

**Table 1. Summary of Proposed Temporary Standard Subsection F with Supporting Rationale for Each Subparagraph**

Subsection of NMAC	Proposed Language	Rationale
<b>Subsection F, 20.6.4.10.F(1)</b>	Any person may petition the commission to adopt a temporary standard applicable to all or part of a surface water of the state as provided for in this section. The commission may adopt a proposed temporary standard if the petitioner demonstrates that:	<p>The preamble to the USEPA guidance in the 1998 Advance Notice of Public Rulemaking (“ANPRM”), see 63 FR 36759, allows:  <i>“A Temporary Standard may be granted for a water body (or portion thereof), as defined in the standards.”</i>                      (63 FR 36761)</p> <p>The Department provision is applicable to surface water body(s) and specific pollutant(s).</p>
<b>20.6.4.10.F(1)(a)</b>	<b>(a)</b> attainment of the associated designated use may not be feasible in the short term due to one or more of the factors listed in 40 CFR 131.10(g) as demonstrated by the petition and supporting work plan requirements in paragraphs (4), (5) and (6) below;	<p>The USEPA requires the state provision to be consistent with the substantive requirements of 40 CFR 131. The USEPA policy and guidance in the ANPRM (63 FR 36759) and more recently proposed federal water quality standards regulations revisions in 78 FR 54545 (Sept. 4, 2013) require a demonstration based on one or more of the factors in 40 CFR 131.10(g)(1) – (6).</p> <p>The USEPA has also stated:  <i>“The intent of a variance or temporary standard is to preserve the use and temporarily modify applicable criteria to detail how incremental progress will be made in ultimately meeting that use. This provision should make it clear that proposals and work plans developed in support of a temporary standard as detailed in subsequent paragraphs clearly describe the basis for a temporary standard supported by documentation that shows meeting the current standard is unattainable based on one or more of the factors outlined in 40 CFR 131.10(g).”</i></p> <p>A petition and work plan is required so that appropriate supporting analyses and the necessary eligibility requirements under 40 CFR 131.10(g) justifications are met.</p>

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20.6.4.10.F(1)(b)	(b) the proposed temporary standard represents the highest degree of protection feasible in the short term, limits the further degradation of water quality to the minimum necessary to achieve the original standard by the expiration date of the temporary standard, and adoption will not cause the further impairment or loss of an existing use;	<p>Guidance in the preamble to USEPA’s ANPRM, 1998 and the recently proposed federal revisions in 40 CFR 131 require that interim standards be developed as close to the underlying standards (i.e., numerical criteria) as is possible and the interim use and criterion reflect the “highest attainable condition during the specified time period...” (40 CFR 131.14; 78 FR 171 p. 54545, Sept. 4, 2013). Further degradation is minimized to keep progress moving forward towards improving water quality.</p> <p>The TS is for the minimum time necessary to achieve the original standards, as justified by the petitioner, but the provisions does not specify a time period. The time period must be justified by the petitioner in the factor demonstration and work plan.</p> <p>The draft provision anticipates there may be water bodies in which designated uses are already impaired for a pollutant. In accordance with the federal regulations at 40 CFR 131.10(h)(1), States may not remove an existing use (unless replaced by a more stringent use). Therefore, the TS proposed under the petition must not allow or cause the loss of an existing use. An existing use means a use actually attained in a surface water of the state on or after November 28, 1975, whether or not it is a designated use in the WQS.</p>
20.6.4.10.F(1)(c)	(c) for point sources, existing or proposed discharge control technologies will comply with applicable technology-based limitations and feasible technological controls and other management alternatives, such as a pollution prevention program; and	Point sources must maintain and comply with feasible control technologies and limitations, and cost-effective and reasonable best management practices are implemented (i.e., storm water, pollution prevention, control of I & I, etc.).

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<b>20.6.4.10.F(1)(d)</b>	<b>(d)</b> for restoration activities, nonpoint source or other control technologies shall limit downstream impacts, and if applicable, existing or proposed discharge control technologies shall be in place consistent with subparagraph (c).	The USEPA has suggested the provision should address situations where a TS is needed to address a project that is broader in scope, such as for restoration or remediation. See USEPA letter, April 8, 2014, page 3.
<b>20.6.4.10.F(2)</b>	<b>(2)</b> A temporary standard shall apply to specific pollutant(s), and to specific water body segment(s). The adoption of a temporary standard does not exempt dischargers from complying with all other applicable water quality standards or control technologies.	While the TS applies to the water body (and for a pollutant), all other water quality standards must be met and pollution controls for all other pollutants must be maintained.
<b>20.6.4.10.F(3)</b>	<b>(3)</b> Designated uses shall not be modified on a temporary basis. Designated use attainment as reported in the CWA Section 305(b)/303(d) Integrated Report shall be based on the original standard and not on a temporary standard.	Underlying standards are maintained; CWA Section 305(b)/303(d) assessments are based on the underlying standards and will continue to reflect that the use is not attained (if impaired).
<b>20.6.4.10.F(4)(a) – (d)</b>	<p><b>(4)</b> A petition for a temporary standard shall:</p> <p><b>(a)</b> identify the currently applicable standard(s), the proposed temporary standard and the surface water(s) of the state to which the temporary standard would apply;</p> <p><b>(b)</b> demonstrate that the proposed temporary standard meets the requirements in this Subsection;</p> <p><b>(c)</b> present a work plan and timetable for achieving compliance with the original standard;</p> <p><b>(d)</b> include any other information necessary to support the petition.</p>	This subsection outlines the basic requirements for a TS petition, including details about the demonstrations required in Subsection F (1).

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<b>20.6.4.10.F(5)</b>	<b>(5)</b> As a condition of a petition for a temporary standard, in addition to meeting the requirements in this Subsection, the petitioner shall prepare a supporting work plan in accordance with subparagraph (6) to conduct the analysis required in this Subsection, and submit the work plan to the department for review and comment. Upon revision of the work plan based on input from the department, the petitioner shall conduct the analyses in accordance with the work plan. The department or the petitioner may petition the commission to adopt a temporary standard if the conclusions of the analysis support such action.	Analyses as required in 20.6.4.10.F (4), (5) and (6) NMAC completed and reviewed by the Department before submitting the petition to the WQCC.  If additional information is needed, or critical analyses are missing, this can be addressed appropriately ahead of time to avoid a petition based on insufficient information or incomplete justification. The purpose is to ensure well vetted petitions and avoid a denial due to insufficient information or incomplete justification.
<b>20.6.4.10.F(6)</b>	<b>(6)</b> The work plan to support a temporary standard petition shall identify the factor(s) listed in 40 CFR 131.10(g) affecting attainment of the standard that will be analyzed and the timeline for specific actions to be taken to achieve the uses attainable over the term of the temporary standard, including baseline water quality, and any investigations, projects, facility modifications, monitoring, or other measures necessary to achieve compliance with the original standard. The work plan shall include provisions for review of progress in accordance with subparagraph (9), public notice and consultation with appropriate state and federal agencies.	Information is required so the Department is able to review and comment or support the petition. The WQCC also requires sufficient information to review and approve or deny the request. The work plan also provides the Department and WQCC with milestones and measures to gage progress in subsequent reviews, as required during a Triennial, and as a basis for extending the TS.
<b>20.6.4.10.F(7)</b>	<b>(7)</b> The commission may condition the approval of a temporary standard by requiring additional monitoring, relevant analyses, the completion of specified projects, submittal of information, or any other actions.	The WQCC may require additional analyses, information, or any other actions, as necessary.

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20.6.4.10.F(8)	(8) Temporary standards may be implemented only after appropriate public participation, commission approval and adoption pursuant to this Subsection for all state purposes, and EPA Clean Water Act Section 303 (c) approval for any federal action.	The WQCC is the State's water quality agency with authority for adoption of water quality standards (NMSA 1978, § 74-6-4). EPA's oversight approval under Clean Water Act (CWA) Section 303(c) and 40 CFR 131.21 is required before the TS may be implemented for CWA purposes. Both provisions have required public participation elements that must be satisfied.
20.6.4.10.F(9)	(9) All temporary standards are subject to a required review during each succeeding review of water quality standards conducted in accordance with Subsection A of 20.6.4.10 NMAC. The purpose of the review is to determine progress consistent with the original conditions of the petition for the duration of the temporary standard. If sufficient progress has not been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard.	<p>This review is required under 40 CFR 131.20. From time to time, or at least during a Triennial Review, the petitioner must demonstrate that the justification for a TS has not changed, that conditions of original petition are being met and progress towards meeting the original water quality standard is being achieved.</p> <p>The TS can be revoked or further conditions may be required by the WQCC, if sufficient progress is not demonstrated.</p>
20.6.4.10.F(10)	(10) The commission may consider a petition to extend a temporary standard. The effective period of a temporary standard shall be extended only if demonstrated to the department that the factors precluding attainment of the underlying standard still apply, that the petitioner is meeting the conditions required for approval of the temporary standard, and that reasonable progress towards meeting the underlying standard is being achieved.	The petition may be extended by the WQCC if the petitioner demonstrates that the conditions precluding attainment of the original standard remain applicable, the work plan is being followed and progress is being made to meet the original standard. Any changes to the TS, including an extension of time, would be subject to WQCC review, and if approved, to USEPA approval under 40 CFR 131.20.
20.6.4.10.F(11)	(11) A temporary standard shall expire no later than the date specified in the approval of the temporary standard. Upon expiration of a temporary standard, the original standard becomes applicable.	Upon expiration of the TS, the original standard is applicable.
20.6.4.10.F(12)	(12) Temporary standards shall be identified in 20.6.4.97 – 899 NMAC as appropriate for the surface water affected.	The WQCC-approved TS will be adopted under the appropriate water quality management segment, along with the expiration date.

**Table 2. Summary of Proposed Subsection H with Supporting Rationale for Each Subparagraph**

<b>Subsection of NMAC</b>	<b>Proposed Language</b>	<b>Rationale</b>
<p><b>Subsection H , 20.6.4.12</b></p>	<p><b>H.</b> It shall be a policy of the commission to allow a temporary standard approved and adopted pursuant to Subsection F of 20.6.4.10 NMAC to be included in the applicable NPDES permit as enforceable limits and conditions. The temporary standard and schedule of actions may be included at the earliest practicable time, and shall specify milestone dates so as to measure progress towards meeting the original standard.</p>	<p>Subsection H is added to 20.6.4.12 NMAC to allow use of an approved temporary standard by EPA in drafting or modifying NPDES permits; and in that case, to include the TS and associated requirements as enforceable limits and conditions in the permit.</p> <p>The federal regulations under 40 CFR 122.44(d)(1)(i), for State WQS requirements in permit limits, standards or other permit conditions applicable to the NPDES program requires:</p> <p><i>“..any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under CWA Sections 301, 304, 306, 307, 318 and 405 necessary to achieve WQS under CWA 303, and limits <u>must control all pollutants or pollutant parameters</u> which the EPA determines are or may be discharged at a level to have the ‘reasonable potential’ to cause or contribute to an excursion of the WQS, including the narrative criteria.”</i></p> <p>New Mexico is non-delegated for the NPDES program; it is suggested Subsection H of 20.6.4.12 NMAC be added so the TS is enforceable in a permit.</p>