

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 80**

[FWS-R9-WSR-2008-0035; 91400-5110-0000-7B]

RIN 1018-AV99

**Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing the Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety financial assistance programs. We propose to (a) address changes in law, and regulation; (b) clarify rules on license certification to address a greater number of licensing choices that States have offered hunters and anglers; (c) delete provisions on audits and records that are addressed in other regulations broadly applicable to financial assistance programs managed by the Department of the Interior; and (d) reword the regulations to make them easier to understand. The proposed changes would improve the regulations by making them more current and clear.

**DATES:** We will accept comments received or postmarked on or before June 4, 2008.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AV99; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

**FOR FURTHER INFORMATION CONTACT:** Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-2156.

**SUPPLEMENTARY INFORMATION:****Background**

The U.S. Department of the Interior's (DOI) Fish and Wildlife Service (Service) manages 38 financial

assistance programs, 14 of which are managed, in whole or in part, by the Service's Wildlife and Sport Fish Restoration activity (WSFR). This proposed rule will revise title 50, part 80, of the Code of Federal Regulations (CFR), which contains the regulations that govern three WSFR programs: Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety. The Sport Fish Restoration program includes freshwater and marine fisheries, aquatic resource education, and boat access programs. These programs provide financial assistance to the fish and wildlife agencies of States and other eligible jurisdictions to manage fish and wildlife and provide hunter education and safety programs. The Catalog of Federal Domestic Assistance at <http://www.cfda.gov> describes these programs under 15.611, 15.605, and 15.626.

The Federal Aid in Wildlife Restoration Act of September 2, 1937, and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, as amended, established the programs affected by this proposed rule. These acts are more commonly known as the Pittman-Robertson Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669k) and the Dingell-Johnson Sport Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777n). They established a user-pay and user-benefit system in which the fish and wildlife agencies of the States, Commonwealths, and territories receive formula-based funding from a continuing appropriation. The District of Columbia also receives such funding, but only for managing fish resources. Industry partners pay taxes on equipment and gear manufactured for purchase by hunters, anglers, boaters, archers, and recreational shooters. The Service then distributes those funds to the fish and wildlife agencies of States and other eligible jurisdictions. States must match these Federal funds by providing a 25-percent cost share. In fiscal year 2008, the States and other eligible jurisdictions received \$310 million through the Wildlife Restoration and Hunter Education and Safety programs and \$398 million through the Sport Fish Restoration program.

The Service revised two sections of 50 CFR 80 in 2001, but we have not systematically reviewed other sections for revision since the 1980's. Consequently, some provisions do not reflect:

(a) The promulgation in 1988 of 43 CFR part 12, subpart C "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments";

(b) The Transportation Equity Act for the 21st Century in 1998, which raised the minimum level of spending for boating access in the Sport Fish Restoration program from 10 to 15 percent; and

(c) The Presidential memorandum of June 1, 1998, that required the use of plain language in Government writing.

In addition, we must clarify 50 CFR 80.10 on certification of hunting and fishing licenses to address the greater number of licensing choices that some States and other jurisdictions have offered hunters and anglers in recent years.

**Updates to the Regulations**

We propose to update and revise the regulations at 50 CFR part 80 to reflect a 2000 amendment of the legal authority that established the affected program. More specifically, we propose to change the names of the Federal Aid in Wildlife Restoration Act of September 2, 1937, and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, to the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. We propose to change the name of the activities associated with the management of the affected financial assistance programs from "Federal Aid" to "Wildlife and Sport Fish Restoration Program." We also propose to update the U.S. Code citations in 50 CFR 80.1 for the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act. The proposed changes above will make 50 CFR part 80 consistent with the Wildlife and Sport Fish Restoration Improvement Act of 2000.

We propose to make nonsubstantive administrative changes in 50 CFR part 80 to ensure that its provisions accurately reflect law and regulation to implement changes that have occurred in these areas over the past 20 years. We would replace the reference in § 80.14 to Office of Management and Budget (OMB) Circular A-102's Attachment N with 43 CFR 12.71 and 12.932 as a source of guidance on the use and disposition of unneeded real property.

The provisions of § 80.19 on records and § 80.22 on audits also refer to subject matter that was in the 1971 version of A-102. We would delete all the contents of these sections because 43 CFR 12.82 and 12.66 are applicable to the affected programs, and they address these subjects adequately.

We propose to delete the definition and references to the "Federal Aid Manual" in § 80.1 and § 80.11 because the "Federal Aid Manual" is a compendium of the Director's instructions to his or her employees and

not appropriate for regulations, which are directed toward and have impacts on the public. We propose to delete references to the Standard Forms (SF) 271 and 269B and add SF 269 in § 80.27 to reflect the forms approved by OMB. We propose to delete § 80.27(d) because the form required by that paragraph, a grant agreement, is no longer valid. We also deleted the estimates of the time required to fill out the forms because such specific information that will change over time is not appropriate for regulations.

We propose to change “aquatic education” to “aquatic resource education” in § 80.15 to reflect more accurately the language of the Dingell-Johnson Sport Fish Restoration Act. We will apply plain language principles to those provisions where we have to change or clarify the content of the regulations. This conversion to plain language will make the affected provisions clearer as well as comply with the Service’s plain language policy. More specifically, we will replace words that are susceptible to different meanings with words that are more precise, *e.g.*, we propose to change “shall” to “must.” We will refer to the territories, Commonwealths, and the District of Columbia in a consistent way throughout 50 CFR 80. Finally, we will alphabetize definitions in § 80.1 for ease of reference and to conform to policy of the Office of the **Federal Register**.

#### Clarifying the Requirements

We propose to make administrative changes in 50 CFR part 80 to ensure that the process for certifying the number of hunter and angler licenses provides accurate data that are comparable among the States (“States” include Commonwealths, territories, and the District of Columbia in the context of license certification.). This proposed change is important because we apportion funds to the States based in part on the numbers of these licenses. We need to clarify this process because, as States offered more licensing options, they began to use different approaches in counting the individuals who purchased licenses. We propose several changes to resolve this problem. We would clarify the 12-month period during which a State-identified license year must end. We would also establish a common approach for States to assign single-year license holders to a license year. Under this approach, States would assign single-year license holders only to the period in which they purchased the license instead of having the option of assigning them to the period in which their licenses are valid. Finally, we would clarify that, under certain

conditions, States may assign a person who purchases a multiyear license to each license period in which the license is valid.

We propose to add the territory of American Samoa to the jurisdictions in § 80.2(b) that are eligible to participate in the benefits of the Pittman-Robertson Wildlife Restoration Act. This is consistent with sections 4(c) and 8(a) of the Pittman-Robertson Wildlife Restoration Act.

We propose to add the District of Columbia to the list of jurisdictions in § 80.12 for which the non-Federal cost sharing must not exceed 25 percent. This change is consistent with section 12 of the Dingell-Johnson Sport Fish Restoration Act.

We propose to increase the minimum expenditure of Sport Fish Restoration apportioned dollars for recreational boating access facilities in § 80.24 from “10 per centum” to “15 percent.” This change would reflect an amendment of the Dingell-Johnson Sport Fish Restoration Act that was in the 1998 Transportation Equity Act for the 21st Century. By increasing the percentage consistent with the 1998 act, we would also change “per centum” to its modern counterpart “percent.”

Finally, we propose to add a provision at § 80.28 that allows the Director to authorize exceptions to any provisions of 50 CFR part 80 that are not explicitly required by law. This proposal recognizes that at some point in the future, natural catastrophes or other extreme situations may justify exceptions to some provisions of 50 CFR part 80.

#### Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal information in addition to the required items specified above, such as your street address, phone number, or e-mail address, you may request at the top

of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

We are opening a comment period of only 30 days because we believe that this amount of time will be sufficient for several reasons: (a) The proposed changes are primarily administrative and nonsubstantive, (b) the affected entities are aware of our intention to propose these changes to improve the regulations, (c) the general public is basically unaffected by these regulations, and (d) no benefit to the public would result from offering a longer comment period and extending the overall timeframe for this rulemaking.

#### Required Determinations

##### *Clarity of This Regulation*

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.*, grouping, order of sections, use of headings, and paragraphing) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A “section” appears in bold type and is preceded by the symbol § and a numbered heading; for example: “§ 80.15 Allowable costs.”)

(5) Does the description of the rule in the “Supplementary Information” section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

##### *Regulatory Planning and Review (Executive Order 12866)*

OMB has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

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

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

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

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

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities, i.e., small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action would not have a significant economic impact on small entities because the changes we are proposing are intended to: (a) Address changes in law and regulation; (b) clarify rules on license certification to address a greater number of licensing choices that States and other jurisdictions have offered hunters and anglers; (c) delete provisions on audits and records that are addressed in other regulations; and (d) reword the regulations to make them easier to understand. No costs are associated with this regulatory change. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It

would not have a significant impact on a substantial number of small entities.

a. This proposed rule would not have an annual effect on the economy of \$100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. The programs governed by the current regulations assist small governments financially, and the proposed rule would simply improve these regulations.

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

*Takings*

In accordance with E.O. 12630, this proposed rule would not have significant takings implications because it would not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

*Federalism*

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. We work closely with the States in administration of these programs. The proposed rule will benefit recipients in three grant programs by establishing a common approach and clarifying the rules applicable to grant recipients' legally required annual certification of the number of hunters and anglers who purchased licenses.

*Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)

(2) of the Order. The proposed rule will also benefit grantees by eliminating unnecessary or outdated elements of the regulations governing the affected programs and by making the regulations easier to understand.

*Paperwork Reduction Act*

We examined the proposed rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number. The proposed rule will clarify 50 CFR 80.10, which requires States to submit information on the number of persons holding hunting and fishing licenses. On January 25, 2007, OMB approved our collection of information from States based on the requirements of 50 CFR 80.10. OMB approved this information collection on forms FWS 3-154a and 3-154b under control number 1018-0007. The proposed rule does not change the information items required on forms FWS 3-154a and 3-154b. It merely establishes a common approach for States to assign license holders to a license year for purposes of the information collection. The proposed rule will also remove outdated information in 50 CFR 80.27.

*National Environmental Policy Act*

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

*Government-to-Government Relationship With Tribes*

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

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

On May 18, 2001, the President issued E.O. 13211 addressing regulations that

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

#### Author

The author of this rulemaking is Tom McCoy, U.S. Fish and Wildlife Service, Wildlife and Sport Fish Restoration Program, 4401 North Fairfax Drive, WSFR-4020, Arlington, VA 22203-1610.

#### List of Subjects in 50 CFR Part 80

Fish, Grant programs—natural resources, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

#### Proposed Regulation Promulgation

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

#### SUBCHAPTER F—FINANCIAL ASSISTANCE—WILDLIFE AND SPORT FISH RESTORATION PROGRAM

1. Revise the heading of subchapter F to read as set forth above.

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

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

**Authority:** 16 U.S.C. 777-777n; 16 U.S.C. 669-669k; 18 U.S.C. 701.

3. Revise the heading of part 80 to read as set forth above.

4. Revise § 80.1 to read as follows:

##### § 80.1 Definitions.

As used in this part, the following terms have these meanings:

*Common horsepower.* Any size motor that can be reasonably accommodated on the body of water slated for development.

*Comprehensive fish and wildlife management plan.* A document describing the State's plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

*Director.* The Director of the U.S. Fish and Wildlife Service (Service), or his or her designated representative. The Director serves as the Secretary's

representative in matters relating to the administration and execution of the Wildlife and Sport Fish Restoration Acts.

*Project.* One or more related undertakings necessary to fulfill a need or needs, as defined by the State, and consistent with the purposes of the appropriate Act.

*Regional Director.* The regional director of any region of the Service, or his or her designated representative.

*Resident angler.* One who fishes within the same State where legal residence is maintained.

*Resident hunter.* One who hunts within the same State where legal residence is maintained.

*Secretary.* The Secretary of the Interior or his or her designated representative.

*State.* Any State of the United States and 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. References to "the 50 States" pertain only to the 50 States of the United States and do not include these other six areas.

*State fish and wildlife agency.* The agency or official of a State designated under State law or regulation to carry out the laws of the State in relation to the management of fish and wildlife resources of the State. Such an agency or official also designated to exercise collateral responsibilities, e.g., a State Department of Natural Resources, will be considered the State fish and wildlife agency only when exercising the responsibilities specific to the management of the fish and wildlife resources of the State.

*Wildlife and Sport Fish Restoration Acts or the Acts.* Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U.S.C. 669-669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (64 Stat. 430; 16 U.S.C. 777-777n).

*Wildlife and Sport Fish Restoration Program Funds.* Funds provided under the Acts.

5. Amend § 80.2 by revising paragraphs (a) and (b) to read as follows:

##### § 80.2 Eligibility.

\* \* \* \* \*

(a) Dingell-Johnson Sport Fish Restoration—Any of the States as defined in § 80.1.

(b) Pittman-Robertson Wildlife Restoration—Any of the States as defined in § 80.1, except the District of Columbia.

##### § 80.4 [Amended]

6. Amend paragraph (a)(4) of § 80.4 by removing the words "Federal Aid project" and adding in their place the word "Project".

##### § 80.5 [Amended]

7. Amend § 80.5 by:  
a. In paragraph (a), removing the words "Federal Aid in" and adding in their place the words "Pittman-Robertson"; and  
b. In paragraph (b), removing the words "Federal Aid in" and adding in their place the words "Dingell-Johnson".

##### § 80.9 [Amended]

8. Amend paragraph (b) of § 80.9 by removing the words "Federal Aid" and adding in their place the words "Wildlife and Sport Fish Restoration Program".

9. Revise § 80.10 to read as follows:

##### § 80.10 State Certification of Licenses.

(a) To ensure proper apportionment of Federal funds, the Service requires that each director of a State fish and wildlife agency:

(1) Specify an accounting period that  
(i) Is 12 consecutive months in length;  
(ii) Corresponds with or includes the State's fiscal year or license year; and  
(iii) Ends no less than 1 year and no more than 2 years before the beginning of the Federal fiscal year that the apportioned funds first become available for expenditure; and

(2) Annually provide to the Service the following data:

(i) The number of people in that State who, during the State-specified period established in paragraph (a)(1) of this section, hold purchased licenses that authorize an individual to hunt in the State; and

(ii) The number of people in that State who, during the State-specified period established in paragraph (a)(1) of this section, hold purchased licenses that authorize an individual to fish in the State.

(b) When counting people holding purchased hunting or fishing licenses in a State-specified 12-month period, a State fish and wildlife agency must abide by the following requirements:

(1) The State may count all persons who possess a purchased license that allows the licensee to hunt or fish for sport or recreation. The State may not count persons holding a license that allows the licensee to trap animals or engage in commercial activities.

(2) The State may count only those persons who possess a license that produced net revenue, which is an amount of at least \$1.00 per year

returned to the State fish and wildlife agency after deducting agents' or sellers' fees and the cost of printing, distribution, control, or other costs directly associated with issuance of the license.

(3) The State may count persons possessing a single-year license (one that is valid for less than 2 years) only in the State-specified 12-month period in which the license was purchased.

(4) The State may count persons possessing a multiyear license (one that is valid for 2 years or more) in each State-specified 12-month period in which the license is valid, whether the period of validity is a specific or indeterminate number of years, only if:

(i) The licensee is required to have a purchased license to fish or hunt anywhere in the State during the State-specified 12-month period;

(ii) The net revenue from the license is commensurate with the number of years in which both the license is valid and the licensee is required to have a purchased license to fish or hunt anywhere in the State; and

(iii) The State fish and wildlife agency uses statistical sampling or other appropriate techniques to determine whether the licensee remains a license holder and is required to have a purchased license to fish or hunt anywhere in the State in the State-specified 12-month period.

(5) The State may count persons possessing a combination license (one that permits the licensee to both hunt and fish) with both

(i) The number of people who hold purchased hunting licenses in the State-specified 12-month period and

(ii) The number of people who hold purchased fishing licenses during the same State-specified 12-month period.

(6) The State may count persons possessing multiple hunting or fishing licenses (in States that require or permit more than one license to hunt or more than one license to fish) only once with

(i) The number of people who hold purchased hunting licenses in the State-specified 12-month period and

(ii) The number of people who hold purchased fishing licenses during the same State-specified 12-month period.

(c) The director of the State fish and wildlife agency must certify the information required in paragraphs (a) and (b) of this section, and, if the Director requests it, provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single individuals in the information that he or she certifies and

may use statistical sampling or other appropriate techniques for this purpose.

(d) The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies.

(e) Once the Director approves the certified information required in paragraphs (a) and (b) of this section, the Service must not adjust the numbers if such adjustment would adversely impact any apportionment of funds to a State fish and wildlife agency other than the State fish and wildlife agency whose certified numbers are being adjusted.

10. Revise § 80.11 to read as follows:

#### § 80.11 Submission of proposals.

A State may apply to use funds apportioned under the Acts by submitting to the Regional Director either a comprehensive fish and wildlife management plan or grant proposal.

(a) Each application must contain such information as the Regional Director may require to determine if the proposed activities are in accordance with the Acts and the provisions of this part.

(b) The State must submit each application and amendments of scope to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A-95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or an official delegated to exercise the authority and responsibilities of the State director in committing the State to participate under the Acts. The director of each State fish and wildlife agency must notify the Regional Director, in writing, of the official(s) authorized to sign the Wildlife and Sport Fish Restoration Program documents, and any changes in such authorizations.

11. Amend § 80.12 by revising the introductory text and paragraph (b) to read as follows:

#### § 80.12 Cost sharing.

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the grant, whichever is less, except that the non-Federal cost sharing for 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 must not exceed 25 percent and may be waived at the discretion of the Regional Director.

\* \* \* \* \*

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions.

\* \* \* \* \*

12. Revise § 80.14 to read as follows:

#### § 80.14 Application of Wildlife and Sport Fish Restoration Program funds.

(a) States must apply Wildlife and Sport Fish Restoration Program funds only to activities or purposes approved by the Regional Director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Wildlife and Sport Fish Restoration Program funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal funds. Replacement property must be of equal value at current market prices and with equal benefits as the original property. The State may have up to 3 years from the date of notification by the Regional Director to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes that interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the Regional Director, the property must be used or disposed of as provided by 43 CFR 12.71 or 43 CFR 12.932.

(c) Wildlife and Sport Fish Restoration Program funds cannot be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities must be accounted for in the project records and disposed of as directed by the Director.

13. Amend § 80.15 by revising paragraphs (c), (d), and (f) to read as follows:

#### § 80.15 Allowable costs.

\* \* \* \* \*

(c) *Are costs allowable if they are incurred prior to the date of the grant?* Costs incurred prior to the effective date of the grant are allowable only when specifically provided for in the grant.

(d) *How are costs allocated in multipurpose projects or facilities?*

Projects or facilities designed to include purposes other than those eligible under either the Dingell-Johnson Sport Fish Restoration or Pittman-Robertson Wildlife Restoration Acts must provide for the allocation of costs among the various purposes. The method used to allocate costs must produce an equitable distribution of costs based on the relative uses or benefits provided.

\* \* \* \* \*

(f) *How much money may be obligated for aquatic resource education and outreach and communications?* (1)

Each of the 50 States may spend no more than 15 percent of the annual amount apportioned to it under the provisions of the Dingell-Johnson Sport Fish Restoration Act for an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms.

(2) 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 are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the appropriate Regional Director.

**§ 80.16 Payments.**

14. Amend § 80.16 by:  
a. Revising the section heading as set forth above;

b. Removing the word "shall" wherever it appears and adding in its place the word "must"; and

c. Removing the words "regional director" and "region director" wherever they appear and adding in their place the words "Regional Director".

15. Revise § 80.17 to read as follows:

**§ 80.17 Maintenance.**

The State is responsible for maintenance of all capital improvements acquired or constructed with Wildlife and Sport Fish Restoration Program funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with funds other than funds from the Wildlife and Sport Fish Restoration Program are allowable costs when such improvements are necessary for accomplishment of project purposes as approved by the Regional Director, and when such costs are otherwise allowable by law.

**§ 80.19 [Removed]**

16. Remove and reserve § 80.19.

**§ 80.20 [Amended]**

17. Amend § 80.20 by removing the words "Federal Aid" and adding in their place the words "Wildlife and Sport Fish Restoration Program".

**§ 80.22 [Removed]**

18. Remove and reserve § 80.22.

19. Amend § 80.23 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 80.23 Allocation of funds between marine and freshwater fishery projects.**

(a) Each coastal State, to the extent practicable, must equitably allocate those funds specified by the Secretary, in the apportionment of the Dingell-Johnson Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) *Coastal States are:* 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; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the Commonwealths of Puerto Rico and the Northern Mariana Islands.

\* \* \* \* \*

20. Revise § 80.24 to read as follows:

**§ 80.24 Recreational boating access facilities.**

The State must allocate at least 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities. All facilities constructed, acquired, developed, renovated, or maintained (including existing structures for which maintenance is provided) must be for providing additional, improved, or safer access of public waters for boating recreation as part of the State's effort for the restoration, management, and public use of sport fish. Although a broad range of access facilities and associated amenities can qualify for funding under the 15 percent provision, the State must accommodate power boats with common horsepower ratings, and must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of the 15 percent set aside for the above purposes that remain unexpended or

unobligated after 2 years must revert to the Service.

**§ 80.25 [Amended]**

21. Amend § 80.25 by:

a. In the section heading and paragraph (a), removing the words "Federal Aid in" and adding in their place the words "Dingell-Johnson"; and

b. In paragraphs (a)(1) and (a)(2), removing the word "Aid".

22. Amend § 80.26 by revising the introductory text and paragraphs (b), (f) introductory text, (g) introductory text, and (h) introductory text to read as set forth below:

**§ 80.26 Symbols.**

We have prescribed distinctive symbols to identify projects funded by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act and items on which taxes and duties have been collected to support the respective Acts.

\* \* \* \* \*

(b) Other persons or organizations may use the symbol(s) for purposes related to the Wildlife and Sport Fish Restoration Program as authorized by the Director. Authorization for the use of the symbol(s) will be by written agreement executed by the Service and the user. To obtain authorization, submit a written request stating the specific use and items to which the symbol(s) will be applied to Director, U.S. Fish and Wildlife Service, Washington, DC 20240.

\* \* \* \* \*

(f) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act is below. \* \* \*

(g) The symbol pertaining to the Dingell-Johnson Sport Fish Restoration Act is below. \* \* \*

(h) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act when used in combination is below.

\* \* \*

23. Revise § 80.27 to read as follows:

**§ 80.27 Information collection requirements.**

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777-777n) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669-669k). The Service may not conduct or sponsor, and applicants or grantees are not required to respond to, a collection of information unless the request

displays a currently valid OMB control number. OMB has approved our collection of information under OMB control number 1018-0007. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Wildlife and Sport Fish Restoration Program.

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

24. Add new § 80.28 to read as follows:

**§ 80.28 Exceptions.**

The Director may authorize exceptions to any provisions of this part that are not explicitly required by law.

Dated: April 16, 2008.

**Lyle Laverty,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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