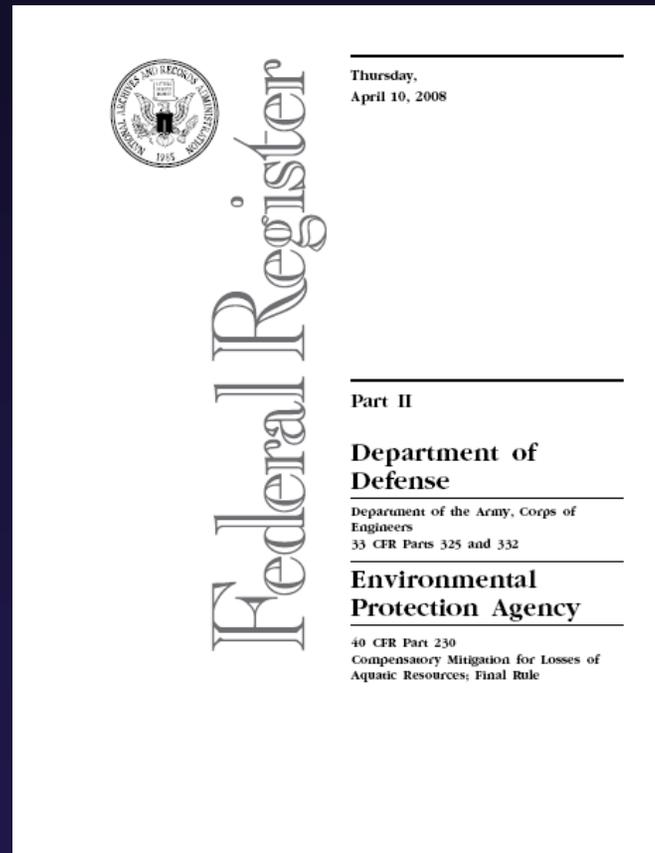


Joint Army-EPA:

Compensatory Mitigation Rule



June 19, 2008



Mitigation Rule

- **Authority** – National Defense Authorization Act FY04
- **References** – NRC Report and aspects of current regulations & guidance
- **Goal** – level playing field (permittee, Mitigation Banks, ILFs) to the maximum extent practicable
- **Performance Standards** – ecologically-driven, equivalent/effective standards, best available science
- **Compliance** – increase compliance visits, establish enforceable success criteria, prescribed monitoring reports
- **Mitigation Sequence Preserved** – avoid, minimize, compensate for unavoidable impacts and lost aquatic functions
- Does not change *when* mitigation is required
- Does change *where* and *how*



Benefits of the Mitigation Rule

- Greater predictability, transparency
- Improved mitigation planning and site selection
- Improved performance of compensatory mitigation projects
- Strongly encourages watershed approach
- Flexibility of mitigation options
- Possible reduction in permitting time
- Increased public participation



Principles in Final Rule

- Ecological performance standards required
- Must be verifiable
- Based on the *best available science* that can be measured or assessed in a practicable manner
- Accommodate variability of regional classes of aquatic resources
- Manage adaptively to rectify performance problems or unanticipated performance
- District Engineer is decision-maker



Compensation Hierarchy

1. Credits from a mitigation bank
2. Credits from an in-lieu fee program
3. PRM using a watershed approach
4. PRM on-site
5. PRM off-site

***In-kind preference** maintained



Existing Regulations and Guidance

- No change to Section 404(b)(1) Guidelines
- Replace entirety of:
 - 1995 Banking Guidance
 - 2000 ILF Guidance
 - 2002 Compensatory Mitigation RGL
- Replace portions of the 1990 Army/EPA Mitigation MOA



Transition

- Rule went into effect on June 9, 2008
- Mitigation banks
 - Existing banks and those approved by July 9, 2008, are grandfathered
 - Instrument modification will trigger compliance with new requirements
- In-lieu Fee mitigation
 - Existing ILFs and those approved by July 9, 2008: 2-yr transition period
 - Additional 3 years possible if “*good cause*”



Implementation

- *“It could be the best of all worlds...or it could be the same old same old...It's all in the implementation.”*
 - Dr. Joy Zedler, Chair 2001 NRC Wetlands Mitigation Study Committee – EM.com, 4–27–08



Next Steps

- Outreach/Training
 - Corps/EPA Joint National Meeting – May/08
 - ASWM Workshop May/08
 - Federal/State IRT Training– June/08
 - Training Courses – Fall '08
- Implementing Guidance



Questions?

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Compensatory Mitigation Website:

- <http://www.epa.gov/wetlandsmitigation/>

Rule posted on the Corps HQ Website:

- <http://www.usace.army.mil/cw/cecwo/reg/>

