

Proposed Amendments to the Delaware River Basin Commission Rules of Practice and Procedure

Informational Briefing and Hearing
November 13, 2023



Delaware River Basin Commission
DELAWARE • NEW JERSEY
PENNSYLVANIA • NEW YORK
UNITED STATES OF AMERICA

Overview of proposed amendments

1. To answer the question: If a project sponsor seeks an extension of time on a Commission approval that would otherwise expire under DRBC rules, who can make that decision and how?
2. Update Water Resources Program and Project Review procedures to better conform them to current practice.
3. Remove references to the federal Freedom of Information Act.
4. Align pronouns with the Commission's policies regarding diversity, inclusion and belonging.

What is not changing about the “Limitation of Approval” rule?

- The purpose of DRBC review under the Compact remains to ensure a project does not substantially impair or conflict with the Comprehensive Plan (CP).
- When DRBC issues an approval, the Commissioners (not the staff) determine whether the project substantially impairs or conflicts with the CP.
- All projects remain subject to public notice and a hearing before the Commissioners make this finding.
- All Commission decisions on whether a project impairs or conflicts with the Comprehensive Plan are made at a public meeting.

What is changing?

- The rule will expressly apply only if the approval has no expiration date.
- Time before an automatic expiration will increase from 3 years to 5.
- The Executive Director will be expressly authorized to grant an extension of an approval previously issued by the Commissioners **IF**:
 - ✓ No material changes to the project are proposed.
 - ✓ Sponsor has expended funds in reliance on the approval or has been prevented from doing so, as set forth in the rule.
 - ✓ Comprehensive Plan and site conditions have not changed in ways important to the Commission's original finding.
- Public notice that an extension has been issued will be expressly required.
- Opportunity to appeal an extension will be expressly provided.

What is a “material change”?

- The proposed definition is: “A change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission’s comprehensive plan.”
- Ties the concept of material change to the standard defined by Section 3.8 of the Compact: i.e., the purpose of Commission review is to ensure any project having a substantial effect on the water resources of the basin does not substantially impair or conflict with the Comprehensive Plan.
- The undefined term “substantial change” would be replaced with “material change” for consistency in the few locations where it is used in the RPP. No change to DRBC’s interpretation of its rules would result.

Alignment with member agency rules

DRBC's current practice on extension of approvals with no expiration (e.g., for in-water construction and dredging projects) aligns with member agency rules.

- **NJDEP** – Grants an application to extend if no change to approved activities, applicable law, or site conditions. Public notice is expressly not required. N.J.A.C. 7:7-24.1(c)(5); 7:7-27.3.
- **PADEP** – Requests for extensions of Water Obstruction and Encroachment permits are “minor” amendments requiring no extensive review and evaluation. 25 Pa. Code § 105.13(c)(2)(v).
- **DNREC** – Has no prescriptive rules on terms or extensions. Wetlands and Waterways staff advise as long as no change is proposed to the approved activities, an extension is granted as an addendum to the authorization. No public process.
- **USACE** – If no significant changes in attendant circumstances, no public notice required re a request for extension. 33 CFR § 325.6(d).

Comparing current to proposed public process

Public Process	Current	Proposed
Public Notice of Application Received	✓	✓
Public Hearing, Oral and Written Public Comment	✓	✓
Decision by Commission at Public Business Meeting	✓	✓
Administrative Appeal of Approval	✓	✓
Appeal to U.S. District Court	✓	✓
Appeal to U.S. Court of Appeals	✓	✓
Notice of Extension	X	✓
Administrative Appeal of Extension	X	✓

Public access to records and information

- No substantive changes are being proposed to the Commission's public access to records regulations.
- No changes are proposed to the Commission's interpretation or application of its current regulations.
- Current regulations contain references to the federal Freedom of Information Act (FOIA) that are inaccurate because FOIA does not apply to non-federal agencies such as the Commission.

Modernizing Project Review application procedures

The proposed amended rule:

- Makes the application process paperless.
- Avoids restating application requirements in multiple locations.
- Establishes concurrent review of applications that also receive member state review, which is current practice.
- Moves renewal application deadline up from 120 to 180 calendar days prior to the expiration date in the approval.
- Establishes a single fee for name changes and changes of ownership.

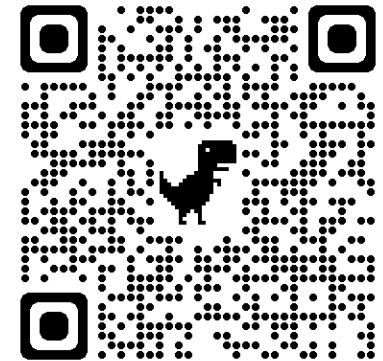
Modernizing Water Resources Program rules

- Conforms the period covered by the Water Resources Program with the language in the Compact (“a reasonably foreseeable period”).
- Removes unused “A” list and “B” list classifications for projects included in the Comprehensive Plan.

For more information

Visit the Commission's website (drbc.gov) to view:

- Text of the proposed amendments.
- Redline comparison of the current and proposed language.
- Instructions on how to submit written comments.
- Information on translation and accessibility requests.



Deadline to submit written comments: **Thursday, November 30, 2023, at 5:00 pm.**