

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves promulgating the operating regulations for a drawbridge. It is categorically excluded from further review under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using [http://](http://www.regulations.gov)

www.regulations.gov, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.911(d) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(d) *SR 171/700 (Wappoo Cut) Bridge across Wappoo Creek, mile 470.8, at Charleston, SC.* The draw shall open on signal; except that the draw need not open from 6 a.m. to 9:29 a.m. and 3:31 p.m. to 7 p.m., Monday through Friday, except Federal holidays. Between 9:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays, the draw need open only once an hour on the half hour.

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Dated: December 11, 2017.

Peter J. Brown,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2017–26999 Filed 12–14–17; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[Docket No. FWS–HQ–WSR–2017–0002; 91400–5110–POLI–7B; 91400–9410–POLI–7B]

RIN 1018–BA33

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 (Service), are proposing to update regulations for the Pittman-Robertson Wildlife Restoration and the Dingell-Johnson Sport Fish Restoration programs and subprograms, based on comments we received during the last rulemaking that were never resolved, existing guidance that we intend to move to regulation, and updates requested by States to improve the processes under license certification. We believe these changes will clarify and simplify the regulations and help ensure consistency in administering the programs across the Nation.

DATES: We will accept comments received or postmarked on or before February 13, 2018.

ADDRESSES: *Comment submission:* You may submit comments, identified by docket number FWS–HQ–WSR–2017–0002, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to docket number FWS–HQ–WSR–2017–0002.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–WSR–2017–0002; U.S. Fish and Wildlife Service; Division of Policy, Performance, and Management Programs; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

- *Hand Delivery/Courier:* U.S. Fish and Wildlife Service; Division of Policy, Performance, and Management Programs; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. We will post all comments received without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and other information on the

rulemaking process, see the “Public Comments” heading below in **SUPPLEMENTARY INFORMATION**.

Background information: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and search for docket number FWS-HQ-WSR-2017-0002.

FOR FURTHER INFORMATION CONTACT: Lisa Van Alstyne, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-1942.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service’s (Service) Wildlife and Sport Fish Restoration Program (WSFR) annually apportion to States more than \$1 billion for programs and subprograms under the Pittman-Robertson Wildlife Restoration Act (50 Stat. 917, as amended; 16 U.S.C. 669-669k), and the Dingell-Johnson Sport Fish Restoration Act (64 Stat. 430, as amended; 16 U.S.C. 777-777n, except 777e-1 and g-1) (Acts). We are proposing to update the regulations at title 50 part 80 of the Code of Federal Regulations (CFR), which is “Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety.” We published the last revision of these regulations in 2011. In conducting the rulemaking process for the 2011 rule, we received comments from the proposed rule that we did not resolve in the final rule. Since the 2011 update to the regulations, we have also worked with States and other partners to identify information from Service Manual chapters, Memoranda, Director’s Orders, interim guidance, and other guidance that we intend to include, as appropriate, in regulation.

This proposed rule is the first of several rulemaking documents that we will publish over an extended period, based on a phased plan developed by a team of Federal and State representatives. The phased-approach will allow us to make changes and address topics while giving States and the public additional opportunities for review and comment. 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 territories of Guam, the U.S. Virgin Islands, and American Samoa; and the District of Columbia (DC). We use “State” or “States” in this document to refer to any or all of these jurisdictions, except that the District of Columbia receives funds only under the Dingell-Johnson Sport Fish Restoration Act. The Pittman-Robertson Wildlife Restoration Act does not authorize funding for the District of Columbia. The term “the 50 States” applies only to the 50 States of the United States.

The Acts established a hunting- and angling-based user-pay and public-benefit system in which the State fish and wildlife agencies receive formula-based funding from a continuing appropriation. Industry partners pay excise taxes on equipment and gear manufactured for purchase by hunters, anglers, boaters, archers, and recreational shooters. The Service apportions funds to the State fish and wildlife agencies, and the agencies contribute matching funds. These regulations tell States how they may receive annual apportionments from the Wildlife Restoration Account (16 U.S.C. 669(b)) and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504), how they may use hunting and fishing license fees, and what requirements States must follow when participating in the programs under the Acts. We also address the State component of the Outreach and Communications subprogram. The programs and subprograms under the Acts give financial assistance to State fish and wildlife agencies to restore or manage wildlife and sport fish; offer hunter-education, hunter-development, hunter-recruitment, and hunter-safety programs; develop and increase recreational boating access; enhance the public’s understanding of water resources, aquatic-life forms, and sport fishing; and develop responsible attitudes and ethics toward aquatic and related environments.

The Catalog of Federal Domestic Assistance at <http://www.cfda.gov> describes these programs under 15.605, 15.611, and 15.626.

Phased Approach to Rulemaking

We published a proposed revision to the regulations at 50 CFR part 80 on June 10, 2010 (75 FR 32877). We published the final rule on August 1, 2011 (76 FR 46150). In 2015, we shared with our State partners a list of topics that we generated from unresolved comments on that prior rulemaking and other non-regulatory guidance. From June through September 2015, we hosted 12 webinars that were open to States, Service Regions, and other interested parties. Each webinar addressed a few topics from the list and gave participants an opportunity to learn more about the reasons the topics are of concern, offer opinions on approaches we have considered, and share their knowledge and experiences. WSFR used information gathered from these webinars to help guide development of a draft proposed rule. In November 2015, we posted the draft proposed rule for informal comments prior to official rulemaking. States informed us that the volume of changes and the level of complexity of many of the topics made it difficult for them to review and respond effectively. At a meeting in April 2016, WSFR proposed to the Association of Fish & Wildlife Agencies (AFWA), the Joint Federal/State Task Force for Financial Assistance Policy, and the Federal Aid Coordinators Working Group a cooperative approach to scheduling rulemaking, which led to forming a Federal/State 50 CFR part 80 Schedule Development Team.

The result of this effort is a plan to make changes to 50 CFR part 80 through four separate rulemakings. Each round of rulemaking will make changes to the rule to address concerns that have already been vetted and resolved and will now be included in regulation, as well as a few complex topics. This approach will distribute the workload in multiple ways, allowing for more focused involvement and well-developed comments. You may find further information on the schedule and topics at <https://fawiki.fws.gov/display/5C8SDT>. The proposed schedule is:

Round	Year 1												Year 2						
	1*	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	
1	PR				FR														
2			PR					FR											
3									PR					FR					

Round	Year 1												Year 2						
	1*	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	
4												PR							FR

PR means proposed rule; FR means final rule.

*“1” indicates the month the proposed rule publishes, not necessarily January. The pattern will follow as closely as possible, considering sufficient time for States to comment and the Service to respond, while ensuring no overlap in rulemakings.

Topics Under Consideration as Part of Phased Rulemaking

In addition to the specific amendments that we are proposing elsewhere in this document, we are also requesting comments and information on some topics identified as being more complex or having the potential to elicit a wide range of opinion or approaches that could impact the proposed rules we issue later in this phased rulemaking process. The Service is asking you to respond to the questions we ask or suggestions we make. This will help us to understand how your State addresses the associated issues and how we can make changes that will improve the ability of fish and wildlife agencies to implement successful projects. We ask you to tell us if you support a suggested change or approach, as well as comment on suggested changes or approaches you do not support. When responding, we ask you to give the reasoning behind your comments to help us better understand your position. When your comments include a legal reference, please specifically cite the legal document. We recommend you use citation formats in *Association of Legal Writing Directors (ALWD) Guide to Legal Citation* or *Bluebook: A Uniform System of Citation* as your guide. If possible, please give a location where we may access the document electronically.

The terms *you*, *your*, and *I* refer to a State fish and wildlife agency that applies for or receives a grant under the Acts, their subgrantees, or interested members of the public who comment. The terms *we*, *us*, and *our* refer to the Service or the Service’s Wildlife and Sport Fish Restoration Program (WSFR).

Our focus audience for these topics consists of the State fish and wildlife agencies who receive funding under the Wildlife Restoration and Sport Fish Restoration Act (Acts) and those interested in the activities of these agencies. We offer definitions and approaches to address a certain topic as a starting point to allow you to know what we are considering and to respond. We ask you to (1) tell us if you agree with an approach, (2) suggest alternatives, (3) advise us of potential obstacles or concerns, (4) give examples of scenarios that would help inform us, and (5) offer your knowledge and

experience to assist us in understanding how our rulemaking can best support wildlife management goals and objectives.

We have posted pertinent information about these topics and the development of 50 CFR part 80 at <https://fawiki.fws.gov/display/5C8SDT/50+CFR+80+Update>. This website includes copies of documents that we reference and information about scheduled webinars. These topics are open for discussion and you may contact the WSFR Policy Branch (Lisa_Van_Alstyne@fws.gov) or other WSFR staff with whom you work prior to or after making comments. You may view other comments at www.regulations.gov by searching for docket number FWS–HQ–WSR–2017–0002.

Definitions

Wildlife

A definition for “wildlife” is not in the Act and was not in the regulations until 1960, at which time the term was simply defined as “wild birds and wild mammals.” The definition did not appear in the 2008 final rule (73 FR 43120, July 24, 2008), but the Service reintroduced the term with a new definition in the 2010 proposed rule (75 FR 32877, June 10, 2010), and the term was codified by the 2011 final rule (76 FR 46150, August 1, 2011). The definition of “wildlife” set forth in 2011 remains the definition in 50 CFR 80.2 today.

We received many comments on our proposed rule to revise 50 CFR part 80 in 2010 (75 FR 32877, June 10, 2010). Among those comments were some from States that sell licenses to hunt or fish species that did not meet the definition of wildlife. These comments suggested that we consider adjusting the definition to allow State fish and wildlife agencies to use funds under the Acts for managing these other species. We did not make changes to the proposed definition in the 2011 final rule, as we wanted to gather comments from all State fish and wildlife agencies as to whether we should consider expanding the definition to include other species.

We ask you to consider a possible alternative to the current definition at 50 CFR 80.2 that would include other species for which a State fish and

wildlife agency sells a license to hunt. We ask your response to these questions:

1. Should we expand the definition of “wildlife” to include other species for which a State fish and wildlife agency sells a license to hunt? This would include any indigenous or naturalized species other than birds or mammals that meet the existing criteria and for which a State issues a license for the legal taking of the species.

2. If this option is acceptable, should we consider including a requirement that the hunting of the species does not interfere with or oppose the legal hunting of birds and mammals already in the definition?

3. If this option is acceptable, should we consider including the requirement that the State Director approve the inclusion of that species as meeting the definition of “wildlife” for that State? Should the Service Director approve?

4. If we should expand the definition, do you have comments on the suggested new definition?

5. Are there advantages or concerns we should consider?

Law Enforcement

We received a comment during the 2011 rulemaking asking that we define “law enforcement.” Law enforcement is an ineligible activity under the Acts and the current regulations. States have told us that law enforcement officers sometimes conduct activities that do not involve enforcing laws and that are beneficial to the State fish and wildlife agency for fish and wildlife management. Agencies may interpret the current regulations to mean that any activities done by law enforcement personnel are not eligible. Without a definition for law enforcement, agencies do not have clear, consistent direction.

We request your comments on how to define law enforcement and if any activities conducted by law enforcement personnel may be eligible using funds under the Acts. Please note that license revenue may be used for any activities that support the administration of the State fish and wildlife agency as described at 50 CFR 80.10(c), which could include some law enforcement activities. WSFR proposed the following definition for informal comment in

2015, and we offer it in this document for further comment and development. We ask you to comment on whether you think this definition is sufficient to guide States and WSFR regarding eligible and ineligible activities, and if the proposed definition is lacking, please describe what additional considerations you recommend.

Law enforcement means the act of developing regulations, issuing punitive citations or tickets for infractions of the law, or assisting with inspections and other enforcement activities that have the potential to result in the issuance of penalties.

Comprehensive Management System

State fish and wildlife agencies may use one of two methods of operation for managing financial assistance. One method is project-by-project grants, and the other is the Comprehensive Management System (CMS). Currently, five States utilize the CMS method, leaving the majority using the project-by-project method. A CMS grant is not the same as a “block grant,” and Federal compliance requirements apply to eligible projects. States using a comprehensive plan link programs, financial systems, human resources, goals, products, and services in developing a strategic plan and carrying it out through an operational planning process. The process must allow an opportunity for public participation, clearly define projects to the level where grant managers can evaluate for compliance, and include approaches for evaluating results. The plan also assesses the current, projected, and desired status of fish and wildlife.

We intend to define a comprehensive management plan and specify that the planning period must be at least 5 years and use a minimum 15-year projection of the desires and needs of the State’s citizens. We would emphasize requirements for public participation in developing the plan. We would describe that a CMS grant funds all or part of your plan, you receive one grant at the beginning of the grant period, and the grant period consists of segments funded by annual apportionments. We would describe compliance requirements. Some compliance requirements may be completed when the plan is approved, but discrete projects in the plan, changing conditions or considerations, and other factors would require additional compliance prior to projects being initiated. We would describe situations that would require additional compliance actions. Plans will include projects using funding under the Acts and projects using other sources of

funding. Service staff often must conduct extensive compliance for projects that have limited funding under the Acts, so we are considering a funding threshold under which States or other Federal entities will be responsible for compliance.

We request your comments on whether we need to give more detail on the level of public participation required, type of notification to citizens, level of budget detail, compliance, and reporting.

Loss of Control/Diversion

We often receive questions from States as to what the Service means when we use the term “control” in 50 CFR part 80. We use the term “control” in conjunction with funding under the Acts, license revenues, real and personal property, third-party agreements, and more. States ask us to define the parameters for what constitutes a loss of control and what actions would lead to a diversion of license revenue or grant funds. States also ask us about control of real property when certain real property rights are held by other entities. We address *Loss of Control and Disposal of Real Property* in our Service manual at 522 FW 20, but this information is limited. Our Regional offices routinely respond to issues involving loss of control and diversion of funds under the Acts, which leads us to consider the need for clear information on *control* and *diversion*.

We understand that this topic is complicated and that each State has a different perception of the needs, limits, and use of control under the Acts, and the meaning of control when certain situations present themselves. We intend to address this subject in a future proposed rule and ask State fish and wildlife agencies to comment on how this issue has affected your agency, what challenges you have encountered, and what concerns you wish us to address. We ask that you give us examples of scenarios that could be difficult to manage without further clarification. We ask you to tell us if your State has encountered situations where an outside entity has dictated, or attempted to dictate, the scope of work of the State fish and wildlife agency and what the response has been. We are also interested in hearing about situations that involve oil, gas, and mineral extraction on or under State fish and wildlife agency-owned and -managed lands. We encourage States to discuss this topic with your Regional WSFR offices.

Allowable Recreational and Commercial Activities

We address allowable recreational and commercial activities at Service manual chapters 522 FW 21 (<https://www.fws.gov/policy/522fw21.html>) and 522 FW 22 (<https://www.fws.gov/policy/522fw22.html>). We intend to move this policy information into regulations for those programs under the Acts. We welcome any comments you have on the information in the chapters, the approach, and making these policy provisions regulatory.

Proposed Rule

This document is not a full update of the proposed changes we plan to make to the regulations in 50 CFR part 80, but rather we address only certain topics at this time. State and Federal representatives proposed and accepted the list of topics we address in this proposed update to the regulations.

Definitions

- We define the terms “asset” and “obligation” in response to requests for clarifying these terms.
- We revise the definition of “capital improvement” to raise the monetary threshold from \$10,000 to \$25,000.
- We add definitions for the terms “geographic location,” “structure,” and “technical assistance.”
- We revise the definition for the term “match” to include that match may be from a Federal source if a statute authorizes it. We revise the definition for the term “real property” to make the definition consistent with other guidance.

License Certification

We collaborated with the Association of Fish and Wildlife Agencies (AFWA) to recommend changes to the regulations at Subpart D—Certification of License Holders that would address States’ concerns over the current language. In September 2016, AFWA voted in support of the changes. In November 2016, the Joint Federal/State Task Force for Federal Assistance Policy proposed changes to the draft that will encourage all States to adopt the new method for all licenses as soon as possible. In December 2016, AFWA again voted in support of the changes.

The major proposed change is in the method for determining the minimum standard needed to count a license holder. The current method requires a minimum of \$1 of net revenue per year. State fish and wildlife agencies determine this amount through various cost accounting methods, tracking costs of multiple types of licenses, tracking and applying administrative costs, and

comparing multiyear licenses to annual licenses. The proposed method simply requires a minimum of \$2 of revenue (no net) to the State fish and wildlife agency for each privilege to hunt or fish, for each year the license is valid. The major effect is in how States count multiyear licenses. The proposed changes will allow a State to count a multiyear license for each year that it meets the standard and all other requirements of the subpart.

Eligible Activities

We propose to revise §§ 80.50 and 80.51 to:

- a. Add “technical assistance” as an eligible activity.
- b. Add information on payments in lieu of taxes.
- c. Expand the guidance on leased vs. purchased equipment.
- d. Add at § 80.50(c)(6) that buying real property for firearm and archery ranges is eligible under the Enhanced Hunter Education and Safety program.

Other

Additional proposed changes to 50 CFR part 80 in this document include the following:

- a. We revise § 80.56 to clarify that projects may have different components and still be substantial in character and design.
- b. We revise § 80.82 to separate “Purpose” and “Objectives.”
- c. We add a new section (at § 80.97) to incorporate guidance on how grantees and subgrantees may charge equipment-use costs to a WSFR grant.
- d. We update § 80.120 to include hunter education course fees as program income.
- e. We update §§ 80.123 and 80.124 to address program income banking.
- f. We add a new section (at § 80.134) to state that a lease is real property.
- g. We add a new section (at § 80.136) to address prescribed fires on land acquired under the Acts. (This proposed change is in response to requests from States to clarify the standards.)
- h. We revise current § 80.137 (proposed to be moved to § 80.139) to remove the reference to 43 CFR 12.71, which no longer exists as 43 CFR part 12 has been removed and reserved from the CFR.
- i. We add § 80.140 to replace the reference to 43 CFR 12.71 at current § 80.137 (proposed § 80.139).
- j. We update § 80.160 for terms and references.

Public Comments

We will accept comments on all the issues addressed that we describe in this preamble and that are set forth in the

amendatory instructions. Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**. Please note that comments posted to <http://www.regulations.gov> are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

We will post your entire comment on <http://www.regulations.gov>. Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your hardcopy comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments submitted electronically to <http://www.regulations.gov> will be posted in their entirety.

In addition, comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. In the Search box, enter FWS-HQ-WSR-2017-0002, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the U.S. Fish and Wildlife Service’s headquarters office in Falls Church, VA (contact the person listed under **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant

rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

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

The Regulatory Flexibility Act requires an agency to consider the impact of 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 analysis is not required if the head of an agency certifies the rule will 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 will 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 this proposed rule does not have a significant impact and does not require a regulatory flexibility analysis because it:

a. Gives information to State fish and wildlife agencies that allows them to apply for and administer financial assistance more easily, more efficiently, and with greater flexibility. Only State fish and wildlife agencies may receive Wildlife Restoration, Sport Fish Restoration, and Hunter Education program and subprogram grants.

b. Addresses changes in law and regulation. This helps applicants and grantees by making the regulations

consistent with current authorities and standards.

c. Rewords and reorganizes the regulations to make them easier to understand.

d. Allows small entities to voluntarily become subgrantees of agencies, and any impact on these subgrantees would be beneficial.

The Service has determined that the proposed changes primarily affect State governments and any small entities affected by the changes voluntarily enter into mutually beneficial relationships with a State agency. They are primarily concessioners and subgrantees, and the impact on these small entities will be very limited and beneficial in all cases.

Consequently, we certify that because this proposed rule will 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 will not have a significant impact on a substantial number of small entities because it will 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; or

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 U.S.C. 1501 *et seq.*) 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 proposed regulations 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 1 year. We have determined the following under the Unfunded Mandates Reform Act:

a. As discussed in the determination for the Regulatory Flexibility Act, this proposed rule will 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 expending 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 eligible agency.

d. The proposed rule clarifies and improves upon the current regulations allowing State, local, and tribal governments and the private sector to receive the benefits of financial assistance funding in a more flexible, efficient, and effective manner.

e. Any costs incurred by a State, local, or 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 may legally provide up to 100 percent for Puerto Rico and DC. The Federal Government will also waive the first \$200,000 of match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, all participate. This is clear evidence that the benefits of this grant funding outweigh the costs.

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

Federalism

This proposed rule will not have sufficient Federalism effects to warrant preparing a federalism summary impact statement under E.O. 13132. It would not interfere with the States’ ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response.

Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 that the

rule will 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 help grantees because it:

a. Updates the regulations to reflect changes in policy and practice and recommendations received during the past 5 years;

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

c. Modifies the final rule to amend 50 CFR part 80 published in the **Federal Register** at 76 FR 46150 on August 1, 2011, based on subsequent experience; and

d. Adopts recommendations on new issues received from State fish and wildlife agencies. We will review all comments on this proposed rule and consider all suggestions when preparing the final rule for publication.

Paperwork Reduction Act (PRA)

This proposed rule does not contain new information collection requirements that require approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB reviewed and approved the U.S. Fish and Wildlife Service application and reporting requirements associated with the Wildlife Restoration, Sport Fish Restoration, and Hunter’s Education financial assistance programs and assigned OMB Control Number 1018–0109, which expires November 30, 2018. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), 43 CFR part 46, and part 516 of the Departmental Manual. This rule is not 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 given at 43 CFR 46.210(i).

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

will 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 does 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

Fish, Grant programs, Natural resources, Reporting and recordkeeping requirements, 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, part 80, as follows:

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

■ 1. The authority citation for part 80 is revised to read as follows:

Authority: 16 U.S.C. 669–669k and 777–777n, except 777e–1 and g–1.

Subpart A—General

- 2. Amend § 80.2 by:
 - a. Adding a definition for “Asset”;
 - b. Revising the definition of “Capital improvement”;
 - c. Adding a definition for “Geographic location”;
 - d. Revising the definition of “Match”;
 - e. Adding a definition for “Obligation”;
 - f. Revising the definition of “Real property”;
 - g. Adding a definition for “Structure”;
 - and
 - h. Adding a definition for “Technical assistance”.

The additions and revisions read as follows:

§ 80.2 What terms do I need to know?

* * * * *

Asset means all tangible and intangible real and personal property of monetary value.

Capital improvement means:

- (1) A structure that costs at least \$25,000 to build or install; or

- (2) The alteration or repair of a structure or the replacement of a structural component, if it increases the structure's useful life by at least 10 years or its market value by at least \$25,000.

* * * * *

Geographic location means an area defined with enough specificity for a reviewer to find the parcel location on a United States Geological Survey quadrangle map or its equivalent.

* * * * *

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, unless a Federal statute authorizes match using Federal funds.

Obligation has two meanings depending on the context:

- (1) When a grantee of Federal financial assistance obligates funds by incurring costs for purposes of the grant, the definition at 2 CFR 200.71 applies.
- (2) When the Service sets aside funds for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at 50 CFR 80.91 applies.

* * * * *

Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. Examples of real property include fee and some leasehold interests, conservation easements, and mineral rights.

- (1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically and firmly attached to it by a natural process or human action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.

- (2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel's owner to travel across an adjacent parcel.

- (3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing “lease” is often a type of personal property known as a license, which is described in the definition of “personal property” in this section.

* * * * *

Structure means a building or anything permanently attached to the land by human action so that removal would cause material damage to the land or the structure itself.

* * * * *

Technical assistance means providing fish, wildlife, and habitat information and advice to target segments of the public, including landowners or other citizens and beneficiaries. This may include collecting or distributing information on fish and wildlife presence and activities, advising on appropriate public response to fish and wildlife interactions, and directing landowners on how they may support fish and wildlife practices on private lands. Technical assistance does not include actual on-the-ground management activities.

* * * * *

- 3. Revise subpart D, including the heading, to read as follows:

Subpart D—License Holder Certification

Sec.

- 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 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder counted?
- 80.35 What additional requirements apply to multiyear licenses?
- 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?
- 80.37 May the State fish and wildlife agency offer a discount on a license when combined with another license or privilege?
- 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license or offer a free license under any circumstances?
- 80.39 What must an agency do if it becomes aware of errors in its certified license data?
- 80.40 May the Service recalculate an apportionment if an agency submits revised data?
- 80.41 May the Director correct a Service error in apportioning funds?

Subpart D—License Holder 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 information:

(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 agency director or his or her designee:

(1) Must certify the information at paragraph (a) of this section in the format that the Director specifies;

(2) Must provide documentation to support the accuracy of this information at the Director's request;

(3) Is responsible for eliminating multiple counting of the same individuals in the information that he or she certifies; and

(4) May use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If an agency director uses statistical sampling to eliminate multiple counting of the same individuals, he or she must ensure that the sampling is complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of license holders.

§ 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) A State fish and wildlife agency must count only those people who have a license issued:

(1) In the license holder's name; or

(2) With a unique identifier that is traceable to the license holder, who must be verifiable in State records.

(b) A State fish and wildlife agency must count a person holding a single-

year license only once in the certification period in which the license is sold. (Single-year licenses are valid for any length of time less than 2 years.)

(c) A person is counted as a license holder even if the person is not required to have a paid license or is unable to hunt or fish.

(d) A person having more than one license to hunt or to fish because the person either voluntarily obtained them or was required to in order to obtain a different privilege may be counted only once each certification period as either a hunter or an angler, or both.

(e) A person who has a license that allows the license holder only to trap animals or only to engage in commercial fishing or other commercial activities must not be counted.

§ 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder counted?

(a) For the State fish and wildlife agency to count a license holder, the agency must establish that it receives:

(1) A minimum of \$2 for each year the license is valid, for either the privilege to hunt or the privilege to fish; and

(2) A minimum of \$4 for each year the license is valid for a combination license that gives privileges to both hunt and fish.

(b) A State fish and wildlife agency must follow the requirement in paragraph (a) of this section for all licenses sold as soon as practical, but by no later than July 1, 2018.

§ 80.35 What additional requirements apply to multiyear licenses?

The following additional requirements apply to multiyear licenses:

(a) A State fish and wildlife agency must follow the requirement at § 80.34(a) for all multiyear licenses sold before and after the date that the agency adopts the new standard, unless following the exception at paragraph (d) of this section.

(b) If a valid license was not eligible to be counted in the annual license certification the year before adopting the standard at § 80.34(a), it must not be counted in any future certification.

(c) If an agency is using an investment, annuity, or similar method to fulfill the net-revenue requirements of the version of § 80.33 that was effective from August 31, 2011, until [EFFECTIVE DATE OF THE FINAL RULE], the agency may discontinue that method and convert to the new method.

(1) If the amount collected at the time of sale has not been spent, the agency must begin to use the new standard by applying the total amount the agency received at the time of sale.

(2) If the amount collected at the time of sale has been spent, the agency must apply the new standard as if it were applicable at the time of sale. For example, if a single-privilege, multiyear license sold for \$100 in 2012, and the agency adopts the new standard in 2018, then 4 years have been used toward the amount received by the agency (4 years × \$2 = \$8) and the license holder may be counted for up to 46 more years (\$100 - \$8 = \$92/\$2 = 46).

(d) An agency may continue to follow the requirements of the version of § 80.33 that was effective from August 31, 2011, until [EFFECTIVE DATE OF THE FINAL RULE], for those multiyear licenses that were sold before the date specified at § 80.34(b) if the agency:

(1) Notifies the Director of the agency's intention to do so;

(2) Describes how the new requirement will cause financial or operational harm to the agency when applied to licenses sold before the effective date of these regulations; and

(3) Commits to follow the current standard for those multiyear licenses sold after the date specified at § 80.34(b).

(e) A multiyear license may be valid for either a specific or indeterminate number of years, but it must be valid for at least 2 years.

(f) The agency may count the license for all certification periods for which it received the minimum required revenue, as long as the license holder meets all other requirements of this subpart. For example, an agency may count a single-privilege, multiyear license that sells for \$25 for 12 certification periods. However, if the license exceeds the life expectancy or the license is valid for only 5 years, it may be counted only for the number of years it is valid.

(g) An agency may spend a multiyear license fee as soon as the agency receives it.

(h) The agency must count only the licenses that meet the minimum required revenue for the license period based on:

(1) The duration of the license in the case of a multiyear license with a specified ending date; or

(2) Whether the license holder remains alive.

(i) The agency must obtain the Director's approval of its proposed technique to decide how many multiyear-license holders remain alive in the certification period. Some examples of techniques are statistical sampling, life-expectancy tables, and mortality tables. The agency may

instead use 80 years of age as a default for life expectancy.

§ 80.36 May an agency count license holders in the annual certification if the agency receives funds from the State or another entity to cover their license fees?

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

(a) The State funds to cover license fees must come from a source other than hunting- and fishing-license revenue.

(b) The State must identify funds to cover license fees separately from other funds provided to the agency.

(c) The agency must receive at least the average amount of State-provided discretionary funds that it received for the administration of the State's fish and wildlife agency during the State's 5 previous fiscal years.

(1) State-provided discretionary funds are those from the State's general fund that the State may increase or decrease if it chooses to do so.

(2) Some State-provided funds are from special taxes, trust funds, gifts, bequests, or other sources specifically dedicated to the support of the State fish and wildlife agency. These funds typically fluctuate annually due to interest rates, sales, or other factors. They are not discretionary funds for purposes of this part as long as the State does not take any action to reduce the amount available to its fish and wildlife agency.

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

(e) The agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license holder, who is verifiable in State records.

(f) The license fees must meet all other requirements at 50 CFR part 80.

§ 80.37 May the State fish and wildlife agency offer a discount on a license when combined with another license or privilege?

Yes. A State fish and wildlife agency may offer a discount on a license when combined with another license or privilege as long as the agency meets the rules for minimum revenue at § 80.34 for each privilege.

§ 80.38 May an entity other than the State fish and wildlife agency offer a discount on a license or offer a free license under any circumstances?

(a) An entity other than the agency may offer the public a license that costs less than the regulated price only if:

(1) The license is issued to the individual according to the requirements at § 80.33;

(2) The amount received by the agency meets all other requirements in this subpart; and

(3) The agency agrees to the amount of revenue it will receive.

(b) An entity other than the agency may offer the public a license that costs less than the regulated price without the agency agreeing, but must pay the agency the full cost of the license.

§ 80.39 What must an agency do if it becomes aware of errors in its certified license 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.

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

The Service may recalculate an apportionment of funds based on revised certified license data under the following conditions:

(a) If the Service receives revised certified data for a pending apportionment before the Director approves the final apportionment, the Service may recalculate the pending apportionment.

(b) If the Service receives revised certified data for an apportionment after the Director has approved the final version of the apportionment, the Service may recalculate the apportionment only if doing so would not reduce funds to other State fish and wildlife agencies.

§ 80.41 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

■ 4. Amend § 80.50 by adding paragraphs (a)(9) through (11) and (c)(6) to read as follows:

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

(a) * * *

(9) Give technical assistance.

(10) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(11) Acquire the use of equipment by leasing it, but purchase may be eligible if:

(i) The grantee can justify that it is cost effective and that the equipment will be used for project purposes for its useful life; or if

(ii) Leasing the equipment is not feasible.

* * * * *

(c) * * *

(6) Buy real property for firearm or archery ranges.

■ 5. Amend § 80.51(a) by adding paragraphs (a)(12) through (14) to read as follows:

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

* * * * *

(a) * * *

(12) Give technical assistance.

(13) Make payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

(i) Required by State or local law; and

(ii) Required for all State lands including those acquired with Federal funds and those acquired with non-Federal funds.

(14) Acquire the use of equipment by leasing it, but purchase may be eligible if:

(i) The grantee can justify that it is cost effective and that the equipment will be used for project purposes for its useful life; or if

(ii) Leasing the equipment is not feasible.

* * * * *

■ 6. Revise § 80.56 including the heading to read as follows:

§ 80.56 What does it mean for a project to be substantial in character and design?

(a) Projects may have very different components and still be substantial in character and design.

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

(1) Describes a need consistent with the Acts;

(2) States a purpose and sets measurable objectives, both of which you base on the need;

(3) Uses a planned approach, appropriate procedures, and accepted principles of fish and wildlife conservation and management, research, or education; and

(4) Is cost effective.

Subpart G—Application for a Grant

■ 7. Amend § 80.82 by:

- a. Revising paragraph (c)(2) to read as set forth below;
- b. Redesignating paragraphs (c)(3) through (13) as paragraphs (c)(4) through (14);
- c. Adding a new paragraph (c)(3) to read as set forth below; and
- d. Revising newly designated paragraphs (c)(9)(iv) and (v) and (10) to read as set forth below.

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

* * * * *

(c) * * *

(2) *Purpose.* State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

(3) *Objectives.* State the objectives and base them on the need. The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

* * * * *

(9) * * *

(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 terms and conditions or program regulations.

(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.

(10) *Budget narrative.*

(i) Provide costs by project and subaccount with additional information sufficient to show that the project is cost effective. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs, capital improvements, and acquiring land or equipment.

(iii) Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

* * * * *

- 8. Amend § 80.85 by revising paragraph (b)(2) to read as follows:

§ 80.85 What requirements apply to match?

* * * * *

(b) * * *

(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.

* * * * *

■ 9. Amend subpart H by:

- a. Redesignating §§ 80.97 through 80.100 as §§ 80.98 through 80.101;
- b. Adding a new § 80.97 to read as follows; and
- c. Revising newly designated § 80.98 to read as follows:

Subpart H—General Grant Administration

* * * * *

§ 80.97 How may a grantee charge equipment use costs to a WSFR-funded project?

(a) A State fish and wildlife agency must establish and use equipment rates that reflect the local market, the type of equipment used on a project, and actual costs to own and operate the equipment. Agencies must calculate their own rates and not use general State rates.

(b) State fish and wildlife agencies must not use a predetermined rate or schedule published by a Federal agency for equipment used on a WSFR grant. However, States may allow subgrantees to use either the agency equipment rate schedule or a regional rate schedule published by a Federal agency if WSFR approves the rate schedule and if the schedule reflects the standards at paragraph (a) of this section.

(c) States may choose from three methods to recover the cost of the equipment it owns when used on a grant. You may use only one method for the same equipment use.

(1) *Indirect.* Grantees may apply costs to the pool of indirect costs that are included either as part of the Negotiated Indirect Cost Rate Agreement or an allowed de minimis rate.

(2) *Direct.* Using one of these approaches:

(i) *Direct cost to the grant.* Grantees may charge the total cost of acquiring and operating equipment directly to a grant. Once the cost of acquiring equipment is recovered through a Federal grant, the grantee has been paid in full and cannot charge to any other Federal grant through any method. Operating costs may be charged to future grants. This practice may require States to establish separate use rates for equipment acquired as a direct cost to a Federal grant.

(ii) *Allocation to the grant using an internally developed rate.* The grantee uses depreciation to develop a rate considering acquisition cost of the equipment and the cost to operate the equipment. The allocation must be based on a methodology that properly

allocates costs based on benefits received.

(3) *Match/cost share.* The grantee may charge costs as match. The guidance for properly applying equipment as match is at 2 CFR 200.306(g)–(j) and 2 CFR 200.434. Guidance on operating cost items can be found at 2 CFR part 200, subpart E—Cost Principles.

§ 80.98 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 200.

* * * * *

Subpart I—Program Income

- 10. Amend § 80.120 by:
 - a. Redesignating paragraphs (b)(5) and (6) as paragraphs (b)(6) and (7);
 - b. Adding a new paragraph (b)(5) to read as set forth below;
 - c. Removing paragraph (c)(3); and
 - d. Redesignating paragraphs (c)(4) and (5) as paragraphs (c)(3) and (4).

§ 80.120 What is program income?

* * * * *

(b) * * *

(5) Hunter-education course fees;

* * * * *

- 11. Amend § 80.123(a) by revising the last sentence to read as follows:

§ 80.123 How may an agency use program income?

(a) * * * Program income must be spent within the grant period that it is earned and before requesting additional Federal funds.

* * * * *

- 12. Revise § 80.124 to read as follows:

§ 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, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income. The agency must spend program income before requesting additional payments for these activities.

- 13. Amend subpart J by:
 - a. Redesignating § 80.134 as § 80.135;
 - b. Adding a new § 80.134 to read as set forth below;
 - c. Redesignating §§ 80.136 through 80.138 as §§ 80.137 through 80.139;
 - d. Adding a new § 80.136 to read as set forth below;
 - e. Revising newly designated § 80.139 to read as set forth below; and

■ f. Adding new § 80.140 to read as set forth below:

Subpart J—Real Property

* * * * *

§ 80.134 Is a lease considered real property or personal property?

A lease of real property is a contract in which the fee owner transfers to a lessee the right of exclusive possession and is, therefore, treated as real property.

* * * * *

§ 80.136 What standards must an agency follow when conducting prescribed fire on land acquired with financial assistance under the Acts?

The State fish and wildlife agency:

- (a) Must comply with existing State laws that require compliance with Federal, State, and local laws; and
- (b) Does not have to comply with the Federal National Wildfire Coordinating Group (NWCG) requirements unless the Service has substantial involvement in the project or these requirements are contained in State or local laws. The NWCG provides national leadership to develop, maintain, and communicate standards, guidelines, qualifications, training, and other capabilities that enable common operations on wildland fires among Federal and non-Federal entities.

* * * * *

§ 80.139 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) Follow the regulations at 2 CFR 200.311 through 200.315 and § 80.140 for instructions on treating proceeds from the disposition of real or personal property.

§ 80.140 When the Service approves the disposition of real property, equipment, intangible property, and excess supplies, what must happen to the proceeds of the disposition?

- (a) A grantee must refer to the regulations at 2 CFR 200.311 through 200.315 before depositing, allocating, or using any proceeds of the disposition of real property, equipment, unused supplies exceeding \$5,000 in total aggregate value, or intangible property.
- (b) A grantee must treat the proceeds of the disposition of real and personal property as license revenue if the grantee acquired the property with:
 - (1) License revenue; or
 - (2) Federal financial assistance funds matched by license revenue.
- (c) A grantee must use its share of the proceeds under a subsequent grant for any activity eligible for funding in the grant program that generated the

income. The agency must spend proceeds of the disposition of real or personal property before requesting additional Federal payments for these activities.

(d) A grantee must credit the Service, through that State’s Regional Office, with the Federal share of the proceeds. The Regional Office determines how the Federal share of the proceeds will be allocated.

Subpart L—Information Collection

■ 14. Amend § 80.160 by revising paragraphs (b) and (c) to read as follows:

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

* * * * *

(b) The authorizations for information collection under this part are in the Acts and in 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

(c) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.

Dated: December 5, 2017.

Jason Larrabee,
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

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