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Title 23 –Highways

Chapter I –Federal Highway Administration, Department of Transportation

Subchapter H –Right-of-Way and Environment

Part 777 –Mitigation of Impacts to Wetlands and Natural Habitat

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303; 23 U.S.C. 101(a), 103, 109(h), 133(b)(1), (b)(11), and (d)(2), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

Source: 65 FR 82924, Dec. 29, 2000, unless otherwise noted.

§ 777.3 Background.

- (a) Executive Order 11990 (42 FR 26961, 3 CFR, 1977 Comp., p. 121) Protection of Wetlands, and DOT Order 5660.1A,^[1] Preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands. Federal agencies are directed to avoid new construction in wetlands unless the head of the agency determines that:
 - (1) There is no practicable alternative to such construction, and
 - (2) The proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.
- (b) Sections 103 and 133 of title 23, U.S. Code, identify additional approaches for mitigation and management of impacts to wetlands and natural habitats which result from projects funded pursuant to title 23, U.S. Code, as eligible for participation with title 23, U.S. Code, funds.
- (c) 33 CFR parts 320 through 330, Regulatory Program, U.S. Army Corps of Engineers; Section 404, Clean Water Act and 40 CFR part 230, Section 404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material, establish requirements for the permitting of discharge of dredge or fill material in wetlands and other waters of the United States.
- (d) Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks presents guidance for the use of ecological mitigation banks as compensatory mitigation in the Section 404 Regulatory Program for unavoidable impacts to wetlands and other aquatic resources.
- (e) Interagency Cooperation—Endangered Species Act of 1973, as amended (50 CFR part 402), presents regulations establishing interagency consultation procedures relative to impacts to species listed under the authority of the Act and their habitats as required by Section 7, Interagency Coordination, of the Endangered Species Act of 1973 (16 U.S.C. 1536).

^[1] DOT Order 5660.1A is available for inspection and copying from FHWA headquarters and field offices as prescribed at 49 CFR part 7.