

developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: May 28, 2010

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010–13956 Filed 6–9–10; 8:45 am]

**BILLING CODE S**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 80

[Docket No. FWS–R9–WSR–2009–0088; 91400–5110–POLI–7B; 91400–9410–POLI–7B]

RIN 1018–AW65

#### **Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing the Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety (Enhanced Hunter Education and Safety) financial assistance programs. We conducted rulemaking 2 years ago to amend these regulations, and based on experience gained since then, we propose to adopt two recommendations that we received in response to the prior proposed rule and to modify three provisions from the subsequent final rule. We also propose

to update the regulations to reflect changes in law, regulation, policy, technology, and practice during the past 25 years. In addition, this proposed rule simplifies specific requirements of the establishing authorities of the Wildlife Restoration and Sport Fish Restoration programs and clarifies terms in those authorities as well as terms generally used in grant administration. Finally, this proposed rule organizes the regulations to follow the life cycle of a grant and rewords and reformats the regulations following Federal plain language policy and current rulemaking guidance.

**DATES:** We will accept comments received or postmarked on or before August 9, 2010.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R9–WSR–2009–0088.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW65; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all public comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

#### **FOR FURTHER INFORMATION CONTACT:**

Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703–358–2156.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The U.S. Department of the Interior's (DOI) Fish and Wildlife Service (Service) manages or co-manages 55 financial assistance programs, 19 of which are managed, in whole or in part, by the Service's Wildlife and Sport Fish Restoration Program. This proposed rule would revise title 50, part 80, of the Code of Federal Regulations (CFR), which is "Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts." The primary users of these regulations are the fish and wildlife agencies of the 50 States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. We use "State" or "States" in this document to refer to any or all of these jurisdictions except the District of

Columbia for purposes of the Pittman-Robertson Wildlife Restoration Act and the two grant programs and one subprogram under the Act because the Act does not authorize funding for the District. The term, "the 50 States," applies only to the 50 States of the United States. It does not include the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, or the territories of Guam, the U.S. Virgin Islands, and American Samoa. These regulations tell States how they may: (a) Use revenues from hunting and fishing licenses; (b) receive annual apportionments from the Federal Aid to Wildlife Restoration Fund and the Sport Fish Restoration and Boating Trust Fund; (c) receive financial assistance from the Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program; and (d) receive financial assistance from the Sport Fish Restoration program, the Recreational Boating Access subprogram, the Aquatic Resources Education subprogram, and the Outreach and Communications subprogram. These programs provide financial assistance to State fish and wildlife agencies to: (a) Restore or manage wildlife and sport fish; (b) provide hunter-education, hunter-development, and hunter-safety programs; (c) provide recreational boating access; (d) enhance the public's understanding of water resources, aquatic-life forms, and sport fishing; and (e) develop responsible attitudes and ethics toward the aquatic environment. The Catalog of Federal Domestic Assistance at <http://www.cfda.gov> describes these programs under 15.611, 15.605, and 15.626.

The Pittman-Robertson Wildlife Restoration Act, as amended (50 Stat. 917; 16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act, as amended (64 Stat. 430; 16 U.S.C. 777–777n, except 777e–1 and g–1), established the programs affected by this proposed rule in 1937 and 1950 respectively. We refer to these acts in this document and in the proposed rule as "the Acts." They established a hunting- and angling-based user-pay and user-benefit system in which the State fish and wildlife agencies of the 50 States, the Commonwealths, and the territories receive formula-based funding from a continuing appropriation. The District of Columbia also receives funding, but only under the Dingell-Johnson Sport Fish Restoration Act. The Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District of

Columbia. Industry partners pay excise taxes on equipment and gear manufactured for purchase by hunters, anglers, boaters, archers, and recreational shooters. The Service distributes these funds to the fish and wildlife agencies of the States that contribute matching funds, generally derived from hunting and fishing license sales. In fiscal year 2009, the States and other eligible jurisdictions received \$336 million through the Wildlife Restoration and Enhanced Hunter Education and Safety programs and \$404 million through the Sport Fish Restoration program.

Revisions of 50 CFR 80 during the past 25 years include one section of 50 CFR 80 in 1987, another section in 1989, and two sections in 2001. We revised the license-certification section in 2008 to address the greater number of license choices that many States have offered hunters and anglers in recent years. We also revised other sections in 2008 to: (a) Comply with Federal policy on plain language and writing style, (b) remove subject matter addressed adequately in other grant regulations, or (c) correct obsolete references or legal requirements. The focus of all revisions since 1987 was on specific issues. We have not systematically reviewed and revised 50 CFR 80 since the early 1980's, so the regulations at this part do not fully reflect the following laws and policies:

(a) The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, Nov. 1, 2000, (Pub. L. 106–408). This amendment of the Acts authorized the Enhanced Hunter Education and Safety program.

(b) Public Law 98–454, title VI, section 601(b), Oct. 5, 1984. This law states that a Federal awarding agency must waive any required match under \$200,000 for grants to Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa.

(c) 43 CFR 12.43, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, Mar. 11, 1988. This section of the CFR defines “obligations” in the context of a grantee incurring costs under a grant. This definition does not apply to “obligations” in the context of a Federal obligation of funds, which involves the awarding agency making funds available for a grant, the submission of an application, and the issuance and acceptance of an award under specified terms and conditions.

(d) OMB Circular A–102, *Grants and Cooperative Agreements with State and Local Governments*, Oct. 14, 1994, and amended Aug. 29, 1997. This policy

requires us to treat land acquisition and development, in effect, as a phase of construction for the purpose of a grantee submitting an assurance statement with the Application for Federal Assistance.

(e) Department of the Interior Manual, 505 DM 2, “Procurement Contracts, Grant and Cooperative Agreements,” Jan. 9, 2008. This DOI manual chapter states that a grant-funded project could involve amounts from more than one program or appropriation when different relationships would otherwise be appropriate and beneficial for different parts of the project.

(f) Service Manual chapter 522 FW 4, “Comprehensive Management System Grants,” Nov. 30, 2004. This FWS manual chapter guides the award and operation of a Comprehensive Management System grant, which the establishing authorities authorize as an alternative to project-by-project grants.

(g) Service Manual chapter 522 FW 16, “Preagreement Costs,” Oct. 13, 2005. This FWS manual chapter establishes conditions under which a grantee may incur costs before the effective date of a grant. It incorporates recommendations of a joint task force of Federal and State officials.

(h) Service Manual chapter 522 FW 19, “Program Income from Federal Assistance Grants,” Feb. 20, 2008. This chapter establishes that States may: (a) Select the deduction or addition methods of applying program income to Federal and non-Federal outlays, and (b) reduce program income by an amount equal to the costs of generating it. The chapter gives examples of the costs of generating program income. It establishes criteria under which a Regional Director may approve an applicant's request to use program income as match. It also requires grant agreements to state that income earned by the grantee after the grant period from grant-supported activities will be treated as: (a) License revenue and used to support the administration of the State fish and wildlife agency, or (b) additional funding for purposes consistent with the grant or program that generated the income. The chapter also allows the grantee to request that grant agreements require that subgrantees account for program income earned after the grant period. Finally, the chapter gives examples of program income and states that the Service does not treat cooperative farming and grazing arrangements as program income if the State fish and wildlife agency designs the farming or grazing to advance its fish or wildlife management objectives. Service Manual chapter 522 FW 16 is based on recommendations of

a joint task force of Federal and State officials.

(i) Director's guidance on “Policy—Federal Aid Timber Sales,” June 6, 2002. This guidance applies a Dec. 5, 2000, Solicitor's Opinion to the Wildlife and Sport Fish Restoration program nationwide. That Opinion stated that timber revenue from wildlife management practices on lands bought under Wildlife Restoration or Sport Fish Restoration grants is program income instead of proceeds from the sale of real property.

(j) The Presidential memorandum of June 1, 1998, “Plain Language in Government Writing.” This memorandum requires the use of plain language in all proposed and final rulemaking documents published in the **Federal Register**.

### Updates to the Regulations

We have arranged the sections of the proposed rule into subparts of related subject matter. The gaps in section numbers between each subpart allow the addition of new sections in the future. We have summarized the changes in the proposed rule by section or by group of sections, and cross-referenced proposed section numbers to the corresponding numbers in the currently published version of 50 CFR 80, as amended by the final rule published in the **Federal Register** at 73 FR 43120 on July 24, 2008. We are referring to the 2008 version of 50 CFR 80 when we use the term “current” before a section number or before a reference to 50 CFR 80.

#### Subpart A—General

##### Section 80.1 What does this part do?

This proposed section does not have a corresponding section in the current regulations. It is a needed introduction to a part that covers subjects as diverse as (a) hunting and fishing license revenue, and (b) financial assistance under the three grant programs and four subprograms authorized by the Acts.

##### Section 80.2 What terms do I need to know?

This proposed section defines the following terms that are not in the corresponding “Definitions” section of the current § 80.1: Agency, angler, capital improvement, comprehensive management system grant, construction, diversion, grant, grantee, match, project-by-project grant, real property, sport fish, subaccount, useful life, and wildlife. We defined “agency” as the State fish and wildlife agency. We used this shorter form in headings and in most places in the text to make the

headings and text easier to read. However, not all readers will consult the definitions in § 80.2 before reading the sections that are of interest to them. To avoid any misunderstanding, we used the longer “State fish and wildlife agency” at the first opportunity in the text of each section and in places where clarity on this issue was especially important.

We defined “construction” to include land acquisition and the clearing and reshaping of land as types or phases of construction. This is consistent with OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, which treats land acquisition and development as construction for purposes of grantees’ submitting an assurance statement at the time of application.

We limited the definition of “wildlife” to birds and mammals, which have been the focus of this program since passage of the Pittman-Robertson Wildlife Restoration Act in 1937. The Act was amended in 2000 to include the Wildlife Conservation and Restoration program and accommodated this program by defining “wildlife” more broadly as “any species of wild free-ranging fauna including fish.” The more limited definition in the proposed section is a common element in all State definitions of “wildlife.” We add this more restrictive definition to 50 CFR 80 to clarify that the broader definition in the Act addresses the full scope of the Wildlife Conservation and Restoration program.

The proposed section deletes “common horsepower” because the term occurs only in the current § 80.24, “Recreational boating access facilities.” The proposed § 80.51(b)(1), which would replace the current § 80.24, in part, uses the definition of “common horsepower” instead of the term.

The proposed § 80.2 also deletes “resident angler” because it occurs only in the proposed § 80.66, so we defined the term in that proposed section. We deleted “Wildlife and Sport Fish Restoration Program funds” from the proposed § 80.2 because the proposed rule does not use the term.

#### *Subpart B—State Fish and Wildlife Agency Eligibility*

**Section 80.10** Who is eligible to receive the benefits of the Acts?

This proposed section restates the current § 80.2, “Eligibility,” and § 80.3, “Assent legislation.”

**Section 80.11** How does a State become ineligible to receive the benefits of the Acts?

This proposed section restates, in part, the current § 80.4, “Diversion of license fees.” It is consistent with the remedies for noncompliance at 43 CFR 12.83, “Enforcement.”

**Section 80.12** Does an agency have to confirm that it wants to receive an annual apportionment of funds?

This proposed section restates the current § 80.9, “Notice of desire to participate.” This requirement is based on a provision of the Pittman-Robertson Wildlife Restoration Act. The proposed section would no longer require States to notify the Service within 60 days of receiving a certificate of apportionment that it wants to participate in the benefits of the Acts. It would require a 60-day notice only in the unlikely event that the State does not want to receive the annual apportionment of funds.

#### *Subpart C—License Revenue*

**Section 80.20** What does revenue from hunting and fishing licenses include?

This proposed section clarifies that license revenue includes fees for access to (a) property acquired or constructed with license revenue, or (b) a recreational opportunity, product, or commodity derived from property acquired, managed, maintained, or produced with license revenue. The proposed section includes animal products among the examples of personal property. This would correct the listing of animal products among examples of real property in the current § 80.4, “Diversion of license fees.” We clarify that only mineral rights and standing timber are real property, but become personal property when the owner extracts the minerals or harvests the timber. The clarification on timber is based on a Dec. 5, 2000, Solicitor’s Opinion on Federal Aid Timber Sales. We also clarify in the proposed section that State property acquired or produced with license revenue could include intellectual property such as patents and copyrights.

**Section 80.21** What if a State diverts license revenue from the control of its fish and wildlife agency?

This proposed section restates the opening sentence of the current § 80.4, “Diversion of license fees,” and the current § 80.4(c) and (d).

**Section 80.22** What must a State do to resolve a declaration of diversion?

This proposed section corresponds to and expands on the current § 80.4(a)(3),

“Diversion of license fees,” and § 80.4(d). The proposed section mentions for the first time that an agency may receive the market rental rate of the diverted property during the period of diversion as an alternative to the actual income earned.

**Section 80.23** Does a declaration of diversion affect a previous Federal obligation of funds?

This proposed section restates the current § 80.4(e) “Diversion of license fees.”

#### *Subpart D—License Certification*

**Section 80.30** Why must an agency certify the number of paid license holders?

This proposed section restates and expands part of the first sentence of the current § 80.10(a), “State certification of licenses.”

**Section 80.31** How does an agency certify the number of paid license holders?

This proposed section restates the current § 80.10(a)(3), “State certification of licenses,” and expands on the current § 80.10(c). The proposed section would require for the first time that if a State uses statistical sampling to eliminate multiple counting of single individuals in the annual certification of the number of people who hold paid licenses, it must sample: (a) Every 5 years, or (b) when the State changes the structure of its licensing system in a way that could affect the number of people who hold paid licenses, whichever comes first.

**Section 80.32** What is the certification period?

This proposed section restates the current § 80.10(a)(1) and (2), “State certification of licenses.”

**Section 80.33** How does an agency decide who to count as paid license holders in the annual certification?

This proposed section restates the current § 80.10(b)(1)–(6), “State certification of licenses,” but we made several significant changes. We state clearly in the proposed § 80.33(a)(1) that an agency must count a person who has a paid license to hunt or fish even if that person is not required to have a paid license or is unable to hunt or fish. This reflects the view that any paid license holder meets the requirements of the Acts and that license fees support the State fish and wildlife agency even if the license holder does not engage in the activity. We added a requirement at the proposed § 80.33(a) that the State fish and wildlife agency may count a person who has a paid license only if

the issue of the license in the license holder's name is verifiable in State records.

In the proposed § 80.33(a)(4) and (b), we replaced "State" in the current § 80.10(b)(2) with "State fish and wildlife agency." This would allow a State to use general-revenue funds to offset lost revenues from hunting and fishing licenses issued free of charge to veterans and other categories of license holders. The State could then count the individuals holding these licenses as paid license holders for annual certification purposes under certain conditions. We propose this change based on a recommendation of a joint task force of Federal and State officials.

In the proposed § 80.33(a)(4), we changed the "period in which the license was purchased," which is the language of the current § 80.10(b)(3), to "period in which the license first becomes valid." This change would more accurately reflect the actual participation in a hunting or fishing season by counting those who buy a license before the opening of a season.

The current § 80.10(b)(4)(i), reads "The net revenue from the [multiyear] license is in close approximation with the number of years in which the license is legal." We changed this in the proposed section at § 80.33(b) to read, "The State fish and wildlife agency must receive net revenue from the multiyear license of at least \$1 for each year in which the license is valid." This change applies the same net revenue standard to multiyear licenses as applies to single-year licenses. We propose this change based on a recommendation of a joint task force of Federal and State officials.

We changed "legal" to "valid" in § 80.33(b) for the sake of consistency with § 80.33(a)(4). We added life-expectancy tables and mortality tables as potential techniques to determine if a lifetime-license holder remains a license holder in the proposed § 80.33(b)(2), which corresponds to the current § 80.10(b)(4)(ii).

**Section 80.34** May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?

This proposed section does not have a corresponding section in the current 50 CFR 80. It establishes the conditions under which the State fish and wildlife agency may count a license holder if the State uses general-revenue funds to offset lost revenues from hunting and fishing licenses issued free of charge to veterans or another category of license holder. This proposed section is linked

to language in the proposed § 80.33(a)(4) and (b), which we discuss above.

**Section 80.35** How does an agency calculate net revenue from a license?

This proposed section restates and expands on the current § 80.10(b)(2), "State certification of licenses," by adding examples of the costs of issuing licenses to include automated license-system costs and licensing-unit personnel costs.

**Section 80.36** What must an agency do if it becomes aware of errors in its data?

This proposed section does not have a corresponding section in the current regulations, but the current § 80.10(d), "State certification of licenses," indirectly acknowledges the possibility that an agency may submit incorrect certified data. This proposed section establishes a 90-day window for the State fish and wildlife agency to submit revised certified data after it becomes aware of errors in its data.

**Section 80.37** May the Service recalculate an apportionment if an agency submits revised data?

This proposed section restates and expands on the current § 80.10(d), "State certification of licenses." It explicitly states that the Service may recalculate an apportionment if it receives revised certified data on license holders before the Director approves the final apportionment.

**Section 80.38** May the Director correct a Service error in apportioning funds?

This proposed section restates the last sentence of the current § 80.10(d), "State certification of licenses."

#### *Subpart E—Eligible Activities*

**Section 80.50** What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

**Section 80.51** What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

These proposed sections restate and expand on the current § 80.5, "Eligible undertakings," § 80.15(f)(1), "Allowable costs," and § 80.24, "Recreational boating access facilities." They list comprehensively the eligible activities for each program and subprogram and use standard terms and parallel construction to describe these activities in greater detail. In part, the proposed § 80.51 responds to several recommendations that we received on the proposed rule to amend 50 CFR 80 that was published in the **Federal Register** at 73 FR 24523 on May 5, 2008. These recommendations stated that we

should explicitly list outreach and communications and aquatic resource education as eligible activities. The proposed § 80.51 does not include the following language of the current § 80.5(b)(2): "Additional funds resulting from expansion of the Sport Fish Restoration Program must be added to existing State fishery program funds available from traditional sources and not as a substitute therefor." This language became part of the regulations after enactment of a significant expansion of the sources of funding for the Dingell-Johnson Sport Fish Restoration Act about 25 years ago. We did not include it in the proposed rule because of its weak legislative authority and the difficulty of enforcing it.

**Section 80.52** What activities are ineligible for funding?

The proposed § 80.52(a) and (b) restate and broaden the scope of two ineligible activities in the current § 80.6, "Prohibited activities." The proposed § 80.52(c), "Activities conducted for the primary purpose of producing income," restates a similar prohibition at the current § 80.14(c), "Application of Wildlife and Sport Fish Restoration Program funds." The newly proposed ineligible activity at § 80.52(d) reads "activities, projects, or programs that promote or encourage opposition to regulated taking of fish, hunting, or the trapping of wildlife." This language is based on the intent of the drafters of the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, which amended the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. The Improvement Act applied similar language to the Multistate Conservation Grant program.

**Section 80.53** Are administrative costs for State central services eligible expenses?

This proposed section closely follows the language of the current § 80.15(e), "Allowable costs," but it does not include the unnecessary last sentence, which reads, "Each State has a State Wide Cost Allocation Plan that describes approved allocations of indirect costs to agencies and programs within the State."

**Section 80.54** May an agency receive a grant to carry out part of a larger project?

This proposed section does not have a corresponding section in the current regulations. It states conditions under which a grant may carry out part of a larger project. These conditions are based on advice from the Department of

the Interior's Office of the Solicitor. It is also consistent with the Department of the Interior Manual, 505 DM 2.18, "Procurement Contracts, Grants, and Cooperative Agreements," issued Jan. 9, 2008.

**Section 80.55** How does a proposed project qualify as substantial in character and design?

This proposed section corresponds to the current § 80.13, "Substantiality in character and design." The proposed section applies to both projects and comprehensive management systems as a result of the definition of "project" in the proposed § 80.2.

*Subpart F—Allocation of Funds by an Agency*

**Section 80.60** What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

This proposed section does not have a corresponding section in the current regulations. It clarifies for the first time in regulation the complex relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety subprogram, which was authorized by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000.

**Section 80.61** What requirements apply to funds for the Recreational Boating Access subprogram?

This proposed section corresponds, in part, with the current § 80.24, "Recreational boating access facilities." The proposed § 80.61(b) requires that Regional allocations average 15 percent over a 5-year period. Although this provision is not in the current § 80.24, the Dingell-Johnson Sport Fish Restoration Act requires it. The proposed § 80.61 also introduces a new requirement to ensure that Regional Offices will have information in time to ensure that the Regional allocation will average 15 percent over a 5-year period. It reads: "A State must apply to use these allocated funds by the end of the fourth consecutive Federal fiscal year after the Federal fiscal year in which the funds first became available for allocation." The current § 80.24 states, "Any portion of a State's 15-percent set aside for the above purposes that remain unexpended or unobligated after 5 years must revert to the Service for apportionment among the States." The proposed § 80.61(g) does not refer to an expenditure of grant funds as does the current § 80.24. It is unnecessary to include such a reference because: (a) a

Federal obligation must precede an agency's expenditure, or (b) the agency's expenditure may be the last step in completing a Federal obligation, thus occurring simultaneously with the obligation.

**Section 80.62** What limitations apply to spending on the Aquatic Resource Education and Outreach and Communications subprograms?

This proposed section corresponds in part to the current § 80.15(f), "Allowable Costs." The proposed section corrects the current section's incorrect reference to the two subprograms as a single "program."

**Section 80.63** Does an agency have to allocate costs in multipurpose projects and facilities?

**Section 80.64** How does an agency allocate costs in multipurpose projects and facilities?

The proposed § 80.63 and § 80.64 correspond to the current § 80.15(d), "Allowable costs." We added the following language in § 80.64, "The agency must describe the method used to allocate costs in multipurpose projects or facilities in the project statement included in the grant application."

**Section 80.65** Does an agency have to allocate funds between marine and freshwater fisheries projects?

This proposed section corresponds, in part, to the current § 80.23, "Allocation of funds between marine and freshwater fishery projects." The proposed section includes the new language, "The subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act do not have to allocate funding in the same manner as long as the State fish and wildlife agency equitably allocates Dingell-Johnson Sport Fish Restoration funds as a whole between marine and freshwater fisheries."

**Section 80.66** What requirements apply to the allocation of funds between marine and freshwater fisheries projects?

This proposed section corresponds, in part, to the current § 80.23, "Allocation of funds between marine and freshwater fishery projects." The proposed section defines a resident angler as "one who fishes for recreational purposes in the same State where he or she maintains legal residence." The current regulations include this term in the Definitions section, but the definition leaves out "for recreational purposes." The proposed section adds the following: "(c) \* \* \* Agencies must use the National Survey of Fishing, Hunting,

and Wildlife-associated Recreation or another statistically reliable survey or technique approved by the Director for this purpose. (d) If a State uses statistical sampling, it must sample at the earlier of the following: (1) Five years after the last statistical sample, or (2) The first certification period affected by any change in the licensing system that could affect the number of people who hold a paid license to fish." We did not include in the proposed § 80.66 this language from the current § 80.23 because it is unnecessary, "Ongoing marine project costs can be applied toward the State's saltwater allocation."

**Section 80.67** May an agency finance an activity from more than one annual apportionment?

**Section 80.68** What requirements apply to financing an activity from more than one annual apportionment?

The proposed § 80.67 and § 80.68 correspond to the current § 80.25, "Multiyear financing under the Dingell-Johnson Sport Fish Restoration program," but the proposed sections broaden the authorization of multiyear financing. They also extend the multiyear-financing option to projects under the Pittman-Robertson Wildlife Restoration Act. The proposed § 80.68(c) changes the current § 80.25 by allowing interest and other financing costs subject to restrictions in the Federal Cost Principles.

*Subpart G—Application for a Grant*

**Section 80.80** How does an agency apply for a grant?

**Section 80.81** What must an agency submit when applying for a comprehensive management system grant?

**Section 80.82** What must an agency submit when applying for a project-by-project grant?

These proposed sections correspond to the current and less comprehensive § 80.11, "Submission of proposals." The proposed sections include detailed information on the information that grantees must include in the application packages for comprehensive management system grants and project-by-project grants. This information is based on information in: (a) Service Manual Chapter 522 FW 4, "Comprehensive Management System Grant;" (b) OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, Section (c)(5); (c) the current 50 CFR 80.25(b)(3) on multiyear financing; and (d) Service Manual chapter 522 FW 19, "Program Income from Federal Assistance Grants."

Section 80.83 What is the Federal share of allowable costs?

This proposed section corresponds, in part, to the current § 80.12, “Cost sharing.” It changes the current regulations by authorizing the Regional Director to waive the 10-percent minimum Federal share of allowable costs if an agency requests a waiver and provides compelling reasons to justify it.

Section 80.84 How does the Service establish the non-Federal share of allowable costs?

This proposed section does not have a corresponding section in the current 50 CFR 80. It is based on the requirements of the Acts and 48 U.S.C. 1469a.

Section 80.85 What requirements apply to match?

The proposed §§ 80.85(a) and (b)(1) correspond in part to the current § 80.12, “Cost sharing.” The proposed § 80.85(b)(2) is new, but it is consistent with the Federal Cost Principles. The proposed § 80.85(c) is based upon Service policy issued in Service Manual chapter 522 FW 17, which in turn is based on a 2005 recommendation of a joint task force of Federal and State officials.

#### *Subpart H—General Grant Administration*

Section 80.90 What are the responsibilities of an agency?

This proposed section corresponds to and closely follows the language of the current § 80.18, “Responsibilities.”

Section 80.91 What is a Federal obligation of funds and how does it occur?

This proposed section does not have a corresponding section in the current regulations. We proposed this section for the following reasons:

(a) The nature of a Federal obligation is not defined in any regulations or policies of the Wildlife and Sport Fish Restoration program;

(b) Both State and Federal employees have at times expressed different understandings of what a Federal obligation is.

(c) Some of the confusion is due to a parallel and related process, in which grantees obligate funds available to them under a grant. These “grantee obligations” are discussed at 43 CFR 12.43 and 43 CFR 12.902 in the definitions of “obligations,” “unliquidated obligations,” and “unobligated balance.” We do not define or discuss grantee obligations.

(d) We use the term “obligation” or “obligate” in the proposed § 80.60, § 80.61, and § 80.92.

Section 80.92 How long are funds available for a Federal obligation?

This proposed section restates and corrects the current § 80.8, “Availability of funds,” which does not take into account the 1-year availability of funds under the Enhanced Hunter Education and Safety program or the 5-year availability of funds in the Recreational Boating Access subprogram.

Section 80.93 When may an agency incur costs under a grant?

This proposed section corresponds, in part, to the current § 80.15(c), “Allowable costs.” It leads to the subject of preagreement costs in the proposed § 80.94.

Section 80.94 May an agency incur costs before the effective date of the grant period?

This proposed section corresponds, in part, to the current § 80.15(c), “Allowable costs,” but describes the conditions under which the State fish and wildlife agency may incur preagreement costs. The proposed section is based on: (a) Service Manual Chapter 522 FW 16, “Preagreement Costs,” which is based on a 2004 recommendation of a joint task force of Federal and State officials, and (b) the Federal Cost Principles in OMB Circular A–87. The proposed section goes beyond 522 FW 16 by allowing the completion of a proposed project before the grant’s effective date as long as the grantee meets certain conditions.

Section 80.95 How does an agency receive Federal grant funds?

This proposed section corresponds to and expands on the current § 80.16, “Payments.” It states that under certain circumstances a grantee may receive an advance of funds. An advance of funds is authorized in 43 CFR 12.61, and the Acts do not prohibit it. The current § 80.16 also limits the means of requesting payment. The proposed section recognizes the nearly universal use of electronic payments by stating that State fish and wildlife agencies may request funds on a standard form only if it cannot use the electronic payment system.

Section 80.96 May an agency request funds in excess of the Federal share?

This proposed section expands on the current § 80.16, “Payments,” by clarifying that the grantee may request Federal grant funds for construction work in excess of the proportional

Federal share of the project taking into account all previous advances and reimbursements for the project. This proposed practice is consistent with the Acts.

Section 80.97 May an agency barter goods or services to carry out a grant-funded project?

Section 80.98 How must an agency report barter transactions?

The proposed § 80.97 and § 80.98 do not have corresponding sections in the current regulations. We added them because of audit findings in several States. The Office of the Inspector General also recommended that the Service address inconsistencies in Service Manual Chapter 522 FW 19 on program income and provide clear guidance on reporting barter transactions.

Section 80.99 Are symbols available to identify projects?

Section 80.100 Do agencies have to display the symbols in this part on completed projects?

The proposed § 80.99 and § 80.100 correspond to and closely follow the language of the current § 80.26, “Symbols.” The only significant change is in the proposed § 80.100, which allows Regional Directors to authorize certain uses of the symbols instead of or in addition to the Director of the U.S. Fish and Wildlife Service.

#### *Subpart 1—Program Income*

The proposed §§ 80.120 through 80.126 explain: (a) What program income is, (b) the conditions under which an agency may earn it, (c) how to calculate it, and (d) how to apply it to Federal and non-Federal outlays. Only the proposed § 80.121, “May an agency earn program income?”, has a corresponding section at the current § 80.14(c), “Application of Wildlife and Sport Fish Restoration Program funds.” The remaining sections in subpart I are based on Service Manual chapter 522 FW 19, “Program Income from Federal Assistance Grants.” This chapter incorporates recommendations of a joint task force of Federal and State officials in 2004 and 2007.

#### *Subpart J—Real Property*

Section 80.130 Does an agency have to hold title to real property acquired under a grant?

Section 80.131 Does an agency have to hold an easement acquired under a grant?

The proposed § 80.130 and § 80.131 do not have corresponding sections in

the current regulations. The Dingell-Johnson Sport Fish Restoration Act states: "Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State." The Pittman-Robertson Wildlife Restoration Act does not have a similar requirement. The Act uses the term "title," which applies to ownership or possessory interests, but not to easements or other nonownership or nonpossessory interests. The proposed section § 80.130 would require grantees under either Act to hold title to the ownership interest in real property acquired under a grant. The proposed § 80.130 would prohibit the State fish and wildlife agency from holding title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity. The proposed § 80.131 would require grantees under both Acts to hold easements acquired under a grant, but the proposed section would allow the grantee to share certain rights and responsibilities with another State agency or a subgrantee. The proposed § 80.130 and § 80.131 are based on input received from State agencies and a joint task force of Federal and State officials.

Section 80.132 Does an agency have to control the land or water where it completes capital improvements?

This proposed section requires the grantee to control lands or waters on which it makes capital improvements with funds apportioned under the Acts. The proposed section corresponds to and closely follows the language of the current § 80.20, "Land control." This language is only in the Dingell-Johnson Sport Fish Restoration Act, but the current regulations apply the requirement to funding under both Acts. The proposed section continues to apply it to funding under both Acts in the interest of having standard requirements for all funding under the Acts to the extent legally possible.

Section 80.133 Does an agency have to maintain acquired or completed capital improvements?

This proposed section corresponds to and is consistent with the language of the current § 80.17, "Maintenance."

Section 80.134 How must an agency use real property?

This proposed section is consistent with the language of the current § 80.14(b), "Application of Wildlife and Sport Fish Restoration Program funds," the current § 80.20, "Land control," and Service Manual chapters 522 FW 18,

"Useful Life," 522 FW 21, "Allowable Recreational Activities and Related Facilities on Federal Assistance Lands," and 522 FW 22, "Allowable Commercial Activities and Related Facilities on Federal Assistance Lands." These Service Manual chapters were based on recommendations of a joint task force of Federal and State officials.

Section 80.135 What if an agency allows a use of real property that interferes with the authorized purpose?

This proposed section corresponds to and closely follows the language of the current § 80.14(b), "Application of Wildlife and Sport Fish Restoration Program funds." It is also consistent with Service Manual Chapter 522 FW 20, "Loss of Control and Disposal of Real Property." This chapter is based on the recommendation of a joint task force of Federal and State officials.

Section 80.136 When is a use of real property that interferes with the authorized purpose considered a diversion?

This proposed section does not have a corresponding section in the current regulations, but it is based on the requirements of the current § 80.4, "Diversion of license fees."

Section 80.137 What if real property is no longer useful or needed for its original purpose?

This proposed section corresponds, in part, to the current § 80.14(b)(3), "Application of Wildlife and Sport Fish Restoration Program funds." One new element is that the director of an agency may propose another eligible purpose for real property no longer useful or needed for its original purpose. The director of the State fish and wildlife agency must ask the Service Regional Director to approve the proposed purpose. This section is based on a recommendation of a joint task force of Federal and State officials. It also follows, in large part, Service Manual chapter 522 FW 20, Loss of Control and Disposal of Real Property, which is based on a recommendation of a joint task force of Federal and State officials.

#### *Subpart K—Amendments and Appeals*

Section 80.150 How does an agency ask for an amendment of a grant?

This proposed section does not have a corresponding section in the current regulations, but it is consistent with the current § 80.11, "Submission of proposals," and Office of Management and Budget Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, Paragraph 1.c.(5)(e). It is also consistent with 43 CFR 12.70.

Section 80.151 May an agency appeal a decision?

This proposed section corresponds to the current § 80.7, "Appeals," but expands it by providing timelines for appeals. It also specifies that appeals to the Secretary are governed by 43 CFR 4, subpart G.

#### *Subpart L—Information Collection*

Section 80.160 What are the information-collection requirements of this part?

This proposed section corresponds to and expands on the current § 80.27, "Information collection requirements." The proposed section lists all information collection requirements in the proposed rule that are subject to the Paperwork Reduction Act. The Office of Management and Budget has approved all of these information collections and assigned them control numbers.

#### **Public Comments**

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### **Required Determinations**

##### *Clarity of This Regulation*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one

of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### **Regulatory Planning and Review (E.O. 12866)**

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under E.O. 12866. OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

#### **Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)**

The Regulatory Flexibility Act requires an agency to consider the impact of proposed rules on small entities, *i.e.*, small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a Regulatory Flexibility Analysis. This is not required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that the proposed changes do not have a significant impact and do not require a Regulatory Flexibility Analysis because the changes:

a. Give information to State fish and wildlife agencies that allows them to apply for and administer grants more easily, more efficiently, and with greater

flexibility. Only State fish and wildlife agencies may receive grants in the three programs affected by this regulation, but small entities sometimes voluntarily become subgrantees of agencies. Any impact on these subgrantees would be beneficial.

b. Address changes in law and regulation. This helps grant applicants and recipients by making the regulation consistent with current standards. Any impact on small entities that voluntarily become subgrantees of agencies would be beneficial.

c. Change three provisions on license certification adopted in a final rule published on July 24, 2008, based on subsequent experience. These changes would impact only agencies and not small entities.

d. Clarify additional issues in the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act. This would help agencies comply with statutory requirements and increase awareness of alternatives available under the law. Any impact on small entities that voluntarily become subgrantees of agencies would be beneficial.

e. Clarify that (1) cooperative farming or grazing arrangements and (2) sales receipts retained by concessionaires or contractors are not program income. This clarification allows States to expand projects with small businesses and farmers without making these cooperative arrangements or sales receipts subject to program income restrictions. This clarification would be potentially beneficial to the small entities that voluntarily become cooperative farmers, cooperative ranchers, and concessionaires.

f. Add information that allows States to enter into agreements with nonprofit organizations to share rights or responsibilities for easements acquired under grants for the mutual benefit of both parties. This addition would benefit the small entities that enter into these agreements voluntarily.

g. Rework and reorganize the regulation to make it easier to understand. Any impact on the small entities that voluntarily become subgrantees of agencies would be beneficial.

The Service has determined that the changes primarily impact State governments. The small entities affected by the changes are primarily concessionaires, cooperative farmers, cooperative ranchers, and subgrantees who voluntarily enter into mutually beneficial relationships with an agency. The impact on small entities would be very limited and beneficial in all cases.

Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a Regulatory Flexibility Analysis is not required.

In addition, this proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and would not have a significant impact on a substantial number of small entities because it does not:

a. Have an annual effect on the economy of \$100 million or more.

b. Cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 USC Ch.25; Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of a proposed rule with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. We have determined the following under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. As discussed in the determination for the Regulatory Flexibility Act, this proposed rule would not have a significant economic effect on a substantial number of small entities.

b. The regulation does not require a small government agency plan or any other requirement for expenditure of local funds.

c. The programs governed by the current regulations and enhanced by the proposed changes potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an agency.

d. The proposed rule clarifies and enhances the current regulations allowing State, local, and tribal governments, and the private sector to receive the benefits of grant funding in a more flexible, efficient, and effective manner. They may receive these benefits as a subgrantee of a State fish and wildlife agency, a cooperating farmer or rancher, a concessionaire, a



concurrent holder of a grant-acquired easement, or a holder of enforcement rights under an easement.

e. Any costs incurred by a State, local, and tribal government, or the private sector are voluntary. There are no mandated costs associated with the proposed rule.

f. The benefits of grant funding outweigh the costs. The Federal Government provides up to 75 percent of the cost of each grant to the 50 States in the three programs affected by the proposed rule. The Federal Government may also provide up to 100 percent of the cost of each grant to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. All 50 States and other eligible jurisdictions voluntarily apply for grants in these programs each year. This rate of participation is clear evidence that the benefits of grant funding outweigh the costs.

g. This proposed rule would not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

### Takings

This proposed rule would not have significant takings implications under E.O. 12630 because it would not have a provision for taking private property. Therefore, a takings implication assessment is not required.

### Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States’ ability to manage themselves or their funds. We work closely with the States in administration of these programs, and they helped us identify those sections of the current regulations in need of change and new issues in need of clarification through regulation. In drafting the proposed rule, we received comments from committees of the Association of Fish and Wildlife Agencies and from the Joint Federal/State Task Force on Federal Assistance Policy. The Director of the U.S. Fish and Wildlife Service and the President of the Association of Fish and Wildlife Agencies jointly chartered the Joint Federal/State Task Force on Federal Assistance Policy in 2002 to identify issues of national concern in the three grant programs affected by the proposed rule.

### Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed rule will benefit grantees because it:

(a) Updates the regulations to reflect changes in policy and practice during the past 25 years;

(b) Makes the regulations easier to use and understand by improving the organization and using plain language;

(c) Modifies three provisions in the final rule to amend 50 CFR 80 published in the **Federal Register** at 73 FR 43120 on July 24, 2008, based on subsequent experience; and

(d) Adopts two recommendations on new issues received from State fish and wildlife agencies in response to the proposed rule to amend 50 CFR 80 published in the **Federal Register** at 73 FR 24523 on May 5, 2008.

### Paperwork Reduction Act

We examined the proposed rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a current OMB control number. The proposed 50 CFR 80.160 describes seven information collections in the proposed rule. All of these collections request information from State fish and wildlife agencies, and all have current OMB control numbers.

OMB authorized and approved Governmentwide standard forms for three of the seven information collections. These three information collections are for the purposes of: (a) Application for a grant; (b) certifications related to authority, capability, and legal compliance; and (c) reporting on the use of Federal funds, match, and program income.

OMB approved three other information collections in the proposed rule under control number 1018–0109, but has not approved Governmentwide standard forms for these collections. The purposes of these information collections are to provide the Service with: (a) A project statement in support of a grant application, (b) a report on progress in completing a grant-funded project, and (c) a request to approve an update or another change in information provided in a previously approved application. OMB authorized these information collections in its Circular A–102.

The Acts and the current 50 CFR 80.10 authorize the seventh information collection. This collection allows the

Service to learn the number of people who have a paid license to hunt and the number of people who have a paid license to fish in each State during a State-specified certification year. The Service uses this information in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States. OMB approved this information collection on forms FWS 3–154a and 3–154b under control number 1018–0007. The proposed rule does not change the information required on forms FWS 3–154a and 3–154b. It merely establishes a common approach for States to assign license holders to a certification year.

### National Environmental Policy Act

We have analyzed this rule under the National Environmental Policy Act, 42 U.S.C. 432–437(f) and part 516 of the Departmental Manual. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes provided at 516 DM 2, Appendix 1, section 1.10.

### Government-to-Government Relationship With Tribes

We have evaluated potential effects on federally recognized Indian tribes under the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2. We have determined that there are no potential effects. This proposed rule would not interfere with the tribes’ ability to manage themselves or their funds.

### Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use and requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and would not affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

### List of Subjects in 50 CFR Part 80

Education, Fish, Fishing, Grants administration, Grant programs, Hunting, Natural resources, Real property acquisition, Recreation and recreation areas, Signs and symbols, Wildlife.

**Proposed Regulation Promulgation**

For the reasons discussed in the preamble, we propose to amend title 50 of the Code of Federal Regulations, chapter I, subchapter F, by revising part 80 to read as follows:

**PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS**

**Subpart A—General**

Sec.

80.1 What does this part do?

80.2 What terms do I need to know?

**Subpart B—State Fish and Wildlife Agency Eligibility**

80.10 Who is eligible to receive the benefits of the Acts?

80.11 How does a State become ineligible to receive the benefits of the Acts?

80.12 Does an agency have to confirm that it wants to receive an annual apportionment of funds?

**Subpart C—License Revenue**

80.20 What does revenue from hunting and fishing licenses include?

80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

80.22 What must a State do to resolve a declaration of diversion?

80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

**Subpart D—Licensee Certification**

80.30 Why must an agency certify the number of paid license holders?

80.31 How does an agency certify the number of paid license holders?

80.32 What is the certification period?

80.33 How does an agency decide who to count as paid license holders in the annual certification?

80.34 May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?

80.35 How does an agency calculate net revenue from a license?

80.36 What must an agency do if it discovers errors in its data?

80.37 May the Service recalculate an apportionment if an agency submits revised data?

80.38 May the Director correct a Service error in apportioning funds?

**Subpart E—Eligible Activities**

80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

80.52 What activities are ineligible for funding?

80.53 Are administrative costs for State central services eligible expenses?

80.54 May an agency receive a grant to carry out part of a larger project?

80.55 How does a proposed project qualify as substantial in character and design?

**Subpart F—Allocation of Funds by an Agency**

80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?

80.61 What requirements apply to funds for the Recreational Boating Access subprogram?

80.62 What limitations apply to spending on the Aquatic Resource Education and Outreach and Communications subprograms?

80.63 Does an agency have to allocate costs in multipurpose projects and facilities?

80.64 How does an agency allocate costs in multipurpose projects and facilities?

80.65 Does an agency have to allocate funds between marine and freshwater fisheries projects?

80.66 What requirements apply to allocation of funds between marine and freshwater fisheries projects?

80.67 May an agency finance an activity from more than one annual apportionment?

≤80.68 What requirements apply to financing an activity from more than one annual apportionment?

**Subpart G—Application for a Grant**

80.80 How does an agency apply for a grant?

80.81 What must an agency submit when applying for a comprehensive-management-system grant?

80.82 What must an agency submit when applying for a project-by-project grant?

80.83 What is the Federal share of allowable costs?

80.84 How does the Service establish the non-Federal share of allowable costs?

80.85 What requirements apply to match?

**Subpart H—General Grant Administration**

80.90 What are the responsibilities of an agency?

80.91 What is a Federal obligation of funds and how does it occur?

80.92 How long are funds available for a Federal obligation?

80.93 When may an agency incur costs under a grant?

80.94 May an agency incur costs before the effective date of the grant period?

80.95 How does an agency receive Federal grant funds?

80.96 May an agency request funds in excess of the Federal share?

80.97 May an agency barter goods or services to carry out a grant-funded project?

80.98 How must an agency report barter transactions?

80.99 Are symbols available to identify projects?

80.100 Do agencies have to display the symbols in this part on completed projects?

**Subpart I—Program Income**

80.120 What is program income?

80.121 May an agency earn program income?

80.122 May an agency deduct the costs of generating program income from gross income?

80.123 How may an agency use program income?

80.124 How may an agency use unexpended program income?

80.125 How must an agency treat income that it earns after the grant period?

80.126 How must an agency treat income earned by a subgrantee after the grant period?

**Subpart J—Real Property**

80.130 Does an agency have to hold title to real property acquired under a grant?

80.131 Does an agency have to hold an easement acquired under a grant?

80.132 Does an agency have to control the land or water where it completes capital improvements?

80.133 Does an agency have to maintain acquired or completed capital improvements?

80.134 How must an agency use real property?

80.135 What if an agency allows a use of real property that interferes with the authorized purpose?

80.136 When is a use of real property that interferes with the authorized purpose considered a diversion?

80.137 What if real property is no longer useful or needed for its original purpose?

**Subpart K—Amendments and Appeals**

80.150 How does an agency ask for an amendment of a grant?

80.151 May an agency appeal a decision?

**Subpart L—Information Collection**

80.160 What are the information collection requirements of this part?

**Authority:** 16 U.S.C. 669–669k; 16 U.S.C. 715 *et seq.*; 16 U.S.C. 777–777n, except 777e-1 and g-1; 18 U.S.C. 701; 26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504; 48 U.S.C. 1469a; E.O. 12372.

**Subpart A—General****§ 80.1 What does this part do?**

This part of the Code of Federal Regulations tells States how they may:

(a) Use revenues derived from State hunting and fishing licenses in compliance with the Acts.

(b) Receive annual apportionments from the Federal Aid to Wildlife Restoration Fund (16 U.S.C. 669(b)), if authorized, and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504).

(c) Receive financial assistance from the Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety grant program, if authorized.

(d) Receive financial assistance from the Sport Fish Restoration program, the Recreational Boating Access

subprogram, the Aquatic Resources Education subprogram, and the Outreach and Communications subprogram.

(e) Comply with the requirements of the Acts.

#### **§ 80.2 What terms do I need to know?**

The terms in this section pertain only to the regulations in this part.

*Acts* means the Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (16 U.S.C. 777–777n, except 777e–1 and g–1).

*Agency* means a State fish and wildlife agency.

*Angler* means a person who fishes for sport fish for recreational purposes as permitted by State law.

*Capital improvement* means an alteration, addition, or replacement that increases the value of real property by at least \$10,000. An agency may use its own definition of *capital improvement* if its definition includes all capital improvements as defined here.

*Comprehensive management system grant* means a grant that funds all or part of a State's comprehensive management system. This system:

(1) Assesses the current, projected, and desired status of fish and wildlife;

(2) Develops a strategic plan and carries it out through an operational planning process; and

(3) Evaluates results. The planning period is at least 5 years using a minimum 15-year projection of the desires and needs of the State's citizens.

*Construction* means the act of building or significantly renovating, altering, or repairing a structure. Acquiring, clearing, and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, roads, parking lots, utility lines, fences, piers, wells, pump stations, ditches, dams, dikes, water-control structures, fish-hatchery raceways, and shooting ranges.

*Director* means the Director of the U.S. Fish and Wildlife Service, or his or her designated representative, who is delegated authority by the Secretary to administer the Acts.

*Diversion* means any use of revenue from the license fees paid by hunters and anglers for a purpose other than administration of the State fish and wildlife agency.

*Grant* means an award of money, the principal purpose of which is to transfer funds or property from a Federal agency to a grantee to support or stimulate an authorized public purpose under the Acts. This part uses the term *grant* for

both a grant and a cooperative agreement for convenience of reference. This use does not affect the legal distinction between the two instruments. The meaning of *grant* in the terms *grant funds*, *grant-funded*, and *under the grant* includes the matching cash and any matching in-kind contributions in addition to the Federal award of money.

*Grantee* means the State fish and wildlife agency that applies for the grant and carries out grant-funded activities in programs authorized by the Acts. The State fish and wildlife agency acts on behalf of the State government, which is the legal entity and is accountable for the use of Federal funds, matching funds, and matching in-kind contributions.

*Match* means the value of any non-Federal in-kind contributions and the portion of the costs of a grant-funded project or projects not borne by the Federal government.

*Project* means one or more related undertakings in a project-by-project grant that are necessary to fulfill a need or needs, as defined by the State fish and wildlife agency, consistent with the purposes of the appropriate Act. For convenience of reference in this part, the meaning of *project* includes an agency's fish and wildlife program under a comprehensive management system grant.

*Project-by-project grant* means an award of money based on a detailed statement of a project or projects and other supporting documentation.

*Real property* means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water including anything above, below, or attached to it as a result of natural processes or human actions.

*Regional Director* means the person appointed by the Director to direct the Service's operations in one of its geographic Regions, or his or her designated representative. This person's responsibility does not extend to any administrative units that the Service's Washington Office supervises directly in that geographic Region.

*Secretary* means the person appointed by the President to direct the operation of the Department of the Interior, or his or her designated representative.

*Service* means the U.S. Fish and Wildlife Service.

*Sport fish* means aquatic, gill-breathing, vertebrate animals with paired fins, having material value for recreation in the marine and fresh waters of the United States.

*State* means any State of the United States, the Commonwealths of Puerto Rico and the Northern Mariana Islands,

and the territories of Guam, the U.S. Virgin Islands, and American Samoa. *State* also includes the District of Columbia for purposes of the Dingell-Johnson Sport Fish Restoration Act, the Sport Fish Restoration program, and its subprograms. *State* does not include the District of Columbia for purposes of the Pittman-Robertson Wildlife Restoration Act and the programs and subprogram under the Act because the Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District. References to "the 50 States" apply only to the 50 States of the United States and do not include the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, or the territories of Guam, the U.S. Virgin Islands, and American Samoa.

*State fish and wildlife agency* means the administrative unit designated by State law or regulation to carry out State laws for management of fish and wildlife resources. If an agency has other jurisdictional responsibilities, the agency is considered the State fish and wildlife agency only when exercising responsibilities specific to management of the State's fish and wildlife resources.

*Subaccount* means a group of similar activities that the Service tracks for purposes of financial accountability using a distinct numeric code for each group. These groups correspond with programs, subprograms, or a combination of subprograms.

*Useful life* means the period during which a federally funded capital improvement is capable of fulfilling its intended purpose with adequate routine maintenance.

*Wildlife* means the indigenous or naturalized species of birds or mammals that are either:

- (1) Wild and free-ranging;
- (2) Held in a captive breeding program established to reintroduce individuals of a depleted indigenous species into previously occupied range; or
- (3) Under the jurisdiction of a State fish and wildlife agency.

#### **Subpart B—State Fish and Wildlife Agency Eligibility**

##### **§ 80.10 Who is eligible to receive the benefits of the Acts?**

States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation that:

- (a) Assents to the provisions of the Acts;
- (b) Ensures the conservation of fish and wildlife; and
- (c) Requires that revenue from license fees paid by hunters and anglers be:

(1) Controlled only by the State fish and wildlife agency; and

(2) Used only for administration of the State fish and wildlife agency which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law.

**§ 80.11 How does a State become ineligible to receive the benefits of the Acts?**

(a) A State becomes ineligible to receive the benefits of the Acts if the Director finds that it:

(1) Does not pass legislation required at § 80.10 or passes legislation contrary to the Acts;

(2) Diverts revenue from license fees paid by hunters and anglers or from property acquired with this revenue from the control of the State fish and wildlife agency to purposes other than its administration; or

(b) A State may become ineligible to receive the benefits of the Acts if the Director finds that the State failed materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts.

**§ 80.12 Does an agency have to confirm that it wants to receive an annual apportionment of funds?**

No. However, if a State fish and wildlife agency does not want to receive the annual apportionment of funds, it must notify the Service in writing within 60 days of receiving a preliminary or final certificate of apportionment.

**Subpart C—License Revenue**

**§ 80.20 What does revenue from hunting and fishing licenses include?**

(a) Hunting and fishing license revenue includes:

(1) Proceeds that the State fish and wildlife agency receives from the sale of State-issued general or special hunting or fishing licenses, permits, stamps, tags, access and use fees, or other State charges to hunt or fish for recreational purposes;

(2) Real, personal, or intellectual property acquired with license revenue;

(3) Income from the sale, lease, or rental of, granting rights to, or a fee for access to property acquired or constructed with license revenue (*see* paragraph (b) of this section); or

(4) Income from the sale, lease, or rental of, granting rights to, or a fee for access to a recreational opportunity, product, or commodity derived from property acquired, managed, maintained, or produced with license

revenue (*see* paragraph (b) of this section);

(5) Interest, dividends, or other income earned on license revenue;

(6) Reimbursements for expenditures originally paid with license revenue; and

(7) Payments received for services funded by license revenue.

(b) Property referred to in paragraphs (a)(3) and (a)(4) of this section includes, but is not limited to:

(1) Real property, such as land owned in fee title, a leasehold interest, easements, mineral rights, standing timber, and structures;

(2) Personal property, such as vehicles, equipment, tools, supplies, annual crops, minerals extracted from the land, harvested timber, animal products, cash, and securities; and

(3) Intellectual property, such as patents and copyrights.

**§ 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?**

If a State violates the requirements of § 80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration, the Director may declare the State to be in diversion. The State is ineligible to receive benefits under the relevant Act from the date the Director signs the declaration of diversion until the State resolves the diversion.

**§ 80.22 What must a State do to resolve a declaration of diversion?**

The State must complete the actions in paragraphs (a) through (f) of this section to resolve a declaration of diversion. The State must use a source of funds other than license revenue to fund the replacement of license revenue.

(a) The State must enact adequate legislative prohibitions to prevent future diversions of license revenue.

(b) The State fish and wildlife agency must regain all diverted cash derived from license revenue and the interest lost up to the date of repayment, and it must enter into State records the receipt of this cash and interest.

(c) The agency must receive either the revenue earned from diverted property during the period of diversion or the current market rental rate of any diverted property, whichever is greater.

(d) The agency must take one of the following actions to resolve a diversion of real, personal, or intellectual property:

(1) Regain management control of the property, which must be in about the same condition as before diversion;

(2) Receive replacement property that meets the criteria in paragraph (f) of this section; or

(3) Receive a cash amount at least equal to the current market value of the diverted property only if the Regional Director agrees that the actions described in paragraphs (d)(1) and (d)(2) of this section are not possible.

(e) The agency must enter into State records the action taken, current market value, amount received, and fish and wildlife benefits if applicable.

(f) To be acceptable under paragraph (d)(2) of this section, replacement property must have both:

(1) Market value that at least equals the current market value of the diverted property, and

(2) Fish or wildlife benefits that at least equal those of the property diverted, as approved by the Regional Director.

**§ 80.23 Does a declaration of diversion affect a previous Federal obligation of funds?**

No. Federal funds obligated before the date that the Director declares a diversion remain available for expenditure without regard to the intervening period of the State's ineligibility. *See* § 80.91 for when a Federal obligation occurs.

**Subpart D—License Certification**

**§ 80.30 Why must an agency certify the number of paid license holders?**

A State fish and wildlife agency must certify the number of people having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

**§ 80.31 How does an agency certify the number of paid license holders?**

(a) A State fish and wildlife agency certifies the number of paid license holders by responding to the Director's annual request for the following data:

(1) The number of people who have paid licenses to hunt in the State during the State-specified certification period (certification period); and

(2) The number of people who have paid licenses to fish in the State during the certification period.

(b) The director of the agency must certify this information in the format that the Director specifies. The director of the agency must provide documentation to support the accuracy of this information at the Director's request.

(c) The director of the agency is responsible for eliminating multiple

counting of single individuals in the information that he or she certifies and may use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose. If a State uses statistical sampling, it must sample at the earlier of the following:

- (1) Five years after the last statistical sample; or
- (2) The first certification period affected by a change in the licensing system that could affect the number of

people who hold a paid license to hunt or a paid license to fish.

**§ 80.32 What is the certification period?**

- A certification period must:
- (a) Be 12 consecutive months;
  - (b) Correspond to the State's fiscal year or license year;
  - (c) Be consistent from year to year unless the Director approves a change; and
  - (d) End at least 1 year and no more than 2 years before the beginning of the Federal fiscal year in which the

apportioned funds first become available for expenditure.

**§ 80.33 How does an agency decide who to count as paid license holders in the annual certification?**

(a) An agency must follow the rules in the following table in deciding how to count paid license holders in the annual certification. For any license holder to be counted, the State fish and wildlife agency must be able to verify the license holder's name in State records.

Type of license holder	How to count each license holder
(1) A person who has either a paid license to hunt or a paid license to fish for sport or recreation even if the person is not required to have a paid license or is unable to hunt or fish.	Once.
(2) A person who has more than one paid license to hunt because the person either voluntarily obtained them or was required to have more than one license.	Once.
(3) A person who has more than one paid license to fish because the person either voluntarily obtained them or was required to have more than one license.	Once.
(4) A person who has a single-year license for which the State fish and wildlife agency receives at least \$1 of net revenue. (Single-year licenses are valid for any length of time less than 2 years.)	Once in the certification period in which the license first becomes valid.
(5) A person who has a multiyear license. (Multiyear licenses may be valid for either a specific or indeterminate number of years, but must be valid for at least 2 years.)	Once in each certification period in which the license is valid only if the license meets the requirements in paragraph (b) of this section.
(6) A person holding a paid combination license permitting both hunting and fishing.	Twice: Once as a person who has a paid hunting license, and once as a person who has a paid fishing license.
(7) A person who has a license that allows the license holder only to trap animals or only to engage in commercial activities.	Cannot be counted.

(b) For a multiyear license to be eligible under paragraph (a)(5) of this section, the State fish and wildlife agency must receive net revenue from the multiyear license of at least \$1 for each year in which the license is valid.

(1) The agency may compute net revenue from a multiyear license annually or at the time of sale. It must base the net revenue on either the:

- (i) Duration of the license, in the case of a multiyear license with a specified ending date; or
- (ii) Expected lifespan of the license holder, in the case of a lifetime license.

(2) The agency may use statistical sampling, life expectancy tables, mortality tables, or other techniques approved by the Director to decide how many multiyear-license holders remain alive in the certification period.

**§ 80.34 May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?**

If a State fish and wildlife agency receives funds from the State to cover fees normally charged for a category of licenses, the State may count those license holders in the annual certification only under the following conditions:

(a) The State funds must come from a source other than hunting- and fishing-license revenue;

(b) The State funds must equal or exceed the fees that the license holder would have paid for comparable hunting or fishing privileges;

(c) The agency must issue each license in the license holder's name;

(d) The agency must receive and account for the State funds as license revenue; and

(e) The license fees must meet all other requirements of this part.

**§ 80.35 How does an agency calculate net revenue from a license?**

The State fish and wildlife agency must calculate net revenue from a license by subtracting the per-license costs of issuing the license from the revenue generated by the license. Examples of costs of issuing licenses are: agents' or sellers' fees; automated license-system costs; licensing-unit personnel costs; and the costs of printing, distribution, and control.

**§ 80.36 What must an agency do if it becomes aware of errors in its data?**

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after it becomes aware of errors in its certified

data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

**§ 80.37 May the Service recalculate an apportionment if an agency submits revised data?**

If a State fish and wildlife agency submits revised certified data on paid license holders, the Service may take one of the following actions depending on the timing and effects of the revision:

(a) If an agency submits revised certified data on paid license holders before the Director approves the final apportionment under the Acts, the Service may recalculate the proposed apportionment.

(b) If an agency submits revised certified data on paid license holders after the Director approves the final apportionment, the Service may recalculate the apportionment only if it would not reduce apportioned funds to other State fish and wildlife agencies.

**§ 80.38 May the Director correct a Service error in apportioning funds?**

Yes. The Director may correct any error that the Service makes in apportioning funds.

## Subpart E—Eligible Activities

### § 80.50 What activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act?

The following activities are eligible for funding under the Pittman-Robertson Wildlife Restoration Act:

- (a) *Wildlife Restoration program.*
  - (1) Restore or manage wildlife.
  - (2) Conduct research on problems of wildlife management if necessary to administer wildlife resources efficiently.
  - (3) Select, restore, rehabilitate, or improve lands or waters as habitat for wildlife.
  - (4) Acquire real property suitable or capable of being made suitable for wildlife habitat or public access.
  - (5) Build structures or acquire equipment, goods, and services to:
    - (i) Restore, rehabilitate, or improve lands or waters as habitat for wildlife; or
    - (ii) Provide public access.
  - (6) Operate or maintain:
    - (i) Projects that the State fish and wildlife agency completed under the Pittman-Robertson Wildlife Restoration Act; or
    - (ii) Facilities that the agency acquired or constructed with funds other than those authorized under the Pittman-Robertson Wildlife Restoration Act if these facilities are necessary to carry out activities authorized by the Pittman-Robertson Wildlife Restoration Act.
  - (7) Manage wildlife areas and resources.
- (b) *Wildlife Restoration—Basic Hunter Education and Safety subprogram.*
  - (1) Teach the skills, knowledge, and attitudes necessary to be a responsible hunter.
  - (2) Construct, operate, or maintain firearm and archery ranges for public use.
- (c) *Enhanced Hunter Education and Safety program.*
  - (1) Enhance programs for hunter education, hunter development, and firearm and archery safety. Hunter-development programs introduce individuals to and recruit them to take part in hunting, bow hunting, target shooting, or archery.
  - (2) Enhance interstate coordination of hunter-education and firearm- and archery-range programs.
  - (3) Enhance programs for education, safety, or development of bow hunters and archers.
  - (4) Enhance construction and development of firearm and archery ranges.
  - (5) Update safety features of firearm and archery ranges.

### § 80.51 What activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act?

The following activities are eligible for funding under the Dingell-Johnson Sport Fish Restoration Act:

- (a) *Sport Fish Restoration program.*
  - (1) Restore or manage sport fish.
  - (2) Conduct research on fish management or culture if necessary to administer sport fish resources efficiently.
  - (3) Obtain data to guide and direct the regulation of fishing. These data may be on: the size and geographic range of sport fish populations; changes in sport fish populations due to fishing, other human activities, or natural causes; and the effects of any measures or regulations applied.
  - (4) Develop and adopt plans to restock sport fish and forage fish in the natural areas or districts covered by the plans; and obtain data to develop, carry out, and test the effectiveness of the plans.
  - (5) Select, restore, rehabilitate, or improve areas of land or water adaptable as habitat for sport fish or as a buffer to protect that habitat.
  - (6) Acquire real property suitable or capable of being made suitable for sport fish habitat or as a buffer to protect that habitat, or acquire real property for public access. Closures to sport fishing must be based on the recommendations of the State fish and wildlife agency for fish and wildlife management purposes.
  - (7) Build structures or acquire equipment, goods, and services to provide public access to or to restore, rehabilitate, or improve areas of water or land as habitat for sport fish.
  - (8) Construct, renovate, operate, or maintain pumpout and dump stations. A pumpout station is a facility that pumps or receives sewage from a type III marine sanitation device that the U.S. Coast Guard requires on some vessels. A dump station, also referred to as a “waste reception facility,” is specifically designed to receive waste from portable toilets on vessels.
  - (9) Operate or maintain:
    - (i) Projects that the State fish and wildlife agency completed under the Dingell-Johnson Sport Fish Restoration Act; or
    - (ii) Facilities that the agency acquired or constructed with funds other than those authorized by the Dingell-Johnson Sport Fish Restoration Act if these facilities are necessary to carry out activities authorized by the Act.
- (b) *Sport Fish Restoration—Recreational Boating Access subprogram.*
  - (1) Acquire land for new facilities, build new facilities, or acquire, renovate, or improve existing facilities

to create or improve public access to the waters of the United States or improve the suitability of these waters for recreational boating. A broad range of access facilities and associated amenities can qualify for funding, but the facilities must accommodate boats with any size of motor that is reasonable and legal for use on the applicable body of water. “Facilities” includes auxiliary structures necessary to ensure safe use of recreational boating access facilities.

(2) Conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(c) *Sport Fish Restoration—Aquatic Resource Education subprogram.*

Enhance the public’s understanding of water resources, aquatic life forms, and sport fishing, and develop responsible attitudes and ethics toward the aquatic environment.

(d) *Sport Fish Restoration—Outreach and Communications subprogram.*

(1) Improve communications with anglers, boaters, and the general public on sport fishing and boating opportunities.

(2) Increase participation in sport fishing and boating.

(3) Advance the adoption of sound fishing and boating practices including safety.

(4) Promote conservation and responsible use of the aquatic resources of the United States.

### § 80.52 What activities are ineligible for funding?

The activities below are ineligible for funding under the Acts, except when necessary to carry out project purposes approved by the Regional Director. Other activities may also be ineligible as a result of Federal laws, regulations, or policies.

- (a) Law enforcement activities.
- (b) Public relations activities to promote the State fish and wildlife agency, other State administrative units, or the State.
- (c) Activities conducted for the primary purpose of producing income.
- (d) Activities, projects, or programs that promote or encourage opposition to regulated taking of fish, hunting, or the trapping of wildlife.

### § 80.53 Are administrative costs for State central services eligible expenses?

Yes. Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency are eligible expenses under the Acts and must follow an approved cost allocation plan. These expenses must not exceed 3

percent of the funds apportioned annually to the State under the Acts.

**§ 80.54 May an agency receive a grant to carry out part of a larger project?**

Yes. A State fish and wildlife agency may receive a grant to carry out part of a larger project involving other organizations working toward the same goal, but using different sources of funding. The agency may receive this funding only if the grant-funded part of the larger project:

- (a) Results in an identifiable outcome that is consistent with the purposes of the grant program;
- (b) Is substantial in character and design;

(c) Meets the requirements of §§ 80.130 through 80.136 for any real property acquired under the grant and any capital improvements completed under the grant; and

(d) Meets all other requirements of the grant program.

**§ 80.55 How does a proposed project qualify as substantial in character and design?**

A proposed project qualifies as substantial in character and design if it:

- (a) Describes a need within the purposes of the Acts;
- (b) Has objectives to meet the need and has methods suitable to meet the objectives; and
- (c) Demonstrates the use of accepted principles of fish and wildlife

conservation and management, sound design, appropriate procedures, and the likelihood of benefits commensurate with project costs.

**Subpart F—Allocation of Funds by an Agency**

**§ 80.60 What is the relationship between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program?**

The relationship between the Basic Hunter Education and Safety subprogram (Basic Hunter Education) and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) is as follows:

	Basic Hunter Education funds	Enhanced Hunter Education funds
(a) Which activities are eligible for funding?	Those listed in § 80.50(b) .....	Those listed in § 80.50(c).
(b) How long are funds available for obligation?	Two Federal fiscal years .....	One Federal fiscal year.
(c) What if funds are not fully obligated during the period of availability?	The Service may use unobligated funds to carry out the Migratory Bird Conservation Act (16 U.S.C. 715 <i>et seq.</i> ).	The Service reapportions unobligated funds to eligible States for the following fiscal year. States are eligible to receive funds only if their Basic Hunter Education funds were fully obligated in the preceding fiscal year.
(d) What if funds are fully obligated during the period of availability?	If Basic Hunter Education funds are fully obligated, the agency may use that fiscal year's Enhanced Hunter Education funds for eligible activities related to basic hunter education, enhanced hunter education, or the Wildlife Restoration program.	No special provisions apply.

**§ 80.61 What requirements apply to funds for the Recreational Boating Access subprogram?**

The requirements of this section apply to allocating and obligating funds for the Recreational Boating Access subprogram.

(a) A State fish and wildlife agency must allocate funds from each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for use in the subprogram.

(b) Over each 5-year period, the total allocation for the subprogram in each of the Service's geographic regions must average at least 15 percent of the Sport Fish Restoration funds apportioned to the States in that Region. As long as this requirement is met, an individual State agency may allocate more or less than 15 percent of its annual apportionment in a single Federal fiscal year with the Regional Director's approval.

(c) The Regional Director calculates Regional-allocation averages for separate 5-year periods that coincide with Federal fiscal years 2008–2012, 2013–2017, 2018–2022, and each subsequent 5-year period.

(d) If the total Regional allocation for a 5-year period is less than 15 percent, the State agencies may, in a memorandum of understanding, agree

among themselves which of them will make the additional allocations to eliminate the Regional shortfall.

(e) This paragraph applies if State fish and wildlife agencies do not agree on which of them will make additional allocations to bring the average Regional allocation to at least 15 percent over a 5-year period. If the agencies do not agree:

(1) The Regional Director may require States in the Region to make changes needed to achieve the minimum 15-percent Regional average before the end of the fifth year; and

(2) The Regional Director must not require a State to increase or decrease its allocation if the State has allocated at least 15 percent over the 5-year period.

(f) An agency must apply to use these allocated funds by the end of the fourth consecutive Federal fiscal year after the Federal fiscal year in which the funds first became available for allocation.

(g) If the agency's application to use these funds has not led to a Federal obligation by that time, these allocated funds become available for reapportionment among the State fish and wildlife agencies for the following fiscal year.

**§ 80.62 What limitations apply to spending on the Aquatic Resource Education and Outreach and Communications subprograms?**

The limitations apply in this section to State fish and wildlife agency spending on the Aquatic Resource Education and Outreach and Communications subprograms.

(a) Each State's fish and wildlife agencies may spend a maximum of 15 percent of the annual amount apportioned to the State from the Sport Fish Restoration and Boating Trust Fund for activities in both subprograms. The 15-percent maximum applies to both subprograms as if they were one.

(b) The 15-percent maximum for the subprograms does not apply to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. These jurisdictions may spend more than 15 percent of their annual apportionments for both subprograms with the approval of the Regional Director.

**§ 80.63 Does an agency have to allocate costs in multipurpose projects and facilities?**

Yes. A State fish and wildlife agency must allocate costs in multipurpose projects and facilities. A grant-funded project or facility is multipurpose if it carries out the purposes of:

- (a) A single grant program under the Acts; and
- (b) Another grant program under the Acts, a grant program not under the Acts, or an activity unrelated to grants.

**§ 80.64 How does an agency allocate costs in multipurpose projects and facilities?**

A State fish and wildlife agency must allocate costs in multipurpose projects based on the uses or benefits for each purpose that will result from the completed project or facility. The agency must describe the method used to allocate costs in multipurpose projects or facilities in the project statement included in the grant application.

**§ 80.65 Does an agency have to allocate funds between marine and freshwater fisheries projects?**

Yes. Each coastal State's fish and wildlife agency must equitably allocate the funds apportioned under the Dingell-Johnson Sport Fish Restoration Act between projects having benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(a) The subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act do not have to allocate funding in the same manner as long as the State fish and wildlife agency equitably allocates Dingell-Johnson Sport Fish Restoration funds as a whole between marine and freshwater fisheries.

(b) The coastal States for purposes of this allocation are:

- (1) Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington;
- (2) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and
- (3) The territories of Guam, the U.S. Virgin Islands, and American Samoa.

**§ 80.66 What requirements apply to allocation of funds between marine and freshwater fisheries projects?**

The requirements of this section apply to allocation of funds between marine and freshwater fisheries projects.

(a) When a State fish and wildlife agency allocates and obligates funds it must meet the following requirements:

- (1) The ratio of marine projects to total funds must be identical to the ratio of resident marine anglers to the total number of resident anglers in the State; and
- (2) The ratio of freshwater fisheries projects to total funds must be identical to the ratio of resident freshwater anglers to the total number of resident anglers in the State.

(b) A resident angler is one who fishes for recreational purposes in the same State where he or she maintains legal residence.

(c) Agencies must use a statistically reliable method to determine the relative distribution of resident anglers in the State between those that fish in marine environments and those that fish in freshwater environments. Agencies must use the National Survey of Fishing, Hunting, and Wildlife-associated Recreation or another statistically reliable survey or technique approved by the Director for this purpose.

(d) If a State uses statistical sampling, it must sample at the earlier of the following:

- (1) Five years after the last statistical sample; or
- (2) The first certification period affected by any change in the licensing system that could affect the number of people who hold a paid license to fish.

(e) The amounts allocated from each year's apportionment do not necessarily have to result in an equitable allocation for each year. However, the amounts allocated over a variable period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects.

(f) Failure to allocate funds equitably between marine and freshwater fisheries projects may result in the agency becoming ineligible to use Sport Fish Restoration program funds until the agency demonstrates to the Director's satisfaction that it has allocated funds equitably.

**§ 80.67 May an agency finance an activity from more than one annual apportionment?**

Yes. A State fish and wildlife agency may use funds from more than one annual apportionment to finance high-cost projects, such as construction or acquisition of lands or interests in lands, including water rights. An agency may do this in either of the following ways:

- (a) Finance the entire cost of the acquisition or construction from a non-Federal funding source. The Service will reimburse funds to the agency in

succeeding apportionment years according to a scheduled reimbursement plan approved by the Regional Director and subject to the availability of funds.

(b) Negotiate an installment purchase or contract in which the agency pays periodic and specified amounts to the seller or contractor. The Service will reimburse or advance funds to the agency for each payment subject to the availability of funds.

**§ 80.68 What requirements apply to financing an activity from more than one annual apportionment?**

The following conditions apply to financing an activity from more than one annual apportionment:

(a) A State fish and wildlife agency must agree to complete the project even if Federal funds are not available. If an agency does not complete the project, it must recover any expended Federal funds that did not result in commensurate wildlife or sport fishery benefits. The agency must then reallocate the recovered funds to approved projects in the same program. Agencies do not have to recover expended Federal funds for incomplete projects if the inability to complete the project is beyond the control of the agency and the State government.

(b) The project statement included with the application must have a complete schedule of payments to complete the project.

(c) Interest and other financing costs may be allowable subject to the restrictions in the applicable Federal Cost Principles.

**Subpart G—Application for a Grant****§ 80.80 How does an agency apply for a grant?**

(a) An agency applies for a grant by sending the Regional Director:

(1) Completed standard forms approved by the Office of Management and Budget for the grant application process; and

(2) Information required for a comprehensive management system grant or a project-by-project grant.

(b) The director of the State fish and wildlife agency or his or her designee must sign all standard forms submitted in the application process.

(c) The agency must send copies of all standard forms and supporting information to the State Clearinghouse or Single Point of Contact before sending it to the Regional Director if the State maintains this process under Executive Order 12372, Intergovernmental Review of Federal Programs.



**§ 80.81 What must an agency submit when applying for a comprehensive-management-system grant?**

A State fish and wildlife agency must submit all of the documents required by this section to the Regional Director when applying for a comprehensive-management-system grant.

(a) The following standard application forms, available on the Federal Web site for electronic grant applications at [www.grants.gov](http://www.grants.gov):

(1) Application for Federal assistance; and

(2) Assurances for nonconstruction, or assurances for construction programs, or both if applicable. Agencies may submit these forms annually to the Service's Regional Divisions of Wildlife and Sport Fish Restoration for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(b) Supporting documentation explaining how the proposed work complies with the Acts, the provisions of this part, and other applicable laws and regulations.

(c) A statement of the agency's intent to carry out and fund part or all of its comprehensive management system through a grant.

(d) A description of the agency's comprehensive management system including inventory, strategic plan, operational plan, and evaluation. "Inventory" refers to the process or processes that an agency uses to:

(1) Determine actual, projected, and desired resource and asset status; and  
(2) Identify management problems, issues, needs, and opportunities.

(e) A description of the State fish and wildlife agency program covered by the comprehensive management system.

(f) Contact information for the State fish and wildlife agency employee who is directly responsible for the integrity and operation of the comprehensive management system.

(g) A description of how the public can take part in decision making for the comprehensive management system.

**§ 80.82 What must an agency submit when applying for a project-by-project grant?**

A State fish and wildlife agency must submit all of the documents required by this section to the Regional Director when applying for a project-by-project grant:

(a) Agencies must submit annually the following standard application forms for grant programs, available on the Federal Web site for electronic grant applications at [www.grants.gov](http://www.grants.gov):

(1) Application for Federal assistance; and

(2) Assurances for nonconstruction, or assurances for construction programs, or

both if applicable. Agencies may submit these forms annually to the Service's Regional Division of Wildlife and Sport Fish Restoration for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(b) A project statement that describes each proposed project and provides the following information:

(1) *Need*. Explain why the project is necessary and how it fulfills the purposes of the relevant Act.

(2) *Objectives*. Base the objectives on the need.

(3) *Results or benefits expected*.

(4) *Approach*. Describe the methods used to achieve the stated objectives. This information must demonstrate that the agency will use sound design, appropriate procedures, and accepted fish and wildlife conservation, management, or research principles.

(5) *Useful life*. Reference the method used to determine the useful life of a capital improvement with a value greater than \$100,000.

(6) *Geographic location*.

(7) *Principal investigator*. Record the principal investigator's name, work address, and work telephone number for research projects only.

(8) *Program income*. The agency must:

(i) Estimate the amount of program income that the project is likely to generate.  
(ii) Indicate the method or combination of methods (deduction, addition, or matching) of applying program income to Federal and non-Federal outlays.

(iii) Request the Regional Director's approval for the matching method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need for using program income as match.

(iv) Indicate whether the agency wants to treat program income that it earns after the grant period as license revenue or additional funding for purposes consistent with the grant or program.

(v) Indicate whether the agency wants to treat program income that the subgrantee earns as license revenue, additional funding for the purposes consistent with the grant or subprogram, or income subject only to the terms of the subgrant agreement.

(9) *Costs by project and subaccount*. Show how the project will yield benefits that address the need commensurate with estimated project costs.

(10) *Multipurpose projects*. Describe the method for allocating costs in multipurpose projects and facilities as described in §§ 80.63 and 80.64.

(11) *Relationship with other grants*. Describe the relationship between this project and other work funded by Federal grants that is planned, anticipated, or underway.

(12) *Timeline*. Describe significant milestones in completing the project and any accomplishments to date.

(13) *Multiyear projects*. Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments to fund construction or the acquisition of lands or interests in lands, including water rights.

(14) *General*. Demonstrate in the information described under paragraphs (b)(1) through (b)(13) of this section that the proposed activities are:

(i) Eligible for funding under the program;

(ii) Substantial in character and design; and

(iii) Comply with the Acts, this part, and other applicable laws and regulations.

**§ 80.83 What is the Federal share of allowable costs?**

(a) The Regional Director must provide at least 10 percent and no more than 75 percent of allowable costs incurred under a grant-funded project to the fish and wildlife agencies of the 50 States.

(1) An agency proposes the specific Federal share by estimating the Federal and match dollars on the application for Federal assistance.

(2) The Regional Director may waive the 10-percent minimum Federal share of allowable costs if an agency requests a waiver and provides compelling reasons to justify it.

(b) The Regional Director may provide funds to pay at least 75 percent and up to 100 percent of allowable costs incurred under a grant-funded project in the Sport Fish Restoration program to the District of Columbia's agency responsible for sport fishing. The Regional Director decides which percentage within the 75–100 percent range is fair, just, and equitable for the Federal share.

(c) The Regional Director may provide funds to pay at least 75 percent and up to 100 percent of allowable costs incurred for a grant-funded project to a fish and wildlife agency of the Commonwealths of Puerto Rico and the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. The Federal share may be affected by the waiver process described at § 80.84(c).

**§ 80.84 How does the Service establish the non-Federal share of allowable costs?**

(a) To establish the non-Federal share of a grant-funded project for the 50 States, the Regional Director approves an application for Federal assistance in which the State fish and wildlife agency proposes the specific non-Federal share by estimating the Federal and match dollars, consistent with § 80.83(a).

(b) To establish the non-Federal share of a grant-funded project for the District of Columbia and the Commonwealth of Puerto Rico, the Regional Director:

(1) Decides which percentage within the 75–100 percent range is fair, just, and equitable for the Federal share;

(2) Subtracts the Federal share percentage from 100 percent to determine the percentage of non-Federal share; and

(3) Applies the percentage of non-Federal share to the allowable costs of a grant-funded project to determine the match requirement.

(c) To establish the non-Federal share of a grant-funded project for the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa, the Regional Director must first calculate a preliminary percentage of non-Federal share in the same manner as described in paragraph (b) of this section. According to 48 U.S.C. 1469(a), the Regional Director must then waive the first \$200,000 of the preliminary match amount to establish the final non-Federal share for each project that includes funding from only one of the three grant programs under the Acts. If a project includes funding from two or all three grant programs under the Acts, the Regional Director must waive the first \$200,000 of the preliminary match amount in each of these programs.

**§ 80.85 What requirements apply to match?**

The requirements that apply to match include:

(a) Match may be in the form of cash or in-kind contributions.

(b) Unless authorized by Federal law, the State fish and wildlife agency or any other entity must not:

(1) Use Federal funds or the value of a third-party in-kind contribution acquired with Federal funds; or

(2) Use the cost or value of an in-kind contribution to satisfy a match requirement if the cost or value has been or will be used to satisfy a match requirement of another Federal grant, cooperative agreement, or contract.

(c) The agency must fulfill match requirements at the:

(1) Grant level if the grant has funds from a single subaccount; or

(2) Subaccount level if the grant has funds from more than one subaccount.

**Subpart H—General Grant Administration****§ 80.90 What are the responsibilities of an agency?**

A State fish and wildlife agency as a grantee is responsible for all of the actions required by this section.

(a) Supervision to ensure that the work follows the terms of the grant, including:

(1) Proper and effective use of funds;

(2) Maintenance of records;

(3) Submission of complete and accurate Federal financial reports and performance reports by the due dates in the terms and conditions of the grant; and

(4) Regular inspection and monitoring of work in progress.

(b) Selection and supervision of personnel to ensure that:

(1) Adequate and competent personnel are available to complete the grant-funded work on schedule; and

(2) Project personnel meet time schedules, accomplish the proposed work, meet objectives, and submit the required reports.

(c) Control of all assets acquired under the grant to ensure that they serve the purpose for which acquired throughout their useful life.

(d) Compliance with all applicable Federal, State, and local laws and regulations.

(e) Settlement of all procurement-related contractual and administrative issues.

**§ 80.91 What is a Federal obligation of funds and how does it occur?**

An obligation of funds is a legal liability to disburse funds immediately or at a later date as a result of a series of actions. All of these actions must occur to obligate funds for the formula-based grant programs authorized by the Acts:

(a) The Service sends an annual certificate of apportionment to a State fish and wildlife agency, which tells the agency how much funding is available according to formulas in the Acts.

(b) The agency sends the Regional Director an application for Federal assistance to use the funds available to it under the Acts and commits to provide the required match to carry out projects that are substantial in character and design.

(c) The Regional Director notifies the agency that he or she approves the application for Federal assistance and states the terms and conditions of the grant.

(d) The agency accepts the terms and conditions of the grant in one of the following ways:

(1) Starts work on the grant-funded project by placing an order, entering into a contract, awarding a subgrant, receiving goods or services, or otherwise incurring allowable costs during the grant period that will require payment immediately or in the future;

(2) Draws down funds for an allowable activity under the grant; or

(3) Sends the Regional Director a letter, fax, or e-mail accepting the terms and conditions of the grant.

**§ 80.92 How long are funds available for a Federal obligation?**

Funds are available for a Federal obligation during the fiscal year for which they are apportioned and until the close of the following fiscal year except for funds in the Enhanced Hunter Education and Safety program and the Recreational Boating Access subprogram. *See* §§ 80.60 and 80.61 for the length of time that funds are available in this program and subprogram.

**§ 80.93 When may an agency incur costs under a grant?**

A State fish and wildlife agency may incur costs under a grant from the effective date of the grant period to the end of the grant period except for preagreement costs that meet the conditions in § 80.94.

**§ 80.94 May an agency incur costs before the effective date of the grant period?**

(a) Yes. A State fish and wildlife agency may incur costs of a proposed project before the effective date of the grant period (preagreement costs). However, an agency has no assurance of reimbursement for preagreement costs until the Regional Director approves an award that incorporates a proposal demonstrating that the preagreement costs conform to all of the conditions in paragraph (b) of this section. The agency cannot receive reimbursement for these costs until after the effective date of the grant.

(b) Preagreement costs must meet the following requirements:

(1) The costs are necessary and reasonable for accomplishing the grant objectives;

(2) The Regional Director would have approved the costs if the State fish and wildlife agency incurred them during the grant period;

(3) The agency incurs these costs in anticipation of the grant and in conformity with the negotiation of the award with the Regional Director;

(4) The activities associated with the preagreement costs comply with all

laws, regulations, and policies applicable to a grant-funded project; and  
 (5) The agency does not complete the project before the grant's effective date, except when the agency can demonstrate to the Regional Director that doing so is necessary either to take advantage of temporary circumstances favorable to the project or to meet legal deadlines.

**§ 80.95 How does an agency receive Federal grant funds?**

(a) A State fish and wildlife agency may receive Federal grant funds through either:

- (1) A request for reimbursement; or
- (2) A request for an advance of funds if the agency maintains or demonstrates that it will maintain procedures to minimize time between transfer of funds and disbursement by the agency or its subgrantee.

(b) An agency must use the following procedures to receive a reimbursement or an advance of funds:

- (1) Request funds through an electronic payment system designated by the Regional Director; or
- (2) Request funds on a standard form for that purpose only if the agency is

unable to use the electronic payment system.

(c) The Regional Director will reimburse or advance funds only to the office or official designated by the agency and authorized by State law to receive public funds for the State.

(d) All payments are subject to final determination of allowability based on audit or a Service review. The State fish and wildlife agency must repay any overpayment as directed by the Regional Director.

(e) The Regional Director may withhold payments pending receipt of all required reports or documentation for the project.

**§ 80.96 May an agency request funds in excess of the Federal share?**

(a) A State fish and wildlife agency must not request Federal grant funds if the requested funds would exceed the Federal share of the total reimbursements and requested advances from the beginning of the grant period through the current request.

(b) An agency may request Federal grant funds for construction work, including land acquisition, even if the requested funds would temporarily

violate the prohibition in paragraph (a) of this section under the following conditions:

(1) The Regional Director and the director of the State fish and wildlife agency jointly decide that the request is appropriate; and

(2) The agency will pay its proportional share of the project's total allowable costs before it submits the final Federal financial report.

**§ 80.97 May an agency barter goods or services to carry out a grant-funded project?**

Yes. A State fish and wildlife agency may barter to carry out a grant-funded project. A barter transaction is the exchange of goods or services for other goods or services without the use of cash. Barter transactions are subject to the Cost Principles at 2 CFR part 220, 2 CFR part 225, and 2 CFR part 230.

**§ 80.98 How must an agency report barter transactions?**

(a) A State fish and wildlife agency must follow the requirements in the following table when reporting barter transactions in the Federal financial report.

If . . .	Then the agency . . .
(1) The goods or services exchanged have the same market value . . . . .	(i) Does not have to report bartered goods or services as program income or grant expenses in the Federal financial report; and (ii) Must disclose that barter transactions occurred and state what was bartered in the Remarks section of the report.
(2) The market value of the goods or services relinquished exceeds the market value of the goods and services received.	Must report the difference in market value as grant expenses in the Federal financial report.
(3) The market value of the goods or services received exceeds the market value of the goods and services relinquished.	Must report the difference in market value as program income in the Federal financial report.
(4) The barter transaction was part of a cooperative farming or grazing arrangement meeting the requirements in paragraph (b) of this section.	(i) Does not have to report bartered goods or services as program income or grant expenses in the Federal financial report; and (ii) Must disclose that barter transactions occurred and identify what was bartered in the Remarks section of the Federal financial report.

(b) For purposes of paragraph (a)(4) of this section, cooperative farming or grazing is an arrangement in which an agency:

- (1) Allows an agricultural producer to farm or graze livestock on land under the control of the agency; and
- (2) Designs the farming or grazing to advance the fish and wildlife management objectives of the agency.

**§ 80.99 Are symbols available to identify projects?**

Yes. The following distinctive symbols are available to identify projects funded by the Acts and products on which taxes and duties have been collected to support the Acts:

(a) The symbol of the Pittman-Robertson Wildlife Restoration Act is below.



(b) The symbol of the Dingell-Johnson Sport Fish Restoration Act is below.



(c) The symbol of the Acts when used in combination is below.



**§ 80.100 Do agencies have to display the symbols in this part on completed projects?**

No. State fish and wildlife agencies do not have to display the symbols in § 80.99 on projects completed under the Acts. However, the Service requests agencies to display the appropriate symbol following these requirements or guidelines:

(a) Agencies may display the appropriate symbol(s) on:

(1) Areas such as wildlife management areas, shooting ranges, and sportfishing and boating access facilities that were acquired, developed, operated, or maintained with funds authorized by the Acts; and

(2) Printed or Web-based material or other visual representations of project accomplishments.

(b) Agencies may require subgrantees to display the appropriate symbol or symbols in the places described in paragraph (a) of this section.

(c) The Director or Regional Director may authorize agencies to use the symbols in a manner other than as described in paragraph (a) of this section.

(d) The Director or Regional Director may authorize other persons, organizations, agencies, or governments to use the symbols for purposes related to the Acts by entering into a written agreement with the user. An applicant must state how it intends to use the symbol(s), to what it will attach the symbol(s), and the relationship to the specific Act.

(e) The user of the symbol(s) must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

(1) Any allegedly unauthorized use of any patent, process, idea, method or device by the user in connection with its use of the symbol(s), or any other alleged action of the user; and

(2) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the symbol(s).

(f) The appearance of the symbol(s) on projects or products indicates that the manufacturer of the product pays excise taxes in support of the respective Act(s), and that the project was funded under

the respective Act(s) (26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504). The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability, or safety of any product, service, or project associated with the symbol(s).

(g) No one may use any of the symbols in any other manner unless the Director or Regional Director authorizes it. Unauthorized use of the symbol(s) is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

**Subpart I—Program Income**

**§ 80.120 What is program income?**

(a) Program income is gross income received by the grantee or subgrantee and earned only as a result of the grant.

(b) Program income includes revenue from any of the following:

(1) Services performed under a grant;

(2) Use or rental of real or personal property acquired, constructed, or managed with grant funds;

(3) Payments by concessionaires or contractors under an arrangement with the agency or subgrantee to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds;

(4) Sale of items produced under a grant;

(5) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of a grant; and

(6) Sale of a product of mining, drilling, forestry, or agriculture on real property acquired or directly managed with grant funds.

(c) Program income does not include any of the following:

(1) License revenue collected by the agency for hunting or fishing, including fees for special-area access or recreation;

(2) Interest on grant funds, rebates, credits, discounts, or refunds;

(3) Sales receipts retained by concessionaires or contractors under an arrangement with the agency to provide a service in support of grant objectives on real property acquired, constructed, or managed with grant funds;

(4) Cash received by the agency or volunteer hunter education instructors to cover incidental costs of a hunter education class;

(5) Cooperative farming or grazing arrangements as described at § 80.98; or

(6) Proceeds from the sale of an interest in real property such as fee title, easement, mineral rights, gas and oil rights, water rights, or a leasehold interest for a lease with a term 10 years or longer.

**§ 80.121 May an agency earn program income?**

Yes. A State fish and wildlife agency may earn income from activities incidental to the grant purposes as long as producing income is not a primary purpose. The agency must account for income and interest received from these activities in the project records and dispose of it according to the terms of the grant.

**§ 80.122 May an agency deduct the costs of generating program income from gross income?**

(a) A State fish and wildlife agency may deduct its costs of generating program income from gross income when it calculates program income as long as the agency does not do any of the following:

(1) Pay these costs with Federal or matching cash under a grant or with any Federal cash unrelated to a grant;

(2) Cover these costs by using services or real or personal property received as matching in-kind contributions under a Federal grant; or

(3) Cover these costs by accepting volunteer services, donated services, or donations of real or personal property.

(b) The agency may deduct the following costs, but other costs may also qualify for deduction:

(1) Maintenance or operation of facilities that generate program income if a grant funded the construction or operation of the facility;

(2) Publication of a pamphlet or book for sale if a grant funded the writing of the book or pamphlet or the research that led to publication of the book or pamphlet; and

(3) Costs of harvesting timber on lands if a grant funded acquisition of the land, direct management of the land, planting the trees, or managing the forest.

**§ 80.123 How may an agency use program income?**

(a) A State fish and wildlife agency may choose any of the three methods listed in paragraph (b) of this section for applying program income to Federal and non-Federal outlays. The agency may also use a combination of these methods. The method or methods that the agency chooses will apply to the program income that it earns during the grant period and to the program income that any subgrantee earns during the grant period. The agency must indicate the method that it wants to use in the project statement that it submits with each application for Federal assistance.

(b) The three methods for applying program income to Federal and non-Federal outlays are shown in the following table:

Method	Requirements for using the method
(1) Deduction .....	(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs. (ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise. (iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.
(2) Addition .....	(i) The agency may add the program income to the Federal and matching funds under the grant.
(3) Matching .....	(ii) The agency must use the program income for the purposes of the grant and under the terms of the grant.
	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency must explain in the project statement the need for using program income as match, how it proposes to use the program income as match, and the expected results. (iii) The Regional Director may approve the use of the matching method if the requirements of paragraph (c) of this section are met.

(c) The Regional Director may approve the use of the matching method if the proposed use of the program income would:

(1) Be consistent with the intent of the applicable Act or Acts; and

(2) Result in at least one of the following:

(i) The agency substitutes program income for at least some of the match that it would otherwise have to provide, and then uses this saved match for other fish or wildlife-related projects;

(ii) The agency substitutes program income for at least some of the apportioned Federal funds, and then uses the saved Federal funds for additional eligible activities under the program; or

(iii) A net benefit to the program.

**§ 80.124 How may an agency use unexpended program income?**

If a State fish and wildlife agency has unexpended program income on its final Federal financial report, the agency may use the income under a subsequent grant. This subsequent grant must have purposes consistent with the grant that generated the program income.

**§ 80.125 How must an agency treat income that it earns after the grant period?**

(a) The State fish and wildlife agency must treat program income that it earns after the grant period as either:

(1) License revenue for the administration of the agency; or

(2) Additional funding for purposes consistent with the grant or the program.

(b) The agency must indicate its choice of one of the alternatives in paragraph (a) of this section in the project statement that the agency submits with each application for Federal assistance. If the agency does not record its choice in the project statement, the agency must treat the income earned after the grant period as license revenue.

**§ 80.126 How must an agency treat income earned by a subgrantee after the grant period?**

(a) The State fish and wildlife agency must treat income earned by a subgrantee after the grant period as:

(1) License revenue for the administration of the agency;

(2) Additional funding for purposes consistent with the grant or the program; or

(3) Income subject only to the terms of the subgrant agreement and any subsequent contractual agreements between the agency and the subgrantee.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that it submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subgrantee does not have to account for any income that it earns after the grant period unless required to do so in the subgrant agreement or in any subsequent contractual agreement.

**Subpart J—Real Property**

**§ 80.130 Does an agency have to hold title to real property acquired under a grant?**

Yes. A State fish and wildlife agency must hold title to an ownership interest in real property acquired under a grant to the extent possible under State law.

(a) If State law does not authorize the fish and wildlife agency to hold the title to real property, the State or one of its administrative units may hold the title if the agency has the authority to manage the real property for the purpose authorized under the grant. The agency, the State, or another administrative unit of State government must not hold title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity.

(b) An ownership interest is an interest in real property that gives the person who holds it the right to use and occupy a parcel of land or water and to exclude others. Fee simple and leasehold interests are ownership

interests. An easement is not an ownership interest. Another name for an ownership interest is a possessory interest.

**§ 80.131 Does an agency have to hold an easement acquired under a grant?**

Yes. A State fish and wildlife agency must hold an easement acquired under a grant, but it may share certain rights or responsibilities as described in paragraph (b) of this section if consistent with State law.

(a) Any sharing of rights or responsibilities does not diminish the agency's responsibility to manage the easement for its authorized purpose.

(b) The agency may share holding or enforcement of an easement only in the following situations:

(1) The State or another administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.

(2) The agency may subgrant the concurrent right to hold the easement to a nonprofit organization or to an agency of a local or tribal government.

(3) The agency may subgrant a right of enforcement to a nonprofit organization or to a local or tribal government. This right of enforcement may allow the subgrantee to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subgrantee's right of enforcement must not supersede and must be concurrent with the agency's right of enforcement.

**§ 80.132 Does an agency have to control the land or water where it completes capital improvements?**

Yes. A State fish and wildlife agency must control the land or water or both on which it completes capital improvements under a grant. An agency must exercise this control through fee title, lease, or another legally binding agreement. Control must be adequate for the protection, maintenance, and use of the improvement for its authorized purpose during its useful life.

**§ 80.133 Does an agency have to maintain acquired or completed capital improvements?**

Yes. The State fish and wildlife agency must maintain capital improvements acquired or completed under a grant to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

**§ 80.134 How must an agency use real property?**

The State fish and wildlife agency must use real property that is acquired, completed, operated, or maintained under a grant for the purpose authorized in the grant. This requirement applies to a capital improvement only during its useful life. The State agency may allow secondary uses of real property acquired, completed, operated, or maintained under a grant if the secondary uses do not interfere with its authorized purpose.

**§ 80.135 What if an agency allows a use of real property that interferes with the authorized purpose?**

(a) When a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its authorized purpose. If it cannot fully restore the real property to its authorized purpose under the grant, the agency must replace the real property using non-Federal funds. Replacement property must be of equal value at current market prices and must have fish, wildlife, and public-use benefits consistent with the purposes of the original grant.

(b) The State may have a reasonable time, up to 3 years from the date of notification by the Regional Director, to restore the real property to its authorized purpose or acquire replacement property. If the State does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the State becomes ineligible to receive new grants in the program or programs that funded the original acquisition.

**§ 80.136 When is a use of real property that interferes with the authorized purpose considered a diversion?**

If the State fish and wildlife agency allows a use of grant-funded real property that interferes with the real property's purpose as authorized under a grant, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as match for the grant; and

(b) The interfering use has purposes other than management of the fish- and

wildlife-related resources for which the agency has authority under State law.

**§ 80.137 What if real property is no longer useful or needed for its original purpose?**

If the director of the State fish and wildlife agency and the Regional Director jointly decide that grant-funded real property is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Request disposition instructions for the real property.

**Subpart K—Amendments and Appeals**

**§ 80.150 How does an agency ask for an amendment of a grant?**

(a) A State fish and wildlife agency must ask for an amendment of a grant by sending the Service the following documents:

(1) The standard form approved by the Office of Management and Budget as an application for Federal assistance. The agency may use this form to update or request a change in the information that it submitted in an approved application. The director of the agency or his or her designee must sign this form.

(2) A statement attached to the application for Federal assistance that explains:

(i) How the requested amendment would affect the information that the agency submitted with the original grant application; and

(ii) Why the requested amendment is necessary.

(b) An agency must send any amendments of scope to the State Clearinghouse or Single Point of Contact if the State maintains this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

**§ 80.151 May an agency appeal a decision?**

An agency may appeal the Director's or Regional Director's decision on any matter subject to this part.

(a) The State fish and wildlife agency must send the appeal to the Director within 30 days of the date that the Director or Regional Director mails or otherwise informs an agency of a decision.

(b) The agency may appeal the Director's decision under paragraph (a) of this section to the Secretary within 30 days of the date that the Director mailed the decision. An appeal to the Secretary must follow procedures in title 43, part

4, subpart G, of the Code of Federal Regulations, "Special Rules Applicable to Other Appeals and Hearings."

**Subpart L—Information Collection**

**§ 80.160 What are the information collection requirements of this part?**

(a) This part requires each State fish and wildlife agency to provide the following information to the Service. The State agency must:

(1) Certify the number of people who have paid licenses to hunt and the number of people who have paid licenses to fish in a State during the State-specified certification period (OMB control number 1018-0007).

(2) Provide information for a grant application on a Government-wide standard form (OMB control number 4040-0002).

(3) Certify on a Government-wide standard form that it:

(i) Has the authority to apply for the grant;

(ii) Has the capability to complete the project; and

(iii) Will comply with the laws, regulations, and policies applicable to construction projects, nonconstruction projects, or both (OMB control numbers 4040-0007 and 4040-0009).

(4) Provide a project statement that describes the need, objectives, results expected, approach, location, explanation of costs, and other information that demonstrates that the project is eligible under the Acts and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB control number 1018-0109).

(5) Change or update information provided to the Service in a previously approved application (OMB control number 1018-0109).

(6) Report on a Government-wide standard form on the status of Federal grant funds and any program income earned (OMB control number 0348-0061).

(7) Report as a grantee on progress in completing the grant-funded project (OMB control number 1018-0109).

(b) The authorizations for information collection under this part are in the Acts and in 43 CFR part 12, subpart C, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: March 23, 2010.

**Will Shafroth,**

*Assistant Secretary for Fish and Wildlife and  
Parks.*

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