TABLE 3—RELATED SERVICE BULLETINS—Continued

<table>
<thead>
<tr>
<th>Airbus Service Bulletin</th>
<th>Revision</th>
<th>Date</th>
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</table>

Material Incorporated by Reference

(i) You must use the service information contained in Table 4 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—MATERIAL INCORPORATED BY REFERENCE

<table>
<thead>
<tr>
<th>Airbus Service Bulletin</th>
<th>Revision</th>
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Airbus Service Bulletin A300–53–6006, Revision 3, dated March 24, 1989, contains the following effective pages:

<table>
<thead>
<tr>
<th>Page Nos.</th>
<th>Revision level shown on page</th>
<th>Date shown on page</th>
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<tbody>
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<td>1, 29, 47, 48</td>
<td>3</td>
<td>March 24, 1989.</td>
</tr>
</tbody>
</table>

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: account.airworth-eas@airbus.com; Internet http://www.airbus.com.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–327–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on September 16, 2009.

Ali Bahrami,
Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. E0–23094 Filed 9–26–09; 8:45 am]
BILLING CODE 4910–13–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 806 and 808

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains amendments to the project review regulations of the Susquehanna River Basin Commission (Commission) including provisions restricting the use of docket reopening petitions to avoid abuses of process; amending the “Approval by Rule” (ABR) process to allow for project sponsors to utilize approved water sources at approved drilling pad sites without the need for modification of the ABR; clarifying that the public hearing requirement for rulemaking shall be applicable to the proposed rulemaking stage of that process; and further providing for the time period within which administrative appeals must be filed. These amendments were first proposed in a Notice of Proposed Rulemaking (NORP) that appeared at 74 FR 31647 on July 2, 2009.

DATES: These rules are effective on November 1, 2009.

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

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717–238–0423, ext. 306; fax: 717–238–2436; e-mail: rcairo@srbc.net. Also, for further information on the final rulemaking, visit the Commission’s Web site at http://www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

The Commission convened public hearings on August 4, 2009, in Harrisburg, Pennsylvania and on August 5, 2009, in Elmira, New York. A written comment period was held open until August 15, 2009. Comments were received at both the hearings and during the comment period. A summary of the comments and the Commission’s responses thereto follows.

Comments by Section, Part 806

Section 806.4 Projects Requiring Review and Approval

Comment: The Commission’s proposal to require review and approval for any hydroelectric project regulated by the Federal Energy Regulatory Commission (FERC) and initiating a licensing or licensing amendment is defective and should not be adopted because: (1) As currently worded, the
The NOPR seeks to infringe on the exclusive authority of FERC granted to it under the Federal Power Act and reserved by Congress when it consented to the Compact. Nothing in the Compact provides, or even suggests, that the United States and the other parties to the Compact intended to grant the Commission review and approval authority in FERC; and (3) the Commission has ample authority to review and approve facilites for review in the proposed amendment to 18 CFR 806.4 (a). Despite the Commission’s claim in the Notice of Proposed Rulemaking (NOPR) that it is merely codifying its current practice, the proposal represents a break with past Commission practice regarding both hydroelectric facility and nuclear power plant review without any explanation or justification for the change, and is therefore arbitrary and capricious.

However, it is apparent from the comments received and the Commission’s own reconsideration that the proposed changes, as drafted, do not provide the clarification originally sought. Therefore, the Commission believes it is appropriate to suspend final action on this element of the NOPR so that it can be re-drafted, particularly to ensure that it does not interfere with FERC and NRC procedures. (This is especially the case with respect to the comment that the proposal could be interpreted as requiring both review and approval prior to initiating licensing actions.) The Commission will move forward with publication of a new NOPR at such time as it completes development of a revised set of proposed changes for projects involved in licensing procedures. Licensing and licensing amendment actions are projects that often have significant effects upon the water resources of the basin and the SRBC Comprehensive Plan. Federal Reservations, Section 2, paragraph w of the Compact, while preserving the authority of federal licensing authorities, also makes clear that use of the waters of the basin shall be subject to approval in accordance with the terms of the Compact.

The Commission appears to be proposing that before an application can even be submitted to FERC or the NRC, application and approval must first be obtained from the Commission, which directly and materially interferes with FERC and NRC’s procedures and processes.

**Response:** The Commission exercises concurrent jurisdiction with FERC and the NRC and believes that its exercise of same is both appropriate and authorized under the Compact. Furthermore, it has no intention of exercising that authority in a manner that conflicts or interferes with that exercised by these two federal agencies. Nor was it the intention of the proposed change to require Commission approval prior to the submission of licensing applications to the federal agencies. Rather, the intention was to have the initiation of federal licensing likewise initiate project review by the Commission. As was the case in a recent hydroelectric facility licensing process, the Commission undertakes a single, coordinated review with all federal and state resource agencies that serves both regulatory schemes.

The deletion of the existing § 806.4(a)(8) language, which requires Commission review and approval of any natural gas well development project targeting the Marcellus or Utica shale formations and involving a withdrawal, diversion or consumptive use of water, regardless of quantity, was alarming. The Commission’s acknowledgement that the deletion of § 806.4(a)(8) was a drafting error, the public recognition of the error it posted on its Web site upon discovery of the error, and its willingness to correct the error at the final rulemaking stage is appreciated.

**Response:** The Commission regrets the inadvertent proposed deletion of the provision and any confusion resulting from the error. Given that the Commission is not moving forward with any revisions to § 806.4(a)(8) as part of this final rulemaking action, the error is of no effect and the provision in question remains effective. At such time as the Commission moves forward with revisions to § 806.4 as part of a new NOPR, it will be certain not to repeat the error.

Section 806.22 Standards for Consumptive Use of Water

**Comment:** Deletion of the contiguous landowner notification requirement in exchange for a display ad newspaper notice would leave such landowners without direct or effective notice, nor any guarantee that newspaper notification would provide adequate time for meaningful participation in the Approval by Rule (ABR) process. Any participation in the process would be markedly diminished, even though they remain the citizens most immediately affected. Moreover, some contiguous landowners do not reside on the affected land and thus may not be reached by the general newspaper notice. And as more newspapers fold as a result of declining readership and advertisement revenue, such notice will become increasingly inadequate. Do not eliminate the requirement that project sponsors notify contiguous landowners as part of the ABR process; it is only fair that notice be given to the persons who are directly affected by such projects, and adjacent landowners are well placed to inform the Commission about potential adverse impacts of the approval.

**Response:** The Commission needs to have notice concerning water withdrawals since the presence of streams, ponds or wetlands, and groundwater, contributes significantly to the value of the property. They should be entitled to notice and allowed a sufficient amount
of time to comment on the impact of proposed withdrawals.

If the Commission wants to enhance public transparency, it should make information concerning applications submitted to it available on the Commission’s Web site. In addition to providing information on the name of applicants, amount of water requested, location of withdrawals, date, and details of final action taken by the Commission, it should also plot withdrawals on a map display so that it is easy to see how much water is being withdrawn in a given area.

Response: The Commission acknowledges the concerns raised in the comments, but notes that there is some confusion about the scope of the ABR process. First, the process does not involve approvals for withdrawals from surface or groundwater sources. A number of the comments received spoke to the legitimate right of contiguous landowners to receive notice of proposed withdrawals because of the potential for their use and enjoyment and potentially diminished value to their land. Withdrawals are regulated separately by the Commission, they require separate docket approval, and contiguous landowner notification is required in advance of any Commission action. The proposed revisions do not modify those notification provisions in any way.

The ABR process involves an administrative approval for consumptive use at the natural gas well drilling pad site and enables the Commission to track all sources of water transported to the site, the quantities used in development of the well, and the fate of flowback and produced fluids. These data are important to assess the cumulative impact of this industry’s activity on the water resources of the basin. A number of the comments received, however, spoke to the appropriateness of landowner notification if well drilling and hydrofracturing activity was occurring adjacent to their property. The ABR process does not involve approval to drill or hydrofrac; it is limited to regulating the consumptive use of water involved in either of those activities. Approval to drill [and to undertake the related hydrofracture development activity] is a separate governmental action undertaken by the Commission’s member states in the form of gas well permits.

The impetus behind the Commission’s proposal to modify contiguous landowner notice provisions in the ABR is the fact that they have been problematic, administratively burdensome, and often lead to confusion at the landowner level. And while those shortcomings are pronounced with the ABR process, given the recent level of natural gas development activity, the Commission acknowledges that a number of those shortcomings are likewise present with its contiguous landowner notification requirements for docket applications as well. Therefore, after review and consideration of the comments received, as well as its own reconsideration of the appropriate scope of amendments to its existing notification procedures, the Commission believes it is appropriate to suspend action on this element of the NOPR as part of this final rulemaking action. Accordingly, it will move forward with publication of a new NOPR at such time as it completes development of a revised set of proposed changes to its general application notification requirements.

With respect to public transparency, please note that the Commission continues to increase the amount of information contained on its Web site, www.srbc.net, for the benefit of the public. Further improvements are underway and are anticipated to be completed by the end of 2009 that will afford greater access to approvals, requests for approval, lists of approved water sources by project sponsor, location information about approved withdrawal and consumptive use sites, and mapping features to display information to better inform the public.

Comment: The proposed changes to § 806.22(f)(11) and (f)(12) would eliminate core safeguards for the water-related values that the Commission is committed to protect by allowing project sponsors to shift water from one project to another without even registering the transfer with the Commission.

Response: This is a misreading of the NOPR and implies that project sponsors will be shifting water sources from one drilling pad site to another without oversight by the Commission. To the contrary, what the Commission is proposing is a system whereby each project sponsor engaged in natural gas development will have an approved list of water sources for which it has received docket approvals, with accompanying conditions to properly limit and monitor its withdrawals from each of those sources. The sources are added to the list at the time of docket approval, which effectively registers them for use at the project sponsor’s approved drilling pad sites. The Commission sees no need to require a separate registration action by the project sponsor when it can be done administratively at the time of docket approval. All other sources that the project sponsor may use at its approved drilling pad sites must first be registered or otherwise approved by the Commission.

Comment: The proposed changes to § 806.22(f)(12) would permit project sponsors to share and trade water sources without obtaining new or modified ABRs, and without certifying to the Commission their intention to comply with all terms and conditions of each other’s ABRs, and would authorize new sources of water without modifying the existing ABRs.

Response: The terms and conditions incorporated into every water source approval, and every ABR issued by the
Commission, must be adhered to by project sponsors. The purposes of the proposed modifications are to facilitate efficient water use and water sharing by the natural gas industry, and to streamline administrative processes so that the Commission’s resources are better focused on substantive review and management of water resources, not inefficient bureaucracy. Issuing a single approval for a given water source and allowing its use at any of the project sponsor’s approved drilling pad sites, with appropriate conditions and monitoring requirements, is far preferable than requiring the project sponsor, and the Commission, to modify each and every ABR issued to the project sponsor, which could number in the hundreds over time. From a water resources management standpoint, the issue is whether the source is approvable for use without adverse effect, regardless of whether the project sponsor intends to utilize the source at one site, or multiple sites. Allowing water sharing limits the number of withdrawals across the basin and limits tanker truck traffic by allowing project sponsors to use the closest approved water source site, even if the withdrawal approval was first issued to another operator. Adherence to all docket conditions, and ABR recordkeeping and reporting conditions, will continued to be required of all project sponsors, resulting in a full daily accounting of all water withdrawn across the basin (by source, by date, by project sponsor), where it was delivered to, and quantities used on site.

Comment: The new proposed subsections \(806.22(f)(11)\) and \(806.22(f)(12)(ii)\) contain language requiring the project sponsor to obtain all necessary approvals required for the project from the state agency. However, such reference to the need for state agency approval is absent from new proposed \(806.22(f)(12)(i)\). For the regulation to be internally consistent and for member state agency coordination purposes, a sentence should be added at the end of \(806.22(f)(12)(i)\) that is similar to the one contained in \(806.22(f)(12)(ii)\), indicating that registrations “shall be subject to any approval or authorization required by the member State to utilize such source(s).” The proposed language would put the project sponsor on notice that it would also need state-level authorization to use such source at the time it is registered with the Commission and before its use for natural gas well development.

Response: The Commission agrees with the commenter and the final rulemaking incorporates the proffered language.

Section 806.32 Reopening/Modification

Comment: This procedural change will allow interested parties’ to fully participate in Commission processes, while avoiding unnecessary or duplicative proceedings.

Response: The Commission agrees.

Comment: Due process requires that the Commission narrowly construe its proposal to prevent persons whose administrative appeals are denied from petitioning for reopening of the approval seeking the same or similar relief absent new facts not known or readily discernable at the time of the appeal. Concern is raised about the use of the term “similar” being applied in such a way as to frustrate legitimate new claims, and the term “functionally equivalent” is recommended to be inserted in its place.

Response: The Commission agrees and the final rulemaking incorporates the proffered language.

Comment: We oppose the proposed restrictions to petitioning and reopening a docket.

Response: The Commission believes that any interested party should have the right to petition for a reopening of a project approval, but believes that parties attempting to use this provision to obtain administrative review of matters for which administrative appeals were denied constitutes an abuse of process and should be restricted.

Comments by Section, Part 808

Section 808.1 Public Hearings

Comment: We agree that the Commission must be adhered to by project sponsors. The purposes of the proposed modifications are to facilitate efficient use and water sharing by the natural gas industry, and to streamline administrative processes so that the Commission’s resources are better focused on substantive review and management of water resources, not inefficient bureaucracy. Issuing a single approval for a given water source and allowing its use at any of the project sponsor’s approved drilling pad sites, with appropriate conditions and monitoring requirements, is far preferable than requiring the project sponsor, and the Commission, to modify each and every ABR issued to the project sponsor, which could number in the hundreds over time. From a water resources management standpoint, the issue is whether the source is approvable for use without adverse effect, regardless of whether the project sponsor intends to utilize the source at one site, or multiple sites. Allowing water sharing limits the number of withdrawals across the basin and limits tanker truck traffic by allowing project sponsors to use the closest approved water source site, even if the withdrawal approval was first issued to another operator. Adherence to all docket conditions, and ABR recordkeeping and reporting conditions, will continued to be required of all project sponsors, resulting in a full daily accounting of all water withdrawn across the basin (by source, by date, by project sponsor), where it was delivered to, and quantities used on site.

Comment: The new proposed subsections \(806.22(f)(11)\) and \(806.22(f)(12)(ii)\) contain language requiring the project sponsor to obtain all necessary approvals required for the project from the state agency. However, such reference to the need for state agency approval is absent from new proposed \(806.22(f)(12)(i)\). For the regulation to be internally consistent and for member state agency coordination purposes, a sentence should be added at the end of \(806.22(f)(12)(i)\) that is similar to the one contained in \(806.22(f)(12)(ii)\), indicating that registrations “shall be subject to any approval or authorization required by the member State to utilize such source(s).” The proposed language would put the project sponsor on notice that it would also need state-level authorization to use such source at the time it is registered with the Commission and before its use for natural gas well development.

Response: The Commission agrees with the commenter and the final rulemaking incorporates the proffered language.

Response: The Commission agrees that this modification advances the due process rights of interested parties and has retained it in this final rulemaking action.

Comment: This procedural change will maximize interested parties’ ability to fully participate in Commission processes.

Response: The Commission agrees.

List of Subjects in 18 CFR Parts 806 and 808

Administrative practice and procedure, Water resources.

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

PART 806—REVIEW AND APPROVAL OF PROJECTS

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, Public Law 91–575, 84 Stat. 1509 et seq.

Subpart C—Standards for Review and Approval

2. In §806.22, revise paragraph (f)(11) and add paragraph (f)(12) to read as follows:

§806.22 Standards for consumptive use of water.

* * * * *

(f) * * *

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any water source approved for use by the project sponsor for natural gas well development pursuant to §806.4 or this section, at the applicable drilling pad site subject to any approval or authorization required by the member state to utilize such source(s).

(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).

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, 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, 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). The notice requirements related to agencies of member states, municipalities and counties contained in paragraph (f)(2) of this section, and the notice requirements contained in paragraph (f)(3) of this section, shall likewise be applicable to any request submitted hereunder.

Subpart D—Terms and Conditions of Approval

§ 808.3 Reopening/modification.

(a) Once a project is approved, the Commission, upon its own motion, or upon petition of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders or otherwise modify or impose such additional conditions that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever a petition for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket. Notwithstanding the foregoing, any petition filed by a party who previously sought the same or functionally equivalent relief identified in the petition pursuant to the administrative appeals process under § 808.2 will not be eligible for consideration by the Commission absent new facts not known or readily discernable at the time of consideration of the petitioner’s previous request for administrative appeal filed pursuant to § 808.2.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

§ 808.1 Public hearings.

(a) * * *

(2) Proposed rulemaking.

* * * * * * 

Subpart A—Conduct of Hearings

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director may file a written appeal requesting a hearing. 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.

* * * * *


Thomas W. Beauduy,
Deputy Director.

[FR Doc. E9–23281 Filed 9–28–09; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2009–0854]

RIN 1625–AA01

Special Anchorage Areas; Henderson Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In this final rule, the Coast Guard removes a note which states from whom one must obtain permission to moor or anchor in the special anchorage areas of Henderson Harbor, NY.

DATES: This rule is effective on September 29, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0854 and are available online by going to http://www.regulations.gov, inserting USCG–2009–0854 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Michael C. Petta, Ninth District Legal Office, Coast Guard, telephone 216–902–6010, e-mail michael.c.petta@uscg.mil. If you have questions on obtaining permission to moor or anchor in the special anchorage areas of Henderson Harbor, NY, call the Town Board, telephone 315–938–5542. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:...