

water quality-related data and information to determine which waterbodies you will include on Parts 1, 2, 3, and 4 of your list, and to determine how you will prioritize your schedule for establishing TMDLs for waterbodies on Part 1 of your list. You must develop a draft methodology and notify the public of the availability of the draft methodology for review and comment. You should notify directly those who submit a written request for notification. You must provide the public an opportunity to submit comments on the draft methodology for no less than 60 days. You must provide a summary of all comments received and your responses to significant comments when you provide a copy of the final methodology to EPA, as required by § 130.24 of this subpart. You must make your final methodology available to the public when you provide a copy to EPA.

(b) The methodology should explain how you will consider and evaluate the following types of data and information when you make listing decisions and develop your prioritized schedule for TMDL establishment:

- (1) Physical data and information;
- (2) Chemical data and information;
- (3) Biological data and information;
- (4) Aquatic and riparian habitat data and information; and
- (5) Other data and information about waterbody impairments, including drinking water susceptibility analyses.

(c) Your methodology should, at a minimum, identify those types of data and information that you will treat as “existing and readily available” and explain how you consider the following factors in making listing decisions and in developing your prioritized schedule for TMDL establishment:

- (1) Data quality and age;
- (2) Degree of confidence you have in the information you use to determine whether waterbodies are impaired, including a description of the quality assurance/quality control factors you will apply to data and information; and
- (3) Number and degree of exceedances of numeric or narrative criteria and periods of nonattainment of designated uses or other factors used to determine whether waterbodies are impaired.

(d) Your methodology should describe the procedures and methods you will use to collect ambient water quality information.

(e) Your methodology should, at a minimum, also include the following:

- (1) A description of the selection factors you will use to include and remove waterbodies from your list;
- (2) A process for resolving disagreements with other jurisdictions involving waterbodies crossed by State, Territorial, Tribal or international boundaries; and
- (3) A description of the method and factors you will use to develop your prioritized schedule for establishing TMDLs.

§ 130.24 When must you provide your methodology to EPA?

(a)(1) If this section is not effective by May 1, 2001, you must provide to EPA a description of the methodology used to develop your 2002 list and a description of the data and information used to identify waters (including a description of the existing and readily available data and information used by the State, Territory, and authorized Tribe) by April 1, 2002. The provisions of § 130.23(b) through (e) do not apply to this methodology.

(2) If this section is effective on or before May 1, 2001, you must provide your final methodology for your 2002 list and a summary of public comments on your methodology by November 1, 2001. This methodology will apply to the list required in 2002.

(b) You must provide to EPA the final methodology and a summary of public comments for your 2006 and subsequent lists submitted under § 130.30(a) no later than two years before you submit your next list, beginning in the year 2004. For example, you provide to EPA the methodology for your 303(d) list for 2006 on or before April 1, 2004. When providing final methodologies to EPA, you need to provide only the parts of the previous methodology you are revising; however, prior to submitting your final methodology to EPA, the entire methodology must be available to the public.

(c) EPA will review your final methodology and will provide you with comments within 60 days of receiving it.

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EPA will not approve or disapprove your methodology. EPA will consider your methodology in its review and approval or disapproval of your next list.

§ 130.25 What is the scope of your list of impaired waterbodies?

(a) Your approvable list of impaired waterbodies includes, based on all existing and readily available water quality-related data and information using appropriate quality assurance/quality control:

(1) Waterbodies that are impaired by individual pollutants, multiple pollutants, or pollution from any source, including point sources, nonpoint sources, storm water sources for which a National Pollutant Discharge Elimination System (NPDES) permit is not required, ground water, and atmospheric deposition.

(2) Waterbodies for which biological information indicates that they do not attain and maintain water quality standards.

(3) Waterbodies that are impaired by point sources only, nonpoint sources only, or by a combination of point and nonpoint sources.

(b) Your list may include, at your option, waterbodies that are not impaired, but which, based on expected changes in loadings or conditions, you anticipate will become impaired in the next four years.

§ 130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired waterbodies?

(a) Water quality standards as defined at 40 CFR part 131 include several requirements, including one for a State antidegradation policy. Your list must include waterbodies consistent with your antidegradation policy as described below.

(1) Any waterbody is impaired if it is not maintaining a designated use or more protective existing use that was attained on or after November 28, 1975.

(2) Any Tier 3 waterbody is impaired when the level of water quality that existed at the time the waterbody was designated as Tier 3 has declined. Tier 3 waters are waters you have designated as outstanding national resource waters.

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(b) [Reserved]

§ 130.27 How must you format your list of impaired waterbodies?

(a) Your list of impaired waterbodies must include the following four parts:

(1) *Part 1.* Waterbodies impaired by one or more pollutant(s) as defined by § 130.2(d), unless listed in Part 3 or 4. Waterbodies identified as impaired through biological information must be listed on Part 1 unless you know that the impairment is not caused by one or more pollutants, in which case you may place the waterbody on Part 2 of the list. Where the waterbody is listed due to biological information, the first step in establishing the TMDL is identifying the pollutant(s) causing the impairment. Waterbodies must also be included on Part 1 where you or EPA have determined, in accordance with §§ 130.32(c)(1)(v), (2)(vii), and (3)(i), that a TMDL needs to be revised. Waterbodies that you chose to list pursuant to § 130.25(b), because you anticipate that they will become impaired by one or more pollutant(s), must be included on Part 1 of your list. A TMDL is required for waterbodies on Part 1 of the list.

(2) *Part 2.* Waterbodies impaired by pollution as defined by § 130.2(c) but not impaired by one or more pollutants. A TMDL is not required for waterbodies on Part 2 of the list.

(3) *Part 3.* Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained. The waterbody must be placed on Part 1 of the list and scheduled for establishment of a new TMDL if you or EPA determine that substantial progress towards attaining the water quality standard is not occurring.

(4) *Part 4.* Waterbodies that are impaired, for which the State, Territory, or authorized Tribe demonstrates that water quality standards will be attained by the date of submission of the next list as a result of implementation of technology-based effluent limitations required by sections 301(b), 306, or 307 of the Clean Water Act or other controls enforceable by State, Territorial or authorized Tribal or Federal law or regulation (including more stringent water quality-based effluent