

SUSQUEHANNA RIVER BASIN COMMISSION

REGULATION OF PROJECTS



18 CFR PARTS 801, 806, 807 AND 808

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CHAPTER VIII—SUSQUEHANNA RIVER BASIN COMMISSION

<i>Part</i>		<i>Page</i>
801	General policies	105
803–805	[Reserved]	
806	Review and approval of projects	111
807	Water withdrawal registration	129
808	Hearings and enforcement actions	130

PART 801—GENERAL POLICIES

Sec.

- 801.0 Introduction.
- 801.1 Standard definitions.
- 801.2 Coordination, cooperation, and intergovernmental relations.
- 801.3 Allocations, diversions, withdrawals, and release.
- 801.4 Project review.
- 801.5 Comprehensive plan.
- 801.6 Water supply.
- 801.7 Water quality.
- 801.8 Flood plain management and protection.
- 801.9 Watershed management.
- 801.10 Recreation.
- 801.11 Public values.
- 801.12 Electric power generation.
- 801.13 Proviso.

AUTHORITY: Secs. 3.1, 3.5(1) and 15.2, Pub. L. 91-575 (84 Stat. 1509 *et seq.*).

SOURCE: 38 FR 4662, Feb. 20, 1973, unless otherwise noted.

§ 801.0 Introduction.

(a) The Governors of the States of New York, Pennsylvania, and Maryland, and a representative of the President of the United States are members of the Susquehanna River Basin Commission. The Commission is a regional governmental agency whose purpose is to effect comprehensive multiple purpose planning for the conservation, utilization, development, management, and control of the water and related natural resources of the basin, which includes part of New York, Pennsylvania, and Maryland.

(b) The Susquehanna River Basin Compact provides broad authority for the Commission to carry out basinwide planning programs and projects, and to take independent action as it determines essential to fulfill its statutory regional governmental role.

(c) The objectives of the Commission are to:

(1) Develop cooperative and coordinated Federal, State, local, and private water and related natural resources planning within the basin,

(2) Formulate, adopt, effectuate, and keep current a comprehensive plan and a water resources program for the immediate and long-range use and development of the water resources of the basin,

(3) Provide for orderly collection and evaluation of data, and for the con-

tinuing promotion and conduct of appropriate research relating to water resources problems,

(4) Establish priorities for planning, financing subject to applicable laws, development and use of projects and facilities essential to effectively meet identified water resource needs,

(5) And to maintain these resources in a viable state.

(d) The Commission shall employ a multiobjective approach recognizing national economy, regional development and environmental quality in planning for the use and development of the water resources of the basin.

(e) It is the purpose of this document to set forth the objectives of the Commission and to present certain basic policies that (1) have basinwide application, (2) are specifically pertinent to the formulation of a comprehensive plan, (3) will serve as guidelines for all agencies or individuals with planning responsibilities for the development and use of the water resources of the basin, (4) form the basis for working relationship between the Commission and other agencies having related responsibilities in the basin. This statement will be amended and updated from time to time.

§ 801.1 Standard definitions.

(a) Many terms that will be used in official Commission documents may have slightly different meanings to various groups. To avoid confusion and to increase the clarity of the meaning the Commission applies to frequently used terms standard definitions will be utilized.

(b) The Commission will use the standard definitions set forth for the terms shown in section 1.2 of the Compact,¹ and will add terms and appropriate definitions as deemed necessary.

§ 801.2 Coordination, cooperation, and intergovernmental relations.

(a) The interstate nature of the Susquehanna River Basin and the broad regional authority of the Commission require clear and effective working relationships with the States, Federal Government, and local and private sectors

¹ Filed as part of FR Doc. 72-17234, Oct. 7, 1972.

in all matters relating to the water resources of the basin.

(1) The Federal Government will be encouraged and asked to participate in water resources projects and programs having national or broad regional significance. The Commission will act to encourage local initiative to solve water resources problems within a local and regional context, but when faced with obviously needed action that is not forthcoming from other sources will act, in accordance with the Compact, on its own.

(2) The Compact provides authority for the Commission to serve in a regulatory capacity and also to act as a managing and operating agency. The Commission will exercise its regulatory authority mainly in interstate matters or where signatory authority is not being effectively exercised or where the signatory has little or no authority to act. Similarly, the Commission may manage and operate various facilities if it is determined that this is an area in which an important and necessary service can be rendered.

(3) Should it become necessary for the Commission to undertake development, management and operation of projects, arrangements for repayment of all project costs and eventual operation and maintenance costs will be appropriately prorated among the signatories or otherwise financed in accordance with the Compact.

(4) The Commission will utilize the functions, powers, and duties of the existing offices and agencies of government to the extent consistent with the Compact.

(5) In its actions the Commission will maintain a high level of public visibility. Broad government, public, and private sector commentary on Commission proposals and findings will be invited, and to the extent possible be incorporated and reflected in decisions for finalization of plans, projects, and programs having significant effect on the water resources of the basin. A concerted effort will be made to keep the Commission and its activities readily available to government and public scrutiny, and responsive to their concerns.

(b) The Commission shall exercise its regional jurisdiction in an effort to

avoid and minimize conflicts and duplication of effort and shall:

(1) Cooperate with and help coordinate Federal, State, local government, and private sector efforts in all matters relating to the planning, conservation, preservation, use, development, management and control of the water resources of the basin.

(2) Develop administrative agreements, as needed, with appropriate agencies of the signatories and other agencies to facilitate achievement of the Commission's objectives and related responsibilities of other agencies by minimizing duplication of effort and maximizing the contributions the respective agencies are best able to make.

(3) Build upon present water resources planning and related activities of the signatory parties, local government, other public bodies, and the private sector and fully consider their recommendations and suggestions.

(4) Establish advisory committees as needed for specific assignments and seek meaningful liaison with sources of technical and scientific expertise.

(5) Share with interested parties results of investigations, studies, tests, and research undertaken by the Commission in an appropriate manner and form.

(6) Conduct its regular meetings announced in advance and open to the public.

(7) Depend upon existing public and private agencies for the construction, operation, and maintenance of projects except when the project is necessary to further the comprehensive plan and the responsible agency does not act or when the Commission is asked to act by one or more signatories, one or more local governments, or other responsible entities.

(8) Require that the planning of projects affecting the water resources of the basin by Federal, State, local agencies and private organizations be undertaken in coordination with the Commission and in accordance with the Compact.

(9) Require that periodic reports of projects affecting water resources

within the basin and listings of discharge permits granted, and similar activities undertaken by offices or agencies of the signatory parties, be submitted to the Commission.

§ 801.3 Allocations, diversions, withdrawals and release.

(a) The extremes in availability of water in the basin means that water will not always be available when and where it is needed. One of the responsibilities of the Commission is to act upon requests for allocations, withdrawals, or diversions of water for in-basin or out-of-basin use. Water emergencies may be expected to develop in portions of the basin due to drought conditions or other causes. The Commission will act promptly to effect alleviation of the condition to the extent possible.

(b) The Commission will require evidence that proposed interbasin transfers of water will not jeopardize, impair or limit the efficient development and management of the Susquehanna River Basin's water resources, or any aspects of these resources for in-basin use, or have a significant unfavorable impact on the resources of the basin and the receiving waters of the Chesapeake Bay.

(c) The Commission may, in making decisions on allocations, diversions, withdrawals, and releases, consider the following principles among others:

(1) That allocations, diversions, or withdrawals of water be based on the common law principles of riparian rights which entitles landholders in any watershed to draw upon the natural stream flow in reasonable amounts and be entitled to the stream flow not unreasonably diminished in quality or quantity by upstream use or diversion of water; and on the maintenance of the historic seasonal variations of the flows into Chesapeake Bay.

(d) When the need arises for action on requests for allocations, diversions, or withdrawals of water from either surface or ground waters of the basin the Commission shall:

(1) Allocate waters of the basin to and among the signatory States to the Compact as the need appears, and impose related conditions, obligations, and release requirements.

(2) Determine if a proposed allocation, withdrawal or diversion is in conflict with or will significantly affect the comprehensive plan, and assure existing immediate and projected long term local and regional uses are protected.

(3) Impose conditions, obligations and release requirements for dams and/or diversion structures to protect prior local interests, downstream interests, and environmental quality.

(4) In the matter of drought, disasters or catastrophes, natural or man-made, which cause actual and immediate shortage of available and usable water supply, determine and delineate the area of shortage and by unanimous vote declare a state of water supply emergency therein, and impose direct controls on any and all allocations, diversions and uses of water to meet the emergency condition.

(5) In water emergencies coordinate the efforts of Federal, State, local, and other persons and entities in dealing with the emergency.

(6) Determine and delineate, after public hearing, areas within the basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage or impair or conflict with the comprehensive plan.

(7) When areas in need of protection from overdemand of safe yield of the supply have been delineated, declare such areas protected from further depletion, with the consent of the member or members from the affected State or States.

(8) Require that no person divert or withdraw from any protected area water for domestic, municipal, agricultural, or industrial uses in excess of such quantities as the Commission may prescribe by general regulation or pursuant to a permit granted heretofore under the laws of any of the signatory States.

§ 801.4 Project review.

(a) The Compact provides generally that no project affecting the water resources of the basin shall be undertaken by any person, governmental authority, or other entity prior to approval by the Commission.

(b) In many instances, one or more of the signatory parties will exercise project review authority regarding proposed projects in the basin coming under the review of the Commission. Accordingly the Commission will direct its attention to reviewing the completeness and effectiveness of the review procedures of the signatories and will endeavor to minimize duplication of staff effort, and time and cost to the applicant.

(c) The Commission will establish exempt categories in accordance with the section 3.10-3 of the Compact, and for projects determined not to have a substantial effect on the water resources of the basin. In dealing with Federal or federally licensed projects, the Commission will take the provisions of reservations (r) and (w) of United States Pub. L. 91-575 (84 Stat. 1509) and provisions of the Compact into account.

(d) It is expected that project review procedures will be modified following adoption of the comprehensive plan. In the meantime the Commission will:

(1) Base its review and comments pertaining to proposed projects within the basin coming under the purview of the Commission, on review and comments of signatory parties. In general, the Commission review will seek to ascertain the completeness of procedures followed by the signatory parties in their review, and will refrain from specifically rechecking detailed evaluations. (Susquehanna River Basin Commission Resolution No. 72-5)

(2) Require as it determines necessary, submission of pertinent project plans and documents for its independent review and approval. The purpose of this review will be to ascertain whether all relevant provisions of the Compact and actions taken pursuant thereto have been observed:

(i) When the Commission has determined that a project may have significant effect on the water resources of the basin.

(ii) When a proposed project does not fall under the review jurisdiction of any agency of the signatory parties.

§ 801.5 Comprehensive plan.

(a) The Compact requires that the Commission formulate and adopt a comprehensive plan for the immediate and long-range development and use of the water resources of the basin.

(1) The plan will include existing and proposed public and private programs, projects, and facilities which are required, in the judgment of the Commission, to meet present and future water resources needs of the basin. Consideration shall be given to the effect of the plan, or any part of the plan, on the receiving waters of the Chesapeake Bay. The Commission shall consult with interested public bodies and public utilities and fully consider the findings and recommendations of the signatory parties, their various subdivisions and interested groups. Prior to adoption of the plan the Commission shall conduct at least one public hearing in each signatory State.

(2) The plan will reflect consideration, of the multiobjectives of national economy, regional development and environmental quality; and multipurpose use of projects.

(3) Water quantity and water quality planning will be studied together and correlated to the extent feasible, with existing and proposed land uses. The development of a basinwide land use study to enable full consideration of basic and alternative proposals to meet water resources needs will be explored.

(4) An important phase of the plan formulation process is a thorough review and evaluation of the Susquehanna River Basin Coordinating Committee Study report, pertinent plans and reports of the signatories, including water quality standards and other data available. The findings and recommendations presented in the Susquehanna River Basin Coordinating Committee Study report will be considered for incorporation in the Commission's plan to the extent they are feasible and compatible with the current and projected needs and interests.

(5) Essentially the comprehensive plan will reflect the findings of an analysis of a mix of alternative futures

for industrial, agricultural, residential, and recreational development in the basin.

(6) The Commission will act diligently to promote Federal, State, local governmental, and private sector cooperation and coordination in the implementation of the adopted plan. It is expected that recommended development programs will be undertaken by the signatories, local governmental agencies, or private interests. If expeditious action by others is not forthcoming or is not possible the Commission will act in accordance with the Compact to implement programs, projects, and standards to the extent necessary to further the aims of the comprehensive plan.

(b) The comprehensive plan shall provide for the immediate and long-range use, development, conservation, preservation, and management of the water resources of the basin. The plan will be presented in a form and order as determined by the Commission and shall include, but not be limited to the following:

(1) Statement of authority, purpose, objectives, and scope.

(2) Description of the physical and human environment.

(3) Inventory of the basin's water resources and existing developments and facilities.

(4) Projection of immediate and long-range water resources needs of the basin.

(5) Description of a general system of measures and programs, including water quality and other standards as determined necessary, and reasonable alternatives considered essential to and capable of satisfying water resources needs into the reasonably foreseeable future.

(6) Criteria used for review and acceptance of projects within the plan.

(7) Procedures for updating and modifying the plan.

(8) Necessary appendices.

§ 801.6 Water supply.

(a) The Susquehanna River Basin is rich in water resources. With proper planning and management, and with adequate public and private investment in treatment, storage, and distribution facilities, the high potential of the

basin to provide water of suitable quality for a wide array of public and private purposes into the foreseeable future should be possible.

(b) The Commission may regulate the withdrawal of waters of the basin not regulated by the signatory parties for domestic, municipal, industrial, and agricultural uses if regulation is considered essential to further the aims set forth in the comprehensive plan.

(c) The Commission shall study the basin's water supply needs, the potential surface and ground water resources, and the interrelationships to meet these needs through existing and new facilities and projects. Efficient use and management of existing facilities with emphasis on the full utilization of known technology will be explored in meeting water supply needs for domestic, municipal, agricultural, and industrial water supply before new programs or projects are approved.

§ 801.7 Water quality.

(a) The signatory States have the primary responsibility in the basin for water quality management and control. However, protection of the water resources of the basin from pollution, and actions by the signatory parties to achieve abatement and control of pollution are important to the Commission.

(b) The signatory parties have adopted water quality standards for the intra and interstate waters of the basin. Initially these standards will serve as the basis for the Commission's water quality program in the comprehensive plan.

(c) The Commission's role in water quality management and control essentially will be one of coordination to ensure water quality standards are adequate to protect broad public water resources interests, and that uniform policies and enforcement are affected by the signatories.

(d) The Commission shall:

(1) Encourage and coordinate efforts of the signatory parties to prevent, reduce, control, and eliminate water pollution and to maintain water quality in accordance with established standards.

(2) Promote government and private sector implementation of maximum

practical use of waste utilization and treatment technology.

(3) Promote and encourage State and local governments and industry to plan for regional waste water treatment and management.

(4) In cooperation with appropriate agencies of the signatory parties, make periodic inspections to ascertain the state of compliance with appropriate water quality standards, and as needed establish and operate water quality monitoring stations.

[38 FR 4662, Feb. 20, 1973, as amended at 38 FR 6386, Mar. 9, 1973]

§ 801.8 Flood plain management and protection.

(a) Periodic inundation of lands along waterways has not discouraged development of flood hazards areas. Major floods cause loss of life, extensive damages, and other conditions not in the public interest. A balanced flood plain management and protection program is needed to reduce the flood hazard to a minimum.

(b) The Commission may regulate the use of flood prone lands with approval of the appropriate signatory party, to safeguard public health, welfare, safety and property, and to sustain economic development.

(c) To foster sound flood plain controls, as an essential part of water resources management, the Commission shall:

(1) Encourage and coordinate the efforts of the signatory parties to control modification of the Susquehanna River and its tributaries by encroachment.

(2) Plan and promote implementation of projects and programs of a structural and nonstructural nature for the protection of flood plains subject to frequent flooding.

(3) Assist in the study and classification of flood prone lands to ascertain the relative risk of flooding, and establish standards for flood plain management.

(4) Promote the use of flood insurance by helping localities qualify for the national program.

(5) Assist in the development of a modern flood forecasting and warning system.

§ 801.9 Watershed management.

(a) The character, extent, and quality of water resources of a given watershed are strongly affected by the land use practices within that watershed. Accordingly the Commission will maintain close liaison with Federal, State, and local highway, mining, soil, forest, fish and wildlife, and recreation agencies and with government agencies dealing with urban and residential development programs.

(b) The Commission shall:

(1) Promote sound practices of watershed management including soil and water conservation measures, land restoration and rehabilitation, erosion control, forest management, improvement of fish and wildlife habitat, and land use in highway, urban, and residential development as related to water resources.

§ 801.10 Recreation.

(a) The use of surface water resources of the basin for recreation purposes is extensive. Swimming, fishing, boating, and other water oriented activities have regional and local economic benefit as well as recreational benefit.

(b) The Commission shall cooperate with public and private agencies in the planning and development of water-related recreation and fish and wildlife programs and projects within the basin and shall:

(1) Promote public access to and recreational use of existing and future public water areas.

(2) Promote recreational use of public water supply reservoirs and lakes where adequate treatment of water is provided, and/or where recreational uses are compatible with primary project purposes.

(3) Include recreation as a purpose where feasible, in multipurpose water use planning of reservoirs and other water bodies.

§ 801.11 Public values.

(a) The basin has many points of archaeological and historic interest, and is well endowed with vistas of aesthetic significance.

(b) The Commission fully recognizes that the value of these areas cannot be measured simply in economic terms and will strive to preserve and promote

them for the enjoyment and enrichment of present and future generations.

(c) The Commission shall:

(1) Seek the advice and assistance of appropriate societies and governmental agencies in the identification of archeological, historic, and scenic areas and unique lands in any planning or development affecting these attributes of the basin.

§ 801.12 Electric power generation.

(a) Significant uses are presently being made of the waters of the basin for the generation of electric power at hydro, pumped storage, and thermoelectric generating stations. Increased demands for electric power throughout the East Coast can be expected to result in proposals for the development of additional electric power generating stations located either in the basin or nearby its borders.

(b) There appears to be limited site potential in the basin for additional hydroelectric generation, and considerable potential for additional pumped storage and thermoelectric generation. The direct and indirect effects of existing and proposed electric generation projects will be considered by the Commission. Items of concern will include consumptive uses of water, alteration of natural stream regimen, effects on water quality, and on the other uses of the streams affected.

(c) The Commission, in cooperation with appropriate agencies of the signatory parties, and with other public and private agencies shall:

(1) Conduct a thorough review of applications to relicense existing electric power generating projects and facilities, and applications to amend existing licenses to determine if the proposal is in accord with the comprehensive plan.

(2) Require that the proposed siting and location in the basin of any type of electric generating facility or any facility located outside the basin having an effect on the waters of the basin, shall be planned in direct consultation with the Commission to enable advance consideration of the possible effects of such installation on the water resources of the basin.

§ 801.13 Proviso.

(a) This part is promulgated pursuant to sections 3.1, 3.5(1), and 15.2 of the Compact and shall be construed and applied subject to all of the terms and conditions of the Compact and of the provisions of Pub. L. 91-575, 84 Stat. 1509: *Provided*, Any provision in this statement of general policies that is inconsistent with the Compact itself shall be null and void.

PARTS 803-805 [RESERVED]

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.*

SOURCE: 71 FR 78579, Dec. 29, 2006, unless otherwise noted.

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 jurisdic-

tion, 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 products, 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 the waters of the basin. For purposes of natural gas well development projects subject to review and approval pursuant to §806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a gas

well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

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. For purposes of natural gas well development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

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.

[71 FR 78579, Dec. 29, 2006, as amended at 73 FR 1273, Jan. 8, 2008; 73 FR 78619, Dec. 23, 2008]

§ 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 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. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided below, agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(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.* Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, 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.

(8) Any natural gas well development project in the basin targeting the Marcellus or Utica shale formations, or any other formation identified in a determination issued by the Executive Director pursuant to § 806.5, for exploration or production of natural gas involving a withdrawal, diversion or consumptive use, regardless of the quantity.

(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 descendants, or any spouse of such lineal descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(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 products, 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.

[71 FR 78579, Dec. 29, 2006, as amended at 73 FR 1273, Jan. 8, 2008; 73 FR 78620, Dec. 23, 2008]

§ 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 descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(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 products, 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 precompact 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 precompact 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.

[71 FR 78579, Dec. 29, 2006, as amended at 73 FR 1273, Jan. 8, 2008]

§ 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 coopera-

tive 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 re-evaluate 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) Except with respect to projects involving natural gas well development subject to the provision of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director 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 paragraph (e)(1)(i) of this section, 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 its intent to operate under this approval 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 Executive Director 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 Executive Director 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.

(f) Approval by rule for consumptive use related to natural gas well development.

(1) Any project involving the development of natural gas wells subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) Notification of Intent: Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 10 days after submittal of a NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15 and send a copy of the NOI to the appropriate agencies of the member state.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water and fluids, including additives, flowback and brines, utilized by the project.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback fluids or produced brines utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) 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 Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant or deny or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any such approval shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a).

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) Subsequent to the issuance of an approval by rule pursuant to paragraph (f)(9) of this section, authorization to utilize additional sources of water for the project other than those identified in the approval by rule may be obtained as follows:

(i) Water withdrawals or diversions requiring and receiving approval by the Commission pursuant to § 806.4(a), provided such withdrawal source is approved for such use and is registered with the Commission at least 10 days prior to use on a form and in a manner as prescribed by the Commission.

(ii) Sources of water other than those subject to paragraph (f)(11)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are approved prior to use as a modification to the approval by rule. Any request to modify an approval by rule to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

[71 FR 78579, Dec. 29, 2006, as amended at 73 FR 78620, Dec. 23, 2008]

§ 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 dis-

charged 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.

(2) [Reserved]

§ 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, modi-

fying 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.

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.*

SOURCE: 71 FR 78588, Dec. 29, 2006, unless otherwise noted.

§ 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.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

Sec.

- 808.1 Public hearings.
- 808.2 Administrative appeals.
- 808.3 Hearings 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. 3.4 (9), 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

SOURCE: 71 FR 78589, Dec. 29, 2006, unless otherwise noted.

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 con-

sultation 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 par-

ties 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 offi-

cer(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 remediate 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.