

§ 233.4

40 CFR Ch. I (7–1–10 Edition)

§ 233.4 Conflict of interest.

Any public officer or employee who has a direct personal or pecuniary interest in any matter that is subject to decision by the agency shall make known such interest in the official records of the agency and shall refrain from participating in any manner in such decision.

Subpart B—Program Approval

§ 233.10 Elements of a program submission.

Any State that seeks to administer a 404 program under this part shall submit to the Regional Administrator at least three copies of the following:

(a) A letter from the Governor of the State requesting program approval.

(b) A complete program description, as set forth in § 233.11.

(c) An Attorney General's statement, as set forth in § 233.12.

(d) A Memorandum of Agreement with the Regional Administrator, as set forth in § 233.13.

(e) A Memorandum of Agreement with the Secretary, as set forth in § 233.14.

(f) Copies of all applicable State statutes and regulations, including those governing applicable State administrative procedures.

§ 233.11 Program description.

The program description as required under § 233.10 shall include:

(a) A description of the scope and structure of the State's program. The description should include extent of State's jurisdiction, scope of activities regulated, anticipated coordination, scope of permit exemptions if any, and permit review criteria;

(b) A description of the State's permitting, administrative, judicial review, and other applicable procedures;

(c) A description of the basic organization and structure of the State agency (agencies) which will have responsibility for administering the program. If more than one State agency is responsible for the administration of the program, the description shall address the responsibilities of each agency and how the agencies intend to coordinate administration and evaluation of the program;

(d) A description of the funding and manpower which will be available for program administration;

(e) An estimate of the anticipated workload, e.g., number of discharges.

(f) Copies of permit application forms, permit forms, and reporting forms;

(g) A description of the State's compliance evaluation and enforcement programs, including a description of how the State will coordinate its enforcement strategy with that of the Corps and EPA;

(h) A description of the waters of the United States within a State over which the State assumes jurisdiction under the approved program; a description of the waters of the United States within a State over which the Secretary retains jurisdiction subsequent to program approval; and a comparison of the State and Federal definitions of wetlands.

NOTE: States should obtain from the Secretary an identification of those waters of the U.S. within the State over which the Corps retains authority under section 404(g) of the Act.

(i) A description of the specific best management practices proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) of the Act for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.

§ 233.12 Attorney General's statement.

(a) Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independence legal counsel), that the laws and regulations of the State, or an interstate compact, provide adequate authority to carry out the program and meet the applicable requirements of this part. This statement shall cite specific statutes and administrative regulations which are lawfully adopted at the time the statement is signed and which shall be fully effective by the time the program is approved, and, where appropriate, judicial decisions which demonstrate adequate authority. The attorney signing the statement required by this section must have authority to represent