

Environmental Protection Agency

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the responsible agencies shall be parties of the Memorandum of Agreement.

(b) The Memorandum of Agreement shall include:

(1) A description of waters of the United States within the State over which the Secretary retains jurisdiction, as identified by the Secretary.

(2) Procedures whereby the Secretary will, upon program approval, transfer to the State pending 404 permit applications for discharges in State regulated waters and other relevant information not already in the possession of the Director.

NOTE: Where a State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue section 404 permits, the State is encouraged to establish in this MOA procedures for joint processing of Federal and State permits, including joint public notices and public hearings.

(3) An identification of all general permits issued by the Secretary the terms and conditions of which the State intends to administer and enforce upon receiving approval of its program, and a plan for transferring responsibility for these general permits to the State, including procedures for the prompt transmission from the Secretary to the Director of relevant information not already in the possession of the Director, including support files for permit issuance, compliance reports and records of enforcement actions.

§ 233.15 Procedures for approving State programs.

(a) The 120 day statutory review period shall commence on the date of receipt of a complete State program submission as set out in § 233.10 of this part. EPA shall determine whether the submission is complete within 30 days of receipt of the submission and shall notify the State of its determination. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(b) If EPA determines the State significantly changes its submission during the review period, the statutory review period shall begin again upon the receipt of a revised submission.

(c) The State and EPA may extend the statutory review period by agreement.

(d) Within 10 days of receipt of a complete State section 404 program submission, the Regional Administrator shall provide copies of the State's submission to the Corps, FWS, and NMFS (both Headquarters and appropriate Regional organizations.)

(e) After determining that a State program submission is complete, the Regional Administrator shall publish notice of the State's application in the FEDERAL REGISTER and in enough of the largest newspapers in the State to attract statewide attention. The Regional Administrator shall also mail notice to persons known to be interested in such matters. Existing State, EPA, Corps, FWS, and NMFS mailing lists shall be used as a basis for this mailing. However, failure to mail all such notices shall not be grounds for invalidating approval (or disapproval) of an otherwise acceptable (or unacceptable) program. This notice shall:

(1) Provide for a comment period of not less than 45 days during which interested members of the public may express their views on the State program.

(2) Provide for a public hearing within the State to be held not less than 30 days after notice of hearing is published in the FEDERAL REGISTER;

(3) Indicate where and when the State's submission may be reviewed by the public;

(4) Indicate whom an interested member of the public with questions should contact; and

(5) Briefly outline the fundamental aspects of the State's proposed program and the process for EPA review and decision.

(f) Within 90 days of EPA's receipt of a complete program submission, the Corps, FWS, and NMFS shall submit to EPA any comments on the State's program.

(g) Within 120 days of receipt of a complete program submission (unless an extension is agreed to by the State), the Regional Administrator shall approve or disapprove the program based on whether the State's program fulfills the requirements of this part and the

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Act, taking into consideration all comments received. The Regional Administrator shall prepare a responsiveness summary of significant comments received and his response to these comments. The Regional Administrator shall respond individually to comments received from the Corps, FWS, and NMFS.

(h) If the Regional Administrator approves the State's section 404 program, he shall notify the State and the Secretary of the decision and publish notice in the FEDERAL REGISTER. Transfer of the program to the State shall not be considered effective until such notice appears in the FEDERAL REGISTER. The Secretary shall suspend the issuance by the Corps of section 404 permits in State regulated waters on such effective date.

(i) If the Regional Administrator disapproves the State's program based on the State not meeting the requirements of the Act and this part, the Regional Administrator shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State's program which are necessary to obtain approval. If the State resubmits a program submission remedying the identified problem areas, the approval procedure and statutory review period shall begin upon receipt of the revised submission.

§ 233.16 Procedures for revision of State programs.

(a) The State shall keep the Regional Administrator fully informed of any proposed or actual changes to the State's statutory or regulatory authority or any other modifications which are significant to administration of the program.

(b) Any approved program which requires revision because of a modification to this part or to any other applicable Federal statute or regulation shall be revised within one year of the date of promulgation of such regulation, except that if a State must amend or enact a statute in order to make the required revision, the revision shall take place within two years.

(c) States with approved programs shall notify the Regional Administrator whenever they propose to transfer all or part of any program from the

approved State agency to any other State agency. The new agency is not authorized to administer the program until approved by the Regional Administrator under paragraph (d) of this section.

(d) Approval of revision of a State program shall be accomplished as follows:

(1) The Director shall submit a modified program description or other documents which the Regional Administrator determines to be necessary to evaluate whether the program complies with the requirements of the Act and this part.

(2) Notice of approval of program changes which are not substantial revisions may be given by letter from the Regional Administrator to the Governor or his designee.

(3) Whenever the Regional Administrator determines that the proposed revision is substantial, he shall publish and circulate notice to those persons known to be interested in such matters, provide opportunity for a public hearing, and consult with the Corps, FWS, and NMFS. The Regional Administrator shall approve or disapprove program revisions based on whether the program fulfills the requirements of the Act and this part, and shall publish notice of his decision in the FEDERAL REGISTER. For purposes of this paragraph, substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability.

(4) Substantial program changes shall become effective upon approval by the Regional Administrator and publication of notice in the FEDERAL REGISTER.

(e) Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to a State's program, he may request and the State shall provide a supplemental Attorney General's statement, program description, or such other documents or information as are necessary to evaluate the program's compliance with the requirements of the Act and this part.