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Part III

Susquehanna River Basin Commission

18 CFR Parts 803, 804, 805 et al.
Review and Approval of Projects; Special Regulations and Standards; Hearings and Enforcement Actions; Final Rule

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804, 805, 806, 807 and 808

Review and Approval of Projects; Special Regulations and Standards; Hearings and Enforcement Actions

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Final rule.

SUMMARY: This document contains amendments to the SRBC's project review regulations currently published at 18 CFR Parts 803, 804 and 805. The regulations provide the procedural and substantive rules for SRBC review and approval of water resources projects and the procedures governing hearings and enforcement actions. These amendments include additional due process safeguards, add new standards for projects, improve organizational structure, incorporate recently adopted policies and clarify language. The amendments were first proposed on July 7, 2006 in the **Federal Register**, Vol. 71, No. 130, p. 38692. Comments received on the proposed rule making are summarized with accompanying responses in the "**SUPPLEMENTARY INFORMATION**" section below. Changes were made to the proposed rules in the final rule making in response to these comments, including the "removal and reservation" of Parts 803, 804 and 805 and the substitution therefore in this final rule making action of Parts 806, 807 and 808, respectively.

DATES: These rules shall be effective January 1, 2007.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717–238–0423; Fax: 717–238–2436; e-mail: *rcairo@srbc.net*. Also, for further information on the final rule making action, visit the Commission's Web site at *http://www.srbc.net*.

SUPPLEMENTARY INFORMATION:

Background

The SRBC proposed rules amending its "Regulations and Procedures for the Review of Projects" presently found at 18 CFR Parts 803, 804 and 805, which were published on July 7, 2006 in the FR, Vol. 71, No. 130, p. 38692. Those rules establish: (1) The scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91–575; 83 Stat. 1509 *et seq.* (the compact); (2) special standards under Section 3.4(2) of the compact governing water withdrawals and consumptive use of water; and (3) procedures for hearings and enforcement actions. The SRBC received numerous comments on the proposed rule making action, which are summarized below with an accompanying response to each. The SRBC made a number of adjustments and changes to the proposed rules in this final rule making action in response to those comments. One change that should be noted is the removal and reservation of 18 CFR Parts 803, 804 and 805, and the substitution therefore in this final rule making action of Parts 806, 807 and 808 respectively. The contents that appeared in Parts 803, 804 and 805 of the proposed rule making now appear in Parts 806, 807 and 808 respectively; hence, this is not an enlargement of the purposes of the proposed rule making, but simply an editorial change in response to a comment that SRBC received pointing to the possible confusion of retaining the same numbering system for the revised regulations. Comments received on the proposed rule making referred to the numbering system as published, namely Parts 803, 804 and 805, and comments and responses set forth below follow that same construction, even though now superseded by Parts 806, 807 and 808, respectively.

General Comments

Comment: Revisions will strengthen and streamline SRBC project review regulations.

Response: The Commission agrees that the revisions will strengthen and streamline its regulatory program.

Comment: SRBC proposed regulations should more strongly emphasize the importance of economic development in its statement of purposes and in the criteria on which an approval will be granted or denied. SRBC should attempt to more carefully balance the economic benefits of a project versus other interests such as the environment. Tools should be developed for analyzing the "harms" of a project versus its "benefits." If there are only minor environmental impacts and great economic benefits, projects should be approved.

Response: The Commission believes that there are already sufficient references to the purposes of economic development in both the Susquehanna River Basin Compact (the "compact") and the project review regulations. The Commission, in its review process, does take into consideration the economic development aspects of a project and works with project sponsors to help them use water resources in a way that will enhance economic growth while avoiding conflicts with other users..

Comment: SRBC should explore the use of free market tools such as credits and trading for compliance with its regulations.

Response: The Commission considers that tools such as credits and trading for compliance with regulations are probably more applicable to water quality regulations than to water quantity regulations of the type administered by the Commission. Nevertheless, an element of free market tools is already incorporated in the proposed regulation Section 803.22 ("Standards for consumptive uses of water"), in that project sponsors are allowed a wide choice of mitigation methods, including the free market acquisition of water for flow augmentation.

Comment: In several instances, the Commission is writing authority into the regulations that does not exist under the compact. For example, Article 11 of the compact pertaining to protected areas is the only section that mentions any authority for approval of withdrawals. Also, there is no compact authority for other items in the regulations such as cease and desist orders and the issuance of subpoenas. Many other examples are cited.

Response: This comment reads the terms of the compact far too narrowly and fails to consider other broad grants of power given to the Commission to manage the river basin's water resources. For example, Section 3.5(4) of the compact states that the Commission "shall assume jurisdiction in any matter affecting water resources whenever it determines * * * that the effectuation of the comprehensive plan or the implementation of the compact so requires." Also, Section 3.4(9) states that the Commission "may have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom." Finally, Section 3.10(2) of the compact makes it clear that the Commission's power to approve projects is not limited.

Comment: SRBC has seemingly unlimited authority to arbitrarily impose enforcement action and prescribe remedies, and is not responsible or accountable to its basin-constituent population or economic interests.

Response: Like any other government agency, the Commission does not operate without limits imposed by the compact, the Constitution, and laws of the United States. Also, the Commission is directly responsible to its member

jurisdictions, each of which is represented on the Commission.

Comment: The proposed regulations should have been presented in a redline/black-line format that shows changes along side of current regulations. Old regulation sections from which regulations were moved or deleted should have been "reserved" instead of reused with new regulatory material because existing policies that refer to these same sections will no longer be accurate and could lead to confusion among those persons reviewing those policies.

Response: These revised regulations represent a complex overhaul of the current Commission regulations that involved the wholesale reorganization of the existing sections, the extensive revision of existing sections, and the addition of whole new sections. Such changes cannot be effectively placed in redline/black-line, side-by-side format without creating even more confusion for a reviewer attempting to review the disjointed mixture of moving text, additions, and deletions. It was therefore decided that the proposed revisions would be presented as an entirely new package of regulations and that the major changes would be described section by section in the preamble of the proposed rulemaking action. Most policies were incorporated into the body of the regulations, which will provide clarity for the regulated community and others. References to sections of the regulations that are no longer accurate will be revised accordingly. Also, with regard to "reserving" old sections of the regulations, the Commission has decided that, as part of its final rulemaking action, it will "remove and reserve" Parts 803, 804 and 805 and replace those Parts respectively with new Parts 806, 807 and 808. This is being done in accordance with **Federal Register** guidelines. All references in this Comment and Response document will reference section numbers as originally proposed (i.e., Parts 803, 804, and 805).

Comment: The new policies, procedures, and regulations implemented by the Commission over the last six years have already imposed significant administrative burdens on the regulated community. Some in the regulated community are now concerned that these new regulations will impose even more burdens that will adversely affect the economic vitality of the basin and drive investors to basins with a friendlier regulatory environment.

Response: The Commission acknowledges that compliance with Commission regulations does place certain short-term administrative and financial obligations upon the regulated community. However, the long-term benefits of Commission management and protection of a critical resource must also be considered. Project sponsors and other water users receive certain protections related to their water use that extend far beyond the protections afforded by the common law. Furthermore, the incorporation of policies and overall refinement of the regulations are intended to foster sustainable use of the resource over the term of an approval, even through times of drought. As such, some of the rigor complained about affords protection to existing uses, including economic uses, and allows for responsible economic development in the basin.

Comment: SRBC should establish a more integrated project approval process that directly considers the impacts of a project in terms of both water quantity and quality, and facilitates implementation of statewide water quality programs and mandates, including the Chesapeake Bay Tributary Strategies program, the anti-degradation program and the TMDL program.

Response: The member jurisdictions continue to maintain primary jurisdiction for regulating water quality pursuant to federal regulations under the Clean Water Act. In order to avoid duplication, the Commission focuses its review on water quantity while considering the impacts of a project on water quality, primarily through integrated, extensive coordination with agencies of its member jurisdictions.

Comment: SRBC should encourage "smart growth" communities that cluster development and have less impact on the environment. SRBC, by increasing regulatory thresholds, eliminating transferability of approvals, shortening amortization times and generally creating uncertainty about future water rights, would seem to promote sprawl by encouraging large lot development with individual wells to avoid SRBC regulation.

Response: The Commission rejects the notion that this set of revised regulations will somehow discourage clustered development and create uncertainty about future water rights. If anything, these strengthened regulations improve the Commission's ability to effectively manage the water resources of the basin, and will reinforce certainty about future water supplies by assuring users that they are drawing on reliable sources of water that will not be subject to conflict or interference with other users. It also acknowledges that land use decisions are made at the local level in all of its member jurisdictions.

Comments by Section, Part 803

Section 803.1 Scope

Comment: Decisions made by the Commission should reference the section of the comprehensive plan that is relied upon.

Response: Docket approvals presently do reference the project's compliance with the terms of the comprehensive plan, but a reference to a single section of the comprehensive plan would be too limiting in most cases.

Section 803.2 Purposes

Comment: The reference to economic development should be strengthened by stating that it is a purpose of the regulations to promote economic development and financial investment. It was further suggested that the purposes section should acknowledge the water-related dependency of many large and small commercial, industrial, and mining industries in the basin. Finally, the words "and control" should be deleted from Section 803.2(a)(2).

Response: Again, the Commission feels that the existing reference to economic development in this section is sufficient. The Commission also promotes economic stability and certainty by protecting the sources of water that all such activities depend on for their use and development. The Commission protects more than just the environment; the Commission heads off conflicts between users and helps users maintain reliable sources of water. The word "control" comes directly from the purposes section of the Susquehanna River Basin Compact and cannot be removed or deleted.

Section 803.3 Definitions

Comment: Revise the "groundwater" definition to indicate that "groundwater * * * includes that water contained in quarries, pits and underground mines not originating directly from surface water inflow (runoff)." Also add that the term groundwater * * * "includes water derived from a spring by pumping or other means of drainage which reduces or eliminates the surface flow."

Response: The definition has been modified to include "or other means of drainage." The Commission does not consider the addition of the other suggested wording to be necessary.

Comment: The last sentence in the "groundwater" definition is confusing and, when read in conjunction with the "surface water" definition, may exclude ground or surface water that is intended to be included.

Response: Agreed. Additional language contained in the current definition has been reinserted to clarify the definition.

Comment: The "surface water" definition uses the term "surface of the earth," while the "groundwater" definition uses the term "surface of the ground."

Response: Agreed. The term has been changed to "surface of the ground."

Comment: There is a need to define the term "undertake" to make clear what constitutes the commencement of a project requiring approval under Section 803.4, and, to insure that mere site preparation such as clearing and grubbing are not included under the definition, a definition of "construction" should also be included.

Response: Agreed. New definitions have been included for the term "undertake" and for the term "construction." The definition of construction insures that mere site preparation activity will not be included under the definition of "undertake". Combined, these definitions clarify what activity is subject to prior review and approval.

Comment: Revise the "project" definition because it is confusing and ambiguous.

Response: This definition utilizes wording taken directly from the Susquehanna River Basin Compact.

Comment: Revise the "pre-compact consumptive use" definition by adding the following words after the date "January 23, 1971": "established on the basis of credible documentation."

Response: The Commission does not consider the suggested language to be necessary. All such determinations are already made on the basis of credible documentation evaluated by Commission staff.

Comment: Revise the "water resources" definition to remove the term "and related natural resources" because it is unclear what these "related natural resources" are.

Response: This definition utilizes wording taken directly from the Susquehanna River Basin Compact.

Comment: Restore the use of the words "for use" in the "withdrawal" definition.

Response: The Commission agrees to restore the words "for use in the basin."

Section 803.4 Projects Requiring Review and Approval

Comment: The proposal to require a new review and approval by the Commission after a change of ownership of a project will substantially complicate and hinder the transfer of projects and therefore reduce the attractiveness of investments in projects in the basin. Frequent corporate changes, reorganizations, and mergers are common in the energy industry today. Requiring a new docket application for each such event would be administratively unwieldy, reduce predictability, and will add unnecessary risk for anyone willing to sponsor a project.

Comment: Requiring approvals upon change of ownership of a project may also discourage water companies from taking over smaller, inadequate systems due to the uncertainties created regarding the new quantities of water that will be available under a reissued approval. Furthermore, there does not appear to be a need to require that full project reviews be performed when there is a change of ownership of a project unless there is a change in conditions that really warrants such a full review.

Comment: The Commission should consider some way of preliminarily evaluating whether there has been such a change before requiring submission of a new application by transferees or simply reopening the docket under its reopening authority. Also, the Commission may want to focus on the ability of a transferee to comply with the existing approval. Yet another suggestion is for the Commission to require the submission of a notice of a change of ownership prior to the transfer, together with a transfer fee. This would enable the Commission to stay fully informed about which entities hold approvals, facilitate enforcement of any limitations or conditions, and offset the Commission's processing and administrative costs.

Response: The Commission has added new paragraph (b) that lists categories of projects that are exempt from the requirement for Commission approval upon a change of ownership. These exemptions were originally contained in the "change of ownership" definition and have been relocated to this section. The Commission has also added new paragraph (c) that allows projects not otherwise exempt under paragraph (b), to be undertaken by a new project sponsor (the transferee) upon a change of ownership pending action by the Commission on an application submitted by such new project sponsor requesting review and approval of the project. Both paragraphs (b) and (c) relate to projects that did not require Commission approval prior to January 1, 2007.

Comment: New owners should be required to seek approval of their water consumption and have full accountability for compliance with the terms for approval.

Response: Subject to the exceptions noted in our response above, the Commission agrees.

Comment: The Commission should not end the grandfathering of consumptive uses existing prior to January 23, 1971. The Commission has not provided a good reason to end this practice that has been a part of the Commission's regulations since their inception, and which project sponsors have come to rely on.

Comment: The intention of grandfathering is to protect the expectations of the person, but not the project. The proposed limitation on grandfathering does not affect the reasonable expectations of any person who is the current owner. Ending grandfathering assures fair implementation of the regulations. Exemptions provided to ag and family transfers should be continued indefinitely.

Response: The rationale for gradually retiring grandfathered benefits upon the transfer of ownership of a project is that, with few exceptions, such portions of the basin's water resources should not be allowed to continue indefinitely into the future unmanaged. Under the compact, the Commission is responsible for the comprehensive management of all of the basin's resources. While it was reasonable to allow those who possess grandfathered benefits to continue their use of them, the unfettered transfer of them to subsequent purchasers effectively creates a situation of prior appropriation.

Comment: The federal reservations to the Susquehanna River Basin Compact specifically prohibit the Commission from charging for pre-compact uses of water under Section 3.9 of the compact. Section 3.9 only allows the Commission to charge for use of its facilities or its services. Waters consumptively used are not a product of the Commission facilities or services, but are produced by the streams and rivers owned by the individual states. There is no basis for charging these projects a fee. Finally, grandfathered amounts encourage water conservation.

Response: The fees paid by consumptive users are not made under the authority of Section 3.9 of the compact and are therefore not subject to the federal reservations regarding charges under Section 3.9 of the compact. Instead, these fees are just one of several means of compliance with the consumptive use regulation that a project sponsor can employ. The Commission places the proceeds of such charges into a special water

management fund where they are used to purchase storage for release during low flow and to implement other measures to mitigate the effects of consumptive water use. Project sponsors are free to propose other means of mitigation.

Comment: Section 803.4(a)(4) requiring approval of any consumptive use that adversely affects purposes outlined in Section 803.2 is overly broad and too vague to effectuate compliance because it provides no quantitative or qualitative benchmarks.

Response: Agreed that this paragraph may be overly broad in scope. This paragraph has therefore been stricken.

Comment: In (a) Consumptive use of water, and (b) Withdrawals, change the reference to Section 803.12 to Section 803.13.

Response: Agreed. This cross-reference was incorrect and has been changed.

Comment: The proposal to regulate combined surface and groundwater withdrawals of 100,000 gpd or greater brings more withdrawals under review and approval, and better enables the Commission to ensure that substantial withdrawals do not compromise basin water resources.

Response: The Commission strongly agrees.

Comment: Combining groundwater and surface water to reach the withdrawal threshold of 100,000 gpd opens the regulatory process to include both when only one may be increased. Approval thresholds should remain separate.

Response: The Commission strongly believes that the hydrologic link between surface and groundwater justifies combining surface and groundwater withdrawals under one regulation that can consider and manage their mutual impacts. This conforms to the comprehensive management principles set forth in the compact.

Comment: The combined surface and groundwater requirement will force applicants to file two applications and pay two application fees.

Response: The proposed regulation does not have the effect referenced in the comment. If finally adopted, the Commission intends to institute a new application system for withdrawals and intends to modify its fee schedule to accommodate combined withdrawals.

Comment: The Commission should exempt the first 20,000 gallons per day (gpd) of an into-basin diversion as it has exempted the first 20,000 gpd of an out-of-basin diversion.

Response: The Commission does not agree that into-basin diversions should also be exempted up to 20,000 gpd. Regardless of quantity, the Commission wishes to insure that only water of good quality or properly treated water is being diverted into the Susquehanna River Basin. Rather than grant a blank exemption, the Commission will consider the possibility of a future "administrative agreement" or other informal arrangement with member states to accept their review and approval of a discharge into the basin (diversion) as an approval by the Commission.

Comment: Diversions should only be approved when the applicant demonstrates the clear need and a lack of alternatives.

Response: The Commission feels that the new regulation, which incorporates the Commission's out-of-basin diversion policy, adequately covers these criteria with respect to out-of-basin diversions.

Comment: There are no substantive criteria in 803.4(g) to establish a threshold as to when "other projects" may be required to submit an application.

Response: This paragraph is in conformance with Section 3.10(3) of the compact that grants the Commission and the member jurisdictions the broad authority to identify other projects that require Commission approval.

Section 803.5 Projects That May Require Review and Approval

Comment: With respect to (a), terms used such as "affect interstate water quality or interstate waters" and "significant effect" are too vague and do not sufficiently establish a quantitative standard. There is no requirement to identify which part of the comprehensive plan is adversely affected and therefore there is no way for an applicant to determine this.

Response: This is language that simply restates and is consistent with the language of the compact, Section 3.10. A project sponsor whose project affects the comprehensive plan would be informed about which part of the plan is so affected when it is notified in writing by the Executive Director under Section 803.4 (g).

Comment: With respect to (b), there should be a "pre-determination notice" procedure that would afford a project sponsor the opportunity to supplement information, discussion, and technical interaction before a determination is made by the Executive Director.

Response: If the Executive Director is called upon to make a determination, he/she will notify the project sponsor to submit such information prior to a determination. This will be part of the due process automatically afforded a project sponsor and there is no need to provide for it separately in the regulation.

Section 803.6 Transferability of Project Approvals

Comment: Support expressed for limited classes of transfers.

Comment: The proposed language should be eliminated for the same reasons given under the comments submitted on Section 803.4. regarding "change of ownership" and the existing rule regarding transfers should be retained. Essentially, restrictions on the transfer of Commission approvals create the same burdens on the regulated community as described in the comments on Section 803.4 above.

Response: This section has been extensively revised to now generally permit the transfer of project approvals. All transfers would require advance notification and certification to comply with all terms and conditions of the transferred approval. Transfers qualifying under new paragraph (b) can be made automatically without further Commission action. Transfers qualifying under new paragraph (c) can be made conditionally with a subsequent application to the Commission within 90 days from the transfer requesting review and approval of previously unapproved aspect of the project. Transfers qualifying under new paragraph (d) can also be made conditionally with a subsequent application to the Commission within 90 days from the transfer requesting review and approval of the entire project.

Section 803.7 Concurrent Project Review by Member Jurisdictions

Comment: Insert the words "to avoid delays" after the words "to avoid duplication of work." All reviews should be carried on in parallel with other agencies so as to avoid any delays in the review process.

Response: The suggested language is seen as unnecessary since it is the express purpose of the section.

Comment: Substitute the words "appropriate administrative agreements" or "informal arrangements" for "agreements of understanding" and "agreements" to be consistent with Section 804.3.

Response: Agreed.

Section 803.8 Waiver/Modification

Comment: The "modify" portion of this section gives the Commission too much discretion to actually change the requirements of a regulation that has already been promulgated. Therefore, the references to "modification" and

"modify" in this section should be deleted.

Response: This section has been a part of the Commission's regulations since the first omnibus rulemaking package was adopted in 1995. It is generally used to relieve project sponsors of unnecessary requirements, rather than to place additional requirements upon a project sponsor. The Commission expects that this type of use of the "waiver" section will continue, although it reserves the right to use such discretion in appropriate circumstances.

Section 803.12 Constant-Rate Aquifer Testing

Comment: There should be an introductory paragraph that includes a statement of purpose.

Response: The Commission has added additional wording that explains the purpose of constant-rate aquifer testing.

Comment: This section should state that constant-rate aquifer testing plans shall be prepared by a qualified and licensed professional geologist.

Response: The Commission defers to state law on this matter. Geologists are not formally licensed in New York or Maryland.

Comment: This section should state that constant-rate aquifer testing plans shall follow published Commission guidelines which shall be consistent with current industrial standards.

Comment: Once testing is complete, the Commission should not be able to require additional testing or monitoring unless the purposes of the first testing have not been met. The specific circumstances requiring additional testing should be set forth.

Response: These comments are addressed in the Commission's revised Aquifer Testing Guidance. Testing is conducted to provide a sound scientific basis for the Commission's decision regarding a project. Additional testing and monitoring is required to confirm assumptions in the interpretation of data or to verify system performance.

Comment: Paragraph (d) allows the Commission to impose arbitrary demands for additional testing.

Response: As is the case with every governmental agency, the Commission may not constitutionally impose arbitrary requirements.

Comment: This section deserves support.

Response: Agreed.

Section 803.13 Submission of Application

Comment: Add a new subsection that describes the deadlines to which the Commission would be obliged with respect to: (1) Administrative completeness; (2) technical reviews of applications; (3) review of supplemental submissions required by the Commission; and (4) actions to be taken by the Commission.

Response: The Commission feels that it would be more appropriate to address this comment in a set of accompanying guidelines rather than in the regulation itself.

Comment: In paragraph (b), how will a transferee of a project know that it is to comply with all of the requirements to certify an intention to comply and assume all associated obligations?

Response: This provision has been relocated to Sec. 806.6. The Commission will make available appropriate notification and certification forms to assist transferees in complying with the requirements.

Comment: In paragraph (c), the Commission should impose a time limit on itself to determine the completeness of an application.

Response: The provision has been deleted.

Section 803.14 Contents of Application

Comment: Applications by project sponsors should demonstrate the consistency of projects with locally adopted comprehensive plans and with state water plans.

Response: The notice of application procedure, which covers notification to local municipalities and county planning agencies, provides an ample opportunity for those entities to submit comments to the Commission on the consistency of the projects with local plans. The Commission coordinates with state agencies on each project application, providing the states with an opportunity to comment on the consistency of the projects with any of their water plans.

Comment: Some items that are now required to be provided in project applications are made discretionary on the part of the Commission in the new regulations. Many of these items provide information relevant to whether a proposed project impacts water resources of the basin. These should continue to be mandated.

Response: The regulation has been restructured to mandate certain information that is uniformly applicable to all projects. The informational requirements listed as discretionary are also important, but not all are necessary for all projects. The Commission believes some discretion is needed to tailor informational needs on a case-by-case basis.

Comment: Applications should not be deemed incomplete if they lack a plan for avoiding or mitigating consumptive use because large volume consumptive use may be a legitimate purpose. Instead preface with statement "As may be appropriate, depending upon the nature of the project, plans for avoiding * * * (etc)".

Response: Mitigation is one of the fundamental purposes of the consumptive use regulation. It is essential that a project sponsor develop a plan for mitigating its consumptive use. Development of a plan does not in any way imply that the use is not legitimate.

Comment: Two additional subsections should be added to allow the applicant to provide information regarding: (1) The benefits of the project; and (2) plans to mitigate adverse impacts of potential adverse effects.

Response: The project sponsor may, as it chooses, submit this information to the Commission. There is no need to make it a required submission.

Comment: Add a new item (xi) Evidence of compliance with all registration requirements of the Commission and the appropriate member jurisdictions.

Response: Agreed.

Comment: In (a)(2)(i), the project location should be determined by gps accurate to 10 meters.

Response: Agreed.

Comment: Paragraph (a)(2)(v) would seem to allow a requirement for a constant-rate aquifer test even if the application is for surface water, and it is the surface water application that causes the combined request to exceed 100,000 gpd.

Response: Commission staff will take into account such situations and, as appropriate, recommend a waiver of the constant-rate aquifer test.

Comment: With respect to paragraph (a)(3)(ii), is a PNDI being required?

Response: The Commission currently conducts a review for threatened or endangered species and their habitats. Under the new regulations, the project sponsor will submit this information with the application.

Comment: With respect to (b)(1)(ii), under what authority can the Commission require information on the ability of a project sponsor to fund a project?

Response: This is a necessary and convenient power under Section 3.4 (8) to reasonably ascertain the financial ability of the project sponsor to carry out a project in a manner to be approved by the Commission, including any conditions that the Commission may impose. This authority is only exercised in very limited situations.

Comment: With respect to (b)(1)(iii), relating to the identification of alternatives, what is a reasonable alternative? Will there be any guidance in this regard?

Response: Reasonable in this context refers to alternatives that may be appropriate for a particular situation. Commission staff will provide guidance and consultation as needed.

Comment: With respect to (b)(1)(iv), will the Commission maintain an inventory of anticipated uses?

Response: It is not necessary for the Commission to maintain such an inventory. Existing and anticipated uses should be identifiable by project sponsors or their consultants in each situation. For example, if the project is proposed for an area that has experienced rapid growth, anticipated uses should be evident, or reasonably discernable.

Comment: With respect to paragraph (3), it is much too open ended, allowing the Commission to ask for anything it deems necessary without limit.

Response: Again, as in any action it takes as a government agency, the Commission must act reasonably. Under constitutional law principles, there must be a rational relationship between what regulatory actions the Commission takes and a legitimate regulatory objective.

Comment: The regulations should continue the requirement for submission of comprehensive information about potential impacts of withdrawals and availability of alternatives, rather than allow its submission to be discretionary on the part of the Commission.

Response: Again, the regulation has been restructured to mandate certain information that is uniformly applicable to all projects. The informational requirements listed as discretionary are also important, but not all are necessary for all projects. The Commission believes some discretion is needed to tailor informational needs on a case-by-case basis.

Comment: There should be compatibility with regional and state Act 220 plans.

Response: The Commission routinely coordinates its approvals with its member jurisdictions. The project sponsor is required to give notice to the municipality and county planning agency of its application for approval, thereby providing an opportunity for local and regional interests to comment on the compatibility of projects.

Section 803.16 Completeness of Application

Comment: Add a statement providing that the Commission will provide the project sponsor with either a formal notice of administrative completeness, or a deficiency notice within a prescribed time.

Response: The Commission currently provides deficiency notices, when appropriate, as reviews are undertaken.

Section 803.21 General Standards

Comment: Omit the sentence containing the subjective terms "detrimental" and "proper."

Response: The wording comes directly from the compact.

Comment: The words "modify and approve as modified" should be rephrased to "With the applicant's consent, the Commission may modify * * *" Only the applicant should have the right to modify a project, not the Commission.

Response: Again, the wording comes directly from the compact. Also, this sentence is not meant to imply that the Commission would unilaterally modify a project without prior notice. It may condition its approval on the project sponsor making a modification or incorporating a condition that would help meet a Commission regulatory objective, but the Commission would not unilaterally modify a project without prior notice and an opportunity to be heard.

Comment: Add a new subsection that requires that Commission staff provide a draft docket to project sponsors at least 10 days in advance of Commission action on that docket. If the staff is recommending modifications, they should be required to provide the reasons for the recommended modifications in writing with quantitative analysis.

Response: The Commission strives to provide project sponsors with a draft docket as far in advance of final Commission action as possible. However, due to fluctuations in the number and complexity of dockets before the Commission at any particular meeting, a guarantee of ten (10) days advance review is not possible in all cases.

Comment: The Commission should not suspend review or revoke approval due to the disapproval of another government agency, especially when what some other agency is deciding has little or nothing to do with the water resources of the project. Furthermore, this provision seems to limit the Commission's power to preempt municipal regulations that, at least under Pennsylvania Law, illegally attempts to regulate water withdrawals. Instead of suspending review, the Commission should proceed expeditiously with its review and approval process and simply condition its approval on the applicant obtaining and retaining all other applicable approvals.

Response: The Commission will not suspend its review or approval of a project in response to the illegal exercise of authority by another governmental jurisdiction. However, it makes sense to coordinate Commission review and approval actions with other governmental jurisdictions. By the same token, it makes little sense for the Commission to expend staff resources on the review of projects that have been rejected by other governmental jurisdictions and cannot, therefore, be implemented.

Comment: This section should be supported because it allows the Commission to streamline its decision making with other government entities involved in project review.

Response: Agreed. See response to prior comment.

Comment: Should include language acknowledging the importance of economic interests of the applicant, community, region, etc.

Response: See above responses regarding purposes of the regulations.

Section 803.22 Standards for Consumptive Uses of Water

Comment: Eliminating the Q7–10 trigger flow for providing makeup during periods of low flow leaves too much discretion to SRBC and leaves no guidance to project sponsors to determine risk and costs.

Response: The elimination of the Q7–10 trigger flow criterion effectively changes little because few consumptive use projects approved by the Commission are now tied to this criterion. Most project sponsors opt for payment of the consumptive use fee as a means of compliance rather than release storage or shut down during low flow periods. When the Commission does set a low flow criterion, it does so on a case-by-case basis using modern assessment techniques that allow the Commission to more accurately assess the particular needs of the affected stream. The Commission establishes passby flow requirements the same way. In cases involving a consumptive use as well as a withdrawal, the established passby flow serves as the low flow criterion for a project. In the rare event that a flow criterion is set for a particular project, it will be done only after the project sponsor is given the

opportunity at a public hearing to submit information and make relevant arguments regarding the establishment of a flow criterion for its project. The criterion will not be established arbitrarily and without notice and opportunity for response.

Comment: "Sole Discretion" language too open ended and must incorporate reasonableness.

Response: See responses above to allegation that the Commission may act arbitrarily under these proposed regulations.

Comment: Support expressed for the approval by rule procedures as a means of streamlining the approval process.

Response: The Commission agrees.

Comment: Section 803.22 (b)(4) is inconsistent with the other alternatives provided under (b).

Response: Agreed. It has been made a separate item.

Comment: With respect to (b)(1)(ii), an explanation should be included as to why a project may be required to reduce its withdrawal to an amount greater than its consumptive use.

Response: Agreed. The words "or greater than" have been removed.

Comment: Eliminate mitigation requirement.

Response: Mitigation of consumptive use is a fundamental purpose of the consumptive use regulation and an element of the regulation that comes directly from the Commission's comprehensive plan. Eliminating mitigation requirements essentially would ignore the provisions of the comprehensive plan.

Comment: On the approval by rule provision, the Commission should provide for a 30- to 60-day notification instead of 90 days.

Response: The Commission feels that the 90-day notification is appropriate for qualified projects.

Section 803.23 Standards for Water Withdrawals

Comment: SRBC withdrawal regulations relating to the protection of existing users should make clear that inefficient existing sources of water may not necessarily be protected.

Response: The Commission does not wish to imply that it will protect existing users under all circumstances, thus in effect granting a prior appropriation of water, which is prohibited under the compact.

Comment: Section 803.23(b)—Add the word "significant" before the words adverse impacts.

Response: Agreed. This will remove the implication that a *de minimis* adverse impact will form the basis for some limitation or condition.

Comment: Section 803.23(b)(2)—Add "Commission may consider and balance."

Response: As it has always done, the Commission will carefully weigh the necessity of any requirement or limitation that it imposes versus the benefit to be achieved.

Comment: Section 803.23(b), that allows the Commission to deny, limit or condition an approval to insure no adverse impact, incorrectly suggests that lowering of groundwater levels and stream flow levels is an adverse impact. These may be perfectly legitimate occurrences in connection with use of an aquifer.

Response: The Commission has added "significant" before the words "adverse impact" to remove the implication that a *de minimis* adverse impact will form the basis for some limitation or condition.

Comment: In Section 803.23(b), the Commission should not accord protection status to intermittent streams, as such protection would unduly restrict the use and potential of aquifers that can be used as groundwater reservoirs to provide economically important water supplies.

Response: The Commission believes that headwaters must be carefully managed to insure a proper balance of sustainable development, responsible use, and conservation. Intermittent streams are not afforded special protection; however, Commission staff does evaluate for potential adverse impacts. The withdrawal of large quantities of groundwater from small headwater basins can dewater springs and wetlands, and reduce the groundwater contribution (base flow) to headwater streams. This can change the previous intermittent reaches to ephemeral reaches and the uppermost perennial reaches to intermittent reaches. While the loss of perennial stream length is generally a small fraction of the entire stream, it often represents the most pristine portion of the watershed with respect to water quality and habitat.

Comment: The Commission needs to define the term "low flow." The most logical definition is the Q7–10 low flow. To protect stream flows at any higher level would unduly restrict the use and potential of aquifers that can be used as reservoirs for economically important activities.

Response: The Commission sets low flow criteria on a case-by-case basis using modern assessment techniques to accurately assess the particular needs of the affected stream. The Commission will carefully weigh any limitation it imposes versus the benefit to be achieved.

Comment: The Commission should provide its regulatory requirements concerning the establishment of passby standards in Section 803.23. The current practice of setting a passby standard at 20 percent of average daily flow is not a fair, reasonable and appropriate approach to balancing the need to allow a beneficial stream withdrawal with the need to protect the stream ecology.

Response: The Commission has incorporated passby standards in guidelines that it makes available to all applicants. The Commission sets a low flow criterion based on the particular needs of the stream, the best available science, and on a case-by-case basis. Instream needs are assessed using standard methodologies and can always be refined by local studies. Incorporating the standards in guidance enables the Commission to periodically update those standards as new science emerges.

Comment: The Commission should define terms such as "adverse impact, aquatic habitat and water quality degradation."

Response: The latter two items, as used in Section 803.23, are listed only as possible indicators of adverse impacts that the Commission may consider in each individual case or circumstance. It is not necessary or desirable to place specific weight or limiting criteria on factors that are merely indicators of possible adverse impacts. The term "adverse impacts" or "adverse effect" comes directly from the language of Section 3.10 of the Susquehanna River Basin Compact granting authority to the Commission to review and approve projects that may cause an adverse effect.

Comment: In 803.23(b)(3), make it clear that the applicant shall have the right to propose mitigation measures to offset potential adverse impacts of the proposed project.

Response: The Commission encourages a project sponsor to propose mitigation for any potential adverse impacts in its application(s). Further, the Commission carries on an active dialogue with project sponsors during the review process, and the project sponsor is free at that time to propose any reasonable form of mitigation.

Comment: A decision to deny, modify or conditionally approve a withdrawal project should be accompanied by a technical evaluation that is provided to the project sponsor in a timely manner to allow sponsor to rebut the conclusions or revise its application to address concerns raised by the Commission.

Response: As stated above, the Commission carries on an active dialogue with the project sponsor during the review process that allows for an exchange of information on staff conclusions and concerns, and how such concerns may be resolved.

Comment: The Commission should consider a new MOU with DEP Mining to avoid the "double jeopardy" concern.

Response: The proposed Section 803.7 provides for administrative agreements or other cooperative arrangements with agencies of the member jurisdictions. The Commission anticipates that existing agreements will be reconsidered following adoption of the new regulations.

Section 803.24 Standards for Diversions

Comment: This section should be supported or even strengthened to explicitly state that an applicant for a diversion must demonstrate "by clear and convincing evidence" a need for the diversion.

Response: The Commission believes that the language proposed ensures that the project sponsor will be required to adequately demonstrate a need for the diversion without the formal inclusion of an evidentiary standard that may be subject to further construction or interpretation.

Section 803.25 Water Conservation Standards

Comment: AWWA standards should be used for customer meter testing under Section 803.25(a)(2). Is the definition for "flow control device" correct?

Response: The water conservation standards were taken directly from the current regulations. The Commission intends to revisit this section in the future and will evaluate the published standards at that time.

Section 803.30 Monitoring

Comment: The Commission should accept testing and monitoring done in accordance with member state standards when the state has a parallel or equally stringent procedure.

Response: The water conservation standards were taken directly from the current regulations. The Commission intends to revisit this section in the future and will evaluate the published standards at that time.

Comment: The Commission should consider whether PWS source meters should be certified annually, rather than every five years, with a possible exception for agriculture.

Response: The regulations set the minimum standard for all projects. The Commission can specify certification more frequently than once every five (5) years for source meters of public water suppliers if warranted, or as required in other permits.

Comment: In Section 803.30 (b)(2)(ii), a monitoring loss should be reported within five days of such loss, regardless of the length of time the loss continues.

Response: Agreed.

Comment: The Commission should continue to mandate that project sponsors monitor the water quality impacts of their withdrawals to help the Commission fulfill the compact purposes of "stream quality control" and the "abatement of pollution."

Response: The requirement to collect water quality data was burdensome for the project sponsor, burdensome for Commission staff to review and maintain, and it is generally not used by Commission programs because similar data are available from other sources, particularly from its member jurisdictions, each of which administers a comprehensive water quality program. The Commission reserves the right on any given application to require water quality sampling, if water quality is an issue.

Section 803.31 Duration of Approvals and Renewals

Comment: The Commission should not be reducing the duration of approvals from 25 years to 15 years. Many water resources projects involve large investments of money and many years of planning that are not well accommodated by an approval of 15 years. Instead, the Commission should rely on its authority to reopen a docket if there is a potential problem. The Commission should not have deleted the language that appears in the existing regulations allowing the Commission "to modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors."

Response: The Commission has found that both projects and the water resources that serve them are subject to many changes over 25 years and, therefore, it is appropriate to review these applications on a more frequent basis. The Commission agrees to reinsert the deleted language allowing the Commission to modify the standard duration, when appropriate, in consideration of the factors enumerated in this comment.

Comment: The time for commencement of a project after approval should take into account that some large projects require longer permitting periods and longer construction times. Opponents sometimes attempt to delay projects using administrative appeals and other devices that can prevent a large project from commencement.

Response: The Commission agrees that there may be circumstances in which a longer time frame is needed for undertaking a project. The Commission is inserting language that will allow adjustments to this time limit on a case-by-case basis.

Comment: The submission of an application one year in advance for the renewal of an approval is too long and unneeded.

Response: The time was set to afford both the project sponsor and Commission staff sufficient time to evaluate changes to the project and changes to the resource, and is reasonable considering current review times. Having said that, the Commission is nonetheless willing to modify the period to six (6) months. As modified, a project sponsor who submits a complete application six (6) months in advance, is given the benefit of having an existing approval automatically extended until such time as the Commission renders a decision on the new application. This eliminates the risk of having an approval expire before the Commission has an opportunity to act.

Comment: In (a), the reduction of the duration of approvals to 15 years is appropriate. In fact, 10 years would be more appropriate.

Response: The Commission agrees that the reduction of the term to 15 years is appropriate so that commitment of water to a particular use can be reviewed more frequently and any changes in conditions can be addressed sooner.

Comment: In (c), there should be a notification to the state agency with jurisdiction over the project, at the time a waiver is applied for.

Response: The Commission routinely coordinates with member jurisdictions on such project-related matters.

Comment: How will the Commission fund the increased workload resulting from shorter duration periods?

Response: The Commission has no special plans for funding any increase in workload resulting from a shorter approval term. The member jurisdictions who approve the Commission's budget will need to consider any such increased workload associated with the completion of the Commission's responsibilities under the compact.

Comment: With respect to paragraph (d), abandonment should have to be proven by the Commission and not inferred. Notice should be provided to the project sponsor.

Response: Under general legal principles, any inference of abandonment acted upon by the Commission will have to be supported by substantial evidence and appropriate notice and opportunity to be heard. There is no need for the wording suggested by this comment.

Comment: Application fees should be adjusted downward to account for shorter durations.

Response: The main purpose of shortening the term of approvals is not to realize more revenues from project review fees. In fact, these fees cover no more that half the cost of conducting a review. Project reviews conducted on a more frequent basis will actually involve increased costs that will more than offset any increased revenues from application fees.

Section 803.32 Reopening/ Modification

Comment: In (a), the word "significant" should be substituted for the word "substantial" before the words "adverse impact."

Response: Agreed.

Comment: In (c), the Commission should retain the discretion to require a project sponsor to provide a temporary source of potable water at the project sponsor's expense, if interference should occur during a pumping test of a source under development.

Response: Agreed.

Comment: The language of 803.32(b) is too strong in that it does not spell out how to remedy situations where a project sponsor fails to comply with a term or condition of its docket approval.

Response: The remedy will be worked out administratively between the Commission and the project sponsor without providing for a specific remedy in the regulation.

Section 803.33 Interest on Fees

Comment: Rate should be established and equally imposed.

Response: Interest rates change as they are affected by market forces and therefore should not be set permanently by regulation. Whatever rate is established will be uniformly imposed.

Section 803.34 Emergencies

Comment: In (b), at the end of the paragraph, delete the word "information" before the colon. Also, in (b)(2), delete the word "information" following the word "application."

Response: Agreed.

Comment: In (b)(1), replace "an emergency" with "a completed emergency" before the words "application form."

Response: Agreed.

Comment: In (b)(2)(x), because of the immediate inclusion of an application fee may delay submittal of an emergency application, provision should be made in the regulation for reduction, waiver, or later submittal of an "appropriate" fee.

Response: Agreed; however, this is a change that can be made in the SRBC Project Fee Schedule, rather than these regulations.

Comments by Section, Part 804

Section 804.2 Time Limits

Comment: Registration language strongly supported.

Response: Agreed.

Section 804.3 Administrative Agreements

Comment: Add the following: "In conjunction with such agreements or arrangements, the Commission will require submission of all necessary registration forms to the member jurisdiction as part of a complete application for renewal of an existing project or new or expanded agricultural project or as a condition of approval of any other new or expanded project."

Response: Although not using this suggested language, the Commission has revised this section and renamed it "Administrative coordination" to address this comment.

Comments by Section, Part 805

Section 805.1 Public Hearings

Comment: Participants to a hearing should be limited to interested parties.

Response: Who is able to participate in a hearing will depend on the circumstances and will be controlled by a decision of the presiding officer.

Comment: Notice of hearings should continue to be posted at Commission offices.

Response: Agreed.

Comment: Why does the Commission need three days notice?

Response: This is not mandated by the regulation but is more in the form of a request to participants. Three days allows the Commission to assemble a list of participants and establish an order of call for those wishing to provide testimony.

Section 805.2 Administrative Appeals

Comment: Administrative hearings should be held in the state where the project or controversy is located. Also, the Commission should appoint an "impartial" hearing officer who shall not be a member of the Commission or an officer of the Commission. The Commission should absorb all hearing costs.

Response: Wherever practicable, the Commission will conduct such hearings in the general vicinity where the project or controversy is located. The Commission will also take steps to insure the impartiality of the hearing officer. Such steps do not require, however, that the Commission automatically disqualify members of the Commission or officers of the Commission. Hearing officers only make findings of fact and law that serve as recommendations to the Commission. The ultimate decision in any matter rests with the Commission. With respect to costs, they should be distributed equitably and not assigned automatically to any single party. The Commission has included an in *forma pauperis* procedure in Section 805.3 for parties who genuinely cannot pay hearing costs and have acted in good faith.

Comment: Parties should have at least 60 days to file an administrative appeal, rather than the 30 days given in proposed Section 805.2. Sometimes there is delay in a party learning of a Commission decision, effectively reducing the time for appeals.

Response: The Commission feels that thirty (30) days strikes the appropriate balance for having its action open for appeal.

Section 805.3 Hearing on Administrative Appeal

Comment: Cost of expert consultants should be paid by the Commission.

Response: Again, the presiding officer should be able to weigh the equities of assigning costs for a hearing without being bound by a specific rule, some of which may be assigned to the Commission.

Section 805.10 Scope of Subpart

Comment: Regulated entities should be legally obligated to meet the terms and conditions for their approvals and SRBC must have the authority to ensure that they do.

Response: The Commission strongly agrees and that is why the compliance and enforcement provisions of these regulations have been strengthened.

Section 805.12 Investigative Powers

Comment: The Commission does not have authority from the compact to provide for warrantless searches.

Response: Agreed. This provision will be stricken. The Commission will acquire an administrative search

warrant whenever it is legally required to do so.

Comment: Strongly supported as necessary for the Commission to effectively enforce its regulations.

Response: The Commission strongly agrees.

Section 805.14 Orders

Comment: The Commission does not have authority from the compact to issue orders.

Response: As noted in the Commission's response to the general comments, the Commission strongly disagrees with this contention. The Susquehanna River Basin Compact, P.L. 91–575 provides broad and sweeping powers to the Commission to carry out its purposes, including under Section 3.4 the power to have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom. Also, that same section empowers the Commission to adopt, amend, and repeal rules and regulations to implement the compact.

Comment: Strongly supported as necessary for the Commission to effectively enforce its regulations.

Response: The Commission strongly agrees.

Final Rule

List of Subjects in 18 CFR Parts 803, 804, 805, 806, 807 and 808

Administrative practice and procedure, Water resources.

■ Accordingly, for the reasons set forth in the preamble, under the authority of secs. 3.4, 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*, Chapter VIII of the Code of Federal Regulations is amended as follows:

PARTS 803, 804, AND 805—[REMOVED AND RESERVED]

■ 1. Parts 803, 804, and 805 are removed and reserved.

■ 2. Part 806 is added to read as follows.

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Sec.
806.1 Scope.
806.2 Purposes.
806.3 Definitions.
806.4 Projects requiring review and approval.
806.5 Projects that may require review and approval.
806.6 Transfer of approvals.
806.7 Concurrent project review by member jurisdictions.
806.8 Waiver/modification.

Subpart B—Application Procedure

806.10 Purpose of this subpart.
806.11 Preliminary consultations.
806.12 Constant-rate aquifer testing.
806.13 Submission of application.
806.14 Contents of application.
806.15 Notice of application.
806.16 Completeness of application.

Subpart C—Standards for Review and Approval

806.20 Purpose of this subpart.
806.21 General standards.
806.22 Standards for consumptive uses of water.
806.23 Standards for water withdrawals.
806.24 Standards for diversions.
806.25 Water conservation standards.

Subpart D—Terms and Conditions of Approval

806.30 Monitoring.
806.31 Term of approvals.
806.32 Reopening/modification.
806.33 Interest on fees.
806.34 Emergencies.
806.35 Fees.

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509, *et seq.*

Subpart A—General Provisions

§ 806.1 Scope.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 *et seq.*, (the compact) and establishes special standards under Section 3.4(2) of the compact governing water withdrawals and the consumptive use of water. The special standards established pursuant to Section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under Section 3.10. This part, and every other part of 18 CFR Chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

(b) When projects subject to Commission review and approval are sponsored by governmental authorities, the Commission shall submit recommendations and findings to the sponsoring agency, which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The Commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan, if so required by the compact. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the member jurisdictions, no expenditure or commitment shall be made by any governmental authority for or on account of the construction, acquisition or operation of any project or facility unless it first has been included by the Commission in the comprehensive plan.

(c) If any portion of this part, or any other part of 18 CFR Chapter VIII, shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(d) Except as otherwise stated in this part, this part shall be effective on January 1, 2007.

(e) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 1721 North Front Street, Harrisburg, PA 17102–2391, or from the Commission's Web site at *http://www.srbc.net.*

§ 806.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include, but are not limited to:

(1) The promotion of interstate comity;

(2) The conservation, utilization, development, management and control of water resources under comprehensive, multiple purpose planning; and

(3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 806.22, 806.23 and 806.24 of this part contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of ground and surface waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part and all

subsequent parts is to ascertain and effectuate the purposes and the intention of the Commission set out in this section. These regulations shall not be construed in such a way as to limit the authority of the Commission, the enforcement actions it may take, or the remedies it may prescribe.

§ 806.3 Definitions.

For purposes of parts 806, 807 and 808, unless the context indicates otherwise, the words listed in this section are defined as follows:

Agricultural water use. A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock and poultry. The term shall include aquaculture.

Application. A written request for action by the Commission including without limitation thereto a letter, referral by any agency of a member jurisdiction, or an official form prescribed by the Commission.

Basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

Change of Ownership. A change in ownership shall mean any transfer by sale or conveyance of the real or personal property comprising a project.

Commission. The Susquehanna River Basin Commission, as established in Article 2 of the compact, including its commissioners, officers, employees, or duly appointed agents or representatives.

Commissioner. Member or Alternate Member of the Susquehanna River Basin Commission as prescribed by Article 2 of the compact.

Compact. The Susquehanna River Basin Compact, Pub. L. 91–575; 84 Stat. 1509 *et seq.*

Comprehensive plan. The comprehensive plan prepared and adopted by the Commission pursuant to Articles 3 and 14 of the compact.

Construction. To physically initiate assemblage, installation, erection or fabrication of any facility involving or intended for the withdrawal, conveyance, storage or consumptive use of waters of the basin.

Consumptive use. The loss of water transferred through a manmade conveyance system or any integral part thereof (including such water that is purveyed through a public water supply or wastewater system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, injection of water or wastewater into a subsurface formation from which it would not reasonably be available for future use in the basin, diversion from the basin, or any other process by which the water is not returned to the waters of the basin undiminished in quantity.

Diversion. The transfer of water into or out of the basin.

Executive Director. The chief executive officer of the Commission appointed pursuant to Article 15, Section 15.5, of the compact.

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

Governmental authority. A federal or state government, or any political subdivision, public corporation, public authority, special purpose district, or agency thereof.

Groundwater. Water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels or percolating through underground geologic formations, and regardless of whether the result of natural or artificial recharge. The term includes water contained in quarries, pits and underground mines having no significant surface water inflow, aquifers, underground water courses and other bodies of water below the surface of the earth. The term also includes a spring in which the water level is sufficiently lowered by pumping or other means of drainage to eliminate the surface flow. All other springs are considered to be surface water.

Member jurisdiction. The signatory parties as defined in the compact, comprised of the States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

Member state. The States of Maryland and New York, and the Commonwealth of Pennsylvania.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural. The term shall include a governmental authority and any other entity which is recognized by law as the subject of rights and obligations.

Pre-compact consumptive use. The maximum average daily quantity or volume of water consumptively used over any consecutive 30-day period prior to January 23, 1971.

Project. Any work, service, activity, or facility undertaken which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Project sponsor. Any person who owns, operates or proposes to undertake a project. The singular shall include the plural.

Public water supply. A system, including facilities for collection, treatment, storage and distribution, that provides water to the public for human consumption, that:

(1) Serves at least 15 service connections used by year-round residents of the area served by the system; or

(2) Regularly serves at least 25 year-round residents.

Surface water. Water on the surface of the ground, including water in a perennial or intermittent watercourse, lake, reservoir, pond, spring, wetland, estuary, swamp or marsh, or diffused surface water, whether such body of water is natural or artificial.

Undertake. Except for activities related to site evaluation, the initiation of construction or operation of a new or expanded project, or the operation of an existing project, that is subject to Commission review and approval.

Water or waters of the basin. Groundwater or surface water, or both, within the basin either before or after withdrawal.

Water resources. Includes all waters and related natural resources within the basin.

Withdrawal. A taking or removal of water from any source within the basin for use within the basin.

§ 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation or those authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

(1) Consumptive use of water. Any consumptive water use project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 806.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects that existed prior to January 23, 1971, any project that increases its consumptive use by an average of 20,000 gpd or more in any consecutive 30-day period above its pre-compact consumptive use.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(2) Withdrawals. Any project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801.

(i) Any project initiated on or after the applicable dates specified in paragraph (a)(2)(iv) below, withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or a combination of such sources.

(ii) With respect to projects previously approved by the Commission, any project that increases a withdrawal above that amount which was previously approved and any project that will add a source or increase withdrawals from an existing source which did not require approval prior to January 1, 2007.

(iii) Any project which involves a withdrawal from a groundwater or surface water source and which is subject to the requirements of paragraph (a) of this section regarding consumptive use.

(iv) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source or combination of sources, by a consecutive 30-day average of 100,000 gpd or more, above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

(v) Any project, regardless of when initiated, involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(3) Diversions. The projects described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals.

(i) Any project initiated on or after January 23, 1971, involving the diversion of water into the basin, or involving a diversion of water out of the basin of an average of 20,000 gallons of water per day or more in any consecutive 30-day period.

(ii) With respect to diversions previously approved by the Commission, any project that will increase a diversion above the amount previously approved.

(iii) With respect to diversions initiated prior to January 23, 1971, any project that will increase a diversion into the basin by any amount, or increase the diversion of water out of the basin by an average of 20,000 gpd or more in any consecutive 30-day period.

(iv) Any project, regardless of when initiated, involving the diversion of water into the basin or involving a diversion of an average of 20,000 gallons of water per day or more in any consecutive 30-day period out of the basin, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the Commission approval for such project is transferred pursuant to § 806.6.

(4) Any project on or crossing the boundary between two member states.

(5) Any project in a member state having a significant effect on water resources in another member state.

(6) Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(7) Any other project so determined by the commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

(b) Any project that did not require Commission approval prior to January 1, 2007, and undergoing a change of ownership, shall be exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) of this section if it satisfies any of the following categories:

(1) A corporate reorganization of the following types:

(i) Where property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

(ii) Where the corporate reorganization is merely a result of a change of the name, identity, internal corporate structure or place of organization and does not affect ownership or control.

(2) Transfer of a project to the transferor's spouse or one or more lineal descendents, or any spouse of such lineal descendents, or to a corporation owned or controlled by the transferor, or

the transferor's spouse or lineal descendents, or any spouse of such lineal descendents, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendent(s) and their spouses, continues to be 51 percent or greater.

(3) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action by the Commission on an application submitted by such project sponsor requesting review and approval of the project, provided such application is submitted to the Commission in accordance with this part on or before the date change of ownership occurs and the project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

§ 806.5 Projects that may require review and approval.

(a) The following projects, if not otherwise requiring review and approval under § 806.4, and provided that the project sponsor is notified in writing by the Executive Director, may be subject to Commission review and approval as determined by the Commission or the Executive Director:

(1) Projects that may affect interstate water quality.

(2) Projects within a member state that have the potential to affect waters within another member state. This includes, but is not limited to, projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water resources of interstate streams designated by the Commission under separate resolution.

(3) Projects that may have a significant effect upon the comprehensive plan.

(4) Projects not included in paragraphs (a)(1) through (a)(3) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin.

(b) Determinations by the Executive Director may be appealed to the Commission within 30 days after receipt of notice of such determination as set forth in § 808.2.

§ 806.6 Transfer of approvals.

(a) An existing Commission project approval may be transferred, or conditionally transferred, without prior Commission review and approval, to a new project sponsor upon a change of ownership of the project, subject to the provisions of paragraphs (b), (c) and (d) below, provided the new project sponsor notifies the Commission in advance of the date of the change of ownership, which notice shall be on a form and in a manner prescribed by the Commission and under which the new project sponsor certifies its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

(b) An existing Commission project approval for any of the following categories of projects may be transferred, without Commission review or approval, upon a change of ownership and the new project sponsor may operate such project under the terms and conditions of the transferred approval:

(1) A project undergoing a change of ownership as a result of a corporate reorganization of the following types:

(i) Where property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

(ii) Where the corporation reorganization is merely a result of a change of the name, identity, internal corporate structure or place of organization and does not affect ownership or control.

(2) A project being transferred to the transferor's spouse or one or more lineal descendents, or any spouse of such lineal descendents, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendents, or any spouse of such lineal descendents, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendent(s) and their spouses, continues to be 51 percent or greater.

(3) A project involving the transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

(4) A project that satisfies all of the following conditions:

(i) The existing Commission approval is less than ten (10) years old.

(ii) The project has no associated pre-compact consumptive water use.

(iii) The project has no associated diversion that was initiated prior to January 23, 1971.

(iv) The project has no associated groundwater withdrawal that was initiated prior to July 13, 1978, unless such withdrawal has otherwise been approved by the Commission.

(v) The project has no associated surface water withdrawal that was initiated prior to November 11, 1995, unless such withdrawal has otherwise been approved by the Commission.

(vi) The project is not the subject of a pending compliance or enforcement matter before the Commission.

(vii) The project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or use associated with the project, as identified in the existing Commission approval, have not changed or will not change upon its transfer. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the approved quantity. If the project involves both a consumptive water use and an associated withdrawal, then the withdrawal must have been approved by the Commission.

(c) An existing Commission approval of a project that satisfies the following conditions may be conditionally transferred and the project sponsor may operate such project under the terms and conditions of the conditionally transferred approval, pending action by the Commission on the application submitted in accordance with paragraph (c)(3) below:

(1) The project satisfies all of the following conditions:

(i) The existing approval is less than ten (10) years old.

(ii) The project is not the subject of a pending compliance or enforcement matter before the Commission.

(iii) The project features related to the source, withdrawal, diversion or

consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project, as identified in the existing Commission approval, have not changed or will not change upon its transfer. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the approved quantity.

(2) The project satisfies one or more of the following conditions:

(i) The project has an associated pre-compact consumptive water use.

(ii) The project has an associated diversion that was initiated prior to January 23, 1971.

(iii) The project has an associated groundwater withdrawal that was initiated prior to July 13, 1978 and that has not been approved by the Commission.

(iv) The project has an associated surface water withdrawal that was initiated prior to November 11, 1995 and that has not been approved by the Commission. The project has a consumptive water use approval and has an associated withdrawal that has not been approved by the Commission.

(3) The project sponsor submits an application to the Commission, in accordance with this part, within ninety (90) days from the date of the change of ownership, requesting review and approval of the applicable consumptive use, diversion or withdrawals, identified in paragraph (c)(2) above, as a modification to the conditionally transferred approval.

(d) An existing Commission project approval for any project not satisfying the requirements of paragraphs (b) or (c) above may be conditionally transferred and the project sponsor may operate such project under the terms and conditions of the conditionally transferred approval, pending action by the Commission on an application the project sponsor shall submit to the Commission, provided that:

(1) The new project sponsor submits an application to the Commission, in accordance with this part, within ninety (90) days from the date of the change of ownership, requesting review and approval of the project; and

(2) The project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

§ 806.7 Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to assure compatibility between jurisdictional review and Commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the Commission may develop administrative agreements or other cooperative arrangements, in accordance with the procedures outlined in this part, with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements or arrangements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities. Permits issued by a member jurisdiction agency shall be considered Commission approved if issued pursuant to an administrative agreement or other cooperative arrangement with the Commission specifically providing therefor.

§ 806.8 Waiver/modification.

The Commission may, in its discretion, waive or modify any of the requirements of this or any other part of its regulations if the essential purposes set forth in § 806.2 continue to be served.

Subpart B—Application Procedure

§ 806.10 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 806.4, 806.5, 806.6 and 18 CFR part 801.

§ 806.11 Preliminary consultations.

(a) Any project sponsor of a project that is or may be subject to the Commission's jurisdiction is encouraged, prior to making application for Commission review, to request a preliminary consultation with the Commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the project sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures, anticipated water needs, and the environmental impacts.

(b) Preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans, see § 806.12 but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 806.12 Constant-rate aquifer testing.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval to withdraw or increase a withdrawal of groundwater shall perform a constant-rate aquifer test in accordance with this section.

(b) The project sponsor shall prepare a constant-rate aquifer test plan for prior review and approval by Commission staff before testing is undertaken. Such plan shall include a groundwater availability analysis to determine the availability of water during a 1-in-10-year recurrence interval.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring.

(e) The project sponsor may be required, at its expense, to provide temporary water supply if an aquifer test results in interference with an existing water use.

§ 806.13 Submission of application.

Project sponsors of projects subject to the review and approval of the Commission under § 806.4, 806.5 or 806.6 shall submit an application and applicable fee to the Commission, in accordance with this Subpart.

§ 806.14 Contents of application.

(a) Applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of project and site in terms of:

(i) Project location, including global positioning system (gps) coordinates accurate to within 10 meters.

(ii) Project purpose.

(iii) Proposed quantity of water to be withdrawn.

(iv) Proposed quantity of water to be consumed, if applicable.

(v) Constant-rate aquifer tests. The project sponsor shall provide the results of a constant-rate aquifer test with any application which includes a request for a groundwater withdrawal. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(vi) Water use and availability.

(vii) All water sources and the date of initiation of each source.

(viii) Supporting studies, reports, and other information upon which assumptions and assertions have been based.

(ix) Plans for avoiding or mitigating for consumptive use.

(x) Copies of any correspondence with member jurisdiction agencies.

(xi) Evidence of compliance with applicable water registration requirements of the member jurisdiction in which the project is located.

(3) Anticipated impact of the proposed project on:

(i) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics).

(ii) Threatened or endangered species and their habitats.

(iii) Existing water withdrawals.

(4) Project estimated completion date and estimated construction schedule.

(b) The Commission may also require the project sponsor to submit the following information related to the project, in addition to the information required in paragraph (a) of this section, as deemed necessary.

(1) Description of project and site in terms of:

(i) Engineering feasibility.

(ii) Ability of project sponsor to fund the project or action.

(iii) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the project sponsor should include information that may be required by § 806.25 or any policy of the Commission relating to diversions.

(iv) Compatibility of proposed project with existing and anticipated uses.

(v) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones.

(B) Recreation potential.

(C) Fish and wildlife (habitat quality, kind and number of species).

(D) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers).

(E) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities).

(F) Historical, cultural and archaeological impacts.

(2) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment of government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(3) Any other information deemed necessary by the Commission.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

§ 806.15 Notice of application.

(a) The project sponsor shall, no later than 10 days after submission of an application to the Commission, notify each municipality in which the project is located, the county planning agency of each county in which the project is located, and each contiguous property owner that an application has been submitted to the Commission. The project sponsor shall also publish at least once in a newspaper of general circulation serving the area in which the project is located, a notice of the submission of the application no later than 10 days after the date of submission. All notices required under this section shall contain a description of the project, its purpose, requested water withdrawal and consumptive use amounts, location and address, electronic mail address, and phone number of the Commission.

(b) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the municipal notification under (a) and a proof of publication for the newspaper notice required under (a). The project sponsor shall also provide certification on a form provided by the Commission that it has made such other notifications as required under paragraph (a) of this section, including a list of contiguous property owners notified under paragraph (a). Until these items are provided to the Commission, processing of the application will not proceed.

§ 806.16 Completeness of application.

(a) The Commission's staff shall review the application, and if necessary, request the project sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project.

(b) An application deemed administratively incomplete will be returned to the project sponsor, who shall have 30 days to cure the administrative deficiencies. An application deemed technically deficient may be returned to the project sponsor, who shall have a period of time prescribed by Commission staff to cure the technical deficiencies. Failure to cure either administrative or technical deficiencies within the prescribed time may result in termination of the application process and forfeiture of any fees submitted.

(c) The project sponsor has a duty to provide information reasonably necessary for the Commission's review of the application. If the project sponsor fails to respond to the Commission's request for additional information, the Commission may terminate the application process, close the file and so notify the project sponsor. The project sponsor may reapply without prejudice by submitting a new application and fee.

Subpart C—Standards for Review and Approval

§ 806.20 Purpose of this subpart.

The purpose of this subpart is to set forth general standards that shall be used by the Commission to evaluate all projects subject to review and approval by the Commission pursuant to §§ 806.4, 806.5 and 806.6, and to establish special standards applicable to certain water withdrawals, consumptive uses and diversions. This subpart shall not be construed to limit the Commission's authority and scope of review. These standards are authorized under Sections 3.4(2), 3.4(8), 3.4(9), and 3.10 of the compact and are based upon, but not limited to, the goals, objectives, guidelines and criteria of the comprehensive plan.

§ 806.21 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

(c) Disapprovals—other governmental jurisdictions.

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated docket by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

(2) The Commission may modify, suspend or revoke a previously granted approval if the project sponsor fails to obtain or maintain the approval of a member jurisdiction or political subdivision thereof having lawful jurisdiction over the project.

§ 806.22 Standards for consumptive uses of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 806.4, 806.5 or 806.6 of this part shall comply with this section.

(b) Mitigation. All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, 806.5 or 806.6 of this part shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one, or a combination of the following:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (3), below, for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for annual consumptive use, in an amount and manner prescribed by the Commission.

(4) Implement other alternatives approved by the Commission.

(c) Determination of manner of mitigation. The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) Quality of water released for mitigation. The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 806.2, as applicable.

(e) Approval by rule for consumptive uses.

(1) Any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved under this paragraph (e) in accordance with the following, unless the Commission determines that the project cannot be adequately regulated under this approval by rule:

(i) Notification of Intent: No fewer than 90 days prior to construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under (i), the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this permit by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) Metering, daily use monitoring and quarterly reporting. The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30.

(3) Standard conditions. The standard conditions set forth in § 806.21 above shall apply to projects approved by rule.

(4) Mitigation. The project sponsor shall comply with mitigation in accordance with § 806.22 (b)(2) or (b)(3).

(5) Compliance with other laws. The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(6) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

§ 806.23 Standards for water withdrawals.

(a) The project sponsors of all withdrawals subject to review and approval under §§ 806.4, 806.5 or 806.6

of this part shall comply with the following standards, in addition to those required pursuant to § 806.21.

(b) Limitations on withdrawals.

(1) The Commission may limit withdrawals to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor.

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; or affecting low flow of perennial or intermittent streams.

(3) The Commission may impose limitations or conditions to mitigate impacts, including without limitation:

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown.

(ii) Require the project sponsor to provide, at its own expense, an alternate water supply or other mitigating measures.

(iii) Require the project sponsor to implement and properly maintain special monitoring measures.

(iv) Require the project sponsor to implement and properly maintain stream flow protection measures.

(v) Require the project sponsor to develop and implement an operations plan acceptable to the Commission.

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, and support existing and proposed future withdrawals.

§ 806.24 Standards for diversions.

(a) The project sponsors of all diversions subject to review and approval under §§ 806.4, 806.5 or 806.6 of this part shall comply with the following standards.

(b) For projects involving out-of-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Demonstrate that they have made good faith efforts to develop and conserve sources of water within the importing basin, and have considered other reasonable alternatives to the diversion.

(ii) Comply with the general standards set forth in §§ 801.3, 806.21, and 806.22, and the applicable requirements of this part relating to consumptive uses and withdrawals.

(2) In deciding whether to approve a proposed diversion out of the basin, the Commission shall also consider and the project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future water needs.

(ii) The location, amount, timing, purpose and duration of the proposed diversion and how the project will individually and cumulatively affect the flow of any impacted stream or river, and the freshwater inflow of the Chesapeake Bay, including the extent to which any diverted water is being returned to the basin or the bay.

(iii) Whether there is a reasonably foreseeable need for the quantity of water requested by the project sponsor and how that need is measured against reasonably foreseeable needs in the Susquehanna River Basin.

(iv) The amount and location of water being diverted to the Susquehanna River Basin from the importing basin.

(v) The proximity of the project to the Susquehanna River Basin.

(vi) The project sponsor's pre-compact member jurisdiction approvals to withdraw or divert the waters of the basin.

(vii) Historic reliance on sources within the Susquehanna River Basin.

(3) In deciding whether to approve a proposed diversion out of the basin, the Commission may also consider, but is not limited to, the factors set forth in paragraphs (i) through (v) of this paragraph (b)(3). The decision whether to consider the factors in this paragraph (b) and the amount of information required for such consideration, if undertaken, will depend upon the potential for the proposed diversion to have an adverse impact on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future needs.

(i) The impact of the diversion on economic development within the Susquehanna River Basin, the member states or the United States of America.

(ii) The cost and reliability of the diversion versus other alternatives, including certain external costs, such as impacts on the environment or water resources.

(iii) Any policy of the member jurisdictions relating to water resources, growth and development.

(iv) How the project will individually and cumulatively affect other environmental, social and recreational values.

(v) Any land use and natural resource planning being carried out in the importing basin.

(c) For projects involving into-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Provide information on the source, amount, and location of the water being diverted to the Susquehanna River Basin from the importing basin.

(ii) Provide information on the water quality classification, if any, of the Susquehanna River Basin stream to which diverted water is being discharged and the discharge location or locations.

(iii) Demonstrate that they have applied for or received all applicable withdrawal or discharge permits or approvals related to the diversion, and demonstrate that the diversion will not result in water quality degradation that may be injurious to any existing or potential ground or surface water use.

§ 806.25 Water conservation standards.

Any project sponsor whose project is subject to Commission approval under this part proposing to withdraw water either directly or indirectly (through another user) from groundwater or surface water sources, or both, shall comply with the following requirements:

(a) Public water supply. As circumstances warrant, a project sponsor of a public water supply shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users.

(ii) Prepare and distribute literature to customers describing available water conservation techniques.

(iii) Implement a water pricing structure which encourages conservation.

(iv) Encourage water reuse.

(b) Industrial. Project sponsors who use water for industrial purposes shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) Irrigation. Project sponsors who use water for irrigation purposes shall utilize irrigation systems properly designed for the sponsor's respective soil characteristics, topography and vegetation.

(d) Effective date. Notwithstanding the effective date for other portions of this part, this section shall apply to all groundwater and surface water withdrawals initiated on or after January 11, 1979.

Subpart D—Terms and Conditions of Approval

§ 806.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, be accurate to within 5 percent, and shall be subject to inspection by the Commission at any time.

(a) Project sponsors of projects that are approved under this part shall:

(1) Measure and record on a daily basis, or such other frequency as may be approved by the Commission, the quantity of all withdrawals, using meters or other methods approved by the Commission.

(2) Certify, at the time of installation and no less frequently than once every 5 years, the accuracy of all measuring devices and methods to within 5 percent of actual flow, unless specified otherwise by the Commission.

(3) Maintain metering or other approved methods so as to provide a continuous, accurate record of the withdrawal or consumptive use.

(4) Measure groundwater levels in all approved production wells, as specified by the Commission.

(5) Measure groundwater levels at additional monitoring locations, as specified by the Commission.

(6) Measure water levels in surface storage facilities, as specified by the Commission.

(7) Measure stream flows, passby flows or conservation releases, as specified by the Commission, using methods and at frequencies approved by the Commission.

(b) Reporting.

(1) Project sponsors whose projects are approved under this section shall report to the Commission on a quarterly basis on forms and in a manner prescribed by the Commission all information recorded under paragraph (a) of this section, unless otherwise specified by the Commission.

(2) Project sponsors whose projects are approved under this section shall report to the Commission:

(i) Violations of withdrawal limits and any conditions of approvals, within 5 days of such violation.

(ii) Loss of measuring or recording capabilities required under paragraph (a)(1) of this section, within 5 days after any such loss.

§ 806.31 Term of approvals.

(a) Approvals issued under this part shall have a term equal to the term of any accompanying member jurisdiction approval regulating the same subject matter, but not longer than 15 years, unless an alternate period is provided for in the Commission approval. If there is no such accompanying member jurisdiction approval, or if no term is specified in such accompanying member jurisdiction approval, the term of a Commission approval issued under this part shall be no longer than 15 years or the anticipated life of the project, whichever is less, unless an alternate period is provided for in the Commission approval.

(b) Commission approval of a project shall expire three years from the date of such approval if the withdrawal, diversion or consumptive use has not been commenced, unless an alternate period is provided for in the docket approval or such 3-year period is extended in writing by the Commission upon written request from the project sponsor submitted no later than 120 days prior to such expiration. The Commission may grant an extension, for a period not to exceed two years, only upon a determination that the delay is due to circumstances beyond the project sponsor's control and that there is a likelihood of project implementation within a reasonable period of time. The Commission may also attach conditions to the granting of such extensions, including modification of any terms of approval that the Commission may deem appropriate.

(c) If a withdrawal, diversion or consumptive use approved by the Commission for a project is discontinued for a period of five consecutive years, the approval shall be null and void, unless a waiver is granted in writing by the Commission, upon written request by the project sponsor demonstrating due cause and with notification thereof to the member jurisdiction in which the project is located, prior to the expiration of such period.

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may rescind the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provide otherwise.

§ 806.32 Reopening/modification.

(a) Once a project is approved, the Commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever an application for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket.

(b) If the project sponsor fails to comply with any term or condition of a Commission approval, the Commission may issue an order suspending, modifying or revoking its approval of the project. The Commission may also, in its discretion, suspend, modify or revoke its approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) For any previously approved project where interference occurs, the Commission may require a project sponsor to provide a temporary source of potable water at the project sponsor's

expense, pending a final determination of causation by the Commission.

(d) The Commission, upon its own motion, may at any time reopen any project approval and make additional corrective modifications that may be necessary.

§ 806.33 Interest on fees.

The Executive Director may establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the Commission.

§ 806.34 Emergencies.

(a) Emergency certificates. The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part.

(b) Notification and application. A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

(1) A completed emergency application form or copy of the State or Federal emergency water use application if the project sponsor also is requesting emergency approval from either a state or federal agency.

(2) As a minimum, the application shall contain:

(i) Contact information.

(ii) Justification for emergency action (purpose).

(iii) Location map and schematic of proposed project.

(iv) Desired term of emergency use.

(v) Source(s) of the water.

(vi) Quantity of water.

(vii) Flow measurement system (such as metering).

(viii) Use restrictions in effect (or planned).

(ix) Description of potential adverse impacts and mitigating measures.

(x) Appropriate fee, unless reduced, waived or delayed with the approval of the Executive Director.

(c) Emergency certificate issuance. The Executive Director shall:

(1) Review and act on the emergency request as expeditiously as possible upon receipt of all necessary information stipulated in paragraph (b)(2) of this section.

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission.

(3) Include conditions in the emergency certificate which may include, without limitation, monitoring of withdrawal and/or consumptive use amounts, measurement devices, public notification, and reporting, to assure minimal adverse impacts to the environment and other users.

(d) Post approval. Actions following issuance of emergency certificates may include, but are not limited to, the following:

(1) The Commission may, by resolution, extend the term of the emergency certificate, upon presentation of a request from the project sponsor accompanied by appropriate evidence that the conditions causing the emergency persist.

(2) If the condition is expected to persist longer than the specified extended term, the project sponsor must submit an application to the Commission for applicable water withdrawal or consumptive use, or the emergency certificate will terminate as specified. If the project sponsor has a prior Commission approval for the project, the project sponsor must submit an application to modify the existing docket accordingly.

(e) Early termination. With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, the Executive Director may terminate an emergency certificate earlier than the specified duration if it is determined that an emergency no longer exists and/or the certificate holder has not complied with one or more special conditions for the emergency withdrawal or consumptive water use.

(f) Restoration or mitigation. Project sponsors are responsible for any necessary restoration or mitigation of environmental damage or interference with another user that may occur as a result of the emergency action.

§ 806.35 Fees.

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission.

■ 3. Part 807 is added to read as follows.

PART 807—WATER WITHDRAWAL REGISTRATION

Sec.
807.1 Requirement.
807.2 Time limits.
807.3 Administrative agreements.
807.4 Effective date.
807.5 Definitions.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

§ 807.1 Requirement.

In addition to any other requirements of Commission regulations, and subject to the consent of the affected member state to this requirement, any person withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive 30-day period, from ground or surface water sources, as defined in part 806 of this chapter, shall register the amount of this withdrawal with the Commission and provide such other information as requested on forms prescribed by the Commission.

§ 807.2 Time limits.

(a) Except for agricultural water use projects, all registration forms shall be submitted within one year after May 11, 1995, or within six months of initiation of the water withdrawal or diversion, whichever is later; provided, however, that nothing in this section shall limit the responsibility of a project sponsor to apply for and obtain an approval as may be required under part 806 of this chapter. All registered withdrawals shall re-register with the Commission within five years of their initial registration, and at five-year intervals thereafter, unless the withdrawal is sooner discontinued. Upon notice by the Executive Director, compliance with a registration or reporting requirement, or both, of a member state that is substantially equivalent to this requirement shall be considered compliance with this requirement.

(b) Project sponsors whose existing agricultural water use projects i.e., projects coming into existence prior to March 31, 1997) withdraw or divert in excess of an average of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall register their use no later than March 31, 1997. Thereafter, project sponsors of new projects proposing to withdraw or

divert in excess of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall be registered prior to project initiation.

§ 807.3 Administrative agreements.

The Commission may complete appropriate administrative agreements or arrangements to carry out this registration requirement through the offices of member jurisdictions. Forms developed by the Commission shall apprise registrants of any such agreements or arrangements, and provide appropriate instructions to complete and submit the form.

§ 807.4 Effective date.

This part shall be effective on January 1, 2007.

§ 807.5 Definitions.

Terms used in this part shall be defined as set forth in § 806.3 of this chapter.

■ 4. Part 808 is added to read as follows.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Hearings

Sec.
808.1 Public hearings.
808.2 Administrative appeals.
808.3 Hearing on administrative appeal.
808.4 Optional joint hearing.

Subpart B—Compliance and Enforcement

808.10 Scope of subpart.
808.11 Duty to comply.
808.12 Investigative powers.
808.13 Notice of violation.
808.14 Orders.
808.15 Show cause proceeding.
808.16 Civil penalty criteria.
808.17 Enforcement of penalties, abatement or remedial orders.
808.18 Settlement by agreement.
808.19 Effective date.

Authority: Secs. 3.5 (9), 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearings

§ 808.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by Section 14.1 of the compact.

(2) Rulemaking, except for corrective amendments.

(3) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(4) Hearing requested by a member jurisdiction.

(5) As otherwise required by the compact or Commission regulations.

(b) A public hearing may be conducted by the Commission in any form or style chosen by the Commission when in the opinion of the Commission, a hearing is either appropriate or necessary to give adequate consideration to issues relating to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information, or to decide factual disputes in connection with matters pending before the Commission.

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission Web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. In the case of hearings held in connection with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the **Federal Register**, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) Standard public hearing procedure.

(1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal, or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than 10 days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) Representative capacity. Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority. Any individual intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the nature and extent of his/her authorization to represent the person on whose behalf he/she intends to appear.

(f) Description of project. When notice of a public hearing is issued, there shall be available for inspection at the Commission offices all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) Presiding officer. A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) Transcript. Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the Executive Director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director, may file a written appeal requesting a hearing. Such appeal shall be filed with the Commission within 30 days of that action or decision.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing, and a summary statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request filed more than 30 days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless upon due cause shown the Commission, by unanimous vote, otherwise directs. Receipt of requests for hearings, pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner or an intervener may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected jurisdiction.

(2) The request for a stay shall include affidavits setting forth facts upon which issuance of the stay may depend and the citations of applicable legal authority, if any.

(3) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner or intervener.

(ii) The likelihood that the petitioner or intervener will prevail on the merits.

(iii) The likelihood of injury to the public or other parties.

(e) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(f) If administrative review is granted, the Commission shall refer the matter for hearing, to be held in accordance with § 808.3, and appoint a hearing officer.

(g) Intervention.

(1) If a hearing is scheduled, a notice of intervention may be filed with the Commission by persons other than the petitioner no later than 10 days before the date of the hearing. The notice of intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance.

(2) Any person filing a notice of intervention whose legal rights may be affected by the decision rendered hereunder shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning the subject matter of any hearing scheduled hereunder for inclusion in the record may submit a verified written statement to the Commission. Any interested party may submit a request to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all verified written statements submitted shall be included with the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(h) Notice of any hearing to be conducted pursuant to this section shall comply with the provisions of Section 15.4 (b) of the compact relating to public notice unless otherwise directed by the Commission. In addition, both the petitioner and any interveners shall provide notice of their filings under this section to the list of additional interested parties compiled by the Commission under § 806.14 (a).

(i) Where a request for an appeal is made, the 90-day appeal period set forth in Section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

(j) Where the request for appeal relates to an action taken on a project, any hearing conducted pursuant to this section shall be convened in the general vicinity of the project location.

§ 808.3 Hearings on administrative appeal.

(a) Unless otherwise agreed to by the Commission and the party requesting an administrative appeal under § 808.2 of this part, the following procedures shall govern the conduct of hearing on an administrative appeal.

(b) Hearing procedure.

(1) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearing, to set the location or venue of the hearing, to hold conferences for the settlement or simplification of issues and the stipulation of facts, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, to delineate the hearing issues to be adjudicated, and to take notice of judicially cognizable facts and general, technical, or scientific facts. The hearing officer may, with the consent of the parties, conduct all or part of the hearing or related proceedings by telephone conference call or other electronic means.

(2) The hearing officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence, to examine and cross-examine witnesses, submit rebuttal evidence, and to present summation and argument.

(4) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received provided it shall be founded upon competent, material evidence which is substantial in view of the entire record.

(6) Any party may appear and be heard in person or be represented by an attorney at law who shall file an appearance with the Commission.

(7) Briefs and oral argument may be required by the hearing officer and may be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(8) The hearing officer may, as he/she deems appropriate, issue subpoenas in the name of the Commission requiring the appearance of witnesses or the production of books, papers, and other documentary evidence for such hearings.

(9) A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the petitioner, or any other person who is a party to the appeal proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The petitioner or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

(c) Staff and other expert testimony. The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he/she may deem necessary or desirable, to be incorporated in the record to support the administrative action, determination or decision which is the subject of the hearing.

(d) Written testimony. If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the Commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least 10 days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) Assessment of costs.

(1) Whenever a hearing is conducted, the costs thereof, as herein defined, shall be assessed by the presiding officer to the petitioner or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the Commission, including, but not limited to, hearing officer and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for hearing, the hearing officer shall furnish to the petitioner a reasonable estimate of the costs to be incurred under this section. The project sponsor may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a member state.

(3) A party to an appeal under this section who desires to proceed in forma pauperis shall submit an affidavit to the Commission requesting the same and showing in detail the assets possessed by the party, and other information indicating the reasons why that party is unable to pay costs incurred under this section or to give security for such costs. The Commission may grant or refuse the request based upon the contents of the affidavit or other factors, such as whether it believes the appeal or intervention is taken in good faith.

(f) Findings and report. The hearing officer shall prepare a report of his/her findings and recommendations based on the record of the hearing. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel. Any party may file objections to the report. Such objections shall be filed with the Commission and served on all parties within 20 days after the service of the report. A brief shall be filed together with objections. Any replies to the objections shall be filed and served on all parties within 10 days of service of the objections. Prior to its decision on such objections, the Commission may grant a request for oral argument upon such filing.

(g) Action by the Commission. The Commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the Commission will be in writing and shall be filed in Commission records together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 808.4 Optional joint hearing.

(a) The Commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all of the matters at issue in such hearings.

(b) Whenever designated by a department, agency or instrumentality of a member jurisdiction, and within any limitations prescribed by the designation, a hearing officer designated pursuant to § 808.2 may also serve as a hearing officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a hearing officer shall cause to be filed with the department, agency, or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him/her and, if requested, of his/her findings and recommendations. Neither the hearing officer nor the Susquehanna River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a member jurisdiction (other than the compact).

Subpart B—Compliance and Enforcement

§ 808.10 Scope of subpart.

This subpart shall be applicable where there is reason to believe that a person may have violated any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The said person shall hereinafter be referred to as the alleged violator.

§ 808.11 Duty to comply.

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

§ 808.12 Investigative powers.

(a) The Commission or its agents or employees, at any reasonable time and upon presentation of appropriate credentials, may inspect or investigate any person or project to determine compliance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. Such employees or agents are authorized to conduct tests or sampling; to take photographs; to perform measurements, surveys, and other tests; to inspect the methods of construction, operation, or maintenance; to inspect all measurement equipment; and to audit, examine, and copy books, papers, and records pertinent to any matter under investigation. Such employees or agents are authorized to take any other action necessary to assure that any project is constructed, operated and maintained in accordance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(b) Any person shall allow authorized employees or agents of the Commission, without advance notice, at any reasonable time and upon presentation of appropriate credentials, and without delay, to have access to and to inspect all areas where a project is being constructed, operated, or maintained.

(c) Any person shall provide such information to the Commission as the Commission may deem necessary to determine compliance with any

provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The person submitting information to the Commission shall verify that it is true and accurate to the best of the knowledge, information, and belief of the person submitting such information. Any person who knowingly submits false information to the Commission shall be subject to civil penalties as provided in the compact and criminal penalties under the laws of the member jurisdictions relating to unsworn falsification to authorities.

§ 808.13 Notice of violation.

When the Executive Director or his/her designee issues a Notice of Violation (NOV) to an alleged violator, such NOV will:

(a) List the violations that are alleged to have occurred.

(b) State a date by which the alleged violator shall respond to the NOV.

§ 808.14 Orders.

(a) Whether or not an NOV has been issued, where exigent circumstances warrant, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket approval, the commissioners may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

§ 808.15 Show cause proceeding.

(a) The Executive Director may issue an order requiring an alleged violator to appear before the Commission and show cause why a penalty should not be assessed in accordance with the provisions of this chapter and Section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date and time on which, and the location where, the alleged violator shall appear before the Commission.

(3) Set forth any information to be submitted or produced by the alleged violator.

(4) Identify the limits of the civil penalty that will be recommended to the Commission.

(5) Name the individual(s) who has been appointed as the enforcement officer(s) in this matter pursuant to paragraph (b) of this section.

(b) Simultaneous with the issuance of the order to show cause, the Executive Director shall designate a staff member(s) to act as prosecuting officer(s).

(c) In the proceeding before the Commission, the prosecuting officer(s) shall present the facts upon which the alleged violation is based and may call any witnesses and present any other supporting evidence.

(d) In the proceeding before the Commission, the alleged violator shall have the opportunity to present both oral and written testimony and information, call such witnesses and present such other evidence as may relate to the alleged violation(s).

(e) The Commission shall require witnesses to be sworn or make affirmation, documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions or oral presentations from any other persons as to whether a violation has occurred and any resulting adverse consequences.

(f) The prosecuting officer(s) shall recommend to the Commission the amount of the penalty to be imposed. Based upon the record presented to the Commission, the Commission shall determine whether a violation(s) has occurred that warrants the imposition of a penalty pursuant to Section 15.17 of the compact. If it is found that such a violation(s) has occurred, the Commission shall determine the amount of the penalty to be paid, in accordance with § 808.16.

§ 808.16 Civil penalty criteria.

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission shall consider:

(1) Previous violations, if any, of any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(2) The intent of the alleged violator.

(3) The extent to which the violation caused adverse consequences to public health, safety and welfare or to water resources.

(4) The costs incurred by the Commission or any member jurisdiction relating to the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom.

(6) The extent to which the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission was economically beneficial to the violator.

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty recommended by the prosecuting officer under § 808.15(f) should it determine, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

§ 808.17 Enforcement of penalties, abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with § 808.15(f) shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to Section 15.17 of the compact.

§ 808.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement proceeding by agreement. The Executive Director shall submit to the Commission any offer of settlement proposed by an alleged violator. No settlement will be submitted to the Commission by the Executive Director unless the alleged violator has indicated, in writing, acceptance of the terms of the agreement

and the intention to comply with all requirements of the settlement agreement, including advance payment of any settlement amount or completion of any abatement or remedial action within the time period provided or both. If the Commission determines not to approve a settlement agreement, the Commission may proceed with an enforcement action in accordance with this subpart.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

§ 808.19 Effective date.

This part shall be effective on January 1, 2007.

Dated: December 5, 2006.

Thomas W. Beauduy,

Deputy Director.

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