

Office of the Secretary, Interior

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§ 43.655 Individual.

Individual means a natural person.

§ 43.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 43.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 43.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and 2 CFR Part 180. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

[68 FR 66557, 66630, Nov. 26, 2003, as amended at 72 FR 33386, June 18, 2007]

PART 44—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

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GENERAL INFORMATION

§ 44.10 What is the purpose of this subpart?

This subpart sets forth procedures the Department of the Interior uses in disbursing Federal payments in lieu of taxes to local governments for entitlement lands within their boundaries.

§ 44.11 What are the definitions of terms used in this subpart?

Entitlement land means land owned by the United States:

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(1) That is in the National Park System or the National Forest System, including wilderness areas, and national forest lands in northern Minnesota described in 16 U.S.C. 577d-577d-1;

(2) That is administered by the Secretary of the Interior through the Office of the Secretary;

(3) That is dedicated to the use of the Government for water resource development projects;

(4) On which there are semiactive or inactive installations, excluding industrial installations, that the Department of Army keeps for mobilization and reserve component training;

(5) That is a dredge disposal area under the jurisdiction of the Army Corps of Engineers;

(6) That is located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, and was acquired by the United States after December 23, 1981, to expand the Fort Carson military installation; or

(7) That is a reserve area as defined in 16 U.S.C. 715s(g)(3), which is an area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary of the Interior, through the Fish and Wildlife Service.

Local government means a unit of general local government, which can include any of the following:

(1) A county, parish, township, borough, or city, (other than in Alaska), where the city is independent of any other unit of general local government, that:

(i) Is within the class(es) of such political subdivision in a State that the Secretary of the Interior determines, in his or her discretion, to be the principal provider(s) of governmental services within the State; and

(ii) Is a unit of general local government, as determined by the Secretary of the Interior on the basis of the same principles as were used by the Secretary of Commerce on January 1, 1983, for general statistical purposes;

(2) Any area in Alaska that is within the boundaries of a census area used by the Secretary of Commerce in the decennial census, but that is not included within the boundaries of a governmental entity described under paragraph (1) of this definition; or

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(3) The Governments of the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

Payments in lieu of taxes (PILT) means Federal payments disbursed to local governments to compensate for the exemption of real estate taxes on entitlement lands within their boundaries.

Section 6902 (31 U.S.C. 6902) payments means Federal payments disbursed to local governments containing entitlement lands.

Section 6904 (31 U.S.C. 6904) payments means Federal payments disbursed to local governments for acquisitions or interest in lands acquired for addition to the National Park System or National Forest Wilderness Areas.

Section 6905 (31 U.S.C. 6905) payments means Federal payments disbursed to local governments for lands in the Redwood National Park or Lake Tahoe Basin.

§ 44.12 Who is eligible to receive PILT payments?

(a) Each local government containing entitlement lands may receive a PILT payment.

(b) A local government may not receive a payment for land owned or administered by a State or local government that was exempt from real estate taxes when the land was conveyed to the United States. However, a local government may receive a PILT payment for land when:

(1) A State or local government acquires from a private party to donate to the United States within eight years of acquisition;

(2) A State acquires through an exchange with the United States if the land acquired was entitlement land; or

(3) In the State of Utah, that the United States acquires for Federal land, royalties or other assets if, at the time of acquisition, a local government was entitled to receive payments in lieu of taxes from the State of Utah for the land; provided that the payment to the local government does not exceed the payment the State would have disbursed if the land had not been acquired.

PAYMENTS TO LOCAL GOVERNMENTS
CONTAINING ENTITLEMENT LANDS**§ 44.20 How does the Department process payments to local governments whose jurisdictions contain entitlement lands?**

This section describes how the Department processes payments to local governments whose jurisdictions contain entitlement lands (section 6902 payments).

(a) The Department:

(1) Determines the eligibility of each local government, conferring when necessary with the Bureau of the Census, officials of appropriate State and local governments, and officials of the agency administering the entitlement land;

(2) Computes the amount of the payment disbursed to each local government; and

(3) Certifies the amount of the payment disbursed to each local government.

(b) The Department disburses a payment each fiscal year to each local government containing entitlement lands.

(c) The State of Alaska is required to distribute the payment it receives to home rule cities and general law cities (as such cities are defined by the State) that are located within the boundaries of the local government entitled to the payment.

§ 44.21 How does the Department calculate payments to local governments whose jurisdictions contain entitlement lands?

(a) To calculate section 6902 payments, the Department obtains the necessary data on Federal and State payments from several sources:

(1) Federal agencies provide the amount of entitlement land within the boundaries of each local government as of the last day of the fiscal year preceding the fiscal year for which the Department disburses the payment;

(2) The Governor or designated official provides the amount of money transfers (land revenue sharing payments) disbursed by the State during the previous fiscal year to eligible local governments under the payment laws listed under 31 U.S.C. 6903(a)(1) and in paragraph (d) of this section; and

(3) The Bureau of the Census provides statistics on the population of each local government.

(b) The Department consults with the affected local government and the administering agency to resolve conflicts in land records and other data sources.

(c) The Department calculates the amount of payment using:

(1) The amount of actual appropriations;

(2) The formula in 31 U.S.C. 6903(b)(1), which includes inflation adjustments; and

(3) Federal and State payments disbursed during the previous fiscal year to local governments under the land payment laws listed under 31 U.S.C. 6903(a)(1).

(d) The laws listed in 31 U.S.C. 6903(a)(1) and referred to in paragraphs (a) and (c) of this section are:

(1) The Act of June 20, 1910 (Arizona and New Mexico Enabling Acts) (ch. 310, 36 Stat 557);

(2) Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);

(3) The Act of May 23, 1908 (Knutson-Vandenberg Act regarding Forest Service timber sales contracts) (16 U.S.C. 500);

(4) Section 5 of the Act of June 22, 1948 (Payments to Minnesota from northern Minnesota National Forest receipts) (16 U.S.C. 577g-1);

(5) Section 401(c)(2) of the Act of June 15, 1935 (Payments to local governments from National Wildlife Refuge System receipts) (16 U.S.C. 715s(c)(2));

(6) Section 17 of the Federal Power Act (16 U.S.C. 810);

(7) Section 35 of the Act of February 25, 1920 (Mineral Leasing Act) (30 U.S.C. 191);

(8) Section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);

(9) Section 3 of the Act of July 31, 1947 (Materials Act of 1947) (30 U.S.C. 603); and

(10) Section 10 of the Act of June 28, 1934 (Taylor Grazing Act) (43 U.S.C. 315i).

§ 44.22 Are there any special circumstances that affect the way the Department calculates PILT payments?

If a local government eligible for payments under this subpart reorganizes, the Department will:

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(a) Calculate payments for the fiscal year in which the reorganization occurred as if the reorganization had not occurred; and

(b) Disburse any payment due to each new unit based on the amount of eligible acreage in that unit.

§ 44.23 How does the Department certify payment computations?

(a) The Department will certify a payment computation only after receiving a statement showing all land revenue sharing payments that each local government received from the State during the previous fiscal year. As used in this paragraph, "land revenue sharing payments" means payments made from revenues derived from the payment laws listed under 31 U.S.C. 6903(a)(1). The statement must:

(1) Be signed by the Governor or a designated official of the State in which the local government is located; and

(2) Be accompanied by a certification, signed by a State Auditor, an independent Certified Public Accountant, or an independent public accountant, that the statement has been audited in accordance with:

(i) Auditing standards established by the U.S. Comptroller General in Standards of Audit of Governmental Organizations, Programs, Activities and Function, (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) The Audit Guide for Payments in Lieu of Taxes issued by the Department of the Interior.

(b) The Department's Office of the Inspector General will assist the Department, under the provisions of sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. Appendix), to implement and administer the audit requirements in paragraph (a)(2) of this section.

(c) The Office of the Inspector General will:

(1) Develop appropriate audit guidelines that State auditors, independent Certified Public Accountants, or independent public accountants must use to audit the statements of the Governors or their designated officials and to certify the audits; and

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(2) Furnish copies of the guides to the Governor or designated official each year. You should send questions on the use or application of this guide to the Office of Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(d) The Department may waive the requirement to certify audits if the General Accounting Office or the Office of the Inspector General verifies the information in statements the Governor or designated official furnishes or if the Department determines it is not necessary. Payments to Local Governments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (31 U.S.C. 6904).

§ 44.30 How does the Department make payments for acquired lands?

This section describes how the Department disburses payments for Acquisitions or Interest in Lands Acquired for Addition to the National Park System or National Forest Wilderness Areas (section 6904 payments).

(a) The Department disburses section 6904 payments to qualified local governments only if the administering agency supplies the following information for each qualified local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information the Department may require to certify payments to each qualified local government.

(b) The Department disburses payments under this section only for a period of 5 years from the date the land was conveyed to the United States.

§ 44.31 How does the Department calculate payments for acquired lands?

The Department calculates section 6904 payments by determining 1 percent of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year before Federal acquisition. The payment to qualified local governments will be the lesser of the two.

PAYMENTS TO LOCAL GOVERNMENTS FOR INTEREST IN LANDS IN THE REDWOOD NATIONAL PARK OR LAKE TAHOE BASIN

§ 44.40 How does the Department process payments for lands in the Redwood National Park or Lake Tahoe Basin?

This section describes how the Department disburses payments for lands in the Redwood National Park or Lake Tahoe Basin (section 6905 payments).

(a) The Department disburses payments to qualified local governments only if the administering agency supplies the following information for each qualified local government:

(1) Acreage or interests in land for which the payments are authorized; and

(2) Any other information the Department may require to certify payments to each qualified local government.

(b) The Department disburses payments until 5 percent of the fair market value is paid in full.

§ 44.41 How does the Department calculate payments for lands in the Redwood National Park or Lake Tahoe Basin?

(a) The Department calculates section 6905 payments by determining 1 percent of the fair market value of the purchased land and comparing the result to the amount of real estate taxes paid on the land in the year prior to Federal acquisition. The payment to qualified units of general local government will be the lesser of the two.

(b) The Department disburses payments annually for a period of 5 years beginning in the year immediately following the year of Federal acquisition of the land or interest.

(1) The difference, if any, between the amounts actually paid during each of the 5 years and 1 percent of the fair market value will be deferred to future years. However, a payment or any portion of a payment not paid because Congress appropriated insufficient monies will not be deferred.

(2) The Department will begin annual payment of the deferred amount (calculated the same as in paragraph (a) of this section) starting with the sixth

fiscal year following Federal acquisition.

(3) The Department disburses payment of the deferred amount until the total amount deferred during the first 5 years is paid in full.

STATE AND LOCAL GOVERNMENTS' RESPONSIBILITIES AFTER THE DEPARTMENT DISTRIBUTES PAYMENTS

§ 44.50 What are the local governments' responsibilities after receiving payments under this part?

(a) The local government may use section 6902 payments for any governmental purpose.

(b) Within 90 days of receiving sections 6904 and 6905 payments, the local government must distribute the funds to the affected units of general local government and affected school districts. The affected units of general local government and school districts may use sections 6904 and 6905 payments for any governmental purpose.

(c) The local government must distribute section 6904 and 6905 payments in proportion to the tax revenues assessed and levied by the affected units of general local government and school districts in the Federal fiscal year before the Federal Government acquired the entitlement lands. The Redwoods Community College District in California is an affected school district for this purpose.

(d) Within 120 days of receiving payments, the local government must certify to the Department that it has made an appropriate distribution of funds.

§ 44.51 Are there general procedures applicable to all PILT payments?

(a) The minimum payment that the Department will disburse to any local government is \$100.00 (one hundred dollars).

(b) If Congress appropriates insufficient monies to provide full payment to each local government during any fiscal year, the Department will reduce proportionally all payments in that fiscal year.

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§ 44.52 May a State enact legislation to reallocate or redistribute PILT payments?

A State may enact legislation to reallocate or redistribute PILT payments. If a State enacts legislation, it must:

- (a) Notify the Department if the legislation requires reallocating or redistributing payments to smaller units of general local government (see 31 U.S.C. 6907);
- (b) Provide the Department a copy of the legislation within 60 days of enactment;
- (c) Provide the name and address of the State government office to which the Department should send the payment;
- (d) Distribute funds to its smaller units of general local government within 30 days of receiving the payment; and
- (e) Not reduce the payment made to smaller units of general local government to pay the cost of State legislation which reallocates or redistributes payments.

§ 44.53 What will the Department do if a State enacts distribution legislation?

If a State enacts distribution legislation, the Department will:

- (a) Notify the State that a single payment will be disbursed to the designated State government office beginning with the Federal fiscal year following the fiscal year in which the State enacted legislation; and
- (b) Provide the State with information that identifies the entitlement lands data on which the Department bases the payment.

§ 44.54 What happens if a State repeals or amends distribution legislation?

- (a) If a State repeals or amends distribution legislation, the State must immediately notify the Department in writing of this fact and send the Department a copy of the new law.
- (b) When the Department receives a notification under paragraph (a) of this section, it must:
 - (1) Determine if the State's process complies with 31 U.S.C. 6907. If the Department determines that it does not, we must notify the designated State

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government office that the Department will disburse payment directly to the eligible local governments; and

(2) Start the payments:

- (i) In the current Federal fiscal year, if the Department receives a copy of the State's amendatory legislation before July 1; or
- (ii) Start the payments in the next Federal fiscal year, if the Department receives a copy of the State's amendatory legislation after July 1.

§ 44.55 Can a unit of general local government protest the results of payment computations?

Any affected local government may file a protest with the Department.

§ 44.56 How does a unit of general local government file a protest?

The protesting local government must:

- (a) Submit evidence to indicate the possibility of errors in the computations or the data on which the Department bases the computations; and
- (b) File the protest by the first business day of the calendar year following the end of the fiscal year for which the Department made the payments.

§ 44.57 Can a unit of general local government appeal a rejection of a protest?

Any affected local government may appeal the Department's decision to reject a protest to the Interior Board of Land Appeals under 43 CFR part 4.

PART 45—CONDITIONS AND PRESCRIPTIONS IN FERC HYDRO-POWER LICENSES

Subpart A—General Provisions

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