

Title 50—Wildlife and Fisheries

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

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Authority: 16 U.S.C. 669–669k and 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.

Asset means all tangible and intangible real and personal property of monetary value. This includes *Capital assets* as defined at 2 CFR 200.12, *Equipment* as defined at 2 CFR 200.33, and real property of any value.

Capital improvement or capital expenditure for improvement means:

(1) A structure that costs at least \$25,000 to build, acquire, or install; or the alteration or repair of a structure or the replacement of a structural component, if it increases the structure's useful life by at least 10 years or its market value by at least \$25,000.

(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.

Diversions 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 or cost share means the non-Federal portion of project costs or value of any non-Federal in-kind contributions of a grant-funded project, unless a Federal statute authorizes match using Federal funds. Match must meet the requirements at 2 CFR 200.306(b)(1)–(7).

Obligation has two meanings depending on the context:

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

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, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States where the State Attorney General provides an official opinion that determines a lease is personal property under State law.

(1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed 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 permit is often incorrectly labeled a lease, which can be real property, but most grazing permits are actually licenses, which are not real property.

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) A State fish and wildlife agency must count a person holding a single-year license only once in the certification period in which the license first becomes valid. (Single-year licenses are valid for any length of time less than 2 years.)

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

(d) A person having more than one valid hunting license is counted only once each certification period as a hunter. A person having more than one valid fishing license is counted only once each certification period as an angler. A person having both a valid hunting license and a valid fishing license, or a valid combination hunting/fishing license, may be counted once each certification period as a hunter and once each certification period as an angler. The license holder may have voluntarily obtained them or was required to have them in order to obtain a different privilege.

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

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

(a) For the State fish and wildlife agency to certify a license holder, the agency must establish that it receives the following minimum gross revenue:

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

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

(b) A State fish and wildlife agency must follow the requirement in paragraph (a) of this section for all licenses sold as soon as practical, but no later than September 27, 2021.

(c) A State may apply these standards to all licenses certified in the license certification period that this rule becomes effective.

§ 80.35 What additional requirements apply to multiyear licenses?

The following additional requirements apply to multiyear licenses:

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

(b) If an agency is using an investment, annuity, or similar method to fulfill the net revenue requirements of the version of § 80.33 that was effective August 31, 2011, or any prior rule that required net revenue, until September 26, 2019, the agency must discontinue that method and convert to the new standard, unless following the exception at paragraph (c) of this section.

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

(2) If the revenue collected at the time of sale has been spent, the agency must apply the new standard as if it were applicable at the time of sale. For example, if a single-privilege, multiyear license sold for \$100 in 2014, and the agency adopts the new standard in 2018, then 4 years have been used toward the amount received by the agency ($4 \text{ years} \times \$2 = \8) and the license holder may be counted for up to 46 more years ($\$100 - \$8 = \$92/\$2 = 46$).

(c) An agency may continue to follow the requirements of the version of § 80.33 that was effective from August 31, 2011, or any prior rule required net revenue, until September 26, 2019, for those multiyear licenses that were sold before the date specified at § 80.34(b) if the agency:

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

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

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

(d) 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.

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

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

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

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

(2) Whether the license holder remains alive.

(h) The agency must use and document a reasonable technique for deciding how many multiyear-license holders remain alive in the certification period. Some examples of reasonable techniques are specific identification of license holders, statistical sampling, life-expectancy tables, and mortality tables. The agency may instead use 80 years of age as a default for life expectancy.

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

If a State fish and wildlife agency receives funds from the State or other entity 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 and account for the State or other entity funds as license revenue.
- (e) The agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license holder, who is verifiable in State records.
- (f) The license fees must meet all other requirements in this part.

§ 80.37 May the State fish and wildlife agency certify a license sold at a discount when combined with another license or privilege?

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

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

- (a) An entity other than the agency may offer the public a license that costs less than the regulated price and a State fish and wildlife agency may certify the license holder only if:
 - (1) The license is issued to the individual according to the requirements at § 80.33;
 - (2) The amount received by the agency meets all other requirements in this subpart; and
 - (3) The agency agrees to the amount of revenue it will receive.
- (b) An entity other than the agency may offer the public a license that costs less than the regulated price without the agency agreeing, but must pay the agency the full cost of the license.

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

A State fish and wildlife agency must submit revised certified data on paid license holders within 90 days after it becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if it becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

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

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

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

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

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

Subpart E—Eligible Activities

§ 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.
 - (iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and services under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.
- (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.
- (9) Provide technical assistance.

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

(i) Required by State or local law; and

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

(b) *Wildlife Restoration—Basic Hunter Education and Safety subprogram.*

(1) Teach the skills, knowledge, and attitudes necessary to be a responsible hunter.

(2) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

(3) 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.

(6) Acquire real property suitable or capable of being made suitable for firearm and archery ranges for public use.

§ 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.

(iii) Grantees and subgrantees must follow the requirements at 2 CFR part 200 when acquiring equipment, goods, and service under an award, with emphasis on §§ 200.313, 200.317 through 200.326, and 200.439.

(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.

(12) Provide technical assistance.

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

(i) Required by State or local law; and

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

(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 in table 1 to § 80.60:

Table 1 to § 80.60

	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 et seq.).	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. State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

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

(4) Results or benefits expected.

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

(6) 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.

(7) Geographic location.

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

(9) 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 additive or matching method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need when using program income as match.

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

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

(10) Budget narrative.

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

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are preaward costs, capital improvements or expenditures, real property acquisitions, or equipment purchases.

(iii) 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 200.

§ 80.98 How must an agency report barter transactions?

(a) A State fish and wildlife agency must follow the requirements in table 1 to § 80.98(a) when reporting barter transactions in the Federal financial report:

Table 1 to § 80.98(a)

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. Upon request from the State agency and approval of the Service, the option at 2 CFR 200.307(b) may be allowed.
- (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) Fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses.
- (6) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of a grant.
- (7) 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 any of the following:
 - (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 hunter education, aquatic education, or other classes. Incidental costs are small amounts and typically not essential to the training delivery. Materials purchased at cost by the student, separate from course fees, are incidental costs.
 - (4) Cooperative farming or grazing arrangements as described at § 80.98.
 - (5) Proceeds from the sale of real property, equipment, or supplies.

§ 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 or methods that it wants to use in the project statement that it submits with each application for Federal assistance.
- (b) Program income must be spent within the grant period and program in which it is earned and before requesting additional Federal funds for the activity for which the program income is earned.
- (c) The three methods for applying program income to Federal and non-Federal outlays are in table 1 to § 80.123(c):

Table 1 to § 80.123(c)

Method	Requirements for using the method
(1) Deduction	(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs. (ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise. (iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.
(2) Addition	(i) The agency must request the Regional Director's approval in the project statement.

	(ii) The agency may add the program income to the Federal and non-Federal 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	(i) The agency must request the Regional Director's approval in the project statement. (ii) The agency must explain in the project statement the expected program income, how the agency proposes to use the program income to satisfy matching requirements, how the agency will use program income earned in excess of required match, and the primary conservation or recreation objective sufficient to show income as a secondary benefit. (iii) If neither the agency's project statement nor the award indicates how program income in excess of matching requirements will be applied, the agency must use the deduction method.

(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?

A State fish and wildlife agency must spend program income before requesting additional payments under an award. If the 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 real property acquired with grant funds is no longer useful or needed for its original purpose under the grant, the director of the agency must:

- (a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose, or
- (b) Follow the regulations at 2 CFR 200.311 and consult with the Regional Director on how to treat proceeds from the disposition of real property.

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 1018–0100).

(5) Change or update information provided to the Service in a previously approved application (OMB control number 1018–0100).

(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 1018–0100).

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

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