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50 CFR Part 80

Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety; Final Rule

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: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are revising regulations governing the Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety (Enhanced Hunter Education and Safety) financial assistance programs. We proposed a revision of these regulations on June 10, 2010, to address changes in law, regulation, policy, technology, and practice during the past 25 years. We also proposed a clarification of some provisions of the issue-specific final rule that we published on July 24, 2008. This final rule simplifies specific requirements of the establishing authorities of the three programs and clarifies terms in those authorities as well as terms generally used in grant administration. We organized the final rule to follow the life cycle of a grant, and we reworded and reformatted the regulations following Federal plain language policy and current rulemaking guidance.

DATES: The final rule is effective on August 31, 2011.

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

This final rule revises 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 its authority, 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 aquatic and related environments. The Catalog of Federal Domestic Assistance at <https://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 final rule in 1937 and 1950 respectively. We refer to these acts in this document and in the final 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 from a dedicated fund in the Treasury. 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 into a dedicated fund in the Treasury 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 2010, the States and other eligible jurisdictions received \$384 million in new funding through the Wildlife Restoration and Enhanced Hunter Education and Safety programs and \$363 million in new funding through the Sport Fish Restoration program.

We published a proposed rule in the June 10, 2010, **Federal Register** [75 FR 32877] to revise the regulations governing 50 CFR part 80. We reviewed and considered all comments that were delivered to the Service's Division of Policy and Directives Management during a 60-day period from June 10 to August 9, 2010, and all comments that were entered on <http://www.regulations.gov> or postmarked during that period. We received 10 comments from State agencies, 2 comments from nonprofit organizations, and 2 comments from one individual. Most commenters addressed several issues, so we reorganized the issues into 33 single-issue comments. This final rule adopts the proposed rule that we published on June 10, 2010, with changes based on the comments received. We discuss these comments in the following section.

Response to Public Comments

We arranged the public comments under the relevant sections of the rule. Each numbered comment is from only one agency, organization, or individual unless it states otherwise. The comments summarize the recommendations or opinions as the commenter presented them. We state in the response to each comment whether we made any changes as a result of the recommendation. We also state how we changed the rule, or we refer the reader to the location of the change in the final rule.

Some public comments led us to reexamine sections beyond those that the public addressed specifically. Based on this reexamination, we made nonsubstantive changes throughout the document to improve clarity, consistency, organization, or comprehensiveness. We addressed any substantive changes that resulted from this reexamination in our responses to the comments.

We use the term “current” to refer to 50 CFR part 80 or any section or paragraph of 50 CFR part 80 that became effective after publication of a final rule in the **Federal Register** at 73 FR 43120, July 24, 2008. The term “proposed” refers to language that was in the proposed rule published in the **Federal Register** at 75 FR 32877, June 10, 2010. The term “new” refers to the language of 50 CFR part 80 as published in this final rule.

Subpart A—General

Section 80.2 What terms do I need to know?

Comment 1: Define personal property and law-enforcement activities.

Response 1: We defined personal property to include intellectual property and gave examples at the new § 80.2. We removed the definition of intellectual property and all examples from the proposed § 80.20. To conform to these changes for personal property, we moved the examples of real property from the proposed § 80.20(b)(1) to the definition at § 80.2. We will consider proposing a definition of law enforcement during the next revision of 50 CFR part 80, so we can receive public comments on a proposed definition.

Comment 2: Three commenters had concerns about the proposed definition of wildlife, which includes only birds and mammals. One commenter said that the narrow definition would cause conflicts with States that define it more broadly. Another commenter requested that we broaden the definition to include alligators. The third commenter noted the proposed definition does not include snapping turtles or bullfrogs, which are part of at least one State’s hunting or sportfishing program.

Response 2: We did not make any changes in response to these comments. The proposed rule’s definition of wildlife is specific to wild birds and mammals. This is a common element in all State definitions of wildlife, and program regulations since 1956 have limited the benefits of the Pittman-Robertson Wildlife Restoration Act (Act) to wild birds and mammals. The Act did not define wildlife in the original 1937 legislation, and none of its amendments defined wildlife for purposes of projects under the Act. Although Public Law 106–553 (December 21, 2000) amended the Act and defined wildlife, the only effects of the amendment were to authorize fiscal year 2001 funds for the Wildlife Conservation and Restoration program and to clarify the effect of the Federal Advisory Committee Act. Public Law 106–553’s definition of wildlife did

not apply to projects under the Act according to section 902(f).

Subpart C—License Revenue

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

Comment 3: The opening statement in § 80.20(a) reads, “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 * * *” This is a change from the current § 80.4, which reads, “Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of licenses * * *” This change could exclude as license revenue any license fees collected by other State agencies on behalf of the State fish and wildlife agencies.

Response 3: We changed the proposed § 80.20(a) to read, “All proceeds from the sale of State-issued general or special hunting and fishing licenses, permits, stamps, tags, access and use fees, and other State charges to hunt or fish for recreational purposes.”

Subpart D—Certification of License Holders

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

Comment 4: Insert “or his or her designee” after “the director of the [State] agency” at § 80.31(b) because another individual may be responsible for submitting annual license-certification data electronically to the Service on behalf of the agency director.

Response 4: We changed § 80.31(b) to incorporate the recommendation.

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

Comment 5: One commenter supported the language at § 80.33(a)(1) allowing States to count license holders regardless of whether the licensee engages in the activity. Two other commenters said that the State should not count license holders in the annual certification if the licensee does not hunt or fish.

Response 5: We did not make any changes based on this comment. Some people buy a license because they plan to hunt or fish, but never do. Others buy a license to take part in other outdoor activities on a State Wildlife Management Area where it is required for entry. Some buy a license solely to support wildlife and sport fish programs. Others buy a lifetime license as a gift for a child who is too young to

hunt or fish. The Acts require States to count the number of paid hunting- or fishing-license holders. They do not require States to count those who actually hunt or fish.

Comment 6: Allow a State to verify a license holder in State records using a unique identifier instead of a name. This will accommodate a State that does not record the name of certain categories of license holders, such as minors, out-of-State hunters and anglers, and individuals who do not want to give their names for religious reasons.

Response 6: We accepted the recommendation, but we need to ensure that the agency can associate a license holder with the unique identifier. We changed the proposed § 80.33(a) to read: “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.”

Comment 7: Section 80.33(a)(4) does not allow a State director to count all persons who have paid licenses to hunt or fish in the State-specified certification period. This is inconsistent with the Acts and the proposed § 80.31(a).

Response 7: We did not make any changes based on this comment. We use data from the annual certification of licenses to divide excise tax revenue among the States. Section 80.33 provides an equitable way to count: (a) Individuals holding licenses for a fixed period corresponding to the license-certification year, and (b) other individuals holding licenses for a period that starts on the date of purchase and ends 365 days later (variable period). A State that sells variable-period licenses should not be able to count them in two annual certification periods if a State that sells only single-year fixed-period licenses can count them in only one annual certification period.

Comment 8: Combination license holders should be counted as both anglers and hunters at § 80.33(a)(6) only if the State offers an option to buy a separate license to hunt or fish. If no such option exists, the State should conduct a survey or use other means to find out how many license holders intend to hunt and how many intend to fish. The same approach should apply to use permits and entrance fees for wildlife management areas, to find out how many enter to hunt or fish, and how many enter for other activities. States should count only those who hunt or fish as paid license holders.

Response 8: The Acts require States to count the number of paid hunting and

fishing license holders. They do not require States to count those who actually hunt or fish, so we will not require surveys as the commenter recommended.

Comment 9: The proposed § 80.33(b) states that, for a multiyear license to be counted in each certification period, a State fish and wildlife agency must receive \$1 per year of net revenue for each year in which the license is valid. Clarify whether the agency can count the multiyear license as a paid license if the agency spends the entire multiyear license fee immediately after receiving it. Without this clarification, an alternative interpretation is that the agency must hold the fee over the lifetime of the license so that \$1 of net revenue is available in each year that the agency will count it as a paid license.

Response 9: We added a new § 80.35 on requirements for multiyear licenses. Paragraph (b) of this new section addresses the commenter's concern: "The agency must receive net revenue from a multiyear license that is in close approximation to the net revenue received for a single-year license providing similar privileges:

(1) Each year during the license period, or

(2) At the time of sale as if it were a single-payment annuity, which is an investment of the license fee that shows the agency would have received at least the minimum required net revenue for each year of the license period."

Section 80.34 (new section 80.36) May an agency count license holders in the annual certification if the agency receives funds from the State to cover their license fees?

Comment 10: One commenter said that senior citizens in his State must pay \$11 for a license, of which the State fish and wildlife agency receives about \$9. The commenter said this \$9 in net revenue allows the State to count the license in only nine annual certification periods. He compared this to the proposed §§ 80.33(b) and 80.34 which would allow a State to provide funds to its fish and wildlife agency to cover fees normally charged for a category of license, such as senior citizens or veterans. The agency would be able to count those license holders in the annual certification for each year that the State covers the fees. The commenter said this change would potentially shift funds from States that offer low-cost licenses to those where the State covers fees normally charged for a category of license. Two other commenters opposed the proposed

§§ 80.33(b) and 80.34, and two commenters supported these sections.

Response 10: We did not make any changes based on this comment. If a State chooses to pay the hunting and fishing license fees for a category of its citizens, it should be able to count the license holders in the annual certification if the State and its fish and wildlife agency satisfy the conditions at the new § 80.36.

Comment 11: The proposed § 80.34(b) requires that any funds that a State provides to its fish and wildlife agency to cover fees for a category of license holder must equal or exceed the fees that the license holder would have paid. Why is this different from the standard at the proposed § 80.33(a)(4), which requires that the agency receive at least \$1 per year of net revenue?

Response 11: Licenses that provide similar privileges should not have a lower fee just because the State is paying for it. We retained this requirement with an additional clarification at the new § 80.36(d).

Subpart E—Eligible Activities

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

Comment 12: Add as an eligible activity, "Obtain data to guide and direct the regulation of hunting."

Response 12: We added the recommended eligible activity at a new paragraph (a)(3).

Comment 13: The use of "or" in the proposed § 80.50(a)(4) allows funding for anything that simply provides public access. The public access should be associated with a wildlife- or habitat-management or conservation purpose.

Response 13: We changed the proposed § 80.50(a)(4) to read, "Acquire real property suitable or capable of being made suitable for: (i) Wildlife habitat, or (ii) Public access for hunting and other wildlife-oriented recreation." We also moved the proposed § 80.50(a)(5)(ii) to the new § 80.50(a)(6)(ii) and changed it to read, "Provide public access for hunting or other wildlife-oriented recreation."

Comment 14: Add coordination of grants as an eligible activity for the Wildlife and Sport Fish Restoration programs. Add technical assistance as an eligible activity for the Wildlife Restoration program.

Response 14: We added "Coordinate grants in the Wildlife Restoration program and related programs and subprograms" as an eligible activity for the Wildlife Restoration program at the new § 80.50(a)(8). We also added "Coordinate grants in the Sport Fish

Restoration program and related programs and subprograms" as an eligible activity for the Sport Fish Restoration program at the new § 80.51(a)(11). We did not add technical assistance because we may need to establish criteria to decide when it is appropriate, and we do not want to do this without the benefit of public comment following a proposed rule. However, the Regional Director may still approve technical assistance as an eligible activity on a case-by-case basis under the new section § 80.52, which we discuss in Response 15.

Comment 15: The "closed list" of eligible activities could exclude some creative projects that may be appropriate under the Act.

Response 15: We added a new section § 80.52 which reads: "An activity may be eligible for funding even if this part does not explicitly designate it as an eligible activity if: (a) The State fish and wildlife agency justifies in the project statement how the activity will help carry out the purposes of the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act, and (b) The Regional Director concurs with the justification."

Comment 16: One commenter was pleased that the proposed rule included hunter development and recruitment as eligible for funding under the Enhanced Hunter Education and Safety program. Another commenter said that recruitment has no foundation in the Act. The commenter also said that the Service could consider marketing, promotion, and advertising that may be part of recruitment as public relations, which is an ineligible activity.

Response 16: We disagreed with the commenter's view that recruitment may be an ineligible activity. The Pittman-Robertson Wildlife Restoration Act at 16 U.S.C. 669h-1 specifically allows the use of funds for hunter-development programs, and recruitment may be the first phase of hunter development. We made no changes based on this comment.

Comment 17: The linkage that § 80.50(c)(1) makes between hunter development and target shooting is weak at best.

Response 17: Target shooting is an activity that develops certain hunting skills and supplements hunter education and firearm safety. We made no changes based on this comment.

Comment 18: The proposed rule should have said whether competitive shooting events are eligible activities and more specifically whether a grant could pay for prizes, scholarships, and awards associated with competitive shooting events.

Response 18: If the State fish and wildlife agency, or more typically, the subgrantee, holds the competitive shooting event for the primary purpose of producing income, the event would not be eligible for funding under the Pittman-Robertson Wildlife Restoration Act. We will consider developing Service policy on competitive events in the grant programs and subprograms authorized by the Acts. We made no changes based on this comment.

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

Comment 19: Add as an eligible activity for the Sport Fish Restoration program, "Stock fish for recreational purposes."

Response 19: We incorporated the recommendation at the new § 80.51(a)(5).

Comment 20: Change the second sentence at § 80.51(b)(1) so that it reads, "A broad range of access facilities and associated amenities can qualify for funding, but they must provide benefits to recreational boaters." This change will align the regulation with the language of the Act. The Service's policy at 517 FW 7.12(B) already ensures that the facilities accommodate stakeholders who buy motorboat fuels or angling gear.

Response 20: We changed the sentence as recommended.

Section 80.52 (80.53 in final rule) What activities are ineligible for funding?

Comment 21: Clarify whether wildlife damage and predator control are eligible for funding from (a) a grant in the Wildlife Restoration program, or (b) license revenue.

Response 21: We will consider this issue during the next revision of 50 CFR 80, so that the public will have the opportunity to offer comments. We made no changes based on this comment.

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?

Comment 22: Explain at § 80.60(c) that the Service reapportions unobligated Enhanced Hunter Education funds to eligible States as Wildlife Restoration funds and not Hunter Education funds.

Response 22: We changed § 80.60(c) to incorporate this recommendation.

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

Comment 23: The proposed § 80.66(a) requires the use of a proportion based on the ratio of a State's resident marine anglers to the State's total anglers. This ratio must equal the ratio of: (a) The Sport Fish Restoration funds that the State allocates for marine projects, to (b) the total Sport Fish Restoration funds. However, some marine anglers also fish in freshwater, so a State has to allocate this overlap when developing a ratio for marine and a ratio for freshwater anglers. The Service has misinterpreted 16 U.S.C. 777(b)(1) which reads, " * * * [E]ach coastal State * * * shall equitably allocate amounts apportioned to such State * * * between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State." This requires only a comparison of the number of marine anglers to the number of freshwater anglers in the same order as a comparison of the dollars allocated to marine projects and the dollars allocated to freshwater projects. The relationship of the numbers of the two types of anglers is a ratio, just as the relationship of the two dollar amounts is a ratio. The two ratios are in the "same proportion" as required by § 777(b)(1). The proposed rule incorrectly requires a proportion based on: (a) A comparison of the funds allocated to marine fisheries projects with the total funds allocated to marine and freshwater fisheries, and (b) a comparison of marine anglers to the total number of marine and freshwater anglers.

Response 23: The commenter's recommendation would make the allocation of funds simpler, but the proposed § 80.66(a) is the most reasonable interpretation of what the drafters of the legislation intended. In any case, it would not be appropriate to impose a different allocation method based on an alternative interpretation without the benefit of public review. We made no changes based on this comment, but we will review this issue before the next revision of 50 CFR 80.

Subpart G—Application for a Grant

Section 80.83 What is the Federal share of allowable cost?

Comment 24: Section 80.83(a) gives the Regional Director the discretion to reimburse allowable costs on a sliding

scale between 10 and 75 percent, but does not give guidance on how the Regional Director should make that decision.

Response 24: The commenter's general concern was also applicable to the other paragraphs of § 80.83. We changed the proposed § 80.83 to provide more detail on how the Regional Director decides on the Federal share.

Subpart I—Program Income

Section 80.120 What is program income?

Comment 25: Explain at the proposed § 80.120(c)(1) why hunting and fishing license revenue collected as fees for special-area access or recreation cannot be program income.

Response 25: We deleted the proposed § 80.120(c)(1) from the list of examples of revenue that cannot be program income. This deletion is the result of a July 2010 determination that hunter-access fees on lands leased with grant funds for public hunting may qualify as program income under certain conditions.

Comment 26: Explain the basis of the distinction between leases with terms greater than 10 years and leases with terms less than 10 years.

Response 26: Leases are legally complex. Their classification as personal or real property varies significantly among the States and even within a State depending on the type of property. The classification of a lease as real or personal property is important because it determines whether rent earned by a grantee from the lease of real property acquired under a grant is classified as program income or as proceeds from the disposition of real property. We proposed the 10-year threshold to simplify this complexity by adopting a common standard for classifying leases as real or personal property for purposes of the grant programs under the Acts. We chose 10 years because it is a commonly accepted dividing line between long-term and short-term leases, which often affects the lessees' rights and responsibilities. We will present this subject in the context of a future proposed rule that focuses on the acquisition and disposition of all types of real property under a grant. Until we can develop a proposed rule with that focus, we will rely on case-by-case legal interpretations when faced with lease-related issues. We changed the proposed § 80.120(c)(6), which is the new § 80.120(c)(5), to read, "Proceeds from the sale of real property."

Section 80.123 How may an agency use program income?

Comment 27: One commenter stated that we should not require State fish and wildlife agencies to obtain the Regional Director's approval of the matching method for using program income if we do not require the Regional Director's approval for other activities under a grant. This commenter and another stated that all grants qualified for use of the matching method under the criteria at § 80.123(c), and both commenters said that we should consider approving the use of the matching method without conditions or give specific guidance on when its use is appropriate. A third commenter also requested guidance on when the matching method is appropriate.

Response 27: The statement at § 80.123(c) that the Regional Director may approve the use of the matching method is consistent with other prior-approval requirements of this regulation. The Director has delegated the authority to conduct grant programs to the Regional Director with only a few exceptions. The definition of "Regional Director" at § 80.2 includes his or her designated representative, and Regional Directors have generally delegated most decisions on grant programs to the chiefs of their Regional Wildlife and Sport Fish Restoration Program Divisions. We will consider proposing criteria for approval of the matching method of using program income during the next revision of 50 CFR 80 so the public will have the opportunity to offer comments. We made no changes based on these comments.

Subpart J—Real Property

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

Comment 28: Do not restrict a State agency's ability in § 80.130 to carry out a grant-funded project on lands to which it does not have title. States may want to use grant funds to manage wildlife on Federal lands under the terms of a cooperative agreement.

Response 28: Both §§ 80.130 and 80.132 relate to the commenter's concern. We based these sections on 16 U.S.C. 777g(a), 43 CFR 12.71(a) and (b), and the current regulation at § 80.20, which has been part of 50 CFR part 80 with only a minor change since 1982. The final rule does not affect an agency's ability to manage Federal lands cooperatively if this management does not include the completion of a capital improvement.

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

Comment 29: Replace "subgrantee" with "third party" because "subgrant" implies that grant funding passes to a subgrantee for use at the subgrantee's discretion.

Response 29: A subgrantee is an entity that receives an award of money or property. A subgrantee is accountable to the grantee for the use of the money or property (see definitions of subgrant and subgrantee at 43 CFR 12.43). The proposed § 80.131(b) allows the grantee to subgrant only a concurrent right to hold the easement or a right of enforcement. The grantee will be able to set the terms of the subgrant agreement and ensure that the subgrantee's right will not supersede and will be concurrent with the agency's right of enforcement. Since a third party is not necessarily a subgrantee, the grantee may not be able to set the terms of any agreement on the right of enforcement or a concurrent right to hold the easement. We made no changes based on this comment.

Comment 30: Define "concurrent right to hold."

Response 30: We defined the term at the new § 80.131(b)(2).

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

See Comments 31 and 32 and our responses.

Section 80.134 How must an agency use real property?

Comment 31: Instead of requiring a grantee to use real property for the uses in the grant, the regulation should state that the property must continue to serve the purpose of the grant and must be used for the administration of the fish and wildlife programs.

Response 31: The new § 80.134(a) states, "If a grant funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use it for the purpose authorized in the grant." The requirement to use property for the administration of fish and wildlife programs applies only if: (a) The administration of fish and wildlife programs is a purpose of the grant-funded project that acquired, completed, operated, or maintained the real property; or (b) license revenue funded all or part of the project [see the proposed 50 CFR 80.10(c)(2)]. We made no changes based on this comment.

Comment 32: Clarify that grant projects on property other than that acquired with grant funds fall within the requirements of § 80.134.

Response 32: The comment applies to § 80.132 as well as § 80.134. We changed §§ 80.132 and 80.134 to incorporate the recommendation and to clarify in § 80.134 the differences in use requirements for specific types of grant-funded projects.

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

Comment 33: The proposed § 80.137 says that if a State fish and wildlife agency's director and the Service's Regional Director jointly decide that grant-funded real property is no longer useful or needed for its original purpose, the State agency's director may request disposition instructions. Provide guidance on how the Service and State agency will cooperatively formulate these instructions.

Response 33: We changed the proposed § 80.137(b) so that it reads: "Request disposition instructions for the real property under the process described at 43 CFR 12.71, 'Administrative and Audit Requirements and Cost Principles for Assistance Programs'."

Required Determinations

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 final 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 final rule's potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that the changes in the final rule will 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 rule helps grant applicants and recipients by making the regulations 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 clarification will 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 concessioners 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 concessioners.

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. Reword 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 concessioners, 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 final 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 final 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 U.S.C. 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 final 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 final 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 changes potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an agency.

d. The final 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 concessioner, 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 final 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 final 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 final 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 final rule does not have significant takings implications under E.O. 12630 because it does not have a provision for taking private property. Therefore, a takings implication assessment is not required.

Federalism

This final rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will 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 final 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 final 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 final 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 four provisions in the final rule to amend 50 CFR part 80 published in the **Federal Register** at 73 FR 43120 on July 24, 2008, based on subsequent experience; and
- d. Addresses four new issues that State fish and wildlife agencies raised in response to the proposed rule to amend 50 CFR part 80 published in the **Federal Register** at 73 FR 24523, May 5, 2008.

Paperwork Reduction Act

We examined the final 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 final rule at 50 CFR 80.160 describes eight information collections. 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 four of the eight information collections. These four information collections are for the purposes of: (a) Application for a grant; (b) assurances related to authority, capability, and legal compliance for nonconstruction programs, (c) assurances related to authority, capability, and legal compliance for construction programs;

and (d) reporting on the use of Federal funds, match, and program income.

OMB approved three other information collections in the final 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 eighth 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 final 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 8.5A(3).

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 final 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 will 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.

Final Regulation Promulgation

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

Title 50—Wildlife and Fisheries

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—Certification of License Holders

- 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 How does an agency calculate net revenue from a license?
- 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 to cover their license fees?
- 80.37 What must an agency do if it becomes aware of errors in its certified license data?
- 80.38 May the Service recalculate an apportionment if an agency submits revised data?
- 80.39 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 May an activity be eligible for funding if it is not explicitly eligible in this part?
- 80.53 Are costs of State central services eligible for funding?
- 80.54 What activities are ineligible for funding?
- 80.55 May an agency receive a grant to carry out part of a larger project?
- 80.56 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 the 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 grantee's responsibilities?
- 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 beginning of the grant period?
- 80.95 How does an agency receive Federal grant funds?
- 80.96 May an agency use Federal funds without using match?
- 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 Does an agency have to display one of the symbols in this part on a completed project?

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 its authorized purpose?
- 80.136 Is it a diversion if an agency does not use grant-acquired real property for its authorized purpose?
- 80.137 What if real property is no longer useful or needed for its original purpose?

Subpart K—Revisions and Appeals

- 80.150 How does an agency ask for revision 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. 777–777n, except 777e–1 and g–1.

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. (1) *Capital improvement* means:

(i) A structure that costs at least \$10,000 to build; or

(ii) The alteration, renovation, or repair of a structure if it increases the structure's useful life or its market value by at least \$10,000.

(2) An agency may use its own definition of capital improvement if its definition includes all capital improvements as defined here.

Comprehensive management system is a State fish and wildlife agency's method of operations that links programs, financial systems, human resources, goals, products, and services. It assesses the current, projected, and

desired status of fish and wildlife; it develops a strategic plan and carries it out through an operational planning process; and it 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. A comprehensive-management-system grant funds all or part of a State's comprehensive management system.

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:

- (1) The person whom the Secretary:
 - (i) Appointed as the chief executive official of the U.S. Fish and Wildlife Service, and
 - (ii) Delegated authority to administer the Acts nationally; or
- (2) A deputy or another person authorized temporarily to administer the Acts nationally.

Diversion means any use of revenue from hunting and fishing licenses for a purpose other than administration of the State fish and wildlife agency.

Fee interest means the right to possession, use, and enjoyment of a parcel of land or water for an indefinite period. A fee interest, as used in this part, may be the:

- (1) Fee simple, which includes all possible interests or rights that a person can hold in a parcel of land or water; or
- (2) Fee with exceptions to title, which excludes one or more real property interests that would otherwise be part of the fee simple.

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*, *under a grant*, 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.

Lease means an agreement in which the owner of a fee interest transfers to a lessee the right of exclusive possession and use of an area of land or water for a fixed period, which may be renewable. The lessor cannot readily revoke the lease at his or her discretion. The lessee pays rent periodically or as a single payment. The lessor must be able to regain possession of the lessee's interest (*leasehold interest*) at the end of the lease term. An agreement that does not correspond to this definition is not a lease even if it is labeled as one.

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.

Personal property means anything tangible or intangible that is not real property.

(1) Tangible personal property includes:

- (i) Objects, such as equipment and supplies, that are moveable without substantive damage to the land or any structure to which they may be attached;
- (ii) Soil, rock, gravel, minerals, gas, oil, or water after excavation or extraction from the surface or subsurface;
- (iii) Commodities derived from trees or other vegetation after harvest or separation from the land; and
- (iv) Annual crops before or after harvest.

(2) Intangible personal property includes:

- (i) Intellectual property, such as patents or copyrights;
- (ii) Securities, such as bonds and interest-bearing accounts; and
- (iii) Licenses, which are personal privileges to use an area of land or water with at least one of the following attributes:

(A) Are revocable at the landowner's discretion;

(B) Terminate when the landowner dies or the area of land or water passes to another owner; or

(C) Do not transfer a right of exclusive use and possession of an area of land or water.

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 a 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. Examples of real property include fee and leasehold interests, conservation easements, and mineral rights.

(1) A parcel includes (unless limited by its legal description) the air space above the parcel, the ground 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.

Regional Director means the person appointed by the Director to be the chief executive official of one of the Service's geographic Regions, or a deputy or another person temporarily authorized to exercise the authority of the chief executive official of one of the Service's geographic Regions. 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 a deputy or another person who is temporarily authorized to direct the operation of the Department.

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 record of financial transactions for groups of similar activities based on programs and subprograms. Each group has a unique number. Different subaccounts also distinguish between benefits to marine or freshwater fisheries in the programs and subprograms authorized by the Dingell-Johnson Sport Fish Restoration Act.

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 hunting and fishing licenses 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 State becomes ineligible to receive the benefits of the Acts if it:

- (a) Fails materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts;
- (b) Does not have legislation required at § 80.10 or passes legislation contrary to the Acts; or
- (c) Diverts hunting and fishing license revenue from:
 - (1) The control of the State fish and wildlife agency; or
 - (2) Purposes other than the agency’s administration.

§ 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 after receiving a preliminary certificate of apportionment.

Subpart C—License Revenue

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

Hunting and fishing license revenue includes:

- (a) All proceeds from State-issued general or special hunting and fishing licenses, permits, stamps, tags, access and use fees, and other State charges to hunt or fish for recreational purposes. Revenue from licenses sold by vendors is net income to the State after deducting reasonable sales fees or similar amounts retained by vendors.
- (b) Real or personal property acquired with license revenue.
- (c) Income from the sale, lease, or rental of, granting rights to, or a fee for access to real or personal property acquired or constructed with license revenue.
- (d) 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 real or personal property acquired, managed, maintained, or produced by using license revenue.
- (e) Interest, dividends, or other income earned on license revenue.
- (f) Reimbursements for expenditures originally paid with license revenue.

- (g) Payments received for services funded by license revenue.

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

The Director may declare a State to be in diversion if it 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 State is then ineligible to receive benefits under the relevant Act from the date the Director signs the declaration until the State resolves the diversion. Only the Director may declare a State to be in diversion, and only the Director may rescind the declaration.

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

The State must complete the actions in paragraphs (a) through (e) 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) If necessary, the State must enact adequate legislative prohibitions to prevent diversions of license revenue.

- (b) The State fish and wildlife agency must replace all diverted cash derived from license revenue and the interest lost up to the date of repayment. 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 (e) of this section; or

- (3) Receive a cash amount at least equal to the current market value of the diverted property only if the Director agrees that the actions described in paragraphs (d)(1) and (d)(2) of this section are impractical.

- (e) To be acceptable under paragraph (d)(2) of this section:

- (1) Replacement property must have both:

- (i) Market value that at least equals the current market value of the diverted property; and

- (ii) Fish or wildlife benefits that at least equal those of the property diverted.

(2) The Director must agree that the replacement property meets the requirements of paragraph (e)(1) of this section.

§ 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—Certification of License Holders

§ 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) An agency must follow the rules in this table in deciding how to count license holders in the annual certification:

Type of license holder	How to count each license holder
(1) A person who has either a paid hunting license or a paid sportfishing license 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 hunting license 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 sportfishing license because the person either voluntarily obtained them or was required to have more than one license.	Once.
(4) A person who has a paid single-year hunting license or a paid single-year sportfishing license for which the 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 paid multiyear hunting license or a paid multiyear sportfishing license for which the agency receives at least \$1 of net revenue for each year in which the license is valid. (Multiyear licenses must also meet the requirements at § 80.35.)	Once in each certification period in which the license is valid.
(6) A person holding a paid single-year combination license permitting both hunting and sportfishing for which the agency receives at least \$2 of net revenue.	Twice in the first certification period in which the license is valid: once as a person who has a paid hunting license, and once as a person who has a paid sportfishing license.
(7) A person holding a paid multiyear combination license permitting both hunting and sportfishing for which the agency receives at least \$2 of net revenue for each year in which the license is valid. (Multiyear licenses must also meet the requirements in § 80.35.)	Twice in each certification period in which the license is valid; once as a person who has a paid hunting license, and once as a person who has a paid sportfishing license.
(8) 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.	Cannot be counted.

§ 80.34 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 vendors' fees, automated license-system costs, licensing-unit personnel costs,

and the costs of printing and distribution.

§ 80.35 What additional requirements apply to multiyear licenses?

The following additional requirements apply to multiyear licenses:

(a) 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.

(b) The agency must receive net revenue from a multiyear license that is in close approximation to the net revenue received for a single-year license providing similar privileges:

(1) Each year during the license period; or

(2) At the time of sale as if it were a single-payment annuity, which is an investment of the license fee that results in the agency receiving at least the minimum required net revenue for each year of the license period.

(c) An agency may spend a multiyear license fee as soon as the agency receives it as long as the fee provides the minimum required net revenue for the license period.

(d) The agency must count only the licenses that meet the minimum required net 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.

(e) 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.

§ 80.36 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 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 five 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 State funds that are at least equal to the fees charged for the single-year license providing similar privileges. If the State does not have a single-year license providing similar privileges, the Director must approve the fee paid by the State for those license holders.

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

(f) 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 must be verifiable in State records.

(g) The license fees must meet all other requirements of 50 CFR 80.

§ 80.37 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.

§ 80.38 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 that apportionment, the Service may recalculate the final apportionment only if it would not reduce funds to other State fish and wildlife agencies.

§ 80.39 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 and manage wildlife for the benefit of the public.

(2) Conduct research on the problems of managing wildlife and its habitat if necessary to administer wildlife resources efficiently.

(3) Obtain data to guide and direct the regulation of hunting.

(4) Acquire real property suitable or capable of being made suitable for:

(i) Wildlife habitat; or

(ii) Public access for hunting or other wildlife-oriented recreation.

(5) Restore, rehabilitate, improve, or manage areas of lands or waters as wildlife habitat.

(6) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve lands or waters as wildlife habitat; or

(ii) Provide public access for hunting or other wildlife-oriented recreation.

(7) 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.

(8) Coordinate grants in the Wildlife Restoration program and related programs and subprograms.

(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, archers, and shooters.

(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 and manage sport fish for the benefit of the public.

(2) Conduct research on the problems of managing fish and their habitat and the problems of fish 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:

(i) Size and geographic range of sport fish populations;

(ii) Changes in sport fish populations due to fishing, other human activities, or natural causes; and

(iii) 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) Stock fish for recreational purposes.

(6) Acquire real property suitable or capable of being made suitable for:

(i) Sport fish habitat or as a buffer to protect that habitat; or

(ii) Public access for sport fishing. Closures to sport fishing must be based on the recommendations of the State fish and wildlife agency for fish and wildlife management purposes.

(7) Restore, rehabilitate, improve, or manage:

(i) Aquatic areas adaptable for sport fish habitat; or

(ii) Land adaptable as a buffer to protect sport fish habitat.

(8) Build structures or acquire equipment, goods, and services to:

(i) Restore, rehabilitate, or improve aquatic habitat for sport fish, or land as a buffer to protect aquatic habitat for sport fish; or

(ii) Provide public access for sport fishing.

(9) 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.

(10) 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.

(11) Coordinate grants in the Sport Fish Restoration program and related programs and subprograms.

(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 they must provide benefits to recreational boaters. "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 May an activity be eligible for funding if it is not explicitly eligible in this part?

An activity may be eligible for funding even if this part does not

explicitly designate it as an eligible activity if:

(a) The State fish and wildlife agency justifies in the project statement how the activity will help carry out the purposes of the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act; and

(b) The Regional Director concurs with the justification.

§ 80.53 Are costs of State central services eligible for funding?

Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency are eligible for funding 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 What activities are ineligible for funding?

The following activities are ineligible for funding under the Acts, except when necessary to carry out project purposes approved by the Regional Director:

(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 the regulated taking of fish, hunting, or the trapping of wildlife.

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

A State fish and wildlife agency may receive a grant to carry out part of a larger project that uses funds unrelated to the grant. The grant-funded part of the larger project must:

(a) Result in an identifiable outcome consistent with the purposes of the grant program;

(b) Be substantial in character and design;

(c) Meet 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) Meet all other requirements of the grant program.

§ 80.56 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 consistent with the Acts;

(b) States a purpose and sets objectives, both of which are based on the need;

- (c) Uses a planned approach, appropriate procedures, and accepted principles of fish and wildlife conservation and management, research, or education; and
- (d) Is cost effective.

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 at § 80.50(a) and (b)	Those listed at 80.50(c), but see 80.60(d) under Basic Hunter Education funds.
(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 as Wildlife Restoration funds 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 for activities at § 80.50(b).
(d) What if funds are fully obligated during the period of availability?	If Basic Hunter Education funds are fully obligated for activities listed at 80.50(b), 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) A Federal obligation of these allocated funds must occur 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 the Outreach and Communications subprograms?

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

(a) Each State's fish and wildlife agency 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 with benefits for marine fisheries and projects with 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 total funds obligated for marine fisheries projects to total funds obligated for marine and freshwater fisheries projects combined must equal the ratio of resident marine anglers to the total number of resident anglers in the State; and

(2) The ratio of total funds obligated for freshwater fisheries projects to total funds obligated for marine and freshwater fisheries projects combined must equal 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 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 Regional Director for this purpose.

(d) If an agency uses statistical sampling 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, the sampling must be 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 sportfishing license holders.

(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) Agencies that fail to allocate funds equitably between marine and freshwater fisheries projects may become ineligible to use Sport Fish Restoration program funds. These agencies must remain ineligible until they demonstrate to the Director that they have allocated the funds equitably.

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

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 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 according to a plan that schedules either reimbursements or advances of funds immediately before need. The Service will reimburse or advance funds to the agency according to a plan approved by the Regional Director and 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.

(b) The project statement included with the application must have a complete schedule of payments to finish 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 that are:

(i) Approved by the Office of Management and Budget for the grant application process; and

(ii) Available on the Federal Web site for electronic grant applications at <http://www.grants.gov>; 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 supports 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 the following documents when applying for a comprehensive-management-system grant:

(a) The standard form for an application for Federal assistance in a mandatory grant program.

(b) The standard forms for assurances for nonconstruction programs and construction programs as applicable. Agencies may submit these standard forms for assurances annually to the

Regional Director for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(c) A statement of cost estimates by subaccount. Agencies may obtain the subaccount numbers from the Service's Regional Division of Wildlife and Sport Fish Restoration.

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

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

(f) 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.

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

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

(i) A description of how the public can take part in decisionmaking 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 the following documents when applying for a project-by-project grant:

(a) The standard form for an application for Federal assistance in a mandatory grant program.

(b) The standard forms for assurances for nonconstruction programs and construction programs as applicable. Agencies may submit these standard forms for assurances annually to the Regional Director for use with all applications for Federal assistance in the programs and subprograms under the Acts.

(c) 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) *Purpose and Objectives*. State the purpose and objectives, and base them on the need. The purpose states the desired outcome of the proposed project in general or abstract terms. The objectives state the desired outcome of

the proposed project in terms that are specific and quantified.

(3) *Results or benefits expected*.

(4) *Approach*. Describe the methods used to achieve the stated objectives.

(5) *Useful life*. Propose a useful life for each capital improvement, and 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 for research projects*. Record the principal investigator's name, work address, and work telephone number.

(8) *Program income*.

(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) *Budget narrative*. 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. Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs and capital expenditures for land, buildings, and equipment. Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

(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 any 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) *General*. Provide information in the project statement that:

(i) Shows that the proposed activities are eligible for funding and substantial in character and design; and

(ii) Enables the Service to comply with the applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and 4331-4347), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470s), and other laws, regulations, and policies.

§ 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 the allowable costs of a grant-funded project to the fish and wildlife agencies of the 50 States. The Regional Director generally approves any Federal share from 10 to 75 percent as proposed by one of the 50 States if the:

(1) Funds are available; and
(2) Application is complete and consistent with laws, regulations, and policies.

(b) The Regional Director may provide funds to the District of Columbia to pay 75 to 100 percent of the allowable costs of a grant-funded project in a program or subprogram authorized by the Dingell-Johnson Sport Fish Restoration Act. The Regional Director decides on the specific Federal share between 75 and 100 percent based on what he or she decides is fair, just, and equitable. The Regional Director may reduce the Federal share to less than 75 percent of allowable project costs only if the District of Columbia voluntarily provides match to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless he or she follows the procedure at paragraph (d) of this section.

(c) The Regional Director may provide funds to pay 75 to 100 percent of the allowable costs of a project funded by a grant 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 Regional Director decides on the specific Federal share between 75 and 100 percent based on what he or she decides is fair, just, and equitable. The Regional Director may reduce the Federal share to less than 75 percent of allowable project costs only if the Commonwealth or territorial fish and

wildlife agency voluntarily provides match to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless he or she follows the procedure at paragraph (d) of this section. The Federal share of allowable costs for 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 may be affected by the waiver process described at § 80.84(c).

(d) The Regional Director may waive the 10-percent minimum Federal share of allowable costs if the State, District of Columbia, Commonwealth, or territory requests a waiver and provides compelling reasons to justify why it is necessary for the Federal government to fund less than 10 percent of the allowable costs of a project.

§ 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 is fair, just, and equitable for the Federal share consistent with § 80.83(b) through (d);

(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. Following 48 U.S.C. 1469a, the Regional Director must then waive the first \$200,000 of match to establish the final non-Federal match requirement for a project that includes funding from only one grant program or subprogram. If a project includes funds from more than one grant program or subprogram, the Regional Director must waive the first \$200,000 of match applied to the funds for each program and subprogram.

§ 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 as match Federal funds or the value of an 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 grantee's responsibilities?

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

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

(b) 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.

(c) 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.

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

(e) Giving reasonable access to work sites and records by employees and contractual auditors of the Service, the Department of the Interior, and the Comptroller General of the United States.

(1) Access is for the purpose of:

(i) Monitoring progress, conducting audits, or other reviews of grant-funded projects; and

(ii) Monitoring the use of license revenue.

(2) Regulations on the uniform administrative requirements for grants awarded by the Department of the Interior describe the records that are subject to these access requirements.

(3) The closeout of an award does not affect the grantee's responsibilities described in this section.

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

§ 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 preaward costs that meet the conditions in § 80.94.

§ 80.94 May an agency incur costs before the beginning of the grant period?

(a) A State fish and wildlife agency may incur costs of a proposed project before the beginning of the grant period (preaward costs). However, the agency has no assurance that it will receive reimbursement until the Regional Director awards a grant that incorporates a project statement demonstrating that the preaward costs conform to all of the conditions in paragraph (b) of this section.

(b) Preaward 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 preaward costs comply with all laws, regulations, and policies applicable to a grant-funded project.

- (5) The agency must:
 - (i) Obtain the Regional Director's concurrence that the Service will be able to comply with the applicable laws, regulations, and policies before the agency starts work on the ground; and
 - (ii) Provide the Service with all the information it needs with enough lead time for it to comply with the applicable laws, regulations, and policies.

(6) The agency must not complete the project before the beginning of the grant

period unless the Regional Director concurs that doing so is necessary to take advantage of temporary circumstances favorable to the project or to meet legal deadlines. An agency completes a project when it incurs all costs and finishes all work necessary to achieve the project objectives.

(c) The agency can receive reimbursement for preaward costs only after the beginning of the grant period.

§ 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 use Federal funds without using match?

(a) The State fish and wildlife agency must not draw down any Federal funds for a grant-funded project under the Acts in greater proportion to the use of match than total Federal funds bear to total match unless:

- (1) The grantee draws down Federal grant funds to pay for construction, including land acquisition;
- (2) An in-kind contribution of match is not yet available for delivery to the grantee or subgrantee; or
- (3) The project is not at the point where it can accommodate an in-kind contribution.

(b) If an agency draws down Federal funds in greater proportion to the use of match than total Federal funds bear to total match under the conditions described at paragraphs (a)(1) through (a)(3) of this section, the agency must:

- (1) Obtain the Regional Director's prior approval, and
- (2) Satisfy the project's match requirement 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, or 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 agency's control; and
- (2) Designs the farming or grazing to advance the agency's fish and wildlife management objectives.

§ 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 follows:



(b) The symbol of the Dingell-Johnson Sport Fish Restoration Act follows:



(c) The symbol of the Acts when used in combination follows:



§ 80.100 Does an agency have to display one of the symbols in this part on a completed project?

No. A State fish and wildlife agency does not have to display one of the symbols in § 80.99 on a project

completed under the Acts. However, the Service encourages agencies to display the appropriate symbol following these requirements or guidelines:

(a) An agency 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) An agency may require a subgrantee 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 an agency 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 during the grant period.

(b) Program income includes revenue from:

- (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 concessioners 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; or
- (6) Sale of a product of mining, drilling, forestry, or agriculture during the period of a grant that supports the:
 - (i) Mining, drilling, forestry, or agriculture; or
 - (ii) Acquisition of the land on which these activities occurred.

(c) Program income does not include:

- (1) Interest on grant funds, rebates, credits, discounts, or refunds;
- (2) Sales receipts retained by concessioners 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;
- (3) Cash received by the agency or by volunteer instructors to cover incidental costs of a class for hunter or aquatic-resource education;
- (4) Cooperative farming or grazing arrangements as described at § 80.98; or
- (5) Proceeds from the sale of real property.

§ 80.121 May an agency earn program income?

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 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 the costs of generating program income from gross income when it calculates program income as long as the agency does not:

- (1) Pay these costs with:
 - (i) Federal or matching cash under a Federal grant; or
 - (ii) Federal cash unrelated to a grant.
- (2) Cover these costs by accepting:
 - (i) Matching in-kind contributions for a Federal grant; or
 - (ii) Donations of services, personal property, or real property unrelated to a Federal grant.
- (b) Examples of costs of generating program income that may qualify for deduction from gross income if they are consistent with paragraph (a) of this section are:

- (1) Cost of estimating the amount of commercially acceptable timber in a forest and marking it for harvest if the commercial harvest is incidental to a grant-funded habitat-management or facilities-construction project.
 - (2) Cost of publishing research results as a pamphlet or book for sale if the publication is incidental to a grant-funded research project.
- § 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 in the following table:

Method	Requirements for using the method
(1) Deduction	<ul style="list-style-type: none"> (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	<ul style="list-style-type: none"> (i) The agency may add the program income to the Federal and matching funds under the grant. (ii) The agency must use the program income for the purposes of the grant and under the terms of the grant.
(3) Matching	<ul style="list-style-type: none"> (i) The agency must request the Regional Director's approval in the project statement. (ii) The agency must explain in the project statement how the agency proposes to use the program income, the expected results, and why it is essential to use program income as match. (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, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the 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?

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) Some States do not authorize their fish and wildlife agency to hold the title to real property that the agency manages. In these cases, the State or one of its administrative units may hold the title to grant-funded real property as long as the agency has the authority to manage the real property for its authorized purpose 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. Ownership interests include fee and leasehold interests but not easements.

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

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 a local or tribal government. A concurrent right to hold an easement means that both the State agency and the subgrantee hold the easement and share its rights and responsibilities.

(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 parcel of land and water on which it completes a grant-funded capital improvement. An agency must exercise this control by holding title to a fee or leasehold interest or through 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 even if the agency did not acquire the parcel with grant funds.

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

Yes. A State fish and wildlife agency is responsible for maintaining 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?

(a) If a grant funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use it for the purpose authorized in the grant.

(b) If a grant funds construction of a capital improvement, the agency must use the capital improvement for the purpose authorized in the grant during the useful life of the capital improvement. The agency must do this even if it did not use grant funds to:

(1) Acquire the parcel on which the capital improvement is located; or

(2) Build the structure in which the capital improvement is a component.

(c) If a grant funds management, operation, or maintenance of a parcel of land or water, or a capital improvement, the agency must use it for the purpose authorized in the grant during the grant period. The agency must do this even if it did not acquire the parcel or construct the capital improvement with grant funds.

(d) A State agency may allow commercial, recreational, and other secondary uses of a grant-funded parcel of land or water or capital improvement if these secondary uses do not interfere with the authorized purpose of the grant.

§ 80.135 What if an agency allows a use of real property that interferes with its 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.

(b) If the agency cannot fully restore the real property to its authorized purpose, it must replace the real property using non-Federal funds.

(c) The agency must determine that the replacement property:

(1) Is of at least equal value at current market prices; and

(2) Has fish, wildlife, and public-use benefits consistent with the purposes of the original grant.

(d) The Regional Director may require the agency to obtain an appraisal and appraisal review to estimate the value of the replacement property at current market prices if the agency cannot support its assessment of value.

(e) The agency must obtain the Regional Director's approval of:

(1) Its determination of the value and benefits of the replacement property; and

(2) The documentation supporting this determination.

(f) The agency 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 agency does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the Director may declare the agency ineligible to receive new grants in the program or programs that funded the original acquisition.

§ 80.136 Is it a diversion if an agency does not use grant-acquired real property for its authorized purpose?

If a State fish and wildlife agency does not use grant-acquired real property for its authorized purpose, 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 unauthorized use is for a purpose 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 under the process described at 43 CFR 12.71, "Administrative and Audit Requirements and Cost Principles for Assistance Programs."

Subpart K—Revisions and Appeals**§ 80.150 How does an agency ask for revision of a grant?**

(a) A State fish and wildlife agency must ask for revision of a project or 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 revision would affect the information that the agency

submitted with the original grant application; and

(ii) Why the requested revision is necessary.

(b) An agency must send any requested revision of the purpose or objectives of a project or grant 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 43 CFR part 4, subpart G, "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 Governmentwide standard form (OMB control number 4040-0002).

(3) Certify on a Governmentwide 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 nonconstruction projects, construction projects, or both (OMB control numbers 4040-0007 and 4040-0009).

(4) Provide a project statement that describes the need, purpose and objectives, results or benefits expected, approach, geographic 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 Governmentwide 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, MS 2042-PDM, Arlington, VA 22203.

Dated July 19, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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