

**List of Subjects in 19 CFR Part 19**

Customs duties and inspection,  
Exports, Freight, Imports, Reporting and  
recordkeeping requirements,  
Warehouses.

**Proposed Amendments to the Regulations**

It is proposed to amend part 19,  
Customs Regulations (19 CFR part 19),  
as set forth below.

**PART 19—CUSTOMS WAREHOUSES,  
CONTAINER STATIONS, AND  
CONTROL OF MERCHANDISE  
THEREIN**

1. The general authority citation for  
part 19, and the relevant sectional  
authority citation, would continue to  
read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202  
(General Note 20, Harmonized Tariff  
Schedule of the United States), 1624.

Sections 19.17–19.25 also issued under 19  
U.S.C. 1312;

2. It is proposed to amend § 19.12 by  
revising the seventh and eighth  
sentences of paragraph (d)(3), by  
revising the first sentence of paragraph  
(g), adding a sentence thereafter, and  
revising the last sentence of paragraph  
(g), and by revising the first sentence,  
respectively, of paragraphs (h)(1) and  
(h)(3), to read as follows:

**§ 19.12 Inventory control and  
recordkeeping system.**

(d) *Accountability for merchandise in  
a warehouse.* \* \* \*

(3) *Theft, shortage, overage or  
damage.* \* \* \* The proprietor must also  
record all shortages and overages as  
required in the Customs Form 300 or  
annual reconciliation report under  
paragraph (g) or (h) of this section, as  
appropriate. Duties and taxes applicable  
to any non-extraordinary shortage or  
damage and not required to be paid  
earlier must be reported and submitted  
to the port director no later than the  
date the certification of preparation of  
Customs Form 300 is due or at the time  
the certification of preparation of the  
annual reconciliation report is due, as  
prescribed in paragraph (g) or (h) of this  
section. \* \* \*

(g) *Warehouse proprietor submission.*  
Except as otherwise provided in  
paragraph (h) of this section or  
§ 19.19(b) of this part, the warehouse  
proprietor must prepare a Warehouse  
Proprietor's Submission on Customs  
Form (CF) 300 within 45 calendar days  
from the end of the business year and

maintain the Submission on file for 5  
years from the end of the business year  
covered by the Submission. The  
proprietor must submit to the port  
director, within 10 business days after  
preparation of the CF 300, a letter  
signed by the proprietor certifying that  
the CF 300 has been prepared, is  
available for Customs review, and is  
accurate. \* \* \* An alternative format  
may be used for providing the  
information required on the CF 300.

(h) *Annual reconciliation.* \* \* \*

(1) *Report.* Instead of preparing  
Customs Form 300 as required under  
paragraph (g) of this section, the  
proprietor of a class 2, importers'  
private bonded warehouse, and  
proprietors of classes 4, 5, 6, 7, 8, and  
9 warehouses if the warehouse  
proprietor and the importer are the same  
party, must prepare a reconciliation  
report within 90 days after the end of  
the fiscal year unless the port director  
authorizes an extension for reasonable  
cause. \* \* \*

(3) *Certification.* The proprietor must  
submit to the port director within 10  
business days after preparation of the  
annual reconciliation report, a letter  
signed by the proprietor certifying that  
the annual reconciliation has been  
prepared, is available for Customs  
review, and is accurate. \* \* \*

3. It is proposed to amend § 19.17 by  
revising the first and second sentences  
of paragraph (g) to read as follows:

**§ 19.17 Application to establish  
warehouse; bond.**

(g) *Statement of inventory and bond  
charges.* Where two or more smelting or  
refining warehouses are included under  
one blanket smelting and refining bond,  
an overall statement must be prepared  
and maintained by the principal named  
in the bond by the 28th of each month,  
showing the inventory as of the close of  
the preceding month, of all metals on  
hand at each plant covered by the  
blanket bond and the total of bonded  
charges for all plants. If the warehouses  
covered by an overall statement are  
located in more than one port, each port  
director may choose to verify the  
accuracy of the inventory report only  
with respect to that portion of the report  
that relates to amounts held at a plant  
that is located within that port director's  
jurisdiction. \* \* \*

4. It is proposed to amend § 19.19 by  
revising the first sentence of paragraph  
(b) to read as follows:

**§ 19.19 Manufacturers' records; annual  
statement.**

(b) Every manufacturer engaged in  
smelting or refining, or both, must  
prepare and submit to the port director  
at the port nearest which the plant is  
located an annual statement for the  
fiscal year for the plant involved not  
later than 60 days after the termination  
of that fiscal year. \* \* \*

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: March 12, 1999.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 99–8517 Filed 4–6–99; 8:45 am]

BILLING CODE 4820–02–P

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 777**

[FHWA Docket No. FHWA–97–2514; 96–8]

RIN 2125–AD78

**Mitigation of Impacts to Wetlands and  
Natural Habitat**

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Supplemental notice of  
proposed rulemaking (SNPRM); request  
for comments.

**SUMMARY:** The FHWA is further  
supplementing its June 17, 1996, notice  
of proposed rulemaking (NPRM),  
Mitigation of Impacts to Wetlands, and  
June 18, 1997, supplemental notice of  
proposed rulemaking (SNPRM) on the  
same subject, as described in the  
**SUPPLEMENTARY INFORMATION.** This  
SNPRM also updates the FHWA's  
wetlands regulation to conform with  
wetland and natural habitat mitigation  
provisions contained in the recently  
enacted Transportation Equity Act for  
the 21st Century (TEA–21).

**DATES:** Comments must be received on  
or before June 7, 1999.

**ADDRESSES:** All signed, written  
comments must refer to the docket  
number appearing at the top of this  
document. Submit all comments to the  
Docket clerk, U.S. DOT Dockets, Room  
PL–401, 400 Seventh Street, SW.,  
Washington, DC 20590–0001. All  
comments received will be available for  
examination at the above address  
between 10 a.m. and 5 p.m., e.t.,  
Monday through Friday, except Federal  
holidays. Those desiring notification of  
receipt of comments must include a self-  
addressed, stamped envelope or  
postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Garrett, Office of Natural Environment, HENE, (303) 969-5772, extension 332, or Mr. Brett Gainer, Office of the Chief Counsel, HCC-31, (202) 366-1372, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal source locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days a year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)-512-1661. Internet users may reach the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

**I. The Rulemaking Process**

This rulemaking would amend the FHWA's regulation on wetlands mitigation to conform with the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102-240, 105 Stat.1914), TEA-21, and state-of-the-art practices in wetland science, technology, and management.

**II. Public Participation**

An NPRM on this subject was published in the **Federal Register** on June 17, 1996 (61 FR 30553). The comment period was from June 17 through August 16, 1996. Subsequently, an SNPRM was published in the **Federal Register** on June 18, 1997 (62 FR 33047). The comment period for this SNPRM was from June 18 through August 18, 1997.

In its June 17, 1996, NPRM and June 18, 1997, SNPRM, the FHWA proposed to amend 23 CFR part 777, Mitigation of Impacts to Privately owned Wetlands, in order to update the current, out-dated regulations in light of changes brought about by the ISTEA. Specifically, the June 17, 1996, NPRM proposed revision to the previous regulation (23 CFR part 777) to conform to ISTEA, thereby providing more flexibility to State Departments of Transportation (DOT) in determining eligibility of mitigation alternatives for Federal participation.

The NPRM proposed broadening the scope of the regulation to encompass all wetland mitigation projects eligible for Federal participation, not just those involving privately owned wetlands. The June 18, 1997 SNPRM proposed to clarify the scope of the FHWA's wetlands regulations by specifying that they apply to all projects funded pursuant to the provisions of title 23, United States Code (Title 23). The rulemaking proposed also to make a technical amendment to the text of the June 17, 1996 NPRM.

Recently, TEA-21 (Pub. L. 105-178, 112 Stat. 107) added funding eligibility under the NHS and STP programs for mitigation of impacts on natural habitats due to highway projects funded under title 23, U.S.C. This rulemaking would also include a provision requiring that existing wetland and habitat mitigation banks be given preference for use in establishing compensatory mitigation if the highway project impacts occur within the bank's service area (Sections 1106(b) and 1108(a) of TEA-21; 23 U.S.C. 103(b)(6)(M) and 133(b)(11)). In this SNPRM, the FHWA would revise the current proposed regulation to conform to the authority of TEA-21.

In addition to making changes to conform with TEA-21, this proposal would broaden the scope of the current regulation to encompass all mitigation projects for impacts to wetlands and natural habitats eligible for Federal participation, not just those involving privately owned wetlands. This SNPRM also applies to projects under the Federal Lands Highway Program, as described in § 777.1, Purpose.

With all this in mind, the FHWA has decided to issue this SNPRM, which would further amend part 777. At each place where the term "wetlands" occurs in the regulatory text, this SNPRM proposes to add either the words "natural habitat" or "habitat." In addition, § 777.2, Definitions, would be amended to add a definition of the term "natural habitat." Where negative impacts are unavoidable, the Department of Transportation's Fiscal Year 1999 and 2000 Performance Plans establish an objective to minimize the adverse impacts of projects on wetlands and to achieve a net gain of wetlands in the Federal-aid and Federal Lands Highway Programs. Thus, a new definition for "net gain of wetlands" would be added to § 777.2.

Section 777.9, Mitigation of Impacts, would be amended by adding a preference for existing wetlands banks or natural habitat banks to the provision authorizing the expenditure of Federal-aid highway funds for wetlands and

natural habitat mitigation banking and related measures.

Finally, the title of part 777 would be changed to read, "Mitigation of Impacts to Wetlands and Natural Habitat." The FHWA invites comments on this new proposal.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

**Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)**

The FHWA has considered the impact of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. This rulemaking would supplement the FHWA's NPRM proposing to amend its regulations regarding mitigation of impacts to privately owned wetlands, which have become outdated because of provisions in Sections 1006 and 1007 of the ISTEA authorizing greater flexibility for Federal participation in mitigating impacts to wetlands. These amendments have been codified at 23 U.S.C. 103 and 133. The recently enacted TEA-21 added the term "natural habitat" to the eligibility provisions of 23 U.S.C. 103 and 133, and added a preference for the use of established mitigation banks for wetland mitigation activities. This SNPRM would amend the NPRM to address these new provisions.

This SNPRM would not cause any significant changes to the amount of funding available to the States under the STP or NHS programs or add to the process by which States receive funding. The provisions of this proposed rulemaking would not require the additional expenditure of Federal-aid or State highway funds. Instead, this SNPRM would merely clarify the scope of the FHWA's wetlands regulations by specifying that they apply to all projects

funded pursuant to title 23, U.S.C. Thus, it is anticipated that the economic impact of this rulemaking would be minimal. In addition, it would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will amendment of this regulation raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this SNPRM on small entities and has determined it would not have a significant economic impact on a substantial number of small entities. Supplementing the FHWA's June 17, 1996, NPRM and June 18, 1997, SNPRM in this manner would not affect the amount of funding available to the States through the STP or NHS programs, or the procedures used to select the States eligible to receive these funds. Furthermore, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. For these reasons, and for those set forth in the analysis of E.O. 12866, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532).

#### Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not raise sufficient federalism implications to warrant the preparation of a federalism assessment. This SNPRM would not preempt any State law or State regulation. No additional costs or burdens would be imposed on the States as a result of this action, and the States' ability to discharge traditional State governmental functions would not be affected by this rulemaking.

#### Executive Order 12372

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive

Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### Paperwork Reduction Act

This action does not create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

#### National Environmental Policy Act

The FHWA has analyzed this rulemaking for the purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347). This SNPRM would not, in and of itself, constitute a major Federal action significantly affecting the quality of the human environment. Instead, it would clarify the scope of the June 17, 1996, NPRM, which was intended to increase the flexibility available to States when deciding how to mitigate impacts to wetlands resulting from projects funded pursuant to the provisions of title 23, U.S.C. The passage of TEA–21, with its addition of the term "natural habitat" to the wetlands mitigation banking provisions of title 23, U.S.C., made this SNPRM necessary. Such impacts to wetlands and natural habitat and appropriate mitigation measures would be evaluated pursuant to NEPA on a project-by-project basis by the States and the FHWA. Accordingly, promulgation of this SNPRM would not require the preparation of an environmental impact statement.

#### Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 777

Flood plains, Grant programs—transportation, Highways and roads, Natural habitat, Wetlands.

Issued on: March 31, 1999.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to revise 23 CFR part 777, as set forth below:

1. Part 777 is revised to read as follows:

#### PART 777—MITIGATION OF IMPACTS TO WETLANDS AND NATURAL HABITAT

Sec.

777.1 Purpose.

777.2 Definitions.

777.3 Background.

777.5 Federal participation.

777.7 Evaluation of impacts.

777.9 Mitigation of impacts.

777.11 Other considerations.

**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), 133(b)(11), 133(d)(2), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

##### § 777.1 Purpose.

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to wetlands and natural habitat resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S.C. These policies and procedures shall be applied by the Federal Highway Administration (FHWA) to projects under the Federal Lands Highway Program to the extent such application is deemed appropriate by the FHWA.

##### § 777.2 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

*Biogeochemical transformations.*

Those changes in chemical compounds and substances which naturally occur in ecosystems. Examples are the carbon, nitrogen, and phosphorus cycles in nature, in which these elements are incorporated from inorganic substances into organic matter and recycled on a continuing basis.

*Compensatory mitigation.* Activities such as restoration, enhancement, creation, and under exceptional circumstances, preservation, of wetlands, wetland buffer areas, and natural habitats, carried out to replace or compensate for the loss of wetlands or natural habitat area or functional capacity resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S.C. Compensatory mitigation usually occurs in advance of or concurrent with the impacts to be mitigated, but may occur after such impacts in special circumstances.

*Ecologically desirable.* A state or condition desired or wanted as the result of a mitigation agreement that provides additional wetland or natural habitat area or functional capacity.

*Natural habitat.* A complex of natural, primarily native or indigenous vegetation, not subject to cultivation or current artificial landscaping, a primary purpose of which is to provide habitat for wildlife, either terrestrial or aquatic.

For purposes of this regulation, *habitat* has the same meaning as *natural habitat*.

**Net gain of wetlands.** When project impacts are unavoidable, a wetland resource conservation and management principle under which, over the long term, losses of wetlands area of functional capacity due to highway projects are offset by gains at a ratio greater than 1:1, through restoration, enhancement, preservation, or creation of wetlands or associated areas critical to the protection or conservation of wetlands functions. This definition specifically excludes natural habitat, as defined in this section, other than wetlands.

**On-site, in-kind mitigation.** Compensatory mitigation which replaces wetlands or natural habitat area or functions lost as a result of a highway project with the same or like wetland or habitat type and functions adjacent or contiguous to the site of the impacts.

**Service area of a mitigation bank.** The service area of a wetland or natural habitat mitigation bank shall be consistent with that in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks,<sup>1</sup> i.e., the designated area (e.g., watershed, county) wherein a bank can be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic or natural habitat resources.

**Wetland or habitat enhancement.** Increasing the capacity of an altered or degraded site to perform specific functions by modifying the site conditions in or around the wetland or natural habitat. Examples include, but are not limited to, alteration of hydrologic regime, vegetation management, erosion control, fencing, pest control, and fertilization.

**Wetland or habitat establishment period.** An agreed-upon period of time required to establish wetland functional capacity in a compensatory mitigation project sufficient to compensate wetlands or habitat losses due to impacts of Federal-aid highway projects. The establishment period may vary depending on the specific wetland or habitat type being developed.

**Wetland or habitat functional capacity.** The ability of a wetland or natural habitat to perform natural functions, such as provide wildlife habitat, support biodiversity, store surface water, or perform biogeochemical transformations, as determined by scientific functional

assessment. Natural functions of wetlands include, but are not limited to, those listed by the U.S. Army Corps of Engineers at 33 CFR 320.4(b)(2)(I) through (viii).

**Wetland or habitat restoration.** Reestablishment of wetlands or natural habitats on a site where they formerly existed but essentially have been eliminated.

**Wetland or wetlands.** The terms wetland and wetlands have the same meaning as the definition issued by the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.3).

**Wetlands and habitat banking and related measures.** Efforts, or contributions to efforts, to restore, create, enhance, or, in exceptional circumstances, preserve wetlands, natural habitats, or functional capacity of these areas, usually undertaken in advance and outside the area of direct impacts of proposed Federal-aid highway projects and intended expressly to compensate for unavoidable wetlands or habitat losses caused by such projects, when compensation could not be achieved or would not be as environmentally beneficial if located at individual project impact sites.

**Wetlands or habitat mitigation credit.** A unit of wetlands or habitat mitigation, defined either by:

- (1) Area or
- (2) A measure of functional capacity through application of scientific functional assessment.

#### § 777.3 Background.

(a) Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, Preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands.

(b) 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.

(c) Sections 103 and 133 of title 23, U.S.C., 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.C., as eligible for participation with Federal-aid highway funds.

#### § 777.5 Federal participation.

(a) Those measures which the FHWA and a State DOT find appropriate and

necessary to mitigate adverse environmental impacts to wetlands and natural habitats are eligible for Federal participation where the impacts are the result of projects funded pursuant to title 23, U.S.C. The justification for the cost of proposed mitigation measures should be considered in the same context as any other public expenditure; that is, the proposed mitigation represents a reasonable public expenditure when weighed against other social, economic, and environmental values, and the benefit realized is commensurate with the proposed expenditure. Mitigation measures shall give like consideration to traffic needs, safety, durability, and economy of maintenance of the highway.

(b) It is FHWA policy to permit, consistent with the limits set forth in this part, the expenditure of title 23, U.S.C., funds for activities required for the planning, design, construction, and establishment of wetlands and natural habitat mitigation projects, and acquisition of land or interests therein.

#### § 777.7 Evaluation of impacts.

(a) The reasonableness of the public expenditure should be directly related to:

- (1) The importance of the impacted wetlands and natural habitats, and
- (2) The extent of highway impacts on the wetlands and natural habitats, as determined through an appropriate, interdisciplinary, impact assessment.

(b) Evaluation of the importance of the impacted wetlands and natural habitats should consider:

- (1) The wetlands' and natural habitat functional capacity;
- (2) Input from the appropriate resource management agencies through interagency coordination;
- (3) The relative importance of these functions to the total wetland or natural habitat resource of the area; and
- (4) Other factors such as uniqueness, esthetics, or cultural values.

(c) A determination of the highway impact should focus on both the short- and long-term effects of the project on wetland or natural habitat functional capacity, consistent with 40 CFR 1502.16.

#### § 777.9 Mitigation of impacts.

(a) **Actions eligible for Federal funding.** There are a number of actions that can be taken to minimize the impact of highway projects on wetlands or natural habitats. The following actions qualify for Federal-aid highway funding:

- (1) Where practicable, avoidance or minimization of impacts to wetlands or

<sup>1</sup> This document is available from FHWA Headquarters, Resource Centers, and individual State Division Offices for inspection and copying as prescribed at 49 CFR Part 7.

natural habitats through realignment and special design or construction features. In accordance with the Environmental Protection Agency's Clean Water Act Section 404(b)(1) guidelines (40 CFR part 230 *et seq.*), avoidance and then minimization must be given first consideration in mitigating wetlands impacts. These guidelines apply only to impacts to wetlands regulated under Section 404 of the Clean Water Act.

(2) After practicable avoidance and minimization measures have been exhausted, other ecologically desirable compensatory mitigation alternatives, either inside or outside of the right-of-way. These may include such measures as on-site mitigation, when that alternative is determined to be ecologically desirable and practicable; improvement of existing degraded or historic wetlands or natural habitats through restoration or enhancement on or off site; creation of new wetlands from non-wetland areas off-site; and under exceptional circumstances, preservation of existing wetlands or natural habitats on or off site. Restoration of wetlands is generally preferable to enhancement or creation of new wetlands from non-wetland areas.

(3) Improvements to existing wetlands or natural habitats. Such activities may include, but are not limited to, construction or modification of water level control structures or ditches, establishment of natural vegetation, recontouring of the site, installation or removal of irrigation or water distribution systems, pest control, installation of fencing, site monitoring, and other measures to protect, enhance, or restore the wetland or natural habitat character of the site.

(4) Wetlands mitigation banking and related measures. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks<sup>2</sup> or other applicable Federal law (including regulations).

(b) *Participation in wetlands or natural habitat mitigation banks.* If the development or acquisition of mitigation credits in wetland or natural habitat mitigation banks, either on or off-site, is determined to be the most

ecologically desirable and practicable alternative for compensatory mitigation, banking alternatives eligible for participation with Federal-aid funds include such measures as the following:

(1) Multi-user wetlands or natural habitat banks established on publicly owned or controlled lands;

(2) Single purpose publicly owned banks, established by and for the use of a State DOT with Federal-aid participation; or multipurpose publicly owned banks, established with public, non-Federal-aid funds, in which credits may be purchased by highway agencies using Federal-aid funds on a per-credit basis; or

(3) Other forms of mitigation banks in which mitigation credits are purchased by State DOTs to mitigate wetlands or habitat impacts due to projects funded under title 23, U.S.C., including privately owned banks or those established with private funds to mitigate wetland or natural habitat losses which have been approved and/or permitted by the appropriate regulatory agency.

(c) *Contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands or natural habitats.* Federal-aid funds may participate in the development of statewide and regional wetlands conservation plans, including any efforts and plans authorized pursuant to the Water Resources Development Act of 1990 (Pub. L. 101-640). Contributions to these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

#### **§ 777.11 Other considerations.**

(a) The development of measures proposed to mitigate impacts to wetlands or natural habitats should include consultation with appropriate State and Federal agencies.

(b) Federal-aid funds may not participate in the replacement of wetlands or natural habitats absent sufficient assurances that the area will be maintained in the intended state as a wetland or natural habitat.

(c) The acquisition of proprietary interests in replacement wetlands or natural habitats as a mitigation measure may be in fee simple or by easement, as appropriate. The acquisition of "mitigation credits" in wetland or natural habitat mitigation banks should be accomplished through a legally recognized instrument, such as permanent easement or deed restriction, which provides for protection and permanent continuation of the wetland

or natural habitat nature of the mitigation.

(d) A State DOT may acquire privately owned lands in cooperation with another public agency or third party. Such an arrangement may accomplish greater benefits than would otherwise be accomplished by the individual agency acting alone.

(e) A State DOT may transfer the title to, or enter into an agreement with, an appropriate public natural resource management agency to manage lands acquired outside the right of way without requiring a credit to Federal funds. Any such transfer of title or agreement shall require the continued use of the lands for the purpose for which they were acquired. In the event the purpose is no longer served, the lands and interests therein shall immediately revert to the State DOT for proper disposition.

(f) The reasonable costs of acquiring lands or interests therein to provide replacement lands with equivalent wetlands or natural habitat area or functional capacity associated with these areas are eligible for Federal participation.

(g) The objective in mitigating impacts to wetlands in the Federal-aid highway program is to implement the policy of a net gain of wetlands on a program wide basis, when project impacts are unavoidable.

(h) Certain activities to ensure the viability of compensatory mitigation wetlands or natural habitats during the period of establishment are eligible for Federal-aid participation. These include, but are not limited to, such activities as repair or adjustment of water control structures, pest control, irrigation, fencing modifications, replacement of plantings, and mitigation site monitoring. The establishment period should be specifically determined by the mitigation agreement among the mitigation planners prior to beginning any compensatory mitigation activities.

[FR Doc. 99-8444 Filed 4-6-99; 8:45 am]

BILLING CODE 4910-22-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 180, 185 and 186**

[OPP-300841; FRL-6075-1]

RIN 2070-AB78

### **Tolerance Revocations for Certain Pesticides**

AGENCY: Environmental Protection Agency (EPA).

<sup>2</sup> See footnote 1.