



THE COMMONWEALTH OF MASSACHUSETTS
WATER RESOURCES COMMISSION
100 CAMBRIDGE STREET, BOSTON MA 02114

To: MA Water Resources Commission
From: WRC Staff
Re: Interbasin Transfer Act Regulations (313 CMR 4.00) Proposed Revisions
Date: 11 December 2014

In March and April 2014, staff presented an overview of proposed revisions to the Interbasin Transfer Act regulations (313 CMR 4.00). Since that time, staff have been working to incorporate comments from the Commission and members of the public and the regulations have undergone further review and refinement. To assist you in review of the latest redline version (sent separately) this memo provides a summary of all the proposed changes, and explains the rationale for any major changes.

The Interbasin Transfer Act regulations were first promulgated in December 1986 and have never been updated.

Major Changes and Need:

1) Separated the Applicability and Insignificance Procedures

The original regulations (313 CMR 4.04 (2)) have these two procedures combined, but the information required for each is very different. In 2001, the WRC approved language for its Interbasin Transfer regulations which separated these procedures.

2) Tailored the data required and criteria for Insignificance to different types of transfers

The Commission typically receives requests for determination of insignificance for:

- Wastewater transfers
- Groundwater transfers
- Transfers mainly impacting a lake or reservoir

Because the current regulations address all requests for determination of insignificance as though they involved direct river withdrawals, which are rarely proposed, the information required and the criteria used to evaluate transfers are not always relevant to the proposed project. The proposed revisions provide criteria that are better suited to the type of transfer being evaluated.

3) Added option under the Insignificance Review for smaller transfers

Smaller Transfers (less than or equal to 10,000 gallons per day) are typically applications by small businesses or single-building owners who are required to either go through the full interbasin transfer act review or undertake offsets, if available, both of which can be very cumbersome and costly. A separate pathway that is still environmentally protective is being proposed for those small transfers

that do not have a significant impact on the donor basin. The Commission retains the ability to seek a higher level of review if it determines that the small transfer will have an impact on the donor basin.

4) Added Regional Water Supply Approval Process (313 CMR 4.10)

A provision has been added to allow Regional Water Suppliers to demonstrate compliance with the donor basin criteria of the Act, and then sell water to communities which, at a later date can demonstrate compliance with the receiving basin criteria of the Act. Receiving area communities would apply to the WRC for approval of their portion of the transfer as needed. This process will eliminate the need for repeated donor basin review for the same applicant each time a new customer is added to the system.

5) Eliminated the requirement for a Local Water Resources Management Plan

When the regulations were first promulgated, most water suppliers were not developing comprehensive plans for their water supplies. Since then, most water suppliers have implemented extensive planning programs, and the requirement to provide this particular type of document has become outdated.

6) Specified analyses and other requirements for wastewater transfers

The existing regulations do not fully address information or analyses needed for the review of projects involving the interbasin transfers of wastewater. Since 1987, the WRC has been relying on guidance developed for these reviews; this guidance is being incorporated in the regulations.

7) Revised delineations for two River Basins

Basins which had previously been called out as contributing areas of the South Coastal Basin and the Boston Harbor Basin have been distinguished as separate River Basins (see below).

Specific Changes to Sections:

In addition to the above described major changes, sections have been added, renamed and rearranged, and some sections have been rephrased for better clarity. These changes are further described below.

4.01 General Provisions

Paragraph (1) has been rephrased for clarity and to more completely convey the purposes of the Act.

4.02 Definitions

- Added definitions for:
 - 7Q10
 - Act
 - Donor Basin
 - EEA
 - Hydraulic Capacity
 - MEPA
 - Massachusetts Water Conservation Standards

- NPDES
- Ninety-five Percent (95%) Exceedance Flow
- Regional Water Supply System
- Significant Increase
- Transfer Facilities or Transfer Systems
- Changed “Action of the Commission” to “Decision of the Commission”
- Moved definitions of “Actions to increase over the present rate of interbasin transfer” to its own section (Section 4.04)
- Moved definitions of “Exempt from Water Resources Commission Review” to its own section (Section 4.05)
- Further defined “Commission” to mean the “Massachusetts” Water Resources Commission
- Updated the definition of “Emergency Connection”
- Changed “Insignificant Increase” to “Insignificant or Insignificance”
- Rephrased the definition of “Interbasin Transfer”
- Deleted the definition of “Local Water Resources Management Plan”
- Consolidated and rephrased the definitions for “Present Rate of Interbasin Transfer in a Water Supply System”, “Present Rate of Interbasin Transfer in a Wastewater Conveyance System”, and “Present Rate of a Wastewater Conveyance System”
- Rephrased the definition of “Receiving Area” to accommodate and explain how this term is applied to wastewater transfers
- Deleted “as defined and determined by the Commission” in the definition of “River Basin” and added reference to an Appendix where a basin map will reside.
- Revised the definition of “Viable Sources” to accommodate how it is applied to wastewater transfers
- Deleted the definition of “Water Services” as this term no longer appears in the regulations

4.03 Delineation of River Basins

- Deleted basin numbers and alphabeticized the order of the basins
- Split Boston Harbor into three (3) basins:
 - Mystic River Basin
 - Neponset River Basin
 - Weymouth and Weir Rivers Basin
- Split the South Coastal Basin into two (2) basins:
 - North and South Rivers Basins
 - South Coastal Shore Basin

4.04 Determination and Application Procedures becomes new **4.06 General Procedures**

New Section 4.04 is “**Projects Subject to 313 CMR 4.00**” incorporating “Actions to increase over the present rate of interbasin transfer” from the definitions section (some rephrasing for clarity has occurred).

4.05 Criteria for Evaluation of Application for Approval is incorporated into new Section **4.09 Approval of a Significant Increase in the Present Rate of Interbasin Transfer**

New Section 4.05 is “Exemptions” incorporating “Exempt from Water Resources Commission review” from the definitions section. Added statutory exemptions (Intra-Town and Emergency Connections); added an exemption for expansion within an existing interbasin transfer system that does not increase the transfer and does not include the addition of new communities; and added an exemption for the transfer of any wastewater that did not originate in the Donor Basin (and was therefore either previously approved or grandfathered under the act).. The latter two were previously described in guidance documents.

4.06 Hearing and Decision Making Process becomes new section **4.11 Hearing and Decision Making Process**

New Section 4.06 General Procedures incorporates previous Section 4.04 Determination and Application Procedures Sub-section (1) General Procedures (a) through (d), with some rephrasing.

4.07 Miscellaneous Provisions becomes new section **4.12 Miscellaneous Provisions**

New Section 4.07 Determination of Applicability incorporates portions of previous Section 4.04 Determination and Application Procedures Sub-section (2) Request for Determination of Applicability and/or Insignificance. This section discusses the process for determination of applicability only. Determination of Insignificance has been put into a separate section. Criteria to evaluate applicability have been added.

New Section 4.08 Determination of Insignificance incorporates portions of previous Section **4.04 Determination and Application Procedures** Sub-section (1) General Procedures (d), Sub-sections (2), (3) and (4). Many sub-sections have been rephrased. In addition, it has been emphasized that the criteria will be evaluated cumulatively. Major Changes under this section:

- Added provision for transfers of less than or equal to 10,000 gallons per day, where the Commission could make a Decision that the transfer is insignificant after a review of basic information requested in 313 CMR 4.08(2)(a)(1) to (8) and without requiring more detailed information and analyses described in CMR 4.08(2)(c) and (d). However, if the Commission determines that the transfer needs a higher level of review then the applicant would need to go through the full application for determination of Insignificance.
- Introduced specific language for level of information required in the case of transfers from streamflow, impoundments, and wastewater; for transfers of wastewater triggered by the development of a water supply; and for sources upstream of a wastewater treatment facility.
- Added new criteria for determining insignificance of transfers from streamflow (less than 5% of the unimpacted 95% exceedance flow), and from impoundments (less than 1% of average annual precipitation on drainage area of water body and less than 5% of drought year inflow into the water body)

New Section 4.09 Approval of a Significant Increase in the Present Rate of Interbasin Transfer incorporates previous Section **4.04 Determination and Application Procedures** Sub-section (1) General Procedures (a) through (c) and Sub-section (5) and Section 4.05 Criteria for Evaluation of Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer. Major Change under this section:

- Clarified information needed to describe impact on instream flow in the donor basins for all transfers – water supply, wastewater transfers triggered by the development of a water supply source, groundwater withdrawals, withdrawals from impoundments, and wastewater
- Added a reference to the Massachusetts Water Conservation Standards under criteria that ensures that all practical measures to conserve water have been taken
- Added a new criterion for evaluating wastewater transfers that includes reduction of infiltration and inflow, metering to document wastewater flows, a water conservation program, and development of an operation and maintenance manual.

New Section 4.10 Approval of an Action to Increase the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System

This section creates a streamlined procedure available for a Regional Water Supply System that may have control over a Donor Basin Source, but not over the water management operations (receiving basin criteria) of potential customers. If the Regional Water Supplier wishes to increase its service area in a way that could trigger the Interbasin Transfer Act, it can apply to the Water Resources Commission to evaluate its compliance with the Donor Basin criteria of the Act, and its potential customers can apply separately and be evaluated on the Receiving Basin criteria separately.

New Section 4.11 Hearing and Decision Making Process incorporates the former Section **4.06 Hearing and Decision Making Process**

- Added “This report shall also be sent to the project proponent and the affected Donor Basin and Receiving Area communities” to subsection (3).

New Section 4.12 Miscellaneous Provisions incorporates the former Section **4.07 Miscellaneous Provisions**

Subsection (1) Interbasin Transfer Data – deleted the last sentence “Upon review of water consumption trends in the development of river basin plans in the 313 CMR 2.00 planning process, the Commission may advise any supplier of water that a continuation in the pattern of consumption may result in the need for additional sources of supply, pointing out the requirements which must be met if an out-of-basin source is to be utilized.” The 313 CMR 2.00 planning process no longer exists. The regulations were “sunset” in the 1990’s. Deleted Subsection (4) Amendments to 313 CMR 4.00 as this is not needed.