

proposed rulemaking (NPRM) published in the **Federal Register** on June 8, 2010, which, among other issues, solicits comments on options to provide greater access to air travel for persons with peanut allergies. The June 8 document also proposes action to strengthen the rights of air travelers in the event of oversales, flight cancellations and long delays, and to ensure that passengers have accurate and adequate information to make informed decisions when selecting flights.

**DATES:** Comments should be filed by August 9, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2010–0140 by any of the following methods:

- *Federal Rulemaking Portal:* go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

**Instructions:** You must include the agency name and docket number DOT–OST–2010–0140 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**Privacy Act:** Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Daeleen Chesley, Senior Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of

Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–6792, [daeleen.chesley@dot.gov](mailto:daeleen.chesley@dot.gov).

You may also contact Blane Workie, Deputy Assistant General Counsel at the same address, (202) 366–9342, [blane.workie@dot.gov](mailto:blane.workie@dot.gov). Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

**SUPPLEMENTARY INFORMATION:** *Pilot Project on Open Government and the Rulemaking Process:* Pursuant to the notice of proposed rulemaking (NPRM) published June 8, 2010, persons who desire may provide input on this rulemaking using the social networking pilot project, Regulation Room, established by DOT in partnership with the Cornell eRulemaking Initiative (CeRI). You may visit the Regulation Room Web site, <http://www.regulationroom.org>, to learn about the NPRM and that process. For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at 202.421.9216 or [brett.jortland@dot.gov](mailto:brett.jortland@dot.gov).

#### Clarification of Notice of Proposed Rulemaking

On June 8, 2010, the Department published an NPRM on Enhancing Airline Passenger Protections (75 FR 32318), which, among other things, solicits comment, without proposing any specific rule text, on three options that would provide greater access to air travel for persons with peanut allergies. The NPRM also sought comment on whether it would be preferable to maintain the current practice of not prescribing carrier practices concerning the serving of peanuts. (75 FR 32318, 32332)

We wish to clarify that, as alluded to in the NPRM, we recognize that Section 346 of the Department of Transportation and Related Agencies Appropriations Act of 2000, Public Law 106–69—Oct. 9, 1999 states:

Hereafter, none of the funds made available under this Act or any other Act, may be used to implement, carry out, or enforce any regulation issued under section 41705 of title 49, United States Code, including any regulation contained in part 382 of title 14, Code of Federal Regulations, or any other provision of law (including any Act of Congress, regulation, or Executive order or any official guidance or correspondence thereto), that requires or encourages an air carrier (as that term is defined in section 40102 of title 49, United States Code) to, on intrastate or interstate air transportation (as those terms are defined in section 40102 of title 49, United States Code)—(1) provide a peanut-free buffer zone or any other related peanut-restricted area; or (2) restrict the

distribution of peanuts, until 90 days after submission to the Congress and the Secretary of a peer-reviewed scientific study that determines that there are severe reactions by passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft.

*We will comply with this requirement.*

#### List of Subjects

14 CFR Parts 234, 250, and 259

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 244

Air carriers, Consumer protection, Tarmac delay data.

14 CFR Part 253

Air carriers, Consumer protection, Contract of carriage.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Issued June 22, 2010, at Washington DC.

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. 2010–15536 Filed 6–23–10; 11:15 am]

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## SUSQUEHANNA RIVER BASIN COMMISSION

### 18 CFR Parts 806 and 808

#### Review and Approval of Projects

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to: Include subsidiary allocations for public water supply systems under the scope of withdrawals requiring review and approval; improve notice procedures for all project applications; clarify requirements for grandfathered projects increasing their withdrawals from an existing source or initiating a new withdrawal; refine the provisions governing transfer and re-issuance of approvals; clarify the Executive Director's authority to grant, deny, suspend, rescind, modify or condition an Approval by Rule; include decisional criteria for diversions into the basin; amend administrative appeal procedures to broaden available

remedies and streamline the appeal process; and make other minor regulatory clarifications to the text of the regulations.

**DATES:** Comments on these proposed rules may be submitted to the Commission on or before August 10, 2010. The Commission has scheduled two public hearings on the proposed rules, to be held July 27, 2010, in Binghamton, New York, and July 29, 2010, in Harrisburg, Pennsylvania. The locations of the public hearings are listed in the addresses section of this notice.

**ADDRESSES:** Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by e-mail to [rcairo@srbc.net](mailto:rcairo@srbc.net).

The public hearings will be held on Tuesday, July 27, 2010, at 7 p.m., at the Holiday Inn Arena, 2-8 Hawley Street, Binghamton, New York 13901, and Thursday, July 29, 2010, at 10 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's Web site at <http://www.srbc.net>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Purpose of Amendments**

When 18 CFR 806.4 was originally published as final at 71 FR 78570, December 29, 2006, updating and expanding the range of projects subject to Commission review and approval, a pre-existing regulatory provision was omitted inadvertently and this proposed rulemaking attempts to correct that omission. Specifically, 18 CFR § 806.4(a)(2) would be modified to indicate that the taking or removal of water by a public water supplier indirectly through another public water supply system or another water facility (aka, a subsidiary allocation) constitutes a withdrawal that is subject to review and approval.

An amendment to 18 CFR 806.4(a)(2)(iv) will clarify that sponsors of grandfathered surface or groundwater withdrawal projects are required to submit applications for review and approval whenever the project will increase its withdrawal from an existing source, or initiate a withdrawal from a

new source, or combination of sources. This clarification memorialized existing Commission policy under the current rule.

An amendment to 18 CFR 806.4(c) will provide that sponsors of certain classes of projects undergoing a change of ownership, and thus triggering review and approval, would have 90 days from the date of ownership transfer to submit applications under the rule. The current rule requires submission of the application on or before the date of ownership change. This amendment is consistent with those recommended for transfers of approval under 18 CFR 806.6, as discussed below.

The proposed amendments to 18 CFR 806.6 are intended to clarify that certain approvals may be transferred or conditionally transferred administratively, rather than requiring full Commission action on such transfer requests. The existing phraseology authorizing transfers or conditional transfers of approval "without prior Commission review and approval" was misleading in that respect and is proposed to be deleted, along with other editorial changes intended to add more clarification to this section.

The existing rule also requires certain categories of approvals to initiate the transfer of approval process with the Commission on or before the date of ownership transfer, and yet other categories of approvals are allowed to initiate transfer applications within 90 days of the date of ownership transfer. The proposed language would uniformly require all applications to be submitted within 90 days of the date of ownership transfer.

Another substantive change would break out situations where project sponsors with existing approvals undergo a name change and seek to have the approval changed to reflect the new name. Rather than being categorized as a transfer of approval, which is triggered by a change in ownership, a new subsection is added to more appropriately provide for "re-issuance" of such approvals to reflect the name change of the existing project sponsor.

An amendment is proposed to 18 CFR 806.7 to clarify that existing language recognizing that agencies of the member jurisdictions exercise "review authority" over projects also regulated by the Commission is intended to mean and should be stated as "review and approval authority."

18 CFR 806.15 currently sets notification requirements for project sponsors applying for approvals issued by the Commission under its standard docketing procedures, and for Approval

by Rule (ABR) natural gas pad site approvals issued under 18 CFR 806.22(f). However, ABRs issued under 18 CFR 806.22(e) are subject to certain notification standards in that section which are inconsistent with the general notification requirements contained in 18 CFR 806.15. Furthermore, there are also requirements contained in 18 CFR 806.22(f) that are redundant with those contained in 18 CFR 806.15 and are therefore unnecessary.

The proposed amendments to this section (and complementary ones proposed for 18 CFR 806.22(e) and (f)) are intended to result in all notification requirements for all project approvals being consolidated into this section, including all those having general applicability and those that might be specific to certain classes of project applications. With regard to specific requirements for certain classes, the proposed rulemaking would establish the following revised notification standards:

- For groundwater withdrawal applications, rather than just notifying landowners that are contiguous to the project site, notice would have to be given to all owners currently listed on the tax assessment rolls that are within one-half mile of the proposed withdrawal location.

- For surface water withdrawal applications, rather than just notifying landowners that are contiguous to the project site, notice would have to be given to all owners currently listed on the tax assessment rolls that are within one-half mile of the proposed withdrawal location and whose property borders the stream, river, lake or water body from which the withdrawal is proposed to be taken.

- For consumptive use applications involving a withdrawal, the applicable groundwater or surface water withdrawal requirements noted above would apply. For consumptive use applications that do not involve a withdrawal (such as those supplied by a public water supplier), newspaper notice in the area of the project would be required.

- For out-of-basin diversion applications, there would be additional newspaper notice required in the area outside the basin where the proposed use of the diverted water would occur.

- For into-basin diversion applications, there would be additional newspaper notice required in the area outside the basin where the withdrawal of water proposed for diversion is located.

- For applications to use public water supply a source for water in natural gas development operations, newspaper

notice in the area served by the public water supply system would be required.

- For applications to use wastewater discharge as a source for water in natural gas development operations, newspaper notice would be required in all areas where such discharge water would be used for such development purposes.

In addition to the foregoing, the proposed amendments establish uniform proof of notification standards and would require project sponsors to maintain all proofs of notice for the duration of the approvals related to such notices.

The Approval by Rule (ABR) provisions contained in 18 CFR 806.22 would be modified to clarify that the Executive Director has the authority not only to grant or deny such ABRs, but to “suspend, rescind, modify or condition” such approvals as well. Such authority was implied in the existing language and the existing policy of the Commission supports that interpretation. The proposed amendment is intended to provide that clarification. A second amendment would require all project sponsors seeking an ABR to satisfy the applicable notice requirements proposed for 18 CFR 806.15, and noted above.

With regard to ABRs issued under 18 CFR 806.22(f) for natural gas development projects, language is proposed for subsection (f)(12)(i) to clarify that project sponsors registering approved water withdrawals must record daily and report quarterly the quantity of water obtained from all registered sources. Additionally, subsection (f)(12)(ii) would be modified to delete “other reclaimed waters” as potential sources, thus limiting the class of approvable sources under this provision to public water supply systems and wastewater discharges.

The proposed amendments to 18 CFR 806.24 would add certain decisional criteria for consideration by the Commission while acting on applications for into-basin diversions, similar to what now is provided for consideration in acting on out-of-basin diversion applications. Specifically, the proffered language would add criteria related to the potential introduction of invasive or exotic species that may be injurious to the water resources of the basin, and the extent to which the proposed diversion would satisfy all other applicable standards contained in subpart C of Part 806.

18 CFR 806.35 currently indicates that project sponsors have an affirmative duty to pay fees established by the Commission. The proposed amendatory language would expand this to indicate

that the purpose of such fees is to cover the Commission’s costs of administering its regulatory program and any extraordinary costs associated with specific projects.

18 CFR 808.2 currently establishes a procedure for the filing of administrative appeals to actions or decisions rendered by the Commission or the Executive Director. The broad terms of the current regulation have resulted in some abuse of the appeal process, including attempts to file appeals of determinations on requests for administrative appeals, appeals of stay request determinations and other extraneous or repetitive pleadings that frustrate the original purpose of providing the appropriate administrative review envisioned when this rule became effective in 2007. In short, this abuse has been enabled by the fact that there is no limitation on the type of Commission actions that are eligible for appeal under this section, leaving any action of the Commission subject to this process.

Additionally, the current regulation does not contain provisions for handling appeals from administrative level “Access to Records” determinations. The new Access to Records Policy adopted by the Commission in 2009 (Policy No. 2009–02) provides for appeal of such decisions to the Commission. Finally, the current regulation does not specify the authority of an appointed hearing officer to admit or bar intervenor parties based on the principle of standing.

The proposed revisions to 18 CFR 808.2 generally limit appeals to a single filing, and only to project determinations or records determinations. Executive Director determinations on requests for stay would not be appealable to the Commission and would stand until the time of the Commission proceeding on the appeal (unless overturned by a court of competent jurisdiction). Lastly, the appointed hearing officer is given authority to admit or bar intervenor parties based on the legal principle of standing.

#### **List of Subjects in 18 CFR Parts 806 and 808**

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Parts 806 and 808 as follows:

## **PART 806—REVIEW AND APPROVAL OF PROJECTS**

### **Subpart C—Standards for Review and Approval**

1. The authority citation for Part 806 continues to read as follows:

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

2. In § 806.4, revise paragraphs (a)(2) introductory text, (a)(2)(iv), and (c) to read as follows:

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

(a) \* \* \*

(2) *Withdrawals.* Any project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user’s facilities shall constitute a withdrawal hereunder.

\* \* \* \* \*

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

\* \* \* \* \*

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action by the Commission on an application submitted by such project sponsor requesting review and approval of the project, provided such application is submitted to the Commission in accordance with this part within 90 days of the date change

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

3. In § 806.6, revise the section heading, paragraphs (a), (b) introductory text, (b)(1), (c) introductory text and (d) introductory text, and add paragraph (e) to read as follows:

**§ 806.6 Transfer and re-issuance of approvals.**

(a) An existing Commission project approval may be transferred or conditionally transferred to a new project sponsor upon a change of ownership of the project, subject to the provisions of paragraphs (b), (c) and (d) of this section, and the new project sponsor may only operate the project in accordance with and subject to the terms and conditions of the existing approval pending approval of the transfer, provided the new project sponsor notifies the Commission within 90 days from the date of the change of ownership, which notice shall be on a form and in a manner prescribed by the Commission and under which the new project sponsor certifies its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

(b) An existing Commission project approval for any of the following categories of projects may be conditionally transferred, subject to administrative approval by the Executive Director, upon a change of ownership and the new project sponsor may only operate such project in accordance with and subject to the terms and conditions of the transferred approval:

(1) A project undergoing a change of ownership as a result of a corporate reorganization where the project property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

(c) An existing Commission approval of a project that satisfies the following

conditions may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on the application submitted in accordance with paragraph (c)(3) of this section:

\* \* \* \* \*

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

\* \* \* \* \*

(e) An existing Commission project approval may be re-issued by the Executive Director at the request of a project sponsor undergoing a change of name, provided such change does not affect ownership or control of the project or project sponsor. The project sponsor may only continue to operate the project under the terms and conditions of the existing approval pending approval of its request for re-issuance, provided it submits its request to the Commission within 90 days from the date of the change, which notice shall be on a form and in a manner prescribed by the Commission, accompanied by the appropriate fee established therefore by the Commission.

4. In § 806.7, revise paragraph (a) to read as follows:

**§ 806.7 Concurrent project review by member jurisdictions.**

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

\* \* \* \* \*

5. Revise § 806.15 to read as follows:

**§ 806.15 Notice of application.**

(a) The project sponsor shall, no later than 10 days after submission of an application to the Commission, notify the appropriate agency of the member State, each municipality in which the project is located, and the county planning agency of each county in which the project is located, that an application has been submitted to the Commission. The project sponsor shall

also publish at least once in a newspaper of general circulation serving the area in which the project is located, a notice of the submission of the application no later than 10 days after the date of submission. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (e) of this section, if applicable. All notices required under this section shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn obtained from for sources other than withdrawals or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2), the project sponsor shall also provide the notice required under paragraph (a) of this section no later than 10 days after the date of its submission to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any property that is located within one-half mile of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within one-half mile of the proposed withdrawal location.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application, within 10 days thereof, at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also publish a notice of the submission of its application, within 10 days thereof, at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) For applications submitted under § 806.22(f)(12)(ii) to use a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(12)(ii) to use a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by

publication in a newspaper of general circulation in each area within which the water obtained from such source will be used for natural gas development.

(f) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the duration of the approval related to such notices.

6. In § 806.22, revise paragraphs (e)(1)(i) introductory text, (e)(1)(i) (e)(1)(ii), (e)(6), (f)(3), (f)(9), and (f)(12)(i) and (f)(12)(ii) to read as follows:

**§ 806.22 Standards for consumptive uses of water.**

\* \* \* \* \*

(e) \* \* \*

(1) Except with respect to projects involving natural gas well development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply system, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

(i) *Notification of Intent*: No fewer than 90 days prior to the construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

\* \* \* \* \*

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination,

including the quantity of consumptive use approved.

\* \* \* \* \*

(f) \* \* \*

(3) Within 10 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

\* \* \* \* \*

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

\* \* \* \* \*

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4 (a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member State. Any approval issued hereunder shall be further subject to any approval or authorization required by the member State to utilize such source(s). The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including public water supply or wastewater discharge, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by

the member State to utilize such source(s).

7. In § 806.24, add paragraph (c)(2), to read as follows:

**§ 806.24 Standards for diversions.**

\* \* \* \* \*

(c) \* \* \*

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

(i) Any adverse effects and cumulative adverse effects the project may have on the Susquehanna River Basin, or any portion thereof, as a result of the introduction or potential introduction of invasive or exotic species that may be injurious to the water resources of the basin.

(ii) The extent to which the proposed diversion satisfies all other applicable standards set forth in subpart C of this part.

8. Revise § 806.35 to read as follows:

**§ 806.35 Fees.**

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission to cover its costs of administering the regulatory program established by this part, including any extraordinary costs associated with specific projects.

**PART 808—HEARINGS AND ENFORCEMENT ACTIONS**

**Subpart A—Conduct of Hearings**

10. The authority citation for Part 808 continues to read as follows:

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

11. In § 808.2, revise paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) to read as follows:

**§ 808.2 Administrative appeals.**

(a) A project sponsor or other person aggrieved by a final action or decision of the Commission or Executive Director on a project application or a records access determination made pursuant to Commission policy may file a written appeal requesting a hearing. Except with respect to project approvals or denials, such appeal shall be filed with the Commission within 30 days of the action or decision. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the **Federal Register**. In the case of records access

determinations, such appeal shall be filed with the Commission within 30 days of receipt of actual notice of the determination.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision. Appeals omitting any of these elements will be considered incomplete and not considered by the Commission.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission otherwise authorizes it *nunc pro tunc*. Receipt of requests for hearings, pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived and filings may only be amended or supplemented upon leave of the Executive Director. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) If granted, hearings shall be held not less than 20 days after notice appears in the **Federal Register**. Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

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

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

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

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

(h) *Intervention*. (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the **Federal Register**. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervenor to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

\* \* \* \* \*

Dated: June 15, 2010.

**Thomas W. Beauduy,**  
*Deputy Director.*

[FR Doc. 2010-15282 Filed 6-24-10; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1310

[Docket No. DEA-228P]

RIN 1117-AA66

#### Chemical Mixtures Containing Listed Forms of Phosphorus and Change in Application Process

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The DEA is proposing regulations which establish those chemical mixtures containing red phosphorus, white phosphorus (also known as yellow phosphorus), or hypophosphorous acid and its salts (hereinafter “regulated phosphorus”) that shall automatically qualify for exemption from the Controlled Substances Act (CSA) regulatory controls. DEA is proposing that chemical mixtures containing red phosphorus in a concentration of 80 percent or less and mixtures containing hypophosphorous acid and its salts (hypophosphite salts) in a concentration of 30 percent and less, shall qualify for automatic exemption. DEA is not proposing automatic exemption for chemical mixtures containing white phosphorus. Unless otherwise exempted, all material containing white phosphorus shall become subject to CSA chemical regulatory controls regardless of concentration.

DEA recognizes that concentration criteria alone cannot identify all mixtures that warrant exemption, therefore, an application process has been implemented which allows manufacturers to apply for exemption from CSA regulatory controls for those phosphorus chemical mixtures that do not qualify for automatic exemption. This rulemaking also proposes changes to the application review and notification process.

While preparing this rulemaking, DEA became aware that references to section 1018 of the Act (21 U.S.C. 971) were inadvertently omitted from 21 CFR 1310.12(a) and 1310.13(i). Therefore, DEA is proposing that this rulemaking amend these sections by adding this citation. This insertion is a clarification and does not alter the current treatment of exempt chemical mixtures under the CSA.

**DATES:** Written comments must be postmarked, and electronic comments must be sent, on or before August 24, 2010.

**ADDRESSES:** To ensure proper handling of comments, please reference “Docket No. DEA-228P” on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152. Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 8701 Morrisette Drive, Springfield, VA 22152.