

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 95
COMPENSATORY MITIGATION FOR IMPACTS TO WETLANDS

67-9501. LEGISLATIVE FINDINGS AND PURPOSE. (1) The purpose of this chapter is to promote the availability of all types of compensatory mitigation projects in the state of Idaho, consistent with the provisions of section 404 of the federal clean water act and the regulations promulgated pursuant to it, for the development of projects with unavoidable impacts to wetlands.

(2) In 2008, the United States army corps of engineers and the environmental protection agency issued revised regulations governing compensatory mitigation for impacts to wetlands under section 404 of the federal clean water act, which are contained at 33 CFR parts 325 and 332 and 40 CFR part 230 and referred to as the 2008 compensatory mitigation for losses of aquatic resources rule. These regulations establish equivalent and effective standards for all three (3) types of compensatory mitigation projects: mitigation banks, in-lieu fee mitigation, and permittee-responsible mitigation.

(3) State agencies may review or permit activities associated with applications for United States army corps of engineers section 404 permits and the corps' determinations regarding compensatory mitigation under the mitigation rule.

[(67-9501) 67-9301, added 2019, ch. 206, sec. 1, p. 633; am. and redesign. 2020, ch. 82, sec. 39, p. 213.]

67-9502. DEFINITIONS. As used in this chapter:

(1) "Compensatory mitigation" means the restoration, re-establishment or rehabilitation, establishment or creation, enhancement, and in certain circumstances preservation of aquatic resources for the purpose of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

(2) "Compensatory mitigation project" means compensatory mitigation implemented by the permittee as a requirement of a corps of engineers section 404 wetland permit, i.e., permittee-responsible mitigation, or by a mitigation bank, or an in-lieu fee program.

(3) "Impact" or "impacts" means adverse effects.

(4) "Mitigation rule" or "2008 mitigation rule" means the federal regulations promulgated by the United States army corps of engineers and the environmental protection agency, on April 28, 2008, pursuant to the federal clean water act, contained at 33 CFR parts 325 and 332 and 40 CFR part 230, and known as the 2008 compensatory mitigation for losses of aquatic resources rule.

(5) "Permittee" means any person making application for a federal clean water act section 404 permit from the United States army corps of engineers.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(7) "State agency" means each state board, commission, department or officer, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the

state of Idaho, in the exercise of powers derived directly and exclusively from the constitution, the state militia, or the state board of correction.

[(67-9502) 67-9302, added 2019, ch. 206, sec. 1, p. 633; am. and re-desig. 2020, ch. 82, sec. 39, p. 213.]

67-9503. LIMITATIONS. (1) No state agency, officer, or employee shall, as part of any action related to issuance of a federal clean water act section 404 permit, require mitigation for impacts to wetlands that is more stringent than federal compensatory mitigation requirements for impacts to wetlands under section 404 and the 2008 mitigation rule.

(2) The appropriate state agencies may assist the permittee as needed to meet the requirements of the 2008 mitigation rule, including identification of any compensatory mitigation project, when such mitigation is required by the United States army corps of engineers under the mitigation rule. No state agency shall mandate the type of compensatory mitigation project to be proposed to the United States army corps of engineers by a permittee, nor shall any state approval be unreasonably withheld from a permittee because of the type of compensatory mitigation project proposed.

(3) Individual federal clean water act section 404 permit applications and the associated draft section 401 certifications shall be timely posted on the department of environmental quality website.

(4) The provisions of this chapter shall not apply to or modify the provisions of [chapter 38, title 42](#), Idaho Code, regarding the alteration of channels of streams.

[(67-9503) 67-9303, added 2019, ch. 206, sec. 1, p. 634; am. and re-desig. 2020, ch. 82, sec. 39, p. 214.]