

**§ 381.403 [Amended]**

6. Section 381.403 is amended by removing "\$5,440" and inserting "\$5,740" in its place.

**§ 381.505 [Amended]**

7. In § 381.505, paragraph (a) is amended by removing "\$9,400" and inserting "\$9,930" in its place and by removing "\$10,640" and inserting "\$11,240" in its place.

**§ 381.801 [Amended]**

8. Section 381.801 is amended by removing "\$1,350" and inserting "\$1,020" in its place.

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**SUSQUEHANNA RIVER BASIN  
COMMISSION**
**18 CFR Parts 803, 804 and 805****Review and Approval of Projects;  
Special Regulations and Standards;  
Hearings/Enforcement Actions**

**AGENCY:** Susquehanna River Basin Commission (SRBC)

**ACTION:** Final rule.

**SUMMARY:** This action finalizes adoption of a reorganized and revised set of regulations and procedures for review of projects. These regulations implement the commission's general project review authority set forth in Section 3.10 of the Susquehanna River Basin Compact and its authority under other portions of the compact to set standards for the operation of projects and to enforce its regulations. Other regulations cover registration of water withdrawals and water conservation.

**EFFECTIVE DATE:** May 11, 1995.

**ADDRESSES:** 1721 N. Front Street, Harrisburg, Pa. 17102-2391.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo or John D. Graham, 717-238-0422.

**SUPPLEMENTARY INFORMATION:****History**

These regulations were first proposed on May 12, 1994 and appeared in the **Federal Register** on June 8, 1994 at p. 29563. They replace the commission's existing project review regulations found in Part 803 of the Code of Federal Regulations. Their purpose is to improve the overall precision and clarity of the regulations; to reorganize the regulations into an integrated format that is more readily understood by the regulated community; and to address subject matter not addressed or

inadequately addressed in the existing regulations.

A series of eight public hearings were held throughout the river basin during the summer of 1994. The hearings produced a large number of comments, most of which were directed to the revised consumptive use regulation. Agriculture and public water suppliers provided most of these comments. After considering these comments and making a number of changes in the originally proposed regulation, the commission held a final hearing on March 9, 1995. Additional changes were made in response to the comments received at this hearing. A copy of a document showing all of these changes may be obtained upon request to the commission at the above address or phone.

Due to the many comments and questions raised on the consumptive use portion of the regulations, and because of the complexity and potential regulatory impacts of that particular regulation, the Commission determined that further consultations and discussions with the regulated community will be needed before final action. At the same time, the Commission feels that the remaining portion of the regulations will greatly improve the Commission's regulations and procedures for review of projects and should be adopted as soon as possible. Therefore, the Commission is proceeding with final rulemaking on these regulations, except for the proposed revisions to the regulation on the consumptive use of water which are deferred. The current consumptive use regulation found at 18 CFR 803.61 is substantially retained and renumbered as § 803.42. The Commission will continue the consultation process with the regulated community in an effort to develop a future strategy for the management of agricultural and public water supply uses. The current suspension of the consumptive use regulation with respect to agricultural consumptive uses under Commission Resolution 94-05 also remains in effect.

The comments relating to the non-consumptive use portion of the regulations are summarized below and responses provided.

**Comments/Responses**

1. Public water suppliers do not have the legal authority to enforce water conservation requirements.

*Response:* The water conservation standards which are set forth in the omnibus package have been in effect since 1979 without burdening public water suppliers on the issue of enforcement of conservation measures.

The regulation says that such measures shall be implemented "as circumstances warrant." We see no real difficulty for water suppliers to distribute literature to customers describing water conservation techniques and implementing a water pricing structure that encourages conservation. As for requiring installation of conservation devices, at least this could be implemented as a requirement for hookups to the system if not directly mandated.

2. The duration of approvals should be the same as that of accompanying permits issued by the state. If no state permit duration is specified, the SRBC approval should be perpetual. Making the approval duration retroactive to projects already approved by SRBC is unfair and perhaps an unconstitutional taking of a vested right. Twenty-five years may not enough time to amortize investments some in big, complex plants where large sums of money were invested.

*Response:* The proposed regulation does tie permit duration to any accompanying permit issued by a signatory party. We feel that 25 years is a reasonable duration to otherwise give to a project sponsor so that the investment he has made in the project can be sufficiently amortized. To cover those situations where, for some good reason, 25 years is not appropriate, we propose to add a sentence to § 803.30(a) stating, "The Commission, upon its own motion or that of a project sponsor, may modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors." To address the concern over the retroactive application of the 25 year duration to projects already approved by the Commission, we propose to now add five years to this permit duration from the time of the Commission's initial approval. This will help to mitigate the effects of the retroactive application of the permit duration and stagger the time periods when these previously approved projects come up for renewal.

3. Three years is not enough time for a project sponsor to implement an approved project. This should be extended to four years.

*Response:* The proposed regulation (§ 803.3(b)) already allows the extension or renewal of an approval upon the request of the applicant. The Commission is not likely to refuse any reasonable request for an extension.

4. Hydroelectric projects should be specifically exempted from § 803.44,

and electric generating plants in general should be exempted from § 804.20. Such plants do not properly fit into the category of projects covered by these sections.

*Response:* In most cases, run of river hydroelectric projects, by their very process of passing water through, will not be considered a withdrawal of water. But what if there is a scenario wherein a hydroelectric facility is somehow conveying water that would normally pass directly into the tail race to supply another water use? The commission needs to be able to deal with such an eventuality.

We therefore propose to add a provision exempting hydroelectric projects from § 803.44 except to the extent that such projects constitute a withdrawal as defined in § 803.3. Hydroelectric sponsors should keep in mind the fact that, while hydro projects will generally be exempt under § 803.44, they may still be subject to commission approval under the general project review requirements of Section 3.10 of the Compact and these regulations.

With respect to § 804.20 on water conservation standards, electric generating (fossil-nuclear) facilities are basically industrial type activities. The current proposal does allow sufficient flexibility for the calculations in lieu of metering if indeed metering is impractical for an electric generating station. We recognize that the utilities have undertaken practices such as recirculation which have contributed to water conservation efforts. The commission is willing to work with the utilities to identify other conservation techniques that would be considered unique to utility operations.

5. Under §§ 803.43 & 803.44, the commission should not require metering for water use by electric generating facilities and should require only monthly reporting.

*Response:* We agree that more flexibility is needed on surface withdrawals, so we would propose to add the words "or other suitable methods of measurement" to § 803.44 (c). We also agree to allow the commission to designate, on an ad hoc basis, whether daily, weekly, or monthly records shall be kept. (§ 803.44 (d)).

With respect to § 803.43, the commission has the ability to waive any requirements of the regulations so long as the purposes of the regulations are not violated. If there are good reasons for not doing the normal metering or for having only monthly data reported, the commission will listen and is not likely to refuse any reasonable request. Meanwhile, the commission generally

feels that some interval more frequent than one month is desirable for ground water management.

6. The regulations should not be applied on a retroactive basis. This may even be illegal and is unfair to the owners of existing facilities.

*Response:* The consumptive use regulation has been retroactive since 1976. The only new retroactive application in proposed revisions to Part 803 is the approval durations. However, we are not proposing to revise it at this time. The ground water and conservation regulation effective dates, which were previously established, are simply preserved. The surface water regulation is made only prospectively effective. There is nothing inherently illegal with a retroactive effective date so long as proper safeguards are included.

7. In Section 803.3, a better definition of trigger flow is needed to provide clarification of the intent and purpose of trigger flow, relative to what becomes triggered.

*Response:* The definition of trigger flow relates to Section 803.42 and has been removed for the present time.

8. SRBC should not place the onus of responsibility for notifying the public of an application on the applicant. The regulation calling for notification of municipalities needs clarified. It sounds like an applicant must notify every municipality in the county.

*Response:* Agree that the wording on municipal notification needs revised to make clear that SRBC is not requiring that every municipality in the county be notified, only those in which the project is situated. As for notification responsibilities, agree that the portion of the regulation requiring project sponsor to notify other interested parties known to the project sponsor and SRBC is a vague requirement and we would agree to delete it.

9. In Subpart D—Standards for Review and Approval of Projects, the factors for disapproval of a project by the SRBC are too broad and allow too much discretion on the part of the Commission. Approval/disapproval should be based on evidentiary standards.

*Response:* The standards for review and approval of projects set forth in Subpart D come directly from the Susquehanna River Basin Compact, Section 3.10.

10. Water conservation standards need to be strengthened. For example, the type of water conservation devices mentioned in § 804.20 could be specified.

*Response:* We agree that the water conservation requirement could be

made more specific. As an interim measure, we will retain the existing language and develop more specific criteria for future consideration.

11. Ten days notice in a state bulletin, as required in § 805.1 is not sufficient time before a public hearing regarding rulemaking.

*Response:* The notices in state bulletins will not be the only means of publishing such hearings. There will be a 20-day notice in the **Federal Register**, a publication that is distributed generally throughout all three signatory states. Such hearings will also be announced in various Commission news releases, the Guardian newsletter and the meeting minutes. The news releases alone receive widespread dissemination throughout the basin to media and other interested parties who have expressed an interest in Commission activities. Staff has found that, unlike the **Federal Register**, the state bulletins and registers appear only weekly and are slower in publishing hearing notices. The lead times for publishing in the state bulletins 20 days in advance of hearings can be difficult to meet; hence, the 10-day requirement for state registers and bulletins.

12. The project review procedures set forth in Part 803 are too closely tied to the project review authority under Section 3.10 of the compact. There needs to be a clearer statement that this part is also intended to implement the Commission's authority under Section 3.4 of the compact to set standards for the operation of projects and facilities.

*Response:* Staff agrees and is inserting language to make it clear that Part 803 also covers the setting of standards under Section 3.4 of the compact and that neither Section 3.10 of the compact nor anything else in the proposed regulations should be construed as a limitation on the exercise of Section 3.4 powers.

13. The Commission's authority to set standards for the operation of projects under § 3.4 (2) of the Compact does not give the commission authority to "approve" such projects unless they also fall into the category of projects listed in § 3.10—Review and Approval.

*Response:* We disagree. Both sections 3.4 (9) and 15.2 provide authority to the commission to make rules and regulations to implement, effectuate and enforce the compact. If an agency sets standards for the operation of projects, it may adopt procedures whereby it can review the project and confirm that the project sponsor has complied with the standards set for the project. We would also point to § 3.10 (2) which states that "(a) approval of the commission shall be

required for, but not limited to, the following \* \* \*

14. There are no specific provisions in the proposed rules pertaining to wetlands.

*Response:* While there are no specific references to wetlands in the proposed regulations, § 803.41—General Standards for Review of Projects, stipulates that: (a) A project shall not be detrimental to the proper conservation, development, management or control of the water resources of the basin; and (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. The comprehensive plan does call for the avoidance of dredging and other human alterations of wetlands. All applicants must also obtain applicable federal and state approvals, in addition to SRBC approvals. Thus, the Commission is adequately equipped to deal with threats to wetlands within the project review process.

15. In proposed § 803.5, projects which may require review and approval, there are no objective standards or methodologies to determine whether a project falls into one of the categories that "may" need approval and thus a request for determination. An example is the reference to "projects that have a significant effect upon the comprehensive plan." Such specific standards might allow an applicant to by-pass the "request for determination" procedure outlined in § 803.22 and apply directly to the Commission for approval.

*Response:* The compact itself uses this language and does not attempt to define it, leaving it to the discretion and judgment of the Commission. As long as the Commission does not act arbitrarily or abuse its discretion, it seems appropriate for the Commission to make this judgment on a case-by-case basis. Hard and fast definitions of what constitutes a significant effect on the comprehensive plan would detract from the flexibility and discretion accorded the Commission by the compact.

16. Under § 803.22, a project sponsor cannot rely on the Executive Director's determination on whether a project requires commission approval.

*Response:* The commission feels that there ought to be some method of appeal of the Director's determination to the full commission. This is not unlike the appeal that is always available to the town council or zoning hearing board on a decision made by the local zoning

officer. This proposed procedure is patterned after a similar and very successful regulation of the Delaware River Basin Commission.

17. The form of certification of the giving of notice of an application under § 803.25 is not clear. The Commission should provide the form of certification.

*Response:* Agreed. Wording is added providing that notice shall be given on a form provided by the Commission.

18. § 803.26(5) states that the staff will determine the appropriate application fee. The regulations should state how and on what basis the application fee will be determined.

*Response:* Agreed. Wording is added indicating that the fee will be determined in accordance with SRBC's project review fee schedule, which has been adopted under separate resolution.

19. Under § 803.32—Reopening/ Modifications, it is not prudent to allow any "interested party" to reopen a project docket at any time. Once a project docket is reopened by any "interested party," it may set an undesirable precedent. If any party can request a reopening, it undermines the reliance that a project sponsor can place on an approval granted by the Commission. Considerable resources may have already been expended by the project sponsor in reliance on such an approval.

*Response:* Since it is the Commission which ultimately decides whether a reopening of a docket has merit, we are not alarmed at the use of the term "interested party." We feel that broad public participation in the project review process is to be encouraged, not discouraged by stringent limits placed on those who can and cannot come before the Commission. The Commission is an administrative forum where projects affecting the public interest are evaluated, not a judicial forum where there is a specific controversy involving defined parties who must have standing to participate. We have further concerns about trying to differentiate between those persons who are "interested parties" under § 803.21(e) and those persons who would, under the utilities' proposal, be "affected parties." Nevertheless, we do understand the need for a project sponsor to be able to rely on an approval given by the Commission. We are therefore adding language to § 803.32 requiring an interested party to show by a preponderance of the evidence that an impact or a threat to public health, safety and welfare exists and giving the executive director the authority to determine whether an interested party has made out a prime facie case favoring reopening of the docket.

20. The Commission should clarify whether a project subject to renewed approval under § 803.30(c) is to be considered a "proposed project" for purposes of the approval standards set forth in subpart D of Part 803.

*Response:* Agreed. Wording is added to § 803.30(c) clarifying this point.

21. In § 805.2, it is unfair to assess all of the adjudicatory hearing costs to the project sponsor.

*Response:* The regulation states that the hearing officer shall assess these costs to the project sponsors or others, as deemed equitable. The hearing officer will be able to weigh the equities and then assess costs accordingly. Costs will not necessarily be wholly assessed against a sponsor in each and every case. There is room for the officer to use his/her discretion to be fair to all parties. This regulation is based on procedures successfully implemented by the Delaware River Basin Commission.

22. A joint permitting process with the signatory agencies should be developed as part of or concurrent with this rulemaking process.

*Response:* § 803.6 of the proposed regulation allows for such cooperation with the signatory parties. Staff will attempt to work out such cooperative arrangement once the rulemaking package is in place.

23. Definition of "diversion" should be broadened to include transfers between subbasins.

*Response:* The definition of "diversion" comes from the compact. The Commission cannot broaden its scope, though certainly the effects of a trans-subbasin withdrawal can be considered as part of the project review evaluation process.

24. The costs of an adjudicatory hearing should not be assessed against a signatory party.

*Response:* This should be left to the discretion of the hearing officer as he/she deems equitable.

25. § 803.24(b)(4) should include the word "estimated" before the words "completion date" and "construction schedule."

*Response:* Agreed.

26. Water is not owned by any single person. It may be used by individuals, but it is a resource belonging to all the people of the basin. Water must be managed comprehensively by the SRBC. All users must contribute in some fashion to wise management of the basin's waters.

*Response:* Agreed, though in managing the basin's waters, the Commission understands the need to consider the special needs and challenges facing various users.

27. Some farmers, particularly those in New York State, expressed opposition to water use registration as increasing their paper work loads and setting them up for future regulation. It was suggested that the commission either withdraw the registration regulation or apply it only in the signatory states who desired such registration.

*Response:* The Commission believes that registration will give farmers equitable standing with the SRBC and perhaps with the courts if use conflicts develop with another water user. Registration will also help the Commission do a better job of managing the resource. The State of Maryland's experience with registering agricultural water uses has been very positive and has won the support of Maryland farmers. Pennsylvania farmers also support registration for this reason. Because support for registration does not appear universal, however, the commission is adding language to § 804.1 making the requirement for the registration of water withdrawals exceeding 10,000 gpd subject to the consent of the affected signatory state.

28. With respect to § 803.24 (b)(2)(vi) and § 803.43, the PF&B believes that the use of the word "substantial" before "adverse impact" in each of these sections introduces potentially unintended ambiguity to the regulations. No where is the term "substantial" defined.

*Response:* The use of the word "substantial" is intended to prevent the application of these sections to the most de minimus effects. The word "substantial," though not defined, is used to describe the level of evidence that must be present for an administrative agency to justify a regulatory action. Under the "substantial evidence" criteria, only a relatively small amount of evidence is needed to justify agency action. Thus, we do not believe that the word "substantial" introduces ambiguity anymore than the widespread use in thousands of statutes and judicial decisions of the word "reasonable."

29. With respect to § 803.44(d), new subsection should be added which would require the immediate reporting of violations of release or flow-by conditions along with documentation of the reasons for the violations.

*Response:* The commission does not wish to suggest to such users that it may be acceptable to violate the flow by requirements. If they do so, there are sanctions available to deal with such violations.

30. The commission should permit an applicant to by pass a request for

determination under § 803.22 when it is fairly certain that approval will ultimately be required. The need for a project to submit a "request for determination" and an application for approval is duplicative.

*Response:* In fact, the Commission would not require that an applicant submit a "request for determination" in all cases. If an applicant's project falls into one of the categories listed in § 803.4 (Projects requiring review and approval), the applicant then submits an application directly to the commission.

The "request for determination" proceeding is provided largely for the benefit of potential applicants whose projects fall into the category of projects listed in § 803.5 (Projects which may require review and approval). The "request for determination" procedure could possibly remove the need for them to make a formal application.

The level of information to be provided to the Executive Director in a request for determination will be far less than that required for an application so that duplication should be minimal. Nevertheless, to accommodate applicants who feel that their projects are likely to be classified as requiring the commission's approval, the commission is adding a clause allowing the Executive Director, at an applicant's request, to waive the "request for determination" and proceed directly to the filing of an application for approval.

31. The definition for "withdrawal" in § 803.3 is inconsistent with the definition of withdrawal in the Susquehanna River Basin Compact.

*Response:* Agreed. The definition of "withdrawal" in the compact should be substituted for the proposed definition of withdrawal.

32. A phrase should be added to § 803.28, Application/monitoring fees, indicating that a public hearing shall be held prior to the imposition of such fees.

*Response:* Under Section 3.9 of the compact, such hearings are already required.

#### List of Subjects

##### 18 CFR Part 803

Administrative practice and procedure, water resources.

##### 18 CFR Part 804

Water resources.

##### 18 CFR Part 805

Administrative practice and procedure.

Dated: June 9, 1995.

**Paul O. Swartz,**

*Executive Director.*

Accordingly, Chapter VIII of title 18 of the Code of Federal Regulations is amended as set forth below:

1. Part 803 is revised to read as follows:

## PART 803—REVIEW AND APPROVAL OF PROJECTS

### Subpart A—General Provisions

Sec.

803.1 Introduction.

803.2 Purposes.

803.3 Definitions.

803.4 Projects requiring review and approval.

803.5 Projects which may require review and approval.

803.6 Concurrent project review by signatory parties.

803.7 Waiver/modification.

### Subpart B—Application Procedure

803.20 Purpose of this subpart.

803.21 Preliminary consultations.

803.22 Request for determination.

803.23 Submission of application.

803.24 Contents of application.

803.25 Notice of application.

803.26 Staff review/action/recommendations.

803.27 Emergencies.

803.28 Application/monitoring fees.

### Subpart C—Terms and Conditions of Approval

803.30 Duration of approvals.

803.31 Transferability of approvals.

803.32 Reopening/modification.

803.33 Waiver/modification.

803.34 Interest on fees.

### Subpart D—Standards for Review and Approval/Special Standards

803.40 Purpose of this subpart.

803.41 General standards.

803.42 Standards for consumptive uses of water.

803.43 Standards for ground-water withdrawals.

803.44 Standards for surface-water withdrawals.

**Authority:** Secs. 3.4, 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

### Subpart A—General Provisions

#### § 803.1 Introduction.

(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.

(b) Except for activities relating to site evaluation, no person or governmental entity shall begin construction or operation of any project subject to commission review and approval until such project is approved by the commission.

(c) When projects subject to commission review and approval are sponsored by governmental entities, 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. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

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

(e) Except as otherwise stated in this part this part shall be effective on May 11, 1995; provided, however, that nothing in this paragraph shall be deemed to exempt:

(1) Any project which has been or could have been subject to review and approval by the commission under the authority set forth in Section 3.10 of the compact or any prior regulations of the commission; or

(2) Any withdrawal or consumptive use which has been or could have been subject to special standards adopted pursuant to Section 3.4 (2) of the compact.

(f) 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.

(g) Any forms or documents referenced in this part may be obtained

from the commission at 1721 N. Front Street, Harrisburg, PA 17102-2391.

#### § 803.2 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, §§ 803.42, 803.43 and 803.44 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 surface and ground 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 is to ascertain and effectuate the purposes and the intention of the commission set out in paragraph (b) of this section.

#### § 803.3 Definitions.

For purposes of this part, the words listed in this section are defined as follows:

*Agricultural water use.* A water use associated primarily with the raising of food or forage crops, trees, flowers, shrubs, turf, aquaculture and livestock.

*Application.* A request for action by the commission in written form including without limitation thereto a letter, referral by any agency of a signatory party, or an official form prescribed by the commission.

*Basin.* The Susquehanna River basin.

*Commission.* The Susquehanna River Basin Commission, a body politic created under Article 2, Section 2.1 of the compact.

*Compensation.* Water utilized or provided from storage as makeup for a consumptive use.

*Comprehensive plan.* The "Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin" prepared and adopted by the commission pursuant to Article 3, Section 3.3 of the compact.

*Construction.* Clearing or excavation of the site or installation of any portion of the project on the site.

*Consumptive use.* Consumptive use is the loss of water from a ground-water or surface water source through a manmade conveyance system (including such water that is purveyed through a public water supply system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, diversion from the Susquehanna River basin, or any other process by which the water withdrawn is not returned to the waters of the basin undiminished in quantity. Deep well injection shall not be considered a return to the waters of the basin.

*Dedicated augmentation.* Release from an upstream storage facility which is required for any other instream or withdrawal use.

*Deep well injection.* Injection of waste or wastewater substantially below aquifers containing fresh water.

*Diversion.* The transfer of water into or from 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. For purposes of this part and every other part contained in this chapter, a facility shall be considered a project (see definition of project in this section).

*Governmental entity.* The federal government, the signatory states, their political subdivisions, public corporations, public authorities and special purpose districts.

*Ground-water source.* (1) Pumped wells or well fields;

(2) Flowing wells;

(3) Pumped quarries, pits, and underground mines having no significant surface water inflow

(significant meaning that any surface water inflow is greater than the withdrawal); or

(4) A spring in which the water level is sufficiently lowered by pumping to eliminate the surface flow. All other springs will be considered to be surface water.

*Person.* An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural.

*Pre-compact use.* The maximum average quantity or volume of water consumptively used over any consecutive 30 day period prior to January 23, 1971 expressed in "gallons per day" (gpd).

*Project.* Any work, service, activity, or facility undertaken which is separately planned or financed 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.

*Signatory party.* The States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

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

*Sponsor.* Any person or governmental entity proposing to undertake a project. The singular shall include the plural.

*Surface water source.* Any river, perennial stream, natural lake or pond, spring, wetland or other body of surface water situated in the basin.

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

*Water(s).* Surface and ground water(s) contained within the Susquehanna River basin either before or after withdrawal.

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

#### **§ 803.4 Projects requiring review and approval.**

(a) The following projects are subject to review and approval by the commission and require an application to be submitted to the commission in accordance with the procedures outlined in § 803.23:

- (1) Projects on or crossing the boundary between two signatory states;
- (2) Projects involving the diversion of water;

(3) Projects resulting in a consumptive use of water exceeding an average of 20,000 gallons per day (gpd) for any consecutive thirty-day period or such other amounts as stipulated in § 803.42;

(4) Projects withdrawing in excess of an average of 100,000 gpd for any consecutive thirty-day period from a ground-water or surface water source or such other amounts as stipulated in §§ 803.43 and 803.44; and

(5) Projects which have been included by the commission in its comprehensive plan.

(b) Sponsors of projects who feel that their projects are likely to be classified as requiring the commission's approval may request that the executive director waive the "request for determination" procedure and may thereafter proceed directly to the filing of an application for approval.

#### **§ 803.5 Projects which may require review and approval.**

The following projects, if not already covered under § 803.4, may be subject to commission review and approval and require, in accordance with the procedures outlined in § 803.22, a "request for determination" to be submitted to the executive director:

(a) Projects which may change interstate water quality standards or criteria.

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

(c) Projects which may have a significant effect upon the comprehensive plan.

(d) Projects not included in paragraphs (a) through (c) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin; provided that the project sponsor is notified in writing by the executive director that it shall submit a "request for determination".

#### **§ 803.6 Concurrent project review by signatory parties.**

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

(b) To avoid duplication of work and to cooperate with other government

agencies, the commission may develop agreements of understanding, in accordance with the procedures outlined in this part, with appropriate agencies of the signatory parties regarding joint review of projects. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the commission, or any other matter to support cooperative review activities. Permits issued by a signatory agency shall be considered commission approved if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

#### **§ 803.7 Waiver/modification.**

The commission may, in its discretion, waive or modify the requirements of this part if the essential purposes set forth in § 803.2 continue to be served.

### **Subpart B—Application Procedure**

#### **§ 803.20 Purpose of this subpart.**

The purpose of this subpart is to set forth procedures governing applications required by §§ 803.4 and 803.5.

#### **§ 803.21 Preliminary consultations.**

(a) Any sponsor of a proposed project that is or may be subject to the commission's review jurisdiction under § 803.4 or § 803.5 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 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 and the environmental impacts.

(b) Preliminary consultations shall be optional with the project sponsor and shall not relieve the sponsor from complying with the requirements of the compact or with this part.

#### **§ 803.22 Request for determination.**

(a) Sponsors of projects which may require review and approval, as described in § 803.5, shall submit a "request for determination" to the executive director with such accompanying information and data as the executive director shall prescribe.

(b) If a project sponsor is uncertain whether a "request for determination" should be filed with the commission, the sponsor may ask for and, within thirty days after submission of information in such form and manner as will allow the executive director to

make a decision, receive from the executive director a letter stating whether a "request for determination" should be filed. The executive director may also direct a project sponsor to submit a "request for determination."

(c) Within thirty days of the receipt of such "request for determination," the executive director shall determine whether the said project must be reviewed and approved by the commission. In making such determination, the executive director shall be guided primarily by his/her findings as to the following factors:

(1) Whether the proposed project will have a significant interstate effect on water supply, stream flows, aquifers, water quality, flooding, sensitive land areas, aquatic or terrestrial forms of plant or animal life, historical or cultural resources, or any other water-related resource.

(2) Whether the proposed project will have a significant impact upon the goals, objectives, guidelines, plans, or projects included in the comprehensive plan.

(3) Whether the proposed project may have an adverse or adverse cumulative effect on the water resources of the basin.

(d) The executive director shall notify the sponsor of the project, the agency of the signatory party, if any, reviewing the project, the governing body of each municipality and the planning agency of each county in which the project is located of his/her initial determination under this section. Notice to the sponsor shall be by certified mail, and to all other interested parties by regular, first class mail. At a cost to be assessed to the project sponsor, the executive director shall also publish in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the executive director's initial determination, it shall become final ten days after publication as set forth in this paragraph.

(e) Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the executive director by letter for reconsideration. Following such reconsideration, if requested, the executive director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his/her determination. Any such party may appeal such final determination to the commission by notice in writing served upon the executive director within 14 days after the service of the executive director's decision upon reconsideration. The commission will

determine such appeal at a regular meeting thereafter.

#### § 803.23 Submission of application.

(a) Sponsors of projects requiring the review and approval of the commission under § 803.4, or determined to require the approval of the commission under § 803.22, shall, prior to the time the project is undertaken, submit an application to the commission. The application shall be submitted to the commission at its headquarters, 1721 N. Front Street, Harrisburg, Pennsylvania 17102-2391, and shall contain the information prescribed in § 803.24.

(b) An application shall not be deemed to be pending before the commission until such time as the information required under § 803.24 has been provided and any applicable fee has been paid.

(c) As determined from applications or otherwise, the commission shall review and either approve, approve with conditions or modifications, or disapprove such projects.

#### § 803.24 Contents of application.

(a) Applications shall be submitted on forms prescribed by the commission.

(b) If no forms are prescribed by the commission for a particular type of project, the sponsor shall submit an application addressing the following items applicable to the project:

(1) Identification of sponsor and name of person authorized to speak for the sponsor.

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

(i) Water use and availability.

(ii) Engineering feasibility.

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

(iv) Project location.

(v) Project purpose.

(vi) 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 sponsor should include information:

(A) Detailing the efforts that have been made to develop its own in-basin sources of water; and

(B) Demonstrating that the proposed diversion will not have substantial adverse effects on the ability of the Susquehanna River basin to meet its own water needs.

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

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

(ix) Plans for avoiding or compensating for consumptive use during low flow periods.

(x) 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) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics);

(C) Recreation potential;

(D) Fish and wildlife (habitat quality, kind and number of species);

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

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

(G) Historical, cultural and archaeological impacts.

(3) 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.

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

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a signatory party, may be accepted by the commission *provided* the said report or application addresses the applicable items listed in paragraph (b) of this section.

#### § 803.25 Notice of application.

(a) The project sponsor shall, within ten days of the submission of an application to the commission, notify area and regional news media, the municipality(ies) in which the project is situated, the county planning agency of the county(ies) in which the project is situated, and contiguous property owners that an application has been submitted to the commission. The commission shall compile a list of additional interested parties who comment on the application, request a hearing or make inquiries concerning the application. The project sponsor shall also publish at least once in a newspaper of general circulation in that municipality a notice of the submission of the application which contains a sufficient description of the project, its purpose and its location. Both the notification and the notice shall contain the address and phone number of the commission.

(b) The project sponsor shall provide the commission with a copy of the return receipt for the required municipal notification and a proof of publication for the required newspaper notice. 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. Until these items are provided to the commission, processing of the application will not proceed.

**§ 803.26 Staff review/action/recommendations.**

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

(1) Determination of completeness of the application. An application deemed incomplete will not be processed.

(2) Identification of the issues pertinent to commission review.

(3) Assessment of the project's compatibility with the compact, comprehensive plan, and with the other requirements of this part.

(4) Consultation with the project sponsor if requested or deemed necessary.

(5) Determination of the appropriate application fee in accordance with the commission's project review fee schedule and the transmission of a billing to the project sponsor for that fee. Applications will not be presented to the commission for review and action until such application fee has been paid.

(6) Formal docketing of the project and, within 90 days of receipt of a complete application, presentation to the commission along with the recommendations of the staff for disposition of the application. The executive director may, for good cause, extend this review period for up to an additional 60 days. Any further extension must be approved by the commission.

(b) If the project sponsor fails to respond to the commission's request for additional information, the commission may notify the project sponsor that the application process has been terminated. To reactivate the closed file, the project sponsor shall reapply and may be required to submit new or updated evaluations.

**§ 803.27 Emergencies.**

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

natural resources and the 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 member from the affected signatory 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.

**§ 803.28 Application/monitoring fees.**

The commission may, by separate resolution, establish and modify fees for the submission and processing of applications and for the monitoring of project compliance with this part.

**Subpart C—Terms and Conditions of Approval**

**§ 803.30 Duration of approvals.**

(a) Approvals issued under this part shall have a duration equal to the term of any accompanying signatory license or permit regulating the same subject matter. If there is no such accompanying license or permit or if no term is specified in such accompanying license or permit, the duration of a commission approval issued under this part shall be 25 years. The commission, upon its own motion or that of a project sponsor, may modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors. Unless there is an accompanying signatory license or permit regulating the same subject matter and specifying a duration, the 25 year duration for projects previously approved by the commission under this part shall commence five years from the date on which such projects were initially approved.

(b) For projects that have been approved by the commission but not implemented, approval by the commission under this part shall expire three years from the date of commission action. Likewise, if the use of a project is discontinued for such a period of time and under such circumstances that an abandonment of the project may reasonably be inferred, the commission may rescind a prior approval for such abandoned project. In either case, an approval may be extended or renewed by the commission upon request.

(c) The sponsors of projects previously approved by the commission should apply for renewal of their

approvals no later than six months prior to the expiration of their previous approval. Such applications for renewal shall be reviewed under the same procedures and standards as for newly proposed projects.

**§ 803.31 Transferability of approvals.**

Approvals by the commission are transferable to new owners of projects, provided that the transferors or the transferees notify the commission of the transfer either before or within 60 days after the date of the transfer and that the new owners, within 30 days of being requested to do so by the commission, submit in writing their intention to comply with all conditions of the project's docket approval and assume all other associated obligations. The commission may waive or extend any of these deadline periods for good cause.

**§ 803.32 Reopening/modification.**

Once 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 docket 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 natural 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 substantial adverse impact or a threat to the public health, safety or welfare exists that warrants reopening of the docket. Before such application may be submitted to the commission for action, the executive director shall first determine that an interested party has made out a prima facie case favoring the reopening of the docket. The executive director shall inform the commission of any negative finding in this regard so that the commission is afforded the opportunity to over-rule his/her decision.

**§ 803.33 Interest on fees.**

The commission may, by resolution, establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the commission.

**Subpart D—Standards for Review and Approval/Special Standards**

**§ 803.40 Purpose of this subpart.**

The purpose of this subpart is to set forth standards that shall be used by the commission to evaluate proposed projects pursuant to §§ 803.4 and 803.5, and to establish special standards applicable to certain water withdrawals and consumptive uses irrespective of



whether such withdrawals and consumptive uses are subject to project review pursuant to Section 3.10 of the compact. General standards applying to all projects and special standards applying to certain types of projects are set forth in this subpart. This subpart does not identify all the aspects of a proposed project that will be evaluated, nor should it be construed as a self-imposed limitation upon the commission's authority and scope of review. The special standards established pursuant to Section 3.4 (2) of the compact 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 of the compact.

#### § 803.41 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.

#### § 803.42 Standards for consumptive uses of water.

(a) *Requirement.* (1) Compensation shall be required for consumptive uses of water during periods of low flow. Compensation is required during periods of low flow for the purposes set forth in § 803.2.

(i) *Surface water source.* Compensation in an amount equal to the project's total consumptive use shall be required when the streamflow at the point of taking equals or is anticipated to equal the low flow criterion which is the 7-day 10-year low flow plus the project's total consumptive use and dedicated augmentation. The commission reserves the right to apply a higher low flow criterion for a particular stream reach when it finds, as the result of evidence presented at a public hearing that it is needed to serve the purposes outlined in paragraph (b) (1) of this section.

(ii) *Ground-water source.* Compensation for the project's consumptive use of ground water shall be required when the stream flow is less than the applicable low flow criterion. For the purposes of implementing this regulation, the commission will identify the appropriate stream gaging station for determining the applicable low flow.

(2) Consumptive uses by a project not exceeding an average of 20,000 gpd for any consecutive thirty-day period from surface or groundwaters are exempt from the requirement unless such uses adversely affect the purposes outlined in paragraph (b) (1) of this section.

(b) *Method of Compensation.* (1) Methods of compensation acceptable to the commission will depend upon the character of the project's source of water supply and other factors noted in this paragraph (b) (1).

(i) The required amount of compensation shall be provided by the applicant or project sponsor at the point of taking (for a surface source) or another appropriate site as approved by the commission to satisfy the purposes outlined in this paragraph (b) (1). If compensation for consumptive use from a surface source is to be provided upstream from the point of taking, such compensation shall reasonably assure no diminution of the flow immediately downstream from the point of taking which would otherwise exist naturally, plus any other dedicated augmentation.

(ii) Compensation may be provided by one, or a combination of the following:

(A) Construction or acquisition of storage facilities.

(B) Purchase of available water supply storage in existing public or private storage facilities, or in public or private facilities scheduled for completion prior to completion of the applicant's project.

(C) Purchase of water to be released as required from a water purveyor.

(D) Releases from an existing facility owned and operated by the applicant.

(E) Use of water from a public water supplier utilizing raw water storage that maintains a conservation release or flow-by, as applicable, of Q7-10 or greater at the public water supplier's point of taking.

(F) Ground water.

(G) Purchase and release of waters stored in other subbasins or watersheds.

(H) Other alternatives.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, imposition of conservation measures, utilization of an alternative source that is unaffected by the compensation requirement, or a monetary payment to the commission in an amount to be determined by the commission from time-to-time.

(3) The commission shall, in its sole discretion, determine the acceptable manner of compensation or alternatives to compensation, as applicable, for consumptive uses by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use

and its effect on the purposes set forth in § 803.2 of this part, and any other pertinent factors.

(c) *Quantity of consumptive use.* For purposes of evaluating a proposed project, the commission shall require estimates of anticipated consumptive use from the project sponsor. The commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive losses and compensating flows including flow metering devices, stream gages, and other facilities used to measure the consumptive use of the project or the rate of streamflow. If the commission determines that additional flow measuring devices are required, these shall be provided at the expense of the project sponsor and shall be subject to inspection by the commission at any time. When the project is operational, the commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly. The project sponsor shall provide the commission with periodic reports in the time and manner as it requires showing actual consumptive uses associated with the project. The commission may use this data to modify, as appropriate, the magnitude and timing of the compensating releases initially required when the project was approved.

(d) *Quality of compensation water.* The physical, chemical and biological quality of water used for compensation shall at all times meet the quality requirements for the purposes listed in § 803.2, as applicable.

(e) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all consumptive uses initiated on or after January 23, 1971, the effective date of the compact.

(f) Public water suppliers, except to the extent that they are diverting the waters of the basin, shall be exempt from the requirements of this section; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of this section.

#### § 803.43 Standards for ground-water withdrawals.

(a) *Requirement.* (1) With respect to projects coming into existence on or after the effective date of this section, any project sponsor proposing to withdraw from a ground-water source in excess of an average of 100,000 gpd for any consecutive thirty-day period, proposing to increase a withdrawal to more than an average of 100,000 for any

consecutive thirty-day period or proposing to increase a withdrawal above that amount which was previously approved by the commission, shall apply for approval pursuant to subpart B of this part. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of ground water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn from an aquifer or aquifer system without causing adverse lowering of ground-water levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having a substantial adverse impact on low flow of perennial streams.

(2) With respect to projects withdrawing any quantity of water prior to the effective date of this section, any project sponsor proposing to increase the said withdrawal in excess of 100,000 gpd above that which such project was withdrawing prior to the said effective date, shall apply for approval pursuant to subpart B of this part.

(3) After obtaining approval for the withdrawal pursuant to this paragraph, the sponsor shall also comply with metering, monitoring and reporting requirements as set forth in this section.

(b) *Withdrawal application.* Information required by the commission is specified in the commission's ground-water withdrawal application and includes but is not limited to the results of a constant rate pumping test. Review and approval by SRBC staff of the test procedures to be used by the applicant are necessary before the test is started.

(c) *Metering.* Projects approved under this section shall meter all approved ground-water withdrawals. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* (1) Monitoring and periodic reporting of water levels, well production, and ground-water quality are required of all approved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-water Withdrawal Reporting Form) and includes but is not limited to the following:

(i) Ground-water levels shall be measured weekly in all approved production wells and reported to the commission annually. Additional water level measurements may be required in one or more observation wells as determined by the commission.

(ii) Production from approved ground-water sources shall be recorded weekly and reported to the commission annually.

(iii) Samples of ground water for water quality analysis shall be obtained and the results reported to the commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30.

(2) The information in paragraph (d)(1) of this section may be provided to the commission either on Form SRBC #30 or other similar document containing all of the required information.

(e) *Planning.* If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all ground-water withdrawals initiated on or after July 13, 1978.

#### § 803.44 Standards for surface water withdrawals.

(a) *Requirement.* (1) With respect to projects coming into existence on or after the effective date of this section, any project sponsor proposing to withdraw either directly or a public water supplier proposing to withdraw indirectly (through another user) from a surface source in excess of an average of 100,000 gpd for any consecutive thirty-day period, proposing to increase a withdrawal to more than an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase a withdrawal above that amount which was previously approved by the commission, shall obtain commission approval of the withdrawal. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor

and that can be withdrawn without causing adverse lowering of streamflow levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential water use, adversely affecting fish, wildlife or other living resources or their habitat, or having a substantial adverse impact on the low flow of perennial streams.

(2) With respect to projects withdrawing any quantity of water prior to the effective date of this section, any project sponsor proposing to increase the said withdrawal in excess of 100,000 gpd above that which such project was withdrawing prior to the said effective date, shall apply for approval pursuant to subpart B of this part.

(3) Any sponsor of a project subject to this section shall complete a surface water withdrawal application. After obtaining approval under this section, the sponsor shall comply with metering, monitoring, and conservation requirements as set forth in this section.

(b) *Withdrawal application.* Information required by the commission is specified in the commission's application for withdrawal from surface water sources.

(c) *Metering.* Project sponsors shall meter or use other suitable methods of measuring surface withdrawals approved under this section. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* Monitoring and periodic reporting of surface water withdrawals approved under this section is required. The required information includes but is not limited to the following:

(1) Daily, weekly, or monthly records of withdrawals by source, as specified by the commission, and reported annually;

(2) Description of conservation activity; and

(3) Records of releases or flowby for instream protection reported annually.

(e) *Planning.* If projections indicate that a project's surface water supply will be constrained in the future by either the quantity or quality of available surface water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed surface water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor

may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* This section shall be effective six months after the effective date set forth in § 803.1(e), except for projects previously reviewed and approved by the commission under the general authority of section 3.10 of the compact. Commission authority shall continue over such previously approved projects.

(h) *Hydroelectric projects.* Hydroelectric projects, except to the extent that such projects constitute a withdrawal, shall be exempt from the requirements of this section; 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 §§ 803.4 and 803.5.

2. Parts 804 and 805 are added to read as follows:

**PART 804—SPECIAL REGULATIONS AND STANDARDS**

**Subpart A—Water Withdrawal Registration**  
Sec.

- 804.1 Requirement.
- 804.2 Time limits.
- 804.3 Administrative agreements.
- 804.4 Effective date.
- 804.5 Definitions.

**Subpart B—Water Conservation Requirements**

- 804.20 Requirement.
- 804.21 Effective date.
- 804.22 Definitions.

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

**Subpart A—Water Withdrawal Registration**

**§ 804.1 Requirement.**

In addition to any other requirements of commission regulations, and subject to the consent of the affected signatory state to this requirement, all persons withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive thirty-day period, from surface or ground-water sources, as defined in Part 803 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.

**§ 804.2 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 their initiation, whichever is later; provided, however, that nothing in this section shall limit the responsibility of an

applicant to apply for and obtain an approval as may be required under part 803 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 sooner discontinued.

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

**§ 804.3 Administrative agreements.**

The commission may complete appropriate administrative agreements or informal arrangements to carry out this registration requirement through the offices of signatory agencies. Forms developed by the commission shall apprise registrants of any such agreements or arrangements and provide appropriate instructions to complete and submit the form. Permits issued by a signatory party agency shall be considered a registration with the commission if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

**§ 804.4 Effective date.**

This subpart shall be effective on May 11, 1995 and shall apply to all present and future withdrawals or diversions irrespective of when such withdrawals or diversions were initiated.

**§ 804.5 Definitions.**

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

**Subpart B—Water Conservation Requirements**

**§ 804.20 Requirement.**

Any project sponsor whose project is subject to commission approval under this part or part 803 of this chapter proposing to withdraw water either directly or indirectly (through another user) from surface or ground-water sources or both shall comply with the following requirements:

(a) *Public water suppliers.* As circumstances warrant, the public water supplier 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; and

(iv) Encourage water reuse.

(b) *Industrial water users.* Industrial users 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) *Agricultural and other irrigation.* Water users for irrigation purposes shall utilize irrigation systems properly designed for the user's respective soil characteristics, topography and vegetation.

**§ 804.21 Effective date.**

Notwithstanding the effective date for other portions of this part, this subpart shall apply to all surface and ground-water withdrawals initiated on or after January 11, 1979.

**§ 804.22 Definitions.**

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

**PART 805—HEARINGS/ ENFORCEMENT ACTIONS**

**Subpart A—Conduct of Hearing**

- Sec.
- 805.1 Public hearings.
- 805.2 Adjudicatory hearing.
- 805.3 Consolidation of hearing.
- 805.4 Joint hearings.
- 805.5 Transcript.
- 805.6 Continuance.
- 805.7 Effective date.
- 805.8 Definitions.

**Subpart B—Enforcement Actions and Settlements**

- 805.20 Scope of subpart.
- 805.21 Notice to possible violators.
- 805.22 The record for decision-making.
- 805.23 Adjudicatory hearings/alleged violations.

- 805.24 Assessment of a penalty/abatement or remedial action.  
 805.25 Factors to be applied in fixing penalty amount.  
 805.26 Enforcement of penalties/abatement or remedial orders.  
 805.27 Settlement by agreement.  
 805.28 Effective date.  
 805.29 Definitions.

**Authority:** Secs. 3.4(9), 3.5(5), 3.10, 15.2 and 15.17, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

### Subpart A—Conduct of Hearing

#### § 805.1 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.

(3) Approval of projects.

(4) Hearing requested by a signatory party.

(5) When in the opinion of the commission, a hearing is necessary to give adequate consideration to issues relating to public safety, protection of the environment, or other important societal factors.

(6) To decide factual disputes.

(7) At all other times required by the compact or commission regulations in this chapter.

(b) *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, 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, news media and governmental entities 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.

#### (c) *Participants to a public hearing.*

(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 or governmental entity 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 ten 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.

#### (d) *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 entity may be represented by one of its officers, employees or by a designee of the governmental entity. Any person 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 or governmental entity on whose behalf he/she intends to appear.

(e) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the commission offices such 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.

(f) *Presiding officer.* A public hearing shall be conducted by the commission, 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.

#### § 805.2 Adjudicatory hearing.

(a) *Generally.* The commission, upon application by any interested party or upon its own motion, may determine that, due to outstanding issues of fact, an adjudicatory hearing shall be conducted. If, for any reason, the commission determines that there are not sufficient issues of fact to schedule an adjudicatory hearing, it may still require briefs or oral argument on any issues of law.

(b) *Hearing procedure.* (1) The presiding officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, to hold conferences for the settlement or simplification of issues, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, and to delineate the issues to be adjudicated.

(2) The presiding 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 and to examine and cross-examine witnesses.

(4) When necessary, in order to prevent undue prolongation of the hearing, the presiding 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 presiding 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.

(6) Any party may appear and be heard in person or be represented by an attorney at law.

(7) Briefs and oral argument may be required by the presiding officer and shall 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.

(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 incorporate in the record or 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 ten 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 an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the presiding officer to the project sponsor 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 examiner 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 adjudicatory hearing, the commission secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant 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 signatory state.

(f) *Findings and report.* The presiding officer shall prepare a report of his/her findings and recommendations. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. Any party may file objections to the report within 20 days after the service upon the party of a copy of the report. A brief shall be filed together with objections and briefs shall be promptly submitted to the commission. The commission may require or permit oral argument upon such submission prior to its decision.

(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 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.

#### **§ 805.3 Consolidation of hearing.**

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 the matters at issue in such hearings.

#### **§ 805.4 Joint hearings.**

The commission may conduct public hearings in concert with any other agency of a signatory party.

#### **§ 805.5 Transcript.**

A verbatim transcript of the adjudicatory hearings shall be kept by the commission. 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.

#### **§ 805.6 Continuance.**

The sponsor and all other persons wishing to be heard should be prepared to proceed on the date of the hearing. Applications for continuances will not be granted, except when good cause is shown.

#### **§ 805.7 Effective date.**

This subpart shall be effective on May 11, 1995.

#### **§ 805.8 Definitions.**

Terms used in this subpart shall be defined as set forth in 803.3 of this chapter.

### **Subpart B—Enforcement Actions and Settlements**

#### **§ 805.20 Scope of subpart.**

This subpart shall be applicable where the commission has information indicating that a person or governmental entity (hereafter referred to as alleged violator) has violated or attempted to violate any provision of the compact or any of the commission's rules, regulations or orders

#### **§ 805.21 Notice to possible violators.**

Upon direction of the commission, the executive director shall, and in all other instances, the executive director may require an alleged violator to show cause before the commission why a penalty should not be assessed in accordance with the provisions of this chapter and Section 15.17 of the compact. The notice to the alleged violator shall:

- (a) Set forth the date on which the alleged violator shall respond;
- (b) Set forth any information to be submitted or produced by the alleged violator; and

(c) Specify the violation that is alleged to have occurred.

#### **§ 805.22 The record for decision-making.**

(a) *Written submission.* In addition to the information required by the commission, any alleged violator shall be entitled to submit in writing any other information that it desires to make available to the commission before it shall act. The executive director may require documents to be certified or otherwise authenticated and statements to be verified. The commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the compact or the commission's rules, regulations and orders.

(b) *Presentation to the commission.* On the date set in the notice, the alleged violator shall have the opportunity to supplement its written presentation before the commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the commission or its staff or to the statements submitted by persons affected by the alleged violation.

#### **§ 805.23 Adjudicatory hearings/alleged violations.**

(a) An adjudicatory hearing (which may be in lieu of or in addition to proceedings pursuant to §§ 805.21 and 805.22) shall not be scheduled unless the executive director or the commission determines that a hearing is required to have an adequate record for the commission, or the commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the alleged violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing shall be given to the general public and the press in the manner provided in § 805.1(b).

(c) Except to the extent inconsistent with the provisions of this subpart, adjudicatory hearings shall be conducted in accordance with the provisions of §§ 805.2 through 805.6.

#### **§ 805.24 Assessment of a penalty/abatement or remedial action.**

The executive director may recommend to the commission the amount of the penalty to be imposed or the abatement and remedial actions to be required. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the commission, the commission shall decide whether a violation has occurred that justifies the imposition of a penalty

pursuant to Section 15.17 of the compact or the requirement of abatement or remedial action. If it is found that such a violation has occurred, the commission shall determine the amount of the penalty to be paid and the nature of the abatement or remedial action to be undertaken.

**§ 805.25 Factors to be applied in fixing penalty amount.**

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement:

- (1) Previous violation, if any, of the compact, commission regulations or orders;
- (2) The intent of the alleged violator;
- (3) The extent to which the violation caused adverse environmental consequences;
- (4) The costs incurred by the commission or any signatory party relating to the failure to comply with the compact, commission regulations or orders;
- (5) The extent to which the violator has cooperated with the commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom;

(6) The extent to which the failure to comply with the commission's compact and regulations was economically beneficial to the violator; and

(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 should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

**§ 805.26 Enforcement of penalties/abatement or remedial orders.**

Any penalty imposed or abatement or remedial action ordered by the commission shall be paid or completed within such time period as shall be fixed by the commission. The executive director and commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the commission in determining a penalty amount shall constitute the penalty amount recommended by the commission to be fixed by the court pursuant to Section 15.17 of the compact.

**§ 805.27 Settlement by agreement.**

An alleged violator may request settlement of an enforcement

proceeding by agreement. If the executive director determines that settlement by agreement is in the best interest of the commission, he/she may submit to the commission a proposed settlement agreement. No settlement will be considered by the commission unless the alleged violator has indicated in writing to the commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount or completion of any abatement or remedial action within the time period provided. If the commission determines not to approve a settlement agreement, the commission may proceed with an enforcement action in accordance with this subpart.

**§ 805.28 Effective date.**

This subpart shall be effective on May 11, 1995.

**§ 805.29 Definitions.**

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

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BILLING CODE 7040-01-P

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 2619 and 2676**

**Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in July 1995, and to multiemployer plans with valuation dates in July 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

**EFFECTIVE DATE:** July 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** This rule adopts the July 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C Formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-