this chapter to develop basin-specific verified lists of impaired water segments. The verified list shall specify the pollutant or pollutants causing the impairment and the concentration of the pollutant(s) causing the impairment. If the water segment is listed based on <u>numeric</u> water quality criteria exceedances, then the verified list shall provide the applicable criteria. However, if the listing is based on narrative or biological criteria, or impairment of other designated uses, and the water quality criteria are met, the list shall specify the concentration of the pollutant relative to the water quality criteria and explain why the numerical criterion is not adequate. (2) <u>Segments impaired for pollutants that are no longer legally allowed to be used or discharged</u>	No language.	Analysis: IWR provision 62-303.710 is administrative in nature and describes the methodology FDEP is to use to develop verified lists and what specific information verified lists should contain. This provision does not establish a level of protection related to the magnitude, duration, or frequency of water quality criteria that is then utilized to make an attainment decision to identify water quality limited segments nor does it establish a designated use. Therefore, this provision does not relate to the implementation of CWA Section 303(c) or the regulations in 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.710 does not constitute a new or revised water quality standard.

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<u>shall not be placed on the verified list because the TMDL will be zero for the pollutant.</u> (3)(2) For waters <u>impaired for</u> with exceedances of the dissolved oxygen criteria, the Department shall identify the pollutants causing or contributing to the <u>impairment</u> exceedances and list both the pollutant and dissolved oxygen on the verified list. (4)(3) For waters impaired by nutrients, the Department shall identify whether nitrogen or phosphorus, or both, are the limiting nutrients <u>for the verified period</u>, and specify the limiting nutrient(s) in the verified list.		
PART IV MISCELLANEOUS PROVISIONS 62-303.720 Delisting Procedure.		
(2) Water segments shall be removed from the State's verified list only after completion of a TMDL for all pollutants causing impairment of the segment or upon demonstration that the water meets the water quality standard that was previously established as not being met. (a) For waters listed due to failure to meet aquatic life use support based on water quality criteria exceedances or due to threats to human health based on exceedances of single sample water quality criteria, the water shall be delisted when: 1. The number of samples that do not meet exceedances of an applicable water quality criterion due to pollutant discharges is less than or equal to the number listed in Table 4.3 for the given sample	No language.	Analysis: IWR provision 62-303.720(2)(a) describes how water segments shall be removed from the State's verified list. This section provides that waters must be delisted according to the binomial statistical test parameters listed in Table 4. when the water was initially listed due to failure to meet aquatic life use support or due to threats to human health based on single sample water quality criteria and provides: "when: 1. <i>The number of samples that do not meet an applicable water quality criterion due to pollutant discharges is less than or equal to the number listed in Table 4 for the given sample size, with a minimum sample size of 30. Waters shall be delisted when 10% or less of the samples do not meet the applicable criterion with a</i>

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size, with a minimum sample size of 30. <u>Waters shall be delisted when</u> This table provides the number of exceedances that indicate a maximum of a 10% or less of the samples do not meet the applicable criterion exceedance frequency with a minimum of a 90% confidence level using a binomial distribution, or 2. Following implementation of pollution control activities that are expected to be sufficient to result in attainment of applicable water quality standards, evaluation of new data indicates the water no longer meets the criteria for listing established in section 62-303.420, F.A.C., or 3. Following demonstration that the water was inappropriately listed due to flaws in the original analysis, evaluation of available data indicates the water does not meet the criteria for listing established in section 62-303.420, F.A.C. New data evaluated under rule 62-303.720(2) (a) 1. must meet the following requirements: a. They must include samples collected during similar conditions (same seasons and general flow conditions) that the data previously used to determine impairment were collected, with no more than 50% of the samples collected in any one quarter, b. The sample size must be a minimum of 30 samples, and c. The data must meet the requirements of paragraphs 62-303.320(4), (6) and (7), F.A.C.		<i>minimum of a 90% confidence level using a binomial distribution,...". In addition, Table 4: Delisting provides that: Maximum number of samples that do not meet an applicable water quality criterion allowable to DELIST with at least 90% confidence."</i> This provision implements the same statistical test based on the binomial distribution to evaluate data sets of water quality parameter measurements as that used in 62-303.420(2), except that the confidence value is used in reverse to manage uncertainty in favor of remaining on the verified list. EPA has determined that the provisions of subsection 62-303.420(2), F.A.C., are not new or revised water quality standards, and similarly finds that this application of the binomial statistical test is also not a new or revised water quality standard. EPA does not find the minimum sample size aspect of this provision to be a water quality standard. This provision relates to the exclusion of data for CWA 303(d) listing purposes pursuant to implementing regulations at 40 CFR Part 130.7(b)(5) and 40 CFR Part 130.7(b)(6)(ii) and (iii). This aspect of the provision is not a water quality standard because it does not describe the ambient condition of a water body. This provision contains policy choices about what data is reliable, but it does not describe the condition of the water body that is assessed. See further analysis at 62-303.420(2).

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		Conclusion: EPA has concluded that IWR provision 62-33.720(2)(a) and Table 4 do not constitute new or revised water quality standards.
(b) For waters listed due to failure to meet aquatic life use support based on biological data, the water shall be delisted when the segment passes two independent follow-up bioassessments and there have been no failed bioassessments for at least one year. The follow-up tests must meet the following requirements: 1. For streams, the new data may be two BioRecons or any combination of BioRecons and SCIs. 2. The bioassessments must be conducted during similar conditions (same seasons and general flow conditions) under which the previous bioassessments used to determine impairment were collected. 3. The data must meet the requirements of Section <u>subsections</u> 62-303.330(1) and (2), F.A.C.	62-302.530(10) Biological Integrity criterion – Units – percent reduction of Shannon-Weaver Diversity Index...	Analysis: IWR provision 62-303.720(2)(b) describes how water segments shall be removed from the State's verified list for waters listed due to failure to attain aquatic life uses based on biological data and provides: ". . . <i>the water shall be delisted when the segment passes two independent follow-up bioassessments and there have been no failed bioassessments for at least one year.</i>" This provision implements the same methodology for bioassessments that is used in 62-303.430(2), which EPA has determined to be a new or revised water quality standard. In the 2005 Determination, EPA identified the portion that reads '<i>and there have been no failed bioassessments for at least one year</i>' as a duration component of criteria. EPA's current evaluation is that this is not a duration component of criteria. A "duration" is a time period above which a particular magnitude may be sustained while still protecting the designated use. It can be expressed as an averaging period, or some meaningful time period that is scientifically relevant to the particular endpoint. In contrast, the time period aspect of this provision represents an evaluation period, that is, a period over which FDEP is confident that sufficient time has elapsed to detect potential magnitude-

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		duration-frequency exceedances if there were to be any. It does not change the ambient expectation or define a level of protection for the waterbody itself, instead it identifies a period of time to collect assessment data. Conclusion: EPA has concluded that IWR provision 62-33.720(2)(b) constitutes a new or revised water quality standard because it utilizes the newly established biological assessment criteria contained in 62-303.330(2) to make delisting decisions for previous non-attainment decisions that identified water quality limited segments.
(c) — For waters listed due to failure to meet aquatic life use support based on toxicity data, the water shall be delisted when the segment passes two independent follow-up toxicity tests and there have been no failed toxicity tests for at least one year. The follow-up tests must meet the following requirements: 1. — The tests must be conducted using the same test protocols and during similar conditions (same seasons and general flow conditions) under which the previous test used to determine impairment were collected. 2. — The data must meet the requirements of rules 62-303.340(1), F.A.C., and the time requirements of rules 62-303.340(2) or (3), F.A.C.	No language.	Analysis and Conclusion: This section has been deleted in its entirety from the IWR.
(c)(4) For waters listed due to fish consumption advisories, the water shall be delisted following the	No language.	Analysis: IWR provision 62-303.720(2)(c) describes how water segments shall be removed

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lifting of the advisory or when data complying with rule paragraphs 62-303.470(1)(a) and (b), F.A.C., demonstrate that the continuation of the advisory is no longer appropriate.		from the State's verified list for waters listed due to fish consumption advisories, and provides: "... <i>the water shall be delisted following the lifting of the advisory or when data complying with paragraphs 62-303.470(1)(a) and (b), F.A.C., demonstrate that the continuation of the advisory is no longer appropriate.</i>" This provision implements the same methodology used in 62-303.370(2) for "limited consumption" or "no consumption" fish consumption advisories. See further analysis at 62-303.370(2) and 62-303.470(2). Conclusion: EPA has concluded that IWR provision 62-303.720(2)(c) does not constitute a new or revised water quality standard.
(d)(e) For waters listed due to their changes in shellfish bed management classification, the water shall be delisted upon reclassification of the shellfish harvesting area to <u>approved, or for conditionally approved areas, when the only source identified by SEAS for the harvesting area is wildlife</u> its original or higher harvesting classification. Reclassification of a water from prohibited to unclassified does not constitute a higher classification.	No language.	Analysis: IWR provision 62-303.720(2)(d) describes how water segments shall be removed from the State's verified list for waters listed due to changes in shellfish bed management classification, and provides: "... <i>the water shall be delisted upon reclassification of the shellfish harvesting area to approved, or for conditionally approved areas, when the only source identified by SEAS for the harvesting area is wildlife.</i>" This provision implements the same methodology used in 62-303.370(3) for any shellfish beds that are classified as conditionally approved by the Department of Agriculture and Consumer Services' SEAS Program. This approach excludes from the planning list any water body in the conditionally approved category where SEAS

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		identified only wildlife as the potential source of bacteriological contamination for a shellfishing area. EPA has concluded this provision is not a new or revised water quality standard because it directs the use of SEAS status in a manner consistent with Florida's underlying uses and criteria. See further analysis at 62-303.370(3). Conclusion: EPA has concluded that IWR provision 62-303.720(2)(d) does not constitute a new or revised water quality standard because it specifies how information will be applied to consistently reflect Florida's current water quality standards.
(e)(f) For waters listed due to bathing area closure or advisory data, the water shall be delisted if the bathing area does not meet the listing thresholds in rule 62-303.360(1), F.A.C., for five consecutive years.	No language.	Analysis: This delisting provision references the planning list provision at 62-303.360(1) that EPA has concluded is a new or revised water quality standard because it further defines the use level that represents recreational use support for making listing decisions. In the 2005 Determination, EPA identified the portion that reads '<i>...for five consecutive years</i>' as a duration component of criteria. EPA's current evaluation is that this is not a duration component of criteria. A "duration" is a time period above which a particular magnitude may be sustained while still protecting the designated use. It can be expressed as an averaging period, or some meaningful time period that is scientifically relevant to the particular endpoint. In contrast, the time period aspect of this

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		provision represents an evaluation period, that is, a period over which FDEP is confident that sufficient time has elapsed to detect potential magnitude-duration-frequency exceedances if there were to be any. It does not change the ambient expectation or define a level of protection for the waterbody itself, instead it identifies a period of time to collect assessment data. Conclusion: IWR provision 62-303.720(2)(e) constitutes a new or revised water quality standard because it changes or further defines the use level that represents recreational use support when making delisting decisions for previous listing decisions
(d)(g) For waters listed based on impacts to potable water supplies, the water shall be delisted when applicable water quality criteria are met as defined in rule <u>paragraph</u> 62-303.380(1)(a), F.A.C., and when the causes resulting in higher treatment costs have been ameliorated.	No language.	Analysis: IWR provision 62-303.720(2)(f) describes how water segments shall be removed from the State's verified list for waters listed due to impacts to potable water supplies and provides: "... <i>the water shall be delisted when applicable water quality criteria are met as defined in paragraph 62-303.380(1)(a), F.A.C . . .</i>" This provision implements by reference the same methodology (binomial procedure) used for making drinking water use support attainment decisions. This methodology employs a statistical test based on the binomial distribution to evaluate data sets of water quality parameter measurements and addresses data reliability rather than ambient expectation. EPA has determined that the reference to 62-303.320 in 62-

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		303.380(1)(a) does not constitute a new or revised water quality standard. See further analysis at 62-303.380(1) and 62-303.320. EPA notes that the minimum sample size aspect of the binomial is not a water quality standard for the reasons described in this table at Section 62-303.720(2)(a) above. Conclusion: EPA has concluded that IWR provision 62-303.720(2)(f) does not constitute a new or revised water quality standard.
(g) For waters listed pursuant to paragraph 62-303.460(3)(b), 62-303.470(3)(b), or 62-303.480(3)(b), F.A.C., the water shall be delisted when: 1. The criteria applicable to those sections are met for three consecutive years and there are sufficient new data available to calculate monthly values for at least the same seasons in which the exceedances occurred, or 2. Following a demonstration that the water was inappropriately listed due to flaws in the original analysis, including the use of a non-representative sample set.	No language.	Analysis: IWR provision 62-303.720(2)(g) describes how water segments shall be removed from the State's verified list for waters listed due to bacteriological water quality criteria, and provides: ". . . the water shall be delisted when the criteria applicable to those sections are met for three consecutive years and there are sufficient new data available to calculate monthly values for at least the same seasons in the exceedances occurred, or, following a demonstration that the water was inappropriately listed due to flaws in the original analysis, including the use of a non-representative sample set." This provision adds additional data reliability provisions related to the sufficiency of data rather than a new allowable frequency of exceedance. In other words, where the bacteriological water quality criterion is not exceeded for three consecutive years, this is an

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		indication that the information of attainment is sufficiently reliable to justify delisting. Thus, this aspect of the provision does not describe the ambient condition, but rather is a reliability of data provision relating to Section 303(d) and its implementing regulations at 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-303.720(2)(g) does not constitute a new or revised water quality standard.
(h) <u>For waters listed pursuant to paragraph 62-303.460(3)(a), 62-303.470(3)(a), or 62-303.480(3)(a), F.A.C., the water shall be delisted upon meeting the delisting provisions in paragraph 62-303.720(2)(a), F.A.C.</u>	No language.	Analysis: IWR provision 62-303.720(2)(h) describes how water segments shall be removed from the State's verified list for waters listed due to single-sample bacteriological water quality criteria or Class II bacteriological water quality criteria and provides: "... for waters listed pursuant to paragraph 62-303.460(3)(a), 62-303.470(3)(a), or 62-303.480(3)(a), the water shall be delisted upon meeting the delisting provisions in paragraph 62-303.720(2)(a), F.A.C. . . ." This provision implements by reference the same methodology (binomial procedure) used for making shellfish consumption use support attainment decisions. This methodology employs a statistical test based on the binomial distribution to evaluate data sets of water quality parameter measurements and addresses data reliability rather than ambient expectation. See further analysis at 62-303.320.

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		Conclusion: EPA has concluded that IWR provision 62-303.720(2)(h) does not constitute a new or revised water quality standard.
(i)(h) For waters listed based on exceedance of a human health-based annual average criterion, the water shall be delisted when the annual average concentration is less than the criterion for three consecutive years.	No language.	Analysis: IWR provision 62-303.720(2)(i) describes how water segments shall be removed from the State's verified list for waters listed due to failure to meet human health-based annual average criterion and provides: "<i>. . . the water shall be delisted when the annual average concentration is less than the criterion for three consecutive years.</i>" This provision implements the same human health-based annual average criteria that already exist at 62-303.480(2). EPA has concluded that 62-303.480(2) is not a new or revised water quality standard because it does not change Florida's currently approved human health-based criteria that are expressed as annual averages. In addition, EPA has determined that the reference to no exceedance of the annual average for three consecutive years refers to the reliability of the measurements, rather than the ambient condition of the water body (magnitude, duration, and frequency of exceedance). In other words, where the annual average is not exceeded for three consecutive years, this is an indication that the information of attainment is sufficiently reliable to justify delisting. Thus, this aspect of the provision does not describe the ambient condition, but rather is a reliability of

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		data provision relating to Section 303(d) and its implementing regulations at 40 CFR Part 131. Conclusion: EPA has concluded that IWR provision 62-33.720(2)(i) does not constitute a new or revised water quality standard because it does not change the currently applicable human health-based water quality criteria expressed as annual averages when making delisting decisions for previous attainment decisions that identified water quality limited segments.
(i) For waters listed based on nutrient impairment, the water shall be delisted if it does not meet the listing thresholds in rule 62-303.450, F.A.C., for three consecutive years.	62-302.530(47)(b) Nutrients. "In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna." for Class I, II, III Fresh and Marine."	Analysis: IWR provision 62-303.720(2)(j) describes how water segments shall be removed from the State's verified list for waters listed due to nutrient impairment and provides: ". . . <i>the water shall be delisted if it does not meet the listing thresholds in Rule 62-303.450, F.A.C., for three consecutive years</i>" This provision implements the same criteria for determining nutrient impairment that are used in IWR provisions 62-303.351, .352, and 353 as cross-referenced in 62-303.450 EPA has concluded that these referenced provisions are new or revised water quality standards because they further define or add narrative requirements, a numeric magnitude, a duration, and a frequency. Because of the one-sided nature of this assessment threshold, waters that are delisted using this provision are considered "unassessed" unless a site-specific threshold suitable for determining whether the underlying narrative level of protection is achieved.

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		Conclusion: EPA has concluded that IWR provision 62-303.720(2)(j) constitutes a new or revised water quality standard because it further defines or adds narrative requirements, a numeric magnitude, a duration, and a frequency to criteria contained in 62-302.530(47)(b) that the State uses when making delisting decisions for previous non-attainment decisions that identified water quality limited segments.
(k)(j) For any listed water, the water shall be delisted if, following a change in approved analytical procedures, criteria, or water quality standards, evaluation of available data indicates the water no longer meets the applicable criteria for listing.	No language.	Analysis: IWR provision 62-303.720(2)(k) describes how water segments shall be removed from the State's verified list for waters should Florida water quality standards be revised, and provides: ". . . the water shall be delisted if, following a change in approved analytical procedures, criteria, or water quality standards, evaluation of available data indicates the water no longer meets the applicable criteria for listing." IWR provision 62-303.720(2)(k) states that changes to water quality standards may warrant a delisting action by the State due to ambient conditions that meet a revised water quality standard. Since any revision to water quality standards must be approved by EPA in order for the new or revised standard to be effective for CWA purposes, any new or revised standard must be approved by EPA to be used under this provision. This provision is not a water quality criterion because it does not establish an ambient condition or a level of protection related to the

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		magnitude, duration, or frequency of water quality criteria that is then utilized to make an attainment decision to identify water quality limited segments nor does it establish a designated use. Conclusion: EPA has concluded that IWR provision 62-303.720(2)(k) does not constitute a new or revised water quality standard.
(l) For waters listed based on rule 62-303.420(7)(b) or 62-303.470(3), F.A.C., the water shall be delisted if the Department determines the water is no longer impaired, based on scientifically credible and compelling information comparable in quantity and quality to the information used to make the initial listing decision. Any determinations to delist waters based on this provision shall be documented, and the documentation shall include the basis for the decision.	No language.	Analysis: IWR provision 62-303.720(2)(l) specifies that waters may be delisted if certain reliable information indicates that the water is not impaired, and provides: “. . . the water shall be delisted if the Department determines the water is no longer impaired, based on scientifically credible and compelling information comparable in quantity and quality to the information used to make the initial listing decision.” This provision defines how scientifically credible and compelling information will be used for CWA section 303(d) delisting purposes pursuant to 40 CFR Part 130.7(b)(5) and (6)(b)(ii) and (iii). This provision does not establish a revised criterion by defining the level of protection related to the magnitude, duration, or frequency of water quality criteria that is used by the State to identify water quality limited segments nor does it establish a designated use. Therefore, this provision is not a water quality standard as that term is used in CWA Section 303(c) or the regulations in 40 CFR Part 131.

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		Conclusion: EPA has concluded that 62-303.720(l) does not constitute a new or revised water quality standard.
(m) For waters listed pursuant to paragraph 62-303.320(6)(b), F.A.C., the water shall be delisted when the applicable criteria are met for at least three consecutive years and there are new data available for the same seasons in which the previous exceedances occurred.	Individual “max” criteria for Class II and Class III for pesticides and herbicides (62-302.530(50) subsections c, e, f, g, h, I, j, k, l, m, n, o, p, q, r), chlorophenols (62-302.530(52) subsections b, c1, c2, c3, c5, c6), phthalate esters (62-302.530(54)), PCBs (62-302.530(55)), and silver (62-302.530(59)).	Analysis: IWR provision 62-303.720(2)(m) specifies that waters listed based on the thresholds in 62-303.320(6)(b) may be delisted if the applicable criterion listed in 62-302.530 or a water quality criterion for a synthetic organic compound or synthetic pesticide is met for at least three consecutive years, and provides: “. . . the water shall be delisted when the applicable criteria are met for at least three consecutive years and there are new data available for the same seasons in which the previous exceedances occurred.” IWR provision 62-303.320(6)(b) establishes the requirements for including water segments on the planning list for any acute toxicity-based water quality criterion and for any synthetic organic compound and synthetic pesticide water quality criterion, based on more than one sample not meeting the criterion in any three year period. IWR provision 62-303.720(2)(m) specifies the frequency of attainment for these criteria that must be met in order for waters listed based on these water quality criteria for CWA section 303(d) delisting purposes pursuant to 40 CFR Part 130.7(b)(5) and (6)(b)(ii) and (iii). Conclusion: EPA has concluded that IWR provision 62-303.720(2)(m) constitutes a new or revised water quality standard to the extent it is

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		used by the State to delist waters identified as being impaired for the State's verified list. This is because it changes the frequency of water quality criteria that the State uses when making delisting decisions.