

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

[FWS–HQ–WSFR–2023–0125;  
FVWF5110090000–XXX–FF09W11000;  
FVWF9410090000–XXX–FF09W11000]

RIN 1018–BB84

**Administrative Requirements; Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are proposing to update the regulations pertaining to Federal financial assistance programs and subprograms authorized under the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. We propose these updates to our regulations to ensure they reflect recent legislation; to align with the Office of Management and Budget's administrative rules for Federal financial assistance; to align with other laws, standards, and administrative processes; to respond to comments and feedback on our 2019 rulemaking action; and to provide clarity to help ensure consistency in administering our financial assistance programs and subprograms across the Nation.

**DATES:** We will accept comments received or postmarked on or before January 31, 2025.

*Information collection requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after the date of publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see "Information collection requirements" below under **ADDRESSES**) by January 31, 2025.

**ADDRESSES:** You may submit comments, identified by the regulation identifier number 1018–BB84, by any of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–HQ–WSFR–2023–0125,

which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–WSFR–2023–0125, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Request for Comments, below, for more information).

*Information collection requirements:* Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov); or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018–0100 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Diana Swan-Pinion, Wildlife and Sport Fish Restoration Program, Policy, and Programs Branch at [diana.swan-pinion@fws.gov](mailto:diana.swan-pinion@fws.gov) or (404) 821–6844. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, please see docket FWS–HQ–WSFR–2023–0125 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Fish and Wildlife Service's (Service) Wildlife and Sport Fish Restoration Program (WSFR) annually apportions to fish and wildlife agencies of States, Territories, and the District of Columbia more than \$1.6 billion for programs and subprograms under the Pittman-Robertson Wildlife Restoration Act (Wildlife Restoration Act, 50 Stat. 917, as amended; 16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish

Restoration Act (Sport Fish Restoration Act, 64 Stat. 430, as amended; 16 U.S.C. 777–777m, except 777e–1 and g–1) (Acts). We are proposing to update the regulations in title 50 of the Code of Federal Regulations (CFR) at part 80, which is titled, "Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts."

The primary users of these regulations are the fish and wildlife agencies of the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the District of Columbia (DC). We use "State" or "States" collectively to refer to these entities. The Wildlife Restoration Act does not authorize funding for DC, which receives funds only under the Sport Fish Restoration Act.

These regulations tell States how they may receive annual apportionments from the Federal Aid to Wildlife Restoration Fund (16 U.S.C. 669b) and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504), how they may use hunting and fishing license revenues, and what requirements States must follow when participating in the programs and subprograms under the Acts. These programs and subprograms provide financial assistance to State fish and wildlife agencies to restore or manage wildlife and sport fish and associated habitats; offer hunter and recreational shooter education and safety programs, development, recruitment, retention, and reactivation; develop and increase recreational boating access; enhance the public's understanding of water resources, aquatic life forms, and sport fishing; and develop responsible attitudes and ethics toward aquatic and related environments.

Assistance Listings for these programs may be found at: <https://sam.gov/content/assistance-listings>. On that website, search for numbers 15.605, 15.611, and 15.626 using the "Search Assistance Listings" function.

We published the last revision of these regulations with a proposed rule in 2017 (82 FR 59564, December 15, 2017) and a final rule in 2019 (84 FR 44772, August 27, 2019; referred to below as "the 2019 final rule"). Our December 15, 2017, proposed rule was intended to be the first step in a phased approach to updating 50 CFR part 80 over a period of a few years, addressing multiple topics of concern, and ultimately leading to publishing a final rule that addressed all issues identified as important to resolve. A team of Federal and State subject matter experts

were engaged in developing the strategy and topics to be addressed. Unfortunately, that process was stalled, and we were unable to complete the phased approach, so we published a final rule in 2019 that did not include all identified topics.

The passage of two new laws in 2019 that amended the Wildlife Restoration Act compels the Service to reflect those changes in this proposed rule. In 2019, the Target Practice and Marksmanship Training Support Act (Pub. L. 116–17, May 10, 2019) amended the Wildlife Restoration Act to provide administrative advantages for States engaged in acquiring land for, expanding, and constructing public target ranges, and the Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act (Pub. L. 116–94, December 20, 2019) amended the Wildlife Restoration Act to provide additional eligible activities focused on increasing communication and participation in hunting and recreational shooting. This statutory update also provided the Service the opportunity to consider topics that were left unresolved from the phased approach begun with our 2017–2019 rulemaking process, as well as to incorporate principles established through continued collaborative engagement between the Service, States, and partners into the rulemaking process.

On September 30, 2019, the Service issued “Interim Guidance for Applying Public Law 116–17, the Target Practice and Marksmanship Training Support Act, to the Pittman-Robertson Wildlife Restoration Act” (interim guidance; <https://www.fws.gov/guidance/sites/guidance/files/documents/WSFR%20Interim%20Guidance%20Implementing%20PL%20116/17-FINAL.pdf>), and on July 14, 2021, the Service issued “Implementing the Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act” ([https://www.fws.gov/guidance/sites/guidance/files/documents/Implementing\\_the\\_Modernizing\\_the\\_PittmanRobertson\\_Act.pdf](https://www.fws.gov/guidance/sites/guidance/files/documents/Implementing_the_Modernizing_the_PittmanRobertson_Act.pdf)). Each of these documents has provided WSFR and States with guidance for how to apply the amendments to the Acts to grants, enhance understanding, and strive for consistency, while we developed proposed updates to the regulations. When published and effective, the final rule for this proposed rule will supersede these guidance documents where there are differences;

however, we intend for the guidance documents and any updates to them to continue to provide supplemental information that will assist WSFR and States in administering financial assistance awards. WSFR intends to continue to provide policy and training support on eligible activities under the Acts.

The Service was assisted in this rulemaking by the Joint Federal/State Task Force on Federal Assistance Policy (JTF), an advisory group that was chartered on September 5, 2002, under an agreement between the Service and the Association of Fish and Wildlife Agencies to support the cooperation between the Service and State fish and wildlife agencies in wildlife and sport fish restoration and management projects. The JTF is exempt from the Federal Advisory Committee Act (Pub. L. 92–463, as amended; 5 U.S.C. 1001 *et seq.*) through the Acts. The role of the JTF is to consider operational policies and administrative problems and to recommend solutions. The JTF supported this rulemaking action by nominating State and Federal subject matter experts to serve on a pre-regulatory review team to consider proposed changes and assess them for viability, clarity, applicability, gaps in understanding, and potential controversy, and provide other support as requested. The team began work on this endeavor in September 2021 and had its last meeting in May 2023. During this period, the Service offered two review-and-comment periods to gather input and encourage engagement from Service staff in WSFR, State fish and wildlife agencies, and partners in wildlife and sport fish restoration and associated outdoor recreation. WSFR also provided six open forums to encourage active participation and discussion on topics of interest in the rulemaking process.

In 2013, the Office of Management and Budget (OMB) published regulations at 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) that updated and amended rules for Federal financial assistance for all Federal agencies (78 FR 78608, December 26, 2013). In this proposed rule to update 50 CFR part 80, we align the terminology we use for administering financial assistance under the Acts to the terms used in 2 CFR part 200. These proposed revisions would provide consistency across Federal

financial assistance regulations and improve understanding of applicable Service requirements.

We propose these updates to our regulations to improve clarity, consistency, readability, and alignment with current administrative practices, and to reflect the currently applicable laws, standards, and practices.

### Proposed Amendments to Existing Regulations

Even though we are not proposing revisions or additions to every section in 50 CFR part 80 in this proposed rule, for clarity and readability, we are setting forth the entire part in this proposed rule (see Proposed Regulation Promulgation, below).

The regulations at 2 CFR part 200 have a goal to standardize terms to support standardizing grant management business processes. To support those efforts and to assist grant management practitioners, we propose to amend the following terms to align them more accurately with 2 CFR part 200: *Award* and *subaward* (primarily replacing *grant*), *recipient* and *subrecipient* (replacing *grantee* and *subgrantee*), and *period of performance* (replacing *grant period*). We propose to insert the amended terms throughout 50 CFR part 80. We also propose to incorporate helpful references in 50 CFR part 80 to applicable sections of 2 CFR part 200.

In the information below, we do not discuss in detail editorial changes that we propose to improve readability, clarity, consistency, or continuity. We instead focus on substantive changes to the current regulations.

Proposed amendments and the rationale for changes are described here.

#### I. Subpart A—General

##### *Section 80.1—What does this part do?*

We propose to update § 80.1 to include a new purpose under the Wildlife Restoration Act to facilitate the construction and expansion of public target ranges (per Pub. L. 116–17) and to add reference to activities for hunter recruitment and recreational shooter recruitment (per Pub. L. 116–94).

##### *Section 80.2—What terms do I need to know?*

We propose to add the following terms to the definitions section of the regulations for the following reasons:

Proposed new term	Purpose
90/10/5 .....	In describing activities associated with Public Law 116–17 where the Federal cost share is up to 90 percent (and, therefore, the non-Federal cost share is 10 percent or more) and the period of availability of funds is 5 years when specifically engaging in activities for acquiring land for, expanding, or constructing public target ranges, we propose to abbreviate this concept as “90/10/5”.
Acquisition .....	Supporting activities associated with Public Law 116–17 for acquiring real property for public target ranges, as well as the sections of the regulations pertaining to real property.
Allocate .....	Supporting the financial action of assigning funds to associated, eligible activities.
Allowable .....	Clarifying how we address permissibility of activities and costs under 2 CFR part 200 (distinguished from 50 CFR part 80).
Apportioned funds .....	Enhancing understanding of the grant process and how funds are disbursed to States.
Eligible .....	Clarifying how we address permissibility of funding activities under 50 CFR part 80 (distinguished from 2 CFR part 200).
Equipment .....	Responding to a request to include this term as defined at 2 CFR part 200 in the regulations at 50 CFR part 80.
Expanding .....	Supporting activities associated with Public Law 116–17 for physically expanding access to public target ranges, to mean acquiring land for or constructing public target ranges, or physical improvements to an existing public target range that add to the utility of the range in a manner that ultimately increases range capacity to accommodate more participants.
Facility .....	Supporting understanding and consistency throughout the rule.
Federal fiscal year .....	Differentiating the Federal definition from the State equivalent term.
Fiscal year .....	Adding as defined under Public Law 116–94 for State license years.
Fish restoration and management project.	Adding a condensed version from the Sport Fish Restoration Act to provide parity to the definition of <i>Wildlife restoration project</i> (see below).
Hunter recruitment and recreational shooter recruitment.	Adding as defined under Public Law 116–94, included in the Act under 16 U.S.C. 669c(c)(4).
Law enforcement .....	Resolving a longstanding issue that has caused confusion and inconsistencies for what activities may be eligible under the Acts; clarifying these parameters would allow us to broaden the scope of eligible activities that support the Acts but do not fall into the ineligible categories.
Maintenance .....	Clarifying for those instances where maintenance and operations are not both eligible activities under a funding source.
Operations .....	Clarifying for those instances where maintenance and operations are not both eligible activities under a funding source, such as under 90/10/5 funding where operational activities are ineligible.
Public .....	Resolving a longstanding issue as to what constitutes “the public” because using Federal assistance funds for a project and then limiting access to an exclusive group is not permissible.
Public access .....	Resolving a longstanding issue as to physical access to projects funded under the Acts; supported also by 50 CFR 80.58.
Public relations .....	Adding because Public Law 116–94 removed public relations as a prohibited activity but 2 CFR part 200 restricts allowability, meaning public relations activities are not always eligible.
Public target range .....	Adding as defined under Public Law 116–17.
R3 .....	Adding as an abbreviation for “recruiting, retaining, or reactivating” and applicable to both Acts, to support activities under Public Law 116–94.
Traditional Wildlife Restoration program.	Adding to mean the activities that are funded under apportionments authorized at 16 U.S.C. 669c(b), which reflects the original program funded under the Wildlife Restoration Act, to support distinctions in funding sources due to passage of Public Law 116–17 and Public Law 116–94.
Wildlife restoration project .....	Supporting the part of the definition from the Wildlife Restoration Act that is applicable to the Wildlife Restoration Program, and not the sections of the Act amended by Public Law 106–553 to create the Wildlife Conservation and Restoration Program.

In this proposed rule, we propose to remove a term only when we replace it with a term that better aligns with 2 CFR part 200 and current grant management processes. We propose to amend some terms to update to current standards, such as adding a clause to the term “construction” to accommodate projects under Public Law 116–17 for constructing public target ranges. Upon the advice of State representatives, we propose to simplify the list of terms by removing the term “agency” as a separate definition and instead adding “(agency)” after the term “State fish and wildlife agency” to indicate that those terms mean the same thing. We propose to amend the term “angler” to acknowledge applicable Federal law, as one State reviewer commented that sometimes fishing in a State involves

meeting standards of both State and Federal laws. Five of the 50 U.S. States apply for Federal funds using a “comprehensive management system (CMS)” method of operations, which we define at § 80.2. We consulted representatives from those States to inform the proposed updates to this term in this proposed rule. We propose to update the term “personal property” to align better with the definition and use of that term in the Service Manual chapter at 520 FW 6, “Real Property—Overview.” We propose to clarify the term “subaccount” based on recommendations from the pre-regulatory review team. We propose to amend the term “useful life” to apply to a capital asset or equipment in addition to a capital improvement, based on definitions and other regulatory

requirements provided in 2 CFR part 200.

**II. Subpart B—State Fish and Wildlife Agency Eligibility**

We are not proposing any substantive changes to subpart B.

**III. Subpart C—License Revenue**

We are not proposing any substantive changes to subpart C.

**IV. Subpart D—Certifying License Holders**

In our August 27, 2019, final rule (84 FR 44772), we made significant changes to subpart D. Those regulatory changes included a compliance date of September 27, 2021 (2 years from the effective date of the 2019 final rule), for State fish and wildlife agencies to make the needed changes in their laws and

processes to accommodate the new standards to licenses for the purposes of certifying paid license holders during the annual certification period.

Certifying license holders is an important component to both the Wildlife Restoration and the Sport Fish Restoration programs because, under the Acts, annual apportionment to State fish and wildlife agencies is based in part, under the mandatory funding formulae in the Acts, on the number of paid hunting and fishing license holders that the agency certifies.

We propose to make some editorial changes to subpart D to change the title to reflect active voice, place more emphasis on “individual paid license holders,” and improve clarity and consistency in how we present information. At § 80.33, *How does a State fish and wildlife agency decide who to count as paid license holders in the annual certification?*, we propose to address some misunderstandings that have come to our attention as to how different types of licenses allow license holders to be counted in the annual certification. State fish and wildlife agencies develop many varying structures for how they package and sell hunting and fishing licenses in their State.

As an example of the disparities and how we address them, consider these two scenarios. State A and State B both have “fiscal/license years” that are June 1–May 31. This is the “certification period” for both States when reporting individual paid license holders.

However, State A and State B follow different processes for issuing licenses:

- State A sells annual licenses that, regardless of when you purchase your license, are valid only during the “fiscal/license year.” For example, if you purchase your license on April 1, it will expire May 31 if you are buying that license for the current license year, or it will not be valid until June 1 if you are buying that license for the next license year.

- State B sells annual licenses that, regardless of when you purchase your license, are valid for a full year starting with the day you purchase the license and ending 1 year later (this type of license is also known as a “365-day license”). For example, if you purchase your license on April 1, it is good from that day (April 1) through the following March 31.

State A can easily determine which individual paid license holders may be counted during the certification period as they all fall into the fiscal/license year. However, State B has individual paid license holders that are holding a valid license in two different fiscal/

license years. It would not be fair if State B certified license holders in two certification periods for licenses that are essentially the same in both States.

To align these scenarios, we propose to clearly state the following:

- An individual paid license holder may be counted only in the certification period in which the license first becomes valid.

- A single-year license may be valid for any period from 1 day up to 2 years.

- A license that is valid for 2 years or more is considered a multiyear license.

- A license holder cannot be counted in more certification periods than a license is valid, *i.e.*, if holding a 5-year license, the holder can be counted only in five certification periods for that license.

- A license holder may be counted only for certification periods that align with the years the license is valid, *i.e.*, if a 5-year license is valid from June 1, 2018, through May 31, 2023, the license holder may not be counted for that license for the certification period that ends between October 1, 2024, and September 30, 2025, or any certification period after that.

The criterion above becomes important when considering multiyear licenses that were sold before the 2019 final rule became effective on September 26, 2019, and a State fish and wildlife agency is recalculating to determine if it may certify the license holder in an upcoming certification period. For example, a 10-year license that was sold in 2016 for \$100 could be counted only once under the regulations in effect at that time. Under the 2019 final rule, the State fish and wildlife agency may apply the current standards in § 80.34 to that license and count the license holder in the certification periods that include 2019 until the license expires in 2025, so that license holder may potentially be counted in seven additional certification periods. The State agency cannot certify that license holder beyond that date, for that license, as it is no longer valid. Using the same example, except for a lifetime license, under the 2019 final rule, the State agency may certify the license holder for up to an additional 49 years, provided the license holder is still alive.

Under this proposal, a State would be allowed to certify a license holder only for the number of years that the license is valid and only in the certification years that correspond to the period that the license is valid.

At § 80.34, *Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?*, we propose to remove the statement that all States must be

following the requirements in § 80.34(b) by September 27, 2021, as that date is now in the past. The subpart includes other references to that date, and we propose revisions to update the regulations appropriately.

We propose to amend § 80.35, *What additional requirements apply to multiyear licenses?*, based on comments we have received since the 2019 final rule that certain language set forth by the 2019 final rule is unclear or confusing. We propose no changes to the basic principles established in § 80.35 by the 2019 final rule; rather we propose revisions similar to those we are proposing for § 80.34 in removing language identifying dates for regulatory compliance that are no longer relevant. We also propose revisions for simplicity and clarity, to encourage consistent understanding and implementation of the regulations.

At § 80.37, which pertains to the question of whether the State fish and wildlife agency can certify a license sold at a discount, we propose to remove the phrase “when combined with another license or privilege,” as the answer to the question does not depend on combining the license with another privilege. It can be discounted under other circumstances. We also propose to amend the heading of § 80.38, which asks whether an entity other than the State fish and wildlife agency may offer a discounted or free license under any circumstances, to instead ask whether a State fish and wildlife agency can certify a license when an entity other than the agency offers a discounted or free license. The emphasis would be placed on the ability to certify the license holder, which ultimately is the concept that we want to establish throughout the regulations in subpart D.

Proposed amendments to the regulations in subpart D were presented to the JTF in December 2021 for review and input. Prior to the 2019 final rule, the Service relied on the advice of the JTF to inform the new standards for certifying license holders with the goal of establishing rules that were fair and could be consistently applied by State fish and wildlife agencies. The JTF again had the opportunity to review proposed subpart D regulations during one of the preliminary review and comment periods on the proposed rule.

#### V. Subpart E—Eligible Activities

We propose to amend subpart E by editing the regulations for active voice, clarity, and better readability. We propose to strategically amend the regulations in subpart E more than those in any other subpart in 50 CFR part 80 to accommodate activities newly

eligible under the 2019 amendments to the Wildlife Restoration Act. The WSFR pre-rulemaking policy process and preliminary guidance developed to address the amendments to the Act greatly informed the proposed changes to this subpart.

We describe here several areas of focus that greatly expand eligible activities set forth in subpart E, how we are proposing to reformat the regulations in this subpart, the analyses we engaged in to determine how to improve the current regulations, and how we support certain concepts throughout this proposed rule.

#### *Background Information on the Wildlife Restoration Act*

To better understand amendments to the Wildlife Restoration Act for programs and subprograms, additional eligible activities, and how all eligible activities under the Act intersect with funding sources under the Act and the Service's administration of awards, we provide some background on the Wildlife Restoration Act.

The Federal Aid in Wildlife Restoration Act (Sept. 2, 1937, ch. 899, section 1, 50 Stat. 917) set forth a program that apportioned funds to State fish and wildlife agencies for eligible activities related to acquiring land, improving habitat, and conducting research associated with wildlife restoration and management. Funding was available from revenue accrued during the Federal fiscal year (FFY) on taxes imposed on firearms, shells, and cartridges under the Revenue Act of 1932 (47 Stat. 169) and deposited into "the Federal aid to wildlife restoration fund," which we now refer to as the Wildlife Restoration Trust Fund.

Each of the Act's programs and subprograms has specific eligible activities, and costs must be assigned to separate fiscal subaccounts to support accurate administration of the funds. The Service tracks apportionments and available funding using the Department of the Interior's Financial and Business Management System (FBMS), which supports business management processes related to financial management, grants and cooperative agreements, real and personal property management, and several other functions. FBMS employs the use of subaccounts, which allows the Service to use a "first-in, first-out" method of accounting.

The Service also uses subaccounts to administer the specific use requirements for program and subprogram funding sources under the Act. States that have funding that has not been obligated to an award within the period of

availability may encounter the possibility of having to return apportioned funds to the Service (see table 1 to § 80.92 under Proposed Regulation Promulgation, below, for information on how the Service disburses returned funds). The Service uses a "safety margin" system to track apportioned funds, obligated funds, and periods of availability and will alert a State agency if the agency is approaching a situation where they may need to return funds. (*Note:* the formulas for awarding funds and cost share requirements for insular areas, the Commonwealth of Puerto Rico, and the District of Columbia vary from the formula applied to the 50 States.)

Since enactment of the Wildlife Restoration Act, several amendments have revised the original eligibilities that impact changes addressed in this proposed rule:

- The addition of maintenance of wildlife restoration projects as eligible (Pub. L. 79–533, July 24, 1946).
- Law enforcement and public relations excluded as eligible activities (Pub. L. 84–375, August 12, 1955).
- The addition of the Basic Hunter Education and Safety subprogram to the Act (Pub. L. 91–503, October 23, 1970).
- The addition of the Enhanced Hunter Education and Safety program to the Act (Pub. L. 106–408, November 1, 2000; also known as "the Improvement Act").
- The addition of an administrative funding advantage to encourage and assist States in acquiring land for, expanding, and constructing public target ranges, under the Target Practice and Marksmanship Training Support Act (Pub. L. 116–17, May 10, 2019), which we refer to as "90/10/5."
- The addition of new eligible activities for hunter recruitment and recreational shooter recruitment (which we refer to as "R3") under the Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act (Pub. L. 116–94, December 20, 2019), which also removed the exclusion of public relations activities that was added to the Act in 1955.

#### *Section 80.50—What activities are eligible for funding under the Wildlife Restoration Act?*

##### Updated Terms and Arrangement

As noted above, we propose to begin using the term "Traditional Wildlife Restoration program" to refer to the original program that is funded under 16 U.S.C. 669c(b) and "90/10/5" to refer to activities for acquiring land for, expanding, or constructing public target ranges that qualify for the

administrative advantage of a 90 percent Federal/10 percent non-Federal cost share, with a period of availability to obligate funds of 5 years.

We propose to reorganize the regulations at § 80.50(b) under the general categories of Basic Hunter Education and Safety subprogram and Hunter Recruitment and Recreational Shooter Recruitment, and separate eligible activities for the Basic Hunter Education and Safety subprogram into § 80.50(b)(1) and eligible activities for recruiting, retaining, or reactivating hunters and recreational shooters (R3) into a new § 80.50(b)(2). This proposed revision would allow us to recognize the common funding source, while providing the distinctions between eligible activities under each. We also propose to remove regulations that describe activities that are eligible under all programs under the Acts from current § 80.50 and add them to proposed § 80.52.

##### Traditional Wildlife Restoration Program

We propose that eligible research may include social sciences, to assist States in improving communication and benefits to the public they serve. We also propose that a State may use funds under a Traditional Wildlife Restoration program award for maintaining and operating projects or equipment under the ownership or management control of the State fish and wildlife agency and that support eligible activities under the Wildlife Restoration Act. This proposed change is intended to support the ability for State agencies to use Traditional Wildlife Restoration program funds for eligible maintenance and operations on projects or activities on Traditional Wildlife Restoration-managed land that may have been funded in accordance with regulations in another subpart or from an external source. As an example, a wildlife management area has a public target range. Maintenance activities such as mowing the lawn or operations such as providing lighting to the facility would be eligible activities using Traditional Wildlife Restoration program funds, as they are eligible Traditional Wildlife Restoration program activities, without the need to allocate costs to other funding sources. However, activities such as constructing a public target range or providing staff to run and operate the public target range would not be eligible Traditional Wildlife Restoration program activities and must be charged to an eligible funding source.

We also propose to add to § 80.50 that a State agency may use funds under a Traditional Wildlife Restoration

program award for maintaining and operating projects or equipment that a third party owns or manages provided a third-party binding agreement is in place that ensures the project continues to serve the intended purposes under the award. This third-party binding agreement may be in the form of a subaward.

#### Communication and Public Relations

With the passage of Public Law 116–94, the prohibition for funding public relations activities was removed from the Wildlife Restoration Act, making public relations potentially an eligible activity. The regulations at 2 CFR part 200 specifically define public relations and provide principles establishing when these costs are and are not allowable. We have considered that perhaps the overlap of public relations with other communication terms (such as “outreach,” “marketing,” and “advertising”) would cause confusion and inconsistencies in determining which associated activities may be funded under the Acts. Using preliminary guidance that we already have developed (“Implementing the Modernizing the Pittman-Robertson Fund for Tomorrow’s Needs Act,” July 14, 2021), in this proposed rule we focus on public relations and other activities that would be considered eligible for communicating with the public.

We propose to define the term “public relations” by referencing 2 CFR part 200; therefore, “public relations” would mean activities that are dedicated to maintaining the image of the State fish and wildlife agency or subrecipient or to maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public. As “public relations” activities are described in 2 CFR part 200, costs for the activities are unallowable unless meeting the objectives of, or necessary for the performance of, a Federal award, or when conducting general liaison on matters of public concern. To clarify, if the form of communication solely benefits the State or the State agency, then the costs are unallowable, but if the form of communication supports the objectives or performance of the Federal award then costs would likely be allowable. We propose to include at § 80.50(a)(8) examples of eligible communication types that support a State’s ability to have an informed and engaged public. We would describe at proposed § 80.50(a)(9) what communication activities require prior approval.

Some of the eligible communication activities we describe in this proposed rule are prompted by our engagement in the newly introduced activities associated with R3, but we do not limit the opportunity to expand on eligible communication activities to strictly R3. We propose amendments throughout the regulations that clarify and allow for expanded communication activities that support other eligible activities.

#### Law Enforcement and Eligible Activities

We propose to begin foundationally at § 80.2, as described above, by defining the term “law enforcement” to mean enforcing laws, orders, and regulations. We also would describe at proposed § 80.55 how activities for both law enforcement and the process of making State laws are ineligible for funding. Using these two standards of ineligible activities under the Acts allows us to take an approach with this proposed rulemaking to clarify and more distinctly define those activities that are eligible, as the prohibition of activities connected to law enforcement has been interpreted over the years to extend beyond these restrictions. Based on this approach, we propose to include the following activities in the regulation as eligible:

- Research, data collection, surveys, meeting with boards, and other preliminary activities that State agency staff do to collect information, make assessments, develop internal recommendations, and inform legislators, who then use the information when engaging in the ineligible activity associated with a formal legislative process for making public policy. These eligible activities are also supported under both Acts. When defining “wildlife restoration project” and “fish restoration and management project,” the Acts include, respectively, “research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources” (16 U.S.C. 669a(11)) and “acquisition of such facts as are necessary to guide and direct the regulation of fishing by law” (16 U.S.C. 777a(1)(B)).

- Activities that are otherwise eligible being conducted by law enforcement personnel. Examples are activities such as participating in hunter education and safety courses, supporting public access at boat ramps, or conducting outreach to educate the public or for R3 purposes. If an activity is eligible, the staff involved with conducting the activity, even if law enforcement, may be included as an eligible part of an award. Of course, if law enforcement staff are involved in an eligible activity, and

something occurs that activates them to conduct law enforcement activities, the State or subrecipient would have to prorate costs accordingly and charge only eligible activities to the award or subaward.

- Interpreting, translating, printing, or disseminating published State hunting regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations. Once the laws are published in the official legal registry (State Register or other), the lawmaking process is complete. However, the State agency should then make this information readily available to members of the public in a manner they can understand. Such efforts to simplify the rules in a different format, translate the law into other languages, include information on the laws in hunter or angler guides, and other associated projects would be eligible.

#### Technology

Considering that State agencies may provide many forms of innovation in communication with the public, such as phone applications (apps), social media, websites, software products, and whatever is on the horizon, we propose to add the flexibility for States to employ these methods and tools when associated with an eligible activity.

#### R3 Flexibility

We understand that the ability to use funds under these Acts for R3 activities will provide State fish and wildlife agencies opportunities to be somewhat creative in finding various ways to approach different audiences, thereby helping the agencies achieve the R3 success they are seeking. We want to provide flexibility in the regulations for States to take advantage of those opportunities as much as possible, while still meeting the requirements for being necessary and reasonable and supporting objectives in an award. We, therefore, propose to list eligible activities that support R3 for items such as hiring shooting trainers and hunting guides, paying for optimizing State websites, acquiring supplies that help enhance the experience and skills of participants, and various types of education to include mentoring, field demonstrations, and training simulators. Many of the activities for R3 under Wildlife Restoration can be applied similarly to R3 under Sport Fish Restoration. We propose to leave sufficient flexibility to allow a State agency to have an award approved for activities that the agency can clearly demonstrate are targeted toward eligible R3 objectives.

*Section 80.51—What activities are eligible for funding under the Sport Fish Restoration Act?*

We propose to amend eligible activities in § 80.51 to align with those in the proposed revised § 80.50, as appropriate, including expansion of eligible activities for communication.

Recreational Boating Access Subprogram

We propose to add some activities to provide more context, based on the Service Manual chapter at 517 FW 7. Based on recommendations from States, we would clarify that projects may be for motorized or nonmotorized vessels and users.

State Outreach and Communications Subprogram

We propose to add the word “State” to this subprogram. The Act provides for a National Outreach and Communications Program, which is a competitive program administered out of the Service’s Headquarters Office. The Act also provides for a State Outreach and Communications program (an R3 program), which is to be an extension of the National program focused on State priorities. Each State may use up to 15 percent of its Sport Fish Restoration program apportioned funds (16 U.S.C. 777c) for the costs of the combined Aquatic Resources Education and State Outreach and Communications subprograms. We propose to add a provision for “Interpreting, translating, printing, or disseminating published State fishing regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations” to the regulations to provide parity with eligible activities under proposed revised § 80.50.

*Section 80.52—What activities are eligible for funding under all programs and subprograms under the Acts?*

We propose to add this new section to the regulations as we identified multiple activities currently discussed in §§ 80.50 and 80.51 and in this proposed rule that are eligible to all programs and subprograms. Below we describe two new proposed provisions to accommodate activities newly eligible under the 2019 amendments to the Wildlife Restoration Act.

State Electronic Data Systems

License sales are an important component of the congressionally mandated funding formula the Service uses for awarding annual apportionments to State agencies. Originally a manual process, tracking of

license sales became automated as technology improved and State agencies began using automated point of sale or electronic licensing systems for collecting payments for hunting and fishing licenses and accounting for license sales. As the primary purpose for these electronic systems was management of hunting and fishing license revenue for the State fish and wildlife agency, using grant funds to support the system was considered ineligible for funding as activities conducted for the primary purpose of producing income (see 50 CFR 80.54(c)), and all associated costs, are ineligible. As technology has further improved and agency activities expanded over the years, traditional licensing systems evolved to accommodate a variety of needs and purposes and have been combined with other public-facing electronic systems designed to collect and share data and information as a public interface. A Director’s Memorandum issued on July 11, 1996 (Automated Sportsman’s Data Systems (ASDS)—Formerly Point of Sale), describes the Service’s awareness of the changing technology and the potential eligibility of some costs associated with the expanding system. More than 25 years later, systems have become a tool for a variety of actions related to the conservation of fish and wildlife resources and associated administration of a State agency. Some electronic systems may be combined within a State to accommodate multiple purposes or be used in conjunction with other State agencies. States are using technology to increase efficiency and generate cost savings, so it is possible that the electronic system that sells hunting and fishing licenses may include components for collecting data and funds, distributing information, or administering activities for other purposes such as driver’s licenses, vehicle registrations, park entry permits, and other sources of revenue for States.

In June 2021, WSFR published guidance that describes how States may apply costs of an electronic system that support eligible activities to a Wildlife Restoration or Sport Fish Restoration award. As we have had 2 years to implement and receive feedback on this guidance and have received no negative responses from States, we propose to add such costs to the list of eligible activities in the regulations. The processes in the guidance would still have to be followed for costs to be eligible.

Oversight Activities

We propose to add provisions to the regulations that clarify as eligible those

activities pertaining to oversight, such as monitoring, evaluating, and reporting. We would include as eligible the costs associated with monitoring and compliance activities when they lead to the discovery of an area of noncompliance with an award, a potential diversion of funds under the Acts, or a situation where property acquired under the Acts is infringed upon—improprieties that could result in an action in the legal system. This proposed regulatory change would continue to build on the flexibilities for activities that do not fall into the category of law enforcement or State lawmaking. The State agency would still be unable to use award funds for conducting law enforcement activities, such as issuing a citation, but the agency could use award funds for obtaining evidence, testifying in court, meeting with attorneys, and other activities to protect resource and property interests under an award. Here is an example: While a State is monitoring real property holdings that were acquired under an award, the State finds that an adjacent landowner has put a shed on a State-owned property. Eligible activities would include the work that non-law enforcement staff do to collect information and evidence (*i.e.*, take photographs, check lot lines in the files, etc.), notify managers and officials, write letters to the other party informing them of the situation and offering an opportunity to correct, consult with attorneys to assess the situation and potential alternatives, and, if needed, testify and provide evidence in a court of law.

*Section 80.53—May an activity be eligible for funding if it is not explicitly eligible in this part?*

We propose to add in § 80.53 that an activity must be allowable under 2 CFR part 200 to be eligible if the activity is not explicitly described as eligible in the regulations in part 80.

*Section 80.55—What activities are ineligible for funding?*

We propose to expand on the prohibition for law enforcement to include the definition of “law enforcement” but also the making of laws. We also propose to remove “public relations” as ineligible under the Acts in response to Public Law 116–94.

State Lawmaking as Ineligible

We propose to clearly describe as an ineligible activity participation in the State lawmaking process using Federal funds under an award. This provision is primarily because State agencies need to

retain their State law authority to make policy decisions, and once these activities are included in a grant and paid for with Federal financial assistance funds, they are “federalized,” creating a Federal nexus to what is inherently a State responsibility. When a federally funded project includes the making of State laws, a Federal compliance review is automatically triggered. Even if the project is determined to be categorically excluded from some Federal compliance requirements, the Federal nexus on a State’s responsibility and authority to promulgate laws is inappropriate and is deemed ineligible. Therefore, this proposed rule would clarify and more distinctly define what law-related activities are eligible and ineligible under the Acts.

#### Public Access Denied

We also propose to add that when public access is required under an award and is not provided, the project becomes ineligible for funding. This provision does not include temporary closings or closings because of reasons established at proposed § 80.58 but refers to blatant exclusion or denial of public access when that access is required under an award.

#### *Section 80.57—How does a proposed project qualify as substantial in character and design?*

We propose to add to § 80.57 planned approaches, appropriate procedures, and accepted principles that would relate to R3, access, and communication to accommodate additional eligible activities described in this proposed rule.

#### *Section 80.58—What are public access requirements for activities in an approved award under the Wildlife Restoration or Sport Fish Restoration programs?*

The parameters for public access have been a longstanding issue for the Service and States, and we propose to set some basic principles in the regulations to assist with understanding and encourage consistent application. We propose to start with stating that there are certain eligible activities under an award for which the primary purpose is to provide public access. A prime example of such an activity is public target ranges, which are prominent in both Public Law 116–17, which focuses on offering advantages to States to encourage further development of such facilities, and Public Law 116–94, which seeks to provide public target ranges and other support to recruit, retain, or reactivate members of the

public in hunting and recreational shooting activities. We have encountered situations where potential subrecipients were actively seeking to partner with States in using funds under the Wildlife Restoration Act for range projects but did not want the range open to the public. Often, we encounter situations where the desire is to limit access to members only, and membership costs are very high, or memberships are not offered to all. This includes projects under both Acts.

From the public side, we also have encountered situations where certain groups with specific interests want to access property acquired under an award for various purposes that are not consistent with the purposes of the award under which they were acquired. For example, a real property acquisition for the purposes of conserving a sensitive species in recovery may not be compatible with all-terrain vehicle use or horseback riding on that property. Proposed § 80.58 would give the State agency authority, within the purposes of the Acts, to set parameters for public access. We understand that many States have standards for public access already institutionalized in their laws and practices. Proposed § 80.58 would also describe how a State agency may work under a third-party binding agreement (which may be accomplished as a subaward) to partner with non-State entities on projects that must provide public access.

We purposely do not discuss in the proposed regulations any set formulas for determining the amount of public access to provide when the project with a third party is not available for public access 100 percent of the time. In May 2017, the Service published Best Practices for Third-Party Agreements guidance (best practices guidance), which we updated in September 2019. In the best practices guidance, we describe that the determination as to the adequacy of public access will be accomplished on a case-by-case basis and will be considered as follows:

The WSFR-prescribed method used to determine the amount of public access is:

(1) A reasonable number of regularly scheduled and posted hours of availability must be available to the public that reflects, at minimum, the amount of the Federal and State investment;

(2) Hours of operation may take into consideration safety and security issues, but must not impose impediments such as mandatory membership or excessive fees beyond those needed to offset maintenance and management costs;

(3) If there is potential for closing a site for targeted, non-public use, the recipient must define a process whereby the third party must notify the public of any changes in availability and must compensate the recipient when it reduces the minimum public access defined in the agreement (the preferred method is for the third party to offer additional public access at an alternate time that compensates for the interruption); and

(4) If there are gates, locks, or other controls to access, the third party must clearly indicate at the control point how the public may gain access to the facility.

#### **VI. Subpart F—Allocation of Funds by an Agency**

With the passage of Public Law 116–17 and Public Law 116–94, many more interrelationships are available for developing projects and engaging in eligible activities that could potentially include using funds from a different funding source under the Wildlife Restoration Act. Because these statutory changes prompted a more holistic approach in subpart F, we propose to expand current § 80.60 and add three new sections as follows:

- Proposed § 80.60—What is the relationship between the Traditional Wildlife Restoration Program, the Basic Hunter Education and Safety subprogram (Basic Hunter Education), and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) for acquiring land for, expanding, or constructing public target ranges?

- Proposed § 80.61—What sources of funding in the Wildlife Restoration Act may a State fish and wildlife agency use to support public target range projects, and may funds from multiple sources be used in a single award?

- Proposed § 80.62—What are eligible and ineligible 90/10/5 activities?

- Proposed § 80.63—What exception is provided for Enhanced Hunter Education and Safety funds in relation to Basic Hunter Education and Safety funds?

We propose in these sections, based on the “Interim Guidance for Applying Public Law 116–17, the Target Practice and Marksmanship Training Support Act, to the Pittman-Robertson Wildlife Restoration Act” (interim guidance), how a State may apply the 90 percent Federal/10 percent non-Federal cost share and period of availability of up to 5 years to eligible public target range projects. The proposed sections also describe what amount of funds, if any, a State may allocate to public target range projects and the process a State



agency must take when applying apportioned Traditional Wildlife Restoration program funds to those projects. The current regulations at § 80.60 focus on the differences between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program. We propose to address the relationship between the two programs and one subprogram that may include public target range activities using the 90/10/5 approach as allowable under the amendments from Public Law 116–17.

Proposed § 80.61 would engage with all the options that a State may use when funding public target range projects. We would identify, in a table to proposed § 80.61, seven different potential approaches to use under the regulations.

Proposed § 80.62 would describe eligible and ineligible 90/10/5 activities. The proposed revisions would include a topic that we need to address as, following a legal review of Public Law 116–17, it became clear that the intent of the law is to increase physical access to more or expanded public target ranges. In the interim guidance and this proposed rule, we make it clear that “expanding” means, for the purposes of projects for acquiring land for, expanding, or constructing public target ranges (90/10/5), physical improvements to an existing public target range that add to the utility of the range in a manner that ultimately increases range capacity to accommodate more participants. Physical improvements do not necessarily have to increase the size of the facility but must result in an increase in physical usability that will accommodate more participants. This legal interpretation led us to include in this proposed rule definitions for the terms “maintenance” and “operations.”

In the grant programs under the Acts, we tend to combine operations and maintenance under single awards, and this approach is acceptable for most of the eligible activities under the Acts. However, for 90/10/5 awards, an activity defined as “operations” is not an eligible activity. An activity defined as “maintenance” may be, depending on whether it integrally supports a construction or expansion project. For example, if a project includes activities to expand a 6-stall range to a 12-stall range, but the roof and structure of the existing 6 lanes need repair and maintenance at the same time to allow for successful construction, it may be necessary and reasonable to support the expansion project and ensure that all 12 lanes will be accessible to the public. Other examples may include when a

safety feature of a public target range needs maintenance, and closure of the facility will occur if the need is not resolved. When combined with other activities for expanding the range, this maintenance activity may be included as necessary and reasonable. A State fish and wildlife agency would have to clearly justify how the maintenance activity supports the 90/10/5 objectives and is not just a stand-alone maintenance activity that does nothing to increase range capacity for more participants.

We include in this proposed rule that public target ranges may be on property where title is held by a third party provided the State agency holds a lease or other binding agreement that ensures the terms and conditions of the award will be met. Mobile public target ranges would also be eligible. Although personnel and administrative costs for managing and operating a public target range once the project is completed would be ineligible, personnel and administrative costs associated with activities that directly support development of public target ranges, such as acquiring land and construction, would be eligible. Examples include those activities associated with planning for projects, which may include identifying potential parcels of land, investigating and obtaining permits, conducting real property appraisals, engineering, coordinating projects on a State level, and administering specific projects. Costs that are also eligible when combined with an expansion or construction project are the associated amenities that are necessary and reasonable to ensure the public can fully access and utilize the public target range, such as public restrooms, storage facilities, safety amenities, signs, roads and parking lots, and infrastructure for utilities. We also propose to include as eligible the possibility to justify a project using the 90/10/5 approach when the range has deteriorated to a condition where it is no longer operable or accessible. We do not expect this situation to happen often, and anyone considering this option would have to consult the regional WSFR office.

We would list the following activities as ineligible: operations, maintenance unless necessary for completing a construction or expansion project, long-term monitoring, and any other activities that are not directly related to the goals of 90/10/5 for providing new or increased physical capacity for public target ranges.

Proposed § 80.63 would describe the exception that is in the Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) for use of Enhanced Hunter Education

and Safety funds. The amendments to the Act from Public Law 116–94 complicate administration in some respects. The funding source for both the Basic Hunter Education and Safety subprogram and the newly added hunter recruitment and recreational shooter recruitment (which we refer to as “R3”) activities is described in the Act at 16 U.S.C. 669c(c)(1)–(3). When applied to the Basic Hunter Education and Safety subprogram, the eligible activities are described in the Act at 16 U.S.C. 669g(b). The new eligible activities for R3 are included in the Act under 16 U.S.C. 669c(c)(4). The Act also includes an exception for the Enhanced Hunter Education and Safety program that, if a State uses all its Basic Hunter Education and Safety subprogram funds for purposes under 16 U.S.C. 669g(b) during the FFY, the State may then use its Enhanced Hunter Education and Safety program funds for any purpose under the Act. When applying the amendments for R3 activities in the Act, if a State uses any of its funds under 16 U.S.C. 669c(c) for R3 activities, it voids the exception, and the State must use all its Enhanced Hunter Education and Safety program funds for Enhanced Hunter Education and Safety program purposes. We propose to revise § 80.63 to explain and clarify the exception and associated restrictions when using those funds for R3 activities.

*Section 80.64—What requirements apply to funds for the Recreational Boating Access subprogram?*

We propose to update § 80.64 to clarify that a State need not set aside funds out of each annual apportionment for this subprogram, provided that the standard is accomplished within the designated 5-year period. We propose to update the 5-year periods starting with 2023.

*Section 80.66—Must a State fish and wildlife agency allocate costs in multipurpose projects and facilities? And section 80.67—How does a State fish and wildlife agency allocate costs to an award in multipurpose projects and facilities?*

We propose to amend §§ 80.66 and 80.67 slightly to accommodate for various funding sources within the Acts and to support that a State agency may describe ineligible activities in a proposal that supports eligible activities provided that the proposal clearly shows that no costs for ineligible activities are part of the award. The Service has had a few instances in which auditors have identified any discussion of ineligible activities in a proposal as making the award ineligible.

This determination is inaccurate. In many multipurpose projects, eligible and ineligible activities work together for the success of the overall project, and describing the ineligible activities makes it clearer to the grant reviewer how the entire project is supported. Therefore, this is an acceptable approach that supports the information required at § 80.82(b).

*Section 80.69—What requirements apply to allocation of funds between marine and freshwater fisheries projects?*

We propose to amend § 80.69 to remove the term “obligated” and replace it with the term “allocated” to better align with current administrative practices.

#### **VII. Subpart G—Applying for an Award**

We propose to amend the title of subpart G to reflect active voice and to replace the term “grant” with “award” to align with 2 CFR part 200.

The Service has had several changes to systems and processes for States applying for an award and for Service staff administering awards. In response to these changed circumstances, we propose to revise subpart G to become more generic in some places, not referencing specific systems and processes and referring applicants to the notice of funding opportunity for specific information. As many actions that used to require hardcopy submissions and signatures are now accomplished electronically, we also propose changes to reflect modern procedures. Effective January 1, 2020, *SAM.gov* (<https://sam.gov/content/home>) became the central repository for common certifications and representations required of Federal grants recipients. Effective October 28, 2022, the Service no longer requires applicants to submit the “Assurances for Non-Construction Programs (SF-424B)” form or the “Assurances for Construction Programs (SF-424D)” form with their applications. Therefore, we propose to remove this requirement from the regulations.

*Section 80.83—What is the Federal share of allowable costs? And section 80.84—How does the Service establish the non-Federal share of allowable costs?*

On October 22, 2022, the U.S. Department of the Interior issued a notification (DOI-PGM-PAN Reference No: 2023-0022) that the Office of the Solicitor has determined Public Law 96-205, title VI, section 601, as amended, in conjunction with 48 U.S.C.

1469a(d), requires Department of the Interior offices and bureaus to waive the cost sharing requirement for grants to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, commonly called “insular areas.” Based on this determination, we propose to amend these sections of the regulations to show that the Service will not require those insular areas to provide cost share to awards under these Acts. The insular areas may provide voluntary cost share, but it is not required. The Commonwealth of Puerto Rico and the District of Columbia must still provide a minimum 25 percent cost share.

We also propose to amend these sections to reflect that for those activities that meet the criteria for acquiring land for, expanding, or constructing public target ranges, the Federal share may be up to 90 percent of costs under an award, except for insular areas where it is 100 percent.

*Section 80.85—What requirements apply to cost share or match?*

We propose to revise § 80.85 to refer only to the requirements for cost share as described at 2 CFR 200.306. We would maintain the text that describes at what level of accounting to apply cost share.

#### **VIII. Subpart H—General Award Administration**

*Section 80.92—How long are funds available for a Federal obligation?*

We propose to supplement § 80.92 by providing a table that describes all programs and subprograms under the Acts and shows the name of the program or subprogram, the period of availability for obligation (how many FFYs), and the disbursement of funds at the end of the period of availability for obligation. This table would clearly show all sources of funding and what happens to the funding should it not be obligated within the period of availability.

*Section 80.94—May a State fish and wildlife agency incur costs before the beginning of the period of performance?*

We propose to add a clause at the end of paragraph (c) of § 80.94 that would state that the agency can receive reimbursement for pre-award costs only after the beginning of the period of performance and, for activities requiring compliance, only after the compliance is satisfied. This proposed revision would emphasize that if a State agency receives approval for pre-award costs that require compliance, the compliance

must be completed to the satisfaction of the Service before reimbursement will be made. For activities that do not require compliance, reimbursement may be accomplished as soon as practicable.

*Section 80.97—What is barter, and may a State fish and wildlife agency use barter of goods or services to carry out a grant-funded project? And section 80.98—How must a State fish and wildlife agency include barter in an award and report barter transactions?*

The final rule published on August 1, 2011 (76 FR 46150), introduced in the regulations how a State agency may use the barter of goods and services to carry out a grant-funded project and how barter must be reported. This revision was in response to audit findings reported by the Office of the Inspector General in several States and recommendations that the Service provide clear guidance. In January 2020, the JTF began a process where, annually, WSFR sends out a request for State agencies to submit topics of national concern in the programs under the Acts for our consideration and possible policy action. In 2021, we received a concern that barter transactions in a State had again been identified as an audit finding. This situation prompted WSFR to reexamine the topic and determine how States were managing barter requirements. The JTF supported WSFR staff working with the Federal Assistance Coordinators Working Subcommittee, a group of State representatives and subject matter experts chartered under the Association of Fish and Wildlife Agencies, to assist in reaching out to States and to provide advice on regulatory changes.

Barter is an accounting activity that is addressed under the Generally Accepted Accounting Principles (GAAP) and the associated standards for State and local governments set by the Governmental Accounting Standards Board (GASB). We determined that the current GASB standard that includes barter transactions was published after §§ 80.97 and 80.98 were set forth in the proposed rule (75 FR 32877, June 10, 2010) for the August 1, 2011, rule (76 FR 46150), and we were unaware of the change until consulting with our accounting experts when reassessing the topic in 2021. Therefore, we propose to amend those sections of the regulations to reflect current standards. The proposed revised sections would assign the responsibility to each individual State for developing and maintaining processes that follow GAAP/GASB standards for how to manage barter transactions within that State fish and wildlife agency. This proposed revision

is consistent with 2 CFR part 200, which requires States to establish and follow their own processes under existing laws.

The definition for “barter transactions” would remain the same—that it is an accounting term and means a nonmonetary exchange (reciprocal transfer) transaction. The requirement to report barter transactions in the Federal financial report also would remain. The barter exchange needs to be accounted for according to the GAAP standard. The GAAP standard for States is dictated by the GASB Statement No. 62. In general, accounting for nonmonetary transactions should be based on the fair values of the assets (or services) involved, which is the same basis as that used in monetary transactions. Therefore, barter could result in an even exchange when the fair values of the assets exchanged are the same or result in a gain or a loss when one part of the exchange has a higher value than the other. A gain could be program income and a loss a project expense.

In the current regulations, the Service describes cooperative farming and grazing, a very typical activity with State agencies that is considered an even-exchange barter transaction. In this proposed rule, we propose to remove cooperative farming and grazing from § 80.98 not because it is no longer considered as an even-exchange barter transfer but because, under the current GASB standard, each State, and not the Service, is responsible for establishing processes for making those determinations for their State and then following the resulting processes. Therefore, any State desiring to include cooperative farming and grazing as an even-exchange barter transaction must include it in the State’s processes. A State could potentially add more parameters within GAAP/GASB standards that could benefit the agency’s approaches and objectives. WSFR has been providing technical assistance to States through the Federal Assistance Coordinators Working Subcommittee to assist them in identifying any existing State policies on barter transactions and establishing or refining barter policies for the State fish and wildlife agency to use. By establishing State fish and wildlife agency policies on barter transactions that meet the standards established under GASB, and then following those policies, State agencies may avoid future audit findings related to barter.

One concern related to barter transactions that was brought to our attention is when a State agency wants to incentivize certain activities to support its program objectives and offers something of value to private entities in exchange for a desired action.

We do not address incentives in this rulemaking but did address them in a policy advisory (Advisory 2020–016, October 15, 2020 (<https://fawiki.fws.gov/pages/viewpage.action?pageId=117669889>)) when the question was presented to WSFR. We describe an “incentive” as something that motivates or encourages someone to do a desired behavior or action, that is, it stimulates a reaction or response. An incentive is not a barter transaction unless it meets the criteria for barter. A State agency offering incentives to prompt a desired reaction or response may take many forms, many of which are not barter transactions. When the incentive is more transactional and includes a nonmonetary exchange on both ends, it is a barter transaction and must follow the State processes and the regulations at 50 CFR part 80.

#### IX. Subpart I—Program Income

*Section 80.120—What is program income?*

We propose to update § 80.120 to better align with 2 CFR part 200. To this section, we propose to add barter transactions as a form of program income when the value of goods or services received exceeds the value of goods or services the agency provided.

#### X. Subpart J—Real Property

We propose to revise the heading of § 80.134 and make one substantive change to subpart J. We would add a new paragraph (e) under § 80.134 stating that real property acquired with license revenue (see § 80.20(b)) must be controlled by the State fish and wildlife agency and used only for administration of the agency (see § 80.10(c)). Paragraphs (a) through (d) of § 80.134 address how State agencies must use real property acquired under an award. The proposed addition of new paragraph (e) to this section would close the loop by referring to § 80.20(b), which includes real or personal property acquired with license revenue as “hunting and fishing license revenue” that must be protected, and then back to § 80.10(c), which requires that hunting and fishing license revenue be controlled by the State fish and wildlife agency and used only for the administration of that agency. We would impose no new requirements by adding this new paragraph (e); rather, this proposed addition would align the requirements in a meaningful way in the real property subpart.

#### XI. Subpart K—Revisions and Appeals

We are not proposing any substantive changes to subpart K.

#### XII. Subpart L—Information Collection

We are proposing to update subpart L to the current standardized paragraph for information collection.

##### Statutory Authority

The authorities for this action are 16 U.S.C. 669 *et seq.*, and 777–777m, except 777e–1 and g–1.

##### Request for Comments

You may submit comments and materials on this proposed rule by any one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

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

##### Required Determinations

*Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)*

Executive Order (E.O.) 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant.

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

public participation and an open exchange of ideas.

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

We have developed this proposed rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency publishes a proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

We have examined this proposed rule's potential effects on small entities as required by the RFA. We have determined that this proposed rule would not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis because only eligible State, Territorial, and the District of Columbia fish and wildlife agencies may receive funding under the Acts and regulations. Therefore, small entities (small businesses, small organizations, and small governmental jurisdictions) would not be affected by this proposed rule.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. We certify that, if made final, this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA, as amended. An initial regulatory

flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

#### *Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector.

(a) As discussed above under *Regulatory Flexibility Act*, this proposed rule would not have a significant economic effect on a substantial number of small entities.

(b) The regulations do not require a small government agency plan or any other requirement for expending local funds.

(c) The programs governed by the current regulations and enhanced by the proposed amendments in this document potentially assist small governments financially when they occasionally and voluntarily participate as subrecipients of an eligible agency.

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

(e) Any costs incurred by a State, local, or Tribal government or the private sector are voluntary. There are no mandated costs associated with the proposed rule other than a required cost share, in some cases. No cost share is required under this proposed rule for insular areas.

(f) The benefits of grant funding outweigh the costs. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, all participate. This is clear evidence that the benefits of this grant funding outweigh the costs.

(g) This proposed rule 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.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (E.O. 12630)*

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This proposed rule has no provision for taking private property. Any real property acquisitions

with private landowners are strictly voluntary and only with willing sellers. A takings implication assessment is not required.

#### *Federalism (E.O. 13132)*

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not interfere with the States' ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response. A federalism summary impact statement is not required.

#### *Civil Justice Reform (E.O. 12988)*

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *Consultation With Indian Tribes (E.O. 13175, Department Policy, and U.S. Fish and Wildlife Service Native American Policy)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it would have no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. This proposed rule would inform States, Territories, and the District of Columbia as the eligible recipients under the Acts how to apply for funding, what activities are eligible for funding, and other administrative requirements. Eligible entities may partner with Indian Tribes on projects, but Indian Tribes are not eligible to receive funds directly.

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

This proposed rule contains existing and new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB has reviewed and approved the information collection requirements associated with the administration of financial assistance through grants and cooperative agreement awards to States, local governments, Indian Tribes, institutions of higher education, nonprofit organizations, foreign organizations, foreign public entities, for-profit entities, and individuals and has assigned OMB Control Number 1018-0100, Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs (expires 02/28/2025).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018-0100. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *(NEW) Notice of Annual Apportionment Nonacceptance (50 CFR 80.12)*—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.

(2) *(NEW) State Agency Hunting and Sport Fishing License Certification Revision (50 CFR 80.39)*—A State fish and wildlife agency must submit revised certified data on 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 the State becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

(3) *(NEW) Voluntary Display of Program Symbols (50 CFR 80.100)*—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 as follows:

- 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 establish a requirement for similar standards for displaying the appropriate symbol or symbols, in the places described in paragraph (a) of this section, that is passed through to subrecipients. An agency may require a subrecipient 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.

(4) *(NEW) Required Display of CVA Program Symbol, Slogan, and Information (50 CFR 85.43 and 85.47)*—Facilities must display appropriate information signs at pumpout and portable toilet dump stations. Those signs should indicate fees, restrictions, hours of operation, operating instructions, a contact name, and 1-800-ASK-FISH telephone number for boaters to get additional information or to report an inoperable facility. As the source of funding for Clean Vessel Act facilities, the Sport Fish Restoration program should get credit through use of the Sport Fish Restoration logo. Grant recipients may use the crediting logo identified in 50 CFR 80.99 to identify projects funded by the Clean Vessel Act.

(5) (*REVISION*) Adjust previously approved burden estimates as follows:

- Reduce burden estimates due to the archival of the following programs: 15.641 Wildlife Without Borders—Mexico, 15.633 Landowner Incentive, and 15.656 Recovery Act Funds. We propose to reduce burden estimates based on the number of awards under these programs that were pending closeout reports as of our previous clearance.

- Increase burden estimates associated with new 15.069 Zoonotic Disease Initiative program. This new program was funded and then defunded since our last renewal. We propose to increase burden estimates for only post-award requirements (amendments and reporting) for the 21 awards issued by the program before funding rescission.

- Increase burden estimates for increased financial assistance funding and activities resulting from Infrastructure Investment and Jobs Act (BIL) appropriations supplementing 14 Service financial assistance programs.

- Add the new 15.685 National Fish Passage and 15.686 National Fish Habitat Partnership programs, but we have not proposed a corresponding increase in burden estimates. These longstanding programs were previously managed and reported as subprograms under our 15.608 Fish and Wildlife Management Assistance program.

We also propose to renew the existing reporting and/or recordkeeping requirements identified below:

(1) *Application Package*—We use the information provided in applications to:

- (1) Determine eligibility under the authorizing legislation and applicable program regulations;
- (2) determine allowability of major cost items under the Cost Principles at 2 CFR part 200;
- (3) select those projects that will provide the highest return on the Federal investment; and
- (4) assist in compliance with laws, as applicable, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The full application package (submitted by the applicant) generally includes the following:

- Required Federal financial assistance application forms (SF-424 suite of forms, as applicable to specified project).

- Project Narrative—generally includes items such as:

- Statement of need,
- Project goals and objectives,
- Methods used and timetable,
- Description of key personnel qualifications,

- Description of stakeholders or other relevant organizations/individuals involved and level of involvement,
- Project monitoring and evaluation plan, and/or
- Other pertinent project-specific information.

- Pertinent project budget-related information—generally includes items such as:

- Budget justification,
- Detail on costs requiring prior approval,
- Indirect cost statement,
- Federally funded equipment list, and/or
- Certifications and disclosures.

(2) *Amendments*—Recipients must provide written explanation and submit prior approval requests for budget or project plan revisions, due date extensions for required reports, or other changes to approved award terms and conditions. The information provided by the recipient is used by the Service to determine the eligibility and allowability of activities and to comply with the requirements of 2 CFR part 200.

(3) *Reporting Requirements*—Reporting requirements associated with financial assistance awards generally include the following types of reports:

- Federal Financial Reports (using the required SF-425),
- Performance Reports, and
- Real Property Status Reports, when applicable (using the required SF-429 forms series).

(4) *Recordkeeping Requirements*—In accordance with 2 CFR 200.334, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of 3 years after the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity (in the case of a subrecipient) (unless an exemption as described in 2 CFR 200.334 applies that requires retention of records longer than 3 years).

(5) *Real Property Reporting/Recordkeeping Requirements*—Service recipients purchasing real property under their award in which the Federal Government retains an interest must report on the status and request approval to dispose of those per 2 CFR part 200 and 2 CFR part 1402 using the SF-429-A, Real Property Status Report (General Reporting) and the SF-429-C,

Real Property Status Report (Disposition or Encumbrance Request), as appropriate. For real property acquisition awards in which the Service will retain an interest, we require recipients to submit certain information, including:

- Transactions, such as dates, method of transfer, title holder, and seller;
- Identifiers, such as State and Federal Record ID, parcel number, and property name;
- Values, such as appraised value, purchase price, and other cost information, and acres or acre feet;
- Encumbrances;
- Partners;
- Copies of any options, purchase agreements, mineral assessment reports, and draft conservation easements; and
- Documentation to demonstrate compliance with 2 CFR part 1402.

*Title of Collection:* Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs.

*OMB Control Number:* 1018-0100.

*Form Number:* None.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Public:* Individuals/households, private sector, and State/local/Tribal governments.

*Total Estimated Number of Annual Respondents:* 15,199.

*Total Estimated Number of Annual Responses:* 17,170.

*Estimated Completion Time per Response:* Varies from 15 minutes to 100 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 403,086.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion, quarterly, or annually, depending on activity.

*Total Estimated Annual Nonhour Burden Cost:* None.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov). Please reference OMB Control Number 1018-0100 in the subject line of your comments.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

This proposed rule is not anticipated to constitute a major Federal action significantly affecting the quality of the human environment. The Service has preliminarily determined that categorical exclusion 43 CFR 46.210(i)

applies as the proposed regulation is of an administrative nature and no extraordinary circumstances in 43 CFR 46.215 apply. Therefore, preparation of an environmental assessment or environmental impact statement associated with this proposed rulemaking action is not required. Once eligible applicants have available funding, they would submit project proposals for review and consideration and an assessment under the National Environmental Policy Act and appropriate compliance would be completed prior to awarding a grant.

#### *Effects on Energy Supply (E.O. 13211)*

This proposed rule is not a significant energy action under the definition in Executive Order 13211. This proposed rule is not a significant regulatory action under Executive Order 12866 or any successor order, and it would have no effect on energy supply, distribution, or use. A statement of energy effects is not required.

#### *Clarity of This Regulation*

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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

Fish, Fishing, Grant programs—natural resources, Grant programs—recreation, Grants administration, Hunting, Licensing and Registration, Natural resources, Rates and fares, Real property acquisition, Recreation and recreation areas, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

#### **Proposed Regulation Promulgation**

■ For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service proposes to revise 50 CFR part 80 to read as follows:

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

##### **Subpart A—General**

Sec.

- 80.1 What does this part do?
- 80.2 What terms do I need to know?

##### **Subpart B—State Fish and Wildlife Agency Eligibility**

- 80.10 Who is eligible to receive the benefits of the Acts?
- 80.11 How does a State become ineligible to receive the benefits of the Acts?
- 80.12 Must a State fish and wildlife agency confirm that it wants to receive an annual apportionment of funds?

##### **Subpart C—License Revenue**

- 80.20 What does revenue from hunting and fishing licenses include?
- 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?
- 80.22 What must a State do to resolve a declaration of diversion?
- 80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

##### **Subpart D—Certifying License Holders**

- 80.30 Why must a State fish and wildlife agency certify the number of paid license holders?
- 80.31 How does a State fish and wildlife agency certify the number of paid license holders?
- 80.32 What is the certification period?
- 80.33 How does a State fish and wildlife agency decide who to count as paid license holders in the annual certification?
- 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each year a license holder is certified?
- 80.35 What additional options and requirements apply to multiyear licenses?
- 80.36 May a State fish and wildlife agency count license holders in the annual certification if the agency receives funds from the State or other entity to cover the holders' license fees?
- 80.37 May the State fish and wildlife agency certify a license sold at a discount?
- 80.38 May a State fish and wildlife agency certify a license when an entity other than the agency offers a discount on a license or offers a free license?
- 80.39 What must a State fish and wildlife agency do if it becomes aware of errors in its certified license data?

- 80.40 May the Service recalculate an apportionment if a State fish and wildlife agency submits revised data?
- 80.41 May the Director correct a Service error in apportioning funds?

##### **Subpart E—Eligible Activities**

- 80.50 What activities are eligible for funding under the Wildlife Restoration Act?
- 80.51 What activities are eligible for funding under the Sport Fish Restoration Act?
- 80.52 What activities are eligible for funding under all programs and subprograms under the Acts?
- 80.53 May an activity be eligible for funding if it is not explicitly eligible according to the regulations in this part?
- 80.54 Are costs of State central services eligible for funding?
- 80.55 What activities are ineligible for funding?
- 80.56 May a State fish and wildlife agency receive an award to carry out part of a larger project?
- 80.57 How does a proposed project qualify as substantial in character and design?
- 80.58 What are public access requirements for activities in an approved award under the Wildlife Restoration or Sport Fish Restoration programs?

##### **Subpart F—Allocation of Funds by an Agency**

- 80.60 What is the relationship between the Traditional Wildlife Restoration Program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program for acquiring land for, expanding, or constructing public target ranges?
- 80.61 What sources of funding in the Wildlife Restoration Act may a State fish and wildlife agency use to support public target range projects, and may funds from multiple sources be used in a single award?
- 80.62 What are eligible and ineligible 90/10/5 activities?
- 80.63 What exception is provided for Enhanced Hunter Education and Safety program funds in relation to Basic Hunter Education and Safety subprogram funds?
- 80.64 What requirements apply to funds for the Recreational Boating Access subprogram?
- 80.65 What limitations apply to spending on the Aquatic Resource Education and the State Outreach and Communications subprograms?
- 80.66 Must a State fish and wildlife agency allocate costs in multipurpose projects and facilities?
- 80.67 How does a State fish and wildlife agency allocate costs to an award in multipurpose projects and facilities?
- 80.68 Must a State fish and wildlife agency allocate funds between marine and freshwater fisheries projects?
- 80.69 What requirements apply to allocation of funds between marine and freshwater fisheries projects?
- 80.70 May a State fish and wildlife agency finance an activity from more than one annual apportionment?

80.71 What requirements apply to financing an activity from more than one annual apportionment?

#### Subpart G—Applying for an Award

- 80.80 How does a State fish and wildlife agency apply for an award?
- 80.81 What must a State fish and wildlife agency submit when applying for a comprehensive-management-system award?
- 80.82 What must a State fish and wildlife agency submit when applying for a project-by-project award?
- 80.83 What is the Federal share of allowable costs?
- 80.84 How does the Service establish the non-Federal share of allowable costs?
- 80.85 What requirements apply to cost sharing?

#### Subpart H—General Award Administration

- 80.90 What are the recipient's responsibilities?
- 80.91 What is a Federal obligation of funds, and how does it occur?
- 80.92 How long are funds available for a Federal obligation?
- 80.93 When may a State fish and wildlife agency incur costs under an award?
- 80.94 May a State fish and wildlife agency incur costs before the beginning of the period of performance?
- 80.95 How does a State fish and wildlife agency receive Federal award funds?
- 80.96 May a State fish and wildlife agency use Federal funds without using cost sharing?
- 80.97 What is barter, and may a State fish and wildlife agency use barter of goods or services to carry out a grant-funded project?
- 80.98 How must a State fish and wildlife agency include barter in an award and report barter transactions?
- 80.99 Are symbols available to identify projects?
- 80.100 Must a State fish and wildlife agency display one of the symbols set forth in this part on a completed project?

#### Subpart I—Program Income

- 80.120 What is program income?
- 80.121 May a State fish and wildlife agency earn program income?
- 80.122 May a State fish and wildlife agency deduct the costs of generating program income from gross income?
- 80.123 How may a State fish and wildlife agency use program income?
- 80.124 How may a State fish and wildlife agency use unexpended program income?
- 80.125 How must a State fish and wildlife agency treat income that it earns after the period of performance?
- 80.126 How must a State fish and wildlife agency treat income earned by a subrecipient after the period of performance?

#### Subpart J—Real Property

- 80.130 Must a State fish and wildlife agency hold title to real property acquired under an award?

80.131 Must a State fish and wildlife agency hold an easement acquired under an award?

- 80.132 Must a State fish and wildlife agency have control over the land or water where it completes capital improvements?
- 80.133 Must a State fish and wildlife agency maintain acquired or completed capital improvements?
- 80.134 How must a State fish and wildlife agency use real property?
- 80.135 What if a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose?
- 80.136 Is it a diversion if a State fish and wildlife agency does not use real property acquired under an award for its authorized purpose?
- 80.137 What if real property is no longer useful or needed for its original purpose?

#### Subpart K—Revisions and Appeals

- 80.150 How does a State fish and wildlife agency revise an award?
- 80.151 May a State fish and wildlife agency appeal a decision?

#### Subpart L—Information Collection

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

**Authority:** 16 U.S.C. 669 *et seq.*, except for provisions specific to the Wildlife Conservation and Restoration program, and 777–777m, 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 Federal financial assistance awards for eligible activities under the Traditional Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program, including those authorized for hunter recruitment and recreational shooter recruitment under 16 U.S.C. 669c.
- (d) Receive Federal financial assistance awards for eligible activities under the Sport Fish Restoration program, the Recreational Boating Access subprogram, the Aquatic Resources Education subprogram, and the State 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.

*90/10/5* means activities authorized under Public Law 116–17 for acquiring land for, expanding, or constructing public target ranges that apply a 90 percent Federal/10 percent non-Federal cost share and a 5-year period of availability for obligation.

*Acquisition of real property* means taking ownership or control of a designated area of land or an interest in land by purchase, assignment, reversion, gift, eminent domain, or any other method consistent with State or Federal law. The purpose of the acquisition must be for an eligible activity to meet the objective of an award.

*Acts* means the Pittman-Robertson Wildlife Restoration Act of September 2, 1937 (Wildlife Restoration Act), as amended (16 U.S.C. 669 *et seq.*, except for provisions specific to the Wildlife Conservation and Restoration program), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950 (Sport Fish Restoration Act), as amended (16 U.S.C. 777–777m, except 777e–1 and g–1).

*Allocate* means the process by which States work with the Service to assign apportioned funds to a specific subaccount based on the eligible uses. Once allocated, the funding becomes available for obligation to Federal awards for eligible program activities.

*Allowable* refers to those costs that meet the general criteria to be charged to a Federal financial assistance award and comply with the basic considerations at 2 CFR 200.402 through 200.411, as well as the general principles for selected items of cost at 2 CFR 200.420 through 200.476.

*Angler* means a person who fishes for recreational purposes as permitted by State and/or Federal law.

*Apportioned funds* are those that are made available to a State based on formulas in the Acts. Traditional Wildlife Restoration program funds are apportioned using the formula at 16 U.S.C. 669c(b); Basic Hunter Education and Safety subprogram funds are apportioned using the formula at 16 U.S.C. 669c(c); Enhanced Hunter Education and Safety program funds are apportioned using the formula at 16 U.S.C. 669c(c) and according to the criteria at 16 U.S.C. 669h-1(a); and Sport Fish Restoration program funds are apportioned using the formula at 16 U.S.C. 777c(c).

*Asset* means all tangible and intangible real and personal property of monetary value. This includes “capital assets” as defined at 2 CFR 200.1,



“equipment” as defined at 2 CFR 200.1, and real property of any value.

*Award or grant* has the same meaning as “Federal award” as defined at 2 CFR 200.1. The regulations in this part use the terms “award” or “grant” for both a grant and a cooperative agreement for convenience of reference, and the use does not affect the legal distinction between the two instruments. An award includes all “project costs” as defined at 2 CFR 200.1. We use the term “grant” when making references to programs (*i.e.*, a grant program).

*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) A State fish and wildlife agency may use its own definition of “capital improvement” if the agency’s definition includes all capital improvements as defined here.

*Comprehensive management system (CMS)* is a State fish and wildlife agency’s method of operations that links programs, financial systems, human resources, goals, products, and services. When using a CMS method of operations, a State fish and wildlife agency assesses the current, projected, and desired status of fish and wildlife; develops a strategic plan and carries it out through an operational planning process; and 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 CMS award funds all or part of a State’s CMS. For those States that employ a CMS method of operations, where we refer to a “project statement” in the regulations in this part, a CMS State might refer to activities as part of its “operational plan.”

*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. For the purposes of 90/10/5 projects (acquiring land for, expanding, or constructing public target ranges), *constructing* means building a public target range (see §§ 80.60 and 80.62, 16 U.S.C. 669g(b)(2) and 669h–1(b)(2)).

*Cost sharing* has the same meaning as at 2 CFR 200.1. Cost sharing must meet

the requirements at 2 CFR 200.306(b)(1) through (7) and §§ 80.83 through 80.85.

*Director* has the same meaning as at 50 CFR 1.4 and, for the purposes of this part, means:

(1) The person whom the Secretary delegated to administer the Acts nationally; or

(2) A deputy or another person authorized temporarily to administer the Acts nationally.

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

*Eligible* refers to activities or actions for a Federal financial assistance program that are authorized by Congress through a statute or by Federal agency regulations to accomplish a public purpose under that program.

*Equipment* has the same meaning as at 2 CFR 200.1.

*Expanding* means, for the purposes of projects for acquiring land for, expanding, or constructing public target ranges (90/10/5), physical improvements to an existing public target range that add to the utility of the range in a manner that ultimately increases range capacity to accommodate more participants. Physical improvements do not necessarily have to increase the size of the facility but must result in an increase in physical usability that will accommodate more participants.

*Facility* means the physical infrastructure and appurtenances necessary to support purposes under the Acts. The physical infrastructure includes land.

*Federal fiscal year (FFY)* means the annual period the Federal Government uses for budgets and accounting, beginning October 1 and ending September 30.

*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 or full-fee interest, which includes all possible interests or rights that a person or legal entity can hold in a parcel of real property (land or water); or

(2) Fee with exceptions to title or less-than-full-fee interest, which excludes one or more real property interests that would otherwise be part of the fee simple.

*Fiscal year*, for the purposes of determining the number of paid hunting- or fishing-license holders in a State, means the State-determined (State fiscal year or license year) period that it identifies to certify license holders.

*Fish restoration and management project* means the restoration and management of any species of fish that has material value in connection with sport or recreation (see *Sport fish*) in the marine and/or fresh waters of the United States.

*Hunter recruitment and recreational shooter recruitment* means any activity or project to recruit or retain and, for the purposes of the regulations in this part, reactivate hunters and recreational shooters including by:

(1) Outreach and communications as a means—

(i) To improve communications with hunters, recreational shooters, and the public with respect to hunting and recreational shooting opportunities;

(ii) To reduce barriers to participation in these activities;

(iii) To advance the adoption of sound hunting and recreational shooting practices;

(iv) To promote conservation and the responsible use of the wildlife resources of the United States; and

(v) To further safety in hunting and recreational shooting.

(2) Providing education, mentoring, and field demonstrations;

(3) Enhancing access for hunting and recreational shooting, including through range construction; and

(4) Providing education to the public about the role of hunting and recreational shooting in funding wildlife conservation.

*Law enforcement* means enforcing laws, orders, and regulations.

*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 their 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.

*Maintenance* means keeping a facility or equipment in a condition to serve the intended purpose. It includes recurring, cyclical, or occasional actions to keep a facility or equipment fully functional that are less than the threshold for a capital improvement or capital expenditure for improvement. It does not include operations. Examples of maintenance activities include but are not limited to:

(1) Routine upkeep for physical and mechanical parts of a facility; and

(2) Replacing components of a facility or a piece of equipment that are

expected to need replacement during its useful life.

*Obligation* has two meanings depending on the context:

(1) When a recipient of Federal financial assistance commits funds by incurring costs for purposes of the award, the definition for “financial obligations” at 2 CFR 200.1 applies.

(2) When the Service sets aside funds in an award for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at § 80.91 applies.

*Operations* means supporting the availability of a facility and its components for current public or other intended use. Operations include necessary activities that occur frequently (daily, weekly, monthly). The term does not include maintenance. Operations may be divided into the categories of physical or administrative. Examples include but are not limited to:

(1) Physical activities such as trash removal, portable toilet services, and utility costs; and

(2) Administrative operations such as personnel costs to manage and keep a facility open.

*Period of performance* has the same meaning as at 2 CFR 200.1.

*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 movable without substantive damage to the land or any structure to which they may be attached and not considered an inherent part of the land;

(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 has the same meaning as at 2 CFR 200.1 and 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 (not a real property interest) granted by consent of a landowner, lessee, or tenant to use an area of land or water that would otherwise be trespass or another violation of law, with at least one of the following attributes:

(A) Are revocable at the discretion of the entity consenting to the license;

(B) Terminate when the area of land or water passes to another owner, the lease or tenancy ends, or the landowner, lessee, or tenant dies; 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 award 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 CMS award.

*Project-by-project award* means an award of money based on a detailed statement of a project, or projects, and other supporting documentation.

*Public* means of, relating to, or affecting all people in general.

*Public access* means the public has opportunity, permission, and/or ability to enter, approach, pass to, from, and within, and appropriately use a place/facility for an authorized purpose (see § 80.58 for further requirements).

*Public target range*, including mobile public target ranges and privately owned target ranges during those times when open for public use, means a specific location that—

(1) Is identified by a governmental agency for recreational shooting;

(2) Is open to the public;

(3) May be supervised; and

(4) May accommodate archery or rifle, pistol, or shotgun shooting.

*Public relations* means those activities dedicated to maintaining the image of the non-Federal entity (recipient or subrecipient) or maintaining or promoting understanding and favorable relations with the community, public at large, or any segment of the public. This term could include communicating with the public about specific activities or accomplishments resulting from approved projects or communication and liaison necessary to keep the public informed on matters of public concern such as notices of funding opportunities. (See also “advertising and public relations” in 2 CFR part 200).

*R3* means to recruit, retain, and/or reactivate members of the public to actively participate in the outdoor recreational activities of hunting, angling, boating, and recreational shooting. State fish and wildlife agencies and other involved partners may define R3 more broadly, but agencies must use funds under the Acts only for activities that are eligible under the regulations in this part.

*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 fees, 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.

*Recipient* for the purposes of the regulations in this part means the entities eligible to receive apportionments under the Acts (see § 80.10).

*Regional Director* has the same meaning as at 50 CFR 1.7. This person’s responsibility does not extend to any administrative units that the Service’s Washington Office supervises directly in that geographic region.

*Secretary* has the same meaning as at 50 CFR 1.8.

*Service* has the same meaning as at 50 CFR 1.3.

*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 Commonwealth of Puerto Rico, and the insular areas of the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the Territory of the U.S. Virgin Islands, and the Territory of American Samoa.

(1) “State” also includes the District of Columbia for purposes of the Sport Fish Restoration Act, the Sport Fish Restoration program, and its subprograms. “State” does not include the District of Columbia for purposes of the Wildlife Restoration Act and the programs and subprogram under the Act

because the Wildlife Restoration Act does not authorize funding for the District.

(2) 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* (or *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* (and *account*) means the fiscal management designation used in the Service’s financial system to identify funds by program and subprogram allocation (see § 80.61 for a description of subaccounts and the financial system). Different subaccounts also distinguish between benefits to marine or freshwater fisheries in the programs and subprograms authorized by the Sport Fish Restoration Act.

*Subaward* has the same meaning as at 2 CFR 200.1 A subaward may serve as a third-party binding agreement where required.

*Subrecipient* has the same meaning as at 2 CFR 200.1.

*Traditional Wildlife Restoration program*, for the purposes of the regulations in this part and associated policies, means the activities that are funded under apportionments authorized at 16 U.S.C. 669c(b), which reflects the original program funded under the Wildlife Restoration Act of 1937 (see eligible activities at § 80.50(a)). We use this term for clarity when administering awards, as many eligible activities are specific to funding sources within the Act.

*Useful life* means the period during which a federally funded capital improvement, capital asset, or equipment 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.

*Wildlife restoration project* means the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about those projects.

### 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 the State:

- (a) Fails materially to comply with any law, regulation, or terms and conditions of the Federal award 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 Must a State fish and wildlife agency 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 date 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 funds derived from license revenue and the interest lost up to the date of repayment. The agency must update financial records for the receipt of the diverted funds and interest accordingly.

(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 an 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 (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—Certifying License Holders**

**§ 80.30 Why must a State fish and wildlife agency certify the number of paid license holders?**

A State fish and wildlife agency must certify the number of individuals 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 a State fish and wildlife 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 individual paid hunting license holders in the State during the State-specified certification period (certification period); and

(2) The number of individual paid fishing license holders in the State during the certification period.

(b) The State fish and wildlife agency director or their designee:

(1) Must certify the information described 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 they certify and may use statistical sampling, automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If a State fish and wildlife agency director uses statistical sampling to eliminate multiple counting of the same individuals, they 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 FFY in which the apportioned funds first become available for expenditure.

**§ 80.33 How does a State fish and wildlife agency decide who to count as paid license holders in the annual certification?**

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

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

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

(b) An agency must count an individual in the annual certification:

(1) Only once, and in the certification period in which the license first

becomes valid, when holding a single-year license. A single-year license is valid for any length of time from 1 day to less than 2 years. If valid 2 years or more, a license is considered a multiyear license and may be valid for a specific number of years that is 2 or more, or for the lifetime of the individual (see § 80.35(d)).

(2) Only for the number of years the license is valid and starting in the certification period in which the license first becomes valid, unless that year has already been certified in the case of multiyear licenses. An individual holding a multiyear license may be counted for only the number of years the license is valid and only during the applicable certification periods.

(3) Only for the number of years allowed under § 80.35, when holding a lifetime license.

(c) An individual is counted as a valid license holder when meeting requirements at § 80.34, even if the individual is not required to have a paid license.

(d) An individual having more than one valid hunting license is counted only once each certification period as a hunter. An individual having more than one valid fishing license is counted only once each certification period as an angler. An individual 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 the license(s) or was required to obtain the license(s) to receive a different privilege.

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

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

(a) Yes. A State fish and wildlife agency must receive a minimum amount of gross revenue for each year a license holder is certified.

(b) 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 certified, for either the privilege to hunt or the privilege to fish; or

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

**§ 80.35 What additional options and requirements apply to multiyear licenses?**

In addition to the requirements at § 80.34, the following provisions apply to multiyear licenses:

(a) An agency may spend the proceeds derived from a multiyear license fee as soon as the agency receives payment.

(b) 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.

(c) The agency may count a license holder for the number of certification periods for which all the following requirements are met:

(1) The license holder meets all other requirements of this subpart;

(2) The license is currently valid;

(3) The agency received the minimum required revenue for each certification period during the duration of the license, in the case of a multiyear license with a specified ending date;

(4) The license holder remains alive (see paragraph (d) of this section), in the

case of a lifetime license or other license with no specified ending date; and

(5) If the license is valid for less than the number of years that it meets the minimum required revenue, or the license exceeds the life expectancy of the holder, the agency may count the license holder only for the number of years during which all certification requirements are met. For example, an agency may count for 12 certification periods a license holder who purchased a single-privilege, multiyear license that sells for \$25 and is valid for at least 2 years.

(d) 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.

(e) For currently valid multiyear licenses sold prior to September 26, 2019 (the effective date of the rule promulgated at 84 FR 44772, August 27, 2019), an agency may apply the provisions of § 80.34 to those multiyear licenses under the following situations:

(1) All the requirements in paragraph (c) of this section are met.

(2) The agency may count a multiyear license holder only once in any certification period (see § 80.33) when the license holder purchased another license with the same privilege within an allowable future certification period.

(3) An agency must count the license holder only for the appropriate number of current or future certification periods. The provisions of § 80.34 are not retroactive to past certification periods.

(4) For an illustration of the applications provided in this paragraph (e), see table 1 to paragraph (e):

**TABLE 1 TO PARAGRAPH (e)—SCENARIOS FOR COUNTING LICENSE HOLDERS UNDER THE REQUIREMENTS FOR GROSS REVENUE AT § 80.34**

[For use in counting valid multiyear licenses sold prior to September 26, 2019]

Scenario 1	Scenario 2
<b>An agency sold a single-privilege multiyear license, valid for 10 years, for \$100 in 2014 (term of license 2014–2023)</b>	
<p>The agency spent the money and was able to count the license during only one certification period based on the regulations promulgated in 2014.</p> <p>Applying the standard at § 80.34(b)(1) to the original license cost results in a potential for 50 certification periods (\$100/\$2 per year = 50).</p> <p>After subtracting the 1 certification period that was already counted, 49 potential certification periods remain.</p> <p>Because the license is valid for only 10 years, and through 2023, under scenario 1 the agency could count the license holder only from 2019 through the end of the term of the license (2023) or an additional five certification periods.</p>	<p>The agency invested the funds into an annuity that produced enough income to allow the license holder to be counted in all certification periods since the date of the license sale.</p> <p>Applying the standard at § 80.34(b)(1) to the original license cost results in a potential for 50 certification periods (\$100/\$2 per year = 50).</p> <p>After subtracting the 6 (2014–2019) certification periods already counted, 44 potential certification periods remain.</p> <p>Because the license is valid for only 10 years, under scenario 2 the agency could count the license holder in an additional four (2020–2023) certification periods.</p>

**§ 80.36 May a State fish and wildlife agency count license holders in the annual certification if the agency receives funds from the State or other entity to cover the holders' 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 State fish and wildlife agency must receive at least the average amount of State-provided discretionary funds that it received for the administration of

the State's fish and wildlife agency during the State's 5 previous fiscal years.

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

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

(d) The State fish and wildlife agency must receive and account for the State or other entity funds as license revenue.

(e) The State fish and wildlife 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?**

Yes. A State fish and wildlife agency may certify a license that is sold at a discount if the agency meets the rules for minimum gross revenue at § 80.34.

**§ 80.38 May a State fish and wildlife agency certify a license when an entity other than the agency offers a discount on a license or offers a free license?**

A State fish and wildlife agency may certify a license when an entity other than the agency offers a license that costs less than the regulated price only if:

- (a) The license is issued to the individual according to the requirements at § 80.33;
- (b) The amount received by the agency meets all other requirements in this subpart; and
- (c) The license meets any other conditions required by the agency.

**§ 80.39 What must a State fish and wildlife 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 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 the State 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 a State fish and wildlife 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 Wildlife Restoration Act?**

The following activities are eligible for funding in these programs and subprograms under the Wildlife Restoration Act:

- (a) *Traditional Wildlife Restoration program.* The following wildlife

restoration projects and other associated activities are eligible for funding under apportionments authorized at 16 U.S.C. 669c(b).

- (1) Restoring and managing wildlife for the benefit of the public.
- (2) Conducting research on the problems of managing wildlife and its habitat if necessary to administer wildlife resources efficiently. This research may include social science activities.
- (3) Obtaining data to guide and direct the regulation of hunting.
- (4) Acquiring real property suitable or capable of being made suitable for:
  - (i) Wildlife habitat or management;
  - (ii) Providing public access for hunting or other wildlife-oriented recreation; or
  - (iii) Supporting other eligible activities described under this paragraph (a).
- (5) Wildlife restoration projects for restoring, rehabilitating, improving, managing, or maintaining areas of lands or waters as wildlife habitat.
- (6) Building structures or acquiring equipment, goods, and services for:
  - (i) Restoring, rehabilitating, or improving lands or waters as wildlife habitat;
  - (ii) Supporting wildlife management;
  - (iii) Providing public access for hunting or other wildlife-oriented recreation; or
  - (iv) Supporting other eligible activities described under this paragraph (a).
- (7) Acquiring land for, expanding, or constructing public target ranges following the requirements of § 80.60 when combining up to 10 percent of annually apportioned Traditional Wildlife Restoration funds (16 U.S.C. 669c(b)) with Enhanced Hunter Education and Safety funds (16 U.S.C. 669h–1). When Traditional Wildlife Restoration funds are committed to the Wildlife Restoration for Public Target Ranges 90/10/5 subaccount, they are no longer eligible for Traditional Wildlife Restoration activities.
- (8) Communicating with the public (see § 80.52(h)), including:
  - (i) Outreach and sharing information on award activities, accomplishments, performance, or other communication related to meeting the objectives of an award;
  - (ii) Providing the public with information on Wildlife Management Areas; public access for hunting or other wildlife-associated recreation; notices on safety, rule changes, and topics of interest to the public related to wildlife management; and other opportunities available to the public as a result of a Traditional Wildlife Restoration award;

- (iii) Liaising with the media or other venues to provide public information related to the objectives of an award; or
- (iv) Other forms of communication that support a State's wildlife restoration and management objectives in an award.

(9) Public relations, advertising as a form of outreach, and marketing that are associated with achieving eligible objectives require prior approval of the Service. These activities are allowable only when included in the approach of an approved award to accomplish eligible activities and meet award objectives. Communication that solely benefits the agency is unallowable public relations and is not eligible for funding under the Act.

(b) *Basic Hunter Education and Safety subprogram and Hunter Recruitment and Recreational Shooter Recruitment.*

(1) The following activities are eligible under the Basic Hunter Education and Safety subprogram for activities authorized at 16 U.S.C. 669g(b):

- (i) Teaching the skills, knowledge, and attitudes necessary to be a responsible hunter.
- (ii) Developing and improving access to public target ranges by:
  - (A) Acquiring real property suitable or capable of being made suitable for public target ranges, including through licenses or third-party binding agreements that provide assurances for public access (see § 80.58).
  - (B) Constructing, upgrading, or restoring public target ranges to a useful condition.
  - (C) Operating or maintaining public target ranges.
  - (D) Acquiring land for, expanding, or constructing public target ranges as 90/10/5 projects following §§ 80.60 and 80.62.
  - (E) Constructing, operating, or maintaining educational facilities to support Hunter Education.

(2) The following activities are eligible when directly supporting recruiting, retaining, or reactivating hunters or recreational shooters (R3), as authorized at 16 U.S.C. 669c(c)(4).

- (i) Communicating with hunters, recreational shooters, and the public about hunting and recreational shooting and associated opportunities by:
  - (A) Promoting conservation and the responsible use of the wildlife resources of the United States as part of an effort to recruit, retain, or reactivate hunters or recreational shooters.
  - (B) Promoting a State's R3 program, special events, and opportunities.
  - (C) Providing outreach on public target range availability, access, and locations.

(D) Marketing, publications, press releases, and media relations for content directly related to R3 activities.

(ii) Interpreting, translating, printing, or disseminating published State hunting regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations.

(iii) Using a State fish and wildlife agency's website, cell phone or software products, online support systems, or other appropriate communication tools to engage the public in activities supporting a State's R3 efforts (see § 80.55(c) for exclusions related to income-producing activities).

(iv) Supporting the scope and impact of a State's R3 program by:

(A) Reducing barriers to hunting and recreational shooting opportunities;

(B) Furthering safety in hunting and recreational shooting;

(C) Providing education, mentoring, field demonstrations, and other similar opportunities to recruit, retain, or reactivate hunters or recreational shooters;

(D) Constructing, operating, or maintaining educational facilities to the extent they support R3 activities;

(E) Supporting programs for hunting or recreational shooting that have been developed or are delivered by other entities; and

(F) Offering activities that support R3 for youth and beginner hunters or recreational shooters, such as R3 camps and mentoring programs.

(v) Constructing, operating, or maintaining public target ranges, including mobile public target ranges.

(vi) Educating the public about the role of hunting and recreational shooting in funding wildlife conservation.

(vii) Supplying services that support R3 activities, such as hunt guides, trainers for shooting, and celebrity endorsements.

(viii) Acquiring supplies that enhance the experience and skills for hunters and recreational shooters.

(ix) Engaging in other allowable activities that directly support recruiting, retaining, or reactivating hunters or recreational shooters.

(c) *Enhanced Hunter Education and Safety program.* The following activities are eligible under Enhanced Hunter Education and Safety for activities authorized at 16 U.S.C. 669h-1:

(1) Enhancing 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) Enhancing interstate coordination and developing hunter-education and public target range programs.

(3) Enhancing programs for education, safety, or development of firearm and bow hunters and recreational shooters.

(4) Enhancing development, construction, upgrades, rehabilitation, and improved safety features at public target ranges.

(5) Acquiring real property suitable or capable of being made suitable for public target ranges.

(6) Enhancing operation and maintenance of public target ranges.

(7) Enhancing access for hunting and recreational shooting opportunities.

(8) Acquiring land for, expanding, or constructing public target ranges following the regulations at § 80.60.

(9) Enhancing the hunter and recreational shooter R3 activities listed at paragraph (b)(2) of this section.

**§ 80.51 What activities are eligible for funding under the Sport Fish Restoration Act?**

The following activities are eligible for funding in these programs and subprograms under the Sport Fish Restoration Act:

(a) *Sport Fish Restoration program.*

The following fish restoration and management projects and other associated activities are eligible for funding under apportionments authorized at 16 U.S.C. 777c(c)(1).

(1) Restoring and managing sport fish for the benefit of the public.

(2) Conducting research on the problems of managing fish and their habitat and the problems of fish culture if necessary to administer sport fish resources efficiently. This research may include social science activities.

(3) Obtaining 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) Developing and adopting 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) Stocking fish for recreational purposes.

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

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

(ii) Providing public access for sport fishing; or

(iii) Supporting other eligible activities described under this paragraph (a).

(7) Implementing fish restoration and management projects to restore, rehabilitate, improve, manage, or maintain:

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

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

(8) Building structures or acquiring equipment, goods, and services for:

(i) Restoring, rehabilitating, or improving aquatic habitat for sport fish or land as a buffer to protect aquatic habitat for sport fish;

(ii) Supporting sport fish management;

(iii) Providing public access for sport fishing; or

(iv) Supporting other eligible activities described under this paragraph (a).

(9) Constructing, renovating, operating, or maintaining 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) Communicating with the public (see § 80.52(h)) to include:

(i) Conducting outreach and sharing information on award activities, accomplishments, performance, or other communication related to meeting the objectives of an award;

(ii) Providing the public with information on sport fish management areas; public access for fishing or other sport fish-associated recreation; notices on safety, rule changes, and topics of interest to the public related to sport fish management; and other opportunities available to the public as a result of a Sport Fish Restoration award;

(iii) Liaising with the media or other venues to provide public information related to the objectives of an award; or

(iv) Engaging in other forms of communication that support a State's sport fish restoration and management objectives in an award.

(11) Conducting public relations, advertising as a form of outreach, and marketing that are associated with achieving eligible objectives require prior approval of the Service. These activities are allowable only when included in the approach of an approved award to accomplish eligible activities and meet award objectives. Communication that solely benefits the

agency is unallowable public relations and is not eligible for funding under the Act.

(b) *Sport Fish Restoration—Recreational Boating Access subprogram.*

(1) Conducting projects and activities that may include those for motorized or nonmotorized vessels and users.

(2) Acquiring real property, including water rights, suitable or capable of being made suitable for:

(i) Building, renovating, or improving facilities to create or enhance public access to the waters of the United States;

(ii) Improving the suitability of these waters for recreational boating; or (iii) Providing benefits for recreational boating.

(3) Constructing a broad range of recreational boating access facilities that also may provide services or amenities to recreational boaters. “Facilities” includes auxiliary structures necessary to ensure safe use of recreational boating access facilities.

(4) Conducting surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(5) Developing new, or redeveloping or expanding existing, boating access sites.

(c) *Sport Fish Restoration—Aquatic Resource Education subprogram.* Enhancing the public’s understanding of water resources, aquatic life forms, and sport fishing, and developing responsible attitudes and ethics toward the aquatic environment.

(d) *Sport Fish Restoration—State Outreach and Communications subprogram.* (1) Improving communications with anglers, boaters, and the public on sport fishing and boating opportunities.

(2) Interpreting, translating, printing, or disseminating published State fishing regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations.

(3) Increasing participation in sport fishing and boating through R3 programs and activities.

(4) Advancing the adoption of sound fishing and boating practices including safety.

(5) Promoting conservation and responsible use of the aquatic resources of the United States.

**§ 80.52 What activities are eligible for funding under all programs and subprograms under the Acts?**

The following activities, when supporting other eligible activities under a program or subprogram and

costs are allocated to the appropriate funding source, are eligible for funding:

(a) Conducting planning and compliance activities such as engineering, designing, surveying, obtaining permits or appraisals, and conducting environmental and archeological assessments.

(b) Engaging in oversight activities related to an award, such as:

(1) Monitoring, evaluating, and reporting;

(2) Investigating noncompliance or diversions; and

(3) Protecting property rights for real property that is carrying out the purposes of the Acts.

(c) Maintaining and operating facilities and equipment under the ownership or management control of the State fish and wildlife agency, or under a third-party binding agreement, that support eligible activities under the Wildlife Restoration Act or Sport Fish Restoration Act.

(d) Covering costs associated with State electronic data systems (SEDS), when appropriately allocated and approved by the Service. A SEDS is an electronic system used by a State fish and wildlife agency to sell licenses or support other financial transactions, collect and manage data, and communicate information. The functions and abilities of a SEDS may vary depending on the State fish and wildlife agency needs and organization.

(e) Administering awards (see also § 80.54) and coordinating awards in associated programs and subprograms.

(f) Providing technical assistance.

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

(1) Required by State or local law; and

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

(h) Communicating with the public on eligible activities in an award, when allowable under 2 CFR part 200, subpart E. This communication may include using various forms of media and technology and does not require prior approval (see also §§ 80.50(a)(8) and 80.51(a)(10)).

(i) Advertising (see 2 CFR 200.421) to hire personnel for eligible activities, for procuring goods or services for an eligible activity, or to inform the public or a target audience about events or opportunities that support purposes of the Acts.

**§ 80.53 May an activity be eligible for funding if it is not explicitly eligible according to the regulations in this part?**

Yes. An activity may be eligible for funding even if the regulations in this part do 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 program or subprogram under the Wildlife Restoration Act or the Sport Fish Restoration Act;

(b) The activities are allowable under 2 CFR part 200; and

(c) The Regional Director concurs with the justification.

**§ 80.54 Are costs of State central services eligible for funding?**

Yes. 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.

**§ 80.55 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 (see definition at § 80.2).

(b) The formal administrative process for establishing State fish and wildlife agency regulations. This process:

(1) Begins when boards, commissions, or other policymakers receive information and recommendations from State fish and wildlife agencies and use this input to develop and implement public policy.

(2) Involves official filing and publication of regulations, including State administrative procedures to officially adopt rules and laws to meet authoritative requirements.

(3) Includes printing and distributing the official code of regulations, or State equivalent, except as provided for under §§ 80.50(b)(2)(ii) and 80.51(d)(2) (which pertains to the agency’s interpretive guides and regulatory resources for the public) for the purposes of R3.

(c) License sales and other activities conducted for the primary purpose of producing income. These activities include processes and procedures directly related to the sale of items listed at § 80.20(a).

(d) Activities, projects, or programs that promote or encourage opposition to the regulated taking of fish, hunting, or the trapping of wildlife.



(e) Activities or projects that do not provide public access when access is a purpose of the funding or an objective of the award (see § 80.58).

**§ 80.56 May a State fish and wildlife agency receive an award to carry out part of a larger project?**

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

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

(b) Be substantial in character and design (see § 80.57);

(c) Meet the requirements of §§ 80.130 through 80.137 for any real property acquired under the award and any capital improvements completed under the award; and

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

**§ 80.57 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, construction, wildlife- and fish-associated-recreation participation and access, communication, education, or other eligible purposes; and

(d) Is cost effective.

**§ 80.58 What are public access requirements for activities in an approved award under the Wildlife Restoration or Sport Fish Restoration programs?**

(a) Public access is required for some eligible activities (see §§ 80.50 and 80.51) when supporting the purpose of an award.

(b) The State fish and wildlife agency has the authority, within the purposes of the Acts, to establish parameters for public access and may limit or restrict public access when the management of natural resources and public access are not compatible. Additionally, the agency may limit or restrict public access when the funded project or facility is closed for business or temporarily closed due to an emergency, repairs, construction, or as a safety precaution.

(c) When public access is required for projects and facilities that are under the

ownership or management control of a third party, the State fish and wildlife agency, following its own State laws and processes, must ensure a legally binding instrument setting forth the terms and conditions, such as a subaward or third-party agreement, is in place as follows:

(1) The instrument must be sufficient to ensure public access is provided as expected by the agency and described in the approved award from the Service.

(2) The third-party binding agreement must include or reference agency approval for reasonable fees, any rules and requirements for use, circumstances for temporary closure or reduction to public access, duration of the agreement and any useful life expectations, and procedures for any modifications to the agreement.

(3) The Service does not have authority to approve or reject a State's third-party binding agreement but will include a special award term and condition to require minimum standards and that third-party binding agreements be maintained in agency award files and provided to the Service, upon request, for all awards where funds under the Acts are being used for renovating, constructing, operating, or maintaining property that a third party owns or controls.

**Subpart F—Allocation of Funds by an Agency**

**§ 80.60 What is the relationship between the Traditional Wildlife Restoration Program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program for acquiring land for, expanding, or constructing public target ranges?**

(a) The Target Practice and Marksmanship Training Support Act (Pub. L. 116–17, March 10, 2019) amended the Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) to include activities for acquiring land for, expanding, or constructing public target ranges but does not authorize any new sources of funding. The law became effective for States beginning October 1, 2019.

(b) When a State fish and wildlife agency allocates funds to activities for acquiring land for, expanding, or constructing public target ranges under this law, it may apply a 90 percent Federal/10 percent non-Federal cost share and funds are available for obligation up to 5 years, beginning October 1 of the year the funds first become available. We abbreviate this funding method as “90/10/5.”

(c) An agency may allocate annually apportioned funds for 90/10/5 activities

from the Traditional Wildlife Restoration program (not to exceed 10 percent), Basic Hunter Education and Safety subprogram (any amount from 0 up to 100 percent), and/or Enhanced Hunter Education and Safety program (any amount from 0 up to 100 percent) to projects for acquiring land for, expanding, or constructing public target ranges. There is no requirement for States to allocate any amount of funds to 90/10/5 activities.

(d) When using up to 10 percent of annually apportioned Traditional Wildlife Restoration program funds for 90/10/5 activities, the funds must be allocated to the designated subaccount and must be used only for eligible 90/10/5 purposes. Some amount of available Enhanced Hunter Education and Safety program funds, at least \$1, must be combined with the Traditional Wildlife Restoration program funds allocated to 90/10/5 activities.

(e) An agency must allocate funds to a 90/10/5 subaccount within the FFY that funds are first apportioned. Funds allocated to a 90/10/5 subaccount during a prior FFY must remain in that 90/10/5 subaccount for obligation during the period of availability and until expended.

(f) Acquiring land for, expanding, or constructing public target ranges may also be accomplished, in total or when combined with 90/10/5 funds, using funds under the Basic Hunter Education and Safety subprogram, the Enhanced Hunter Education and Safety program, or both, but the agency must apply cost share and period of availability according to table 1 to § 80.61.

**§ 80.61 What sources of funding in the Wildlife Restoration Act may a State fish and wildlife agency use to support public target range projects, and may funds from multiple sources be used in a single award?**

Table 1 to § 80.61 describes the sources of funding available for public target range projects and identifies their subaccount number. The Service uses subaccounts in the Department of the Interior's financial management system, the Financial and Business Management System or FBMS, to administer the specific use requirements for program and subprogram funding sources under the Acts. A State fish and wildlife agency may combine funds from multiple sources within the Act for eligible public target range activities. Your Regional Wildlife and Sport Fish Restoration Program Office can provide technical assistance on best practices for allocating costs to multiple eligible funding sources.

TABLE 1 TO § 80.61

[BHE = Basic Hunter Education and Safety subprogram; EHE = Enhanced Hunter Education and Safety program; TWR = Traditional Wildlife Restoration program]

Program/subprogram	Funding source; method	Period available for obligation	Cost share	Conditions	Eligible activities described in this part at:
<b>Options for Funding Public Target Ranges</b>					
Traditional Wildlife Restoration program (Subaccount 5222).	16 U.S.C. 669c(b); apportioned.	2 years .....	75 percent Federal/ 25 percent non-Federal.	May use apportioned funds for maintenance activities at public target ranges owned or under the management control of the agency; may allocate to 90/10/5 projects as described for sub-account 5252.	§ 80.50(a).
Traditional Wildlife Restoration program for Public Target Ranges (90/10/5) (Sub-account 5252).	16 U.S.C. 669c(b); allocated by an agency from TWR funds.	5 years .....	90 percent Federal/ 10 percent non-Federal.	May allocate up to 10 percent of TWR funds during the year apportioned to be combined with at least \$1 of EHE funds for acquiring land for, expanding, or constructing public target ranges.	§§ 80.50(a)(7) and 80.60.
Basic Hunter Education and Safety program for activities described at 16 U.S.C. 669g(b) (Subaccount 5221).	16 U.S.C. 669c(c); apportioned.	2 years .....	75 percent Federal/ 25 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, constructing, operation of, and maintenance for public target ranges; does not have to be part of a hunter education program.	§ 80.50(b)(1).
Activities for hunter recruitment and recreational shooter recruitment as described at 16 U.S.C. 669c(c)(4) (Subaccount 5221).	16 U.S.C. 669c(c); assigned by an agency from BHE funds.	2 years .....	75 percent Federal/ 25 percent non-Federal.	May be used for constructing public target ranges or other eligible public target range activities that directly support R3.	§ 80.50(b)(2).
Basic Hunter Education and Safety subprogram for Public Target Ranges (90/10/5) (Subaccount 5251).	16 U.S.C. 669c(c); allocated by an agency from BHE funds.	5 years .....	90 percent Federal/ 10 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, expanding, or constructing a public target range.	§§ 80.50(b)(1)(ii)(E) and 80.60.
Enhanced Hunter Education and Safety program (Sub-account 5231).	16 U.S.C. 669h-1; apportioned.	1 year .....	75 percent Federal/ 25 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, constructing, developing, or improving safety features at public target ranges.	§ 80.50(c).
Enhanced Hunter Education and Safety program for Public Target Ranges (90/10/5) (Subaccount 5241).	16 U.S.C. 669h-1; allocated by an agency from EHE funds.	5 years .....	90 percent Federal/ 10 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, expanding, or constructing a public target range.	§§ 80.50(c)(9) and 80.60.

#### § 80.62 What are eligible and ineligible 90/10/5 activities?

(a) The following are eligible 90/10/5 activities:

(1) Acquiring real property suitable or capable of being made suitable for constructing or expanding public target ranges (see subpart J of this part).

(2) Acquiring title to real property with an existing target range when the acquisition will increase public access or includes construction or expansion activities on the existing target range.

(3) Constructing a public target range on land owned or under management

control of the State fish and wildlife agency. Construction may occur on land when title is held by a third party provided the agency holds a lease or other third-party binding agreement under State law that ensures the terms and conditions of the award will be met.

(4) Constructing or acquiring a mobile public target range.

(5) Expanding the physical footprint or configuration of an existing public target range in a manner that increases range capacity to accommodate more participants, provides additional range activities or functions, or physically

modifies to accommodate all participants, regardless of ability. Examples include adding more lanes at a range, adding structures that provide access that is compliant with the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*), and expanding the facility to provide new opportunities that did not exist before, such as adding an archery range to a former firearm-only facility.

(6) Coordinating 90/10/5 awards that directly support acquiring land for, constructing, or expanding public target ranges through necessary activities that

address planning, compliance, appraisals, engineering, and administering a project.

(7) Auxiliary activities and amenities that support the primary project and are necessary to the public's ability to fully utilize the public target range. Examples include public restrooms, storage facilities, protective bunkers and barriers, signs and markers, roads and parking areas, and utilities.

(8) Improvements may be approved if they are needed to prevent a public target range facility from becoming inoperable or suffering from significant diminished capacity. Consult with your Regional Wildlife and Sport Fish Restoration Program Office.

(9) Constructing or expanding public target range projects on federally owned land.

(b) The following are ineligible 90/10/5 activities:

(1) Operations at a public target range.

(2) Maintenance at a public target range, unless necessary for completing a project for constructing or expanding a public target range.

(3) Construction that is not to build a new or expand an existing public target range. This includes auxiliary activities and amenities not associated with an approved new or expansion project.

(4) Long-term monitoring of a public target range facility.

(5) Activities that do not provide or support new or increased physical capacity for public target ranges.

**§ 80.63 What exception is provided for Enhanced Hunter Education and Safety program funds in relation to Basic Hunter Education and Safety program funds?**

(a) If Basic Hunter Education and Safety program funds are fully obligated for activities listed at § 80.50(b)(1) (see 16 U.S.C. 669g(b)), the State fish and wildlife agency may use Enhanced Hunter Education and Safety program funds for Enhanced Hunter Education and Safety program eligible activities or may allocate any portion of that FFY's Enhanced Hunter Education and Safety program funds to any eligible activity under the Wildlife Restoration Act.

(b) If Basic Hunter Education and Safety program funds are used for R3 activities listed at § 80.50(b)(2), the exception set forth at paragraph (a) of this section does not apply and Enhanced Hunter Education and Safety program funds must be used for Enhanced Hunter Education and Safety program activities.

**§ 80.64 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 annual apportionments under the 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. If this requirement is met, an individual State fish and wildlife agency may allocate more or less than 15 percent of its annual apportionment.

(c) The Regional Director calculates regional allocation averages for separate 5-year periods that coincide with FFYs 2023–2027, 2028–2032, 2033–2037, 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) The regulations in this paragraph (e) apply if State fish and wildlife agencies in a Service region 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 FFY after the FFY 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 FFY.

**§ 80.65 What limitations apply to spending on the Aquatic Resource Education and the State Outreach and Communications subprograms?**

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

**§ 80.66 Must a State fish and wildlife agency allocate costs in multipurpose projects and facilities?**

(a) 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:

(1) A single grant program under the Acts; and

(2) Another grant program, subprogram, a different funding source under the Acts, a grant program not under the Acts, or an activity unrelated to awards.

(b) An agency may describe activities in the project statement that are ineligible under the Act and must clearly show that the ineligible activities are not being funded under the award.

**§ 80.67 How does a State fish and wildlife agency allocate costs to an award in multipurpose projects and facilities?**

A State fish and wildlife agency must allocate costs in multipurpose projects based on eligible activities authorized, sources of funding, and 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 award application.

**§ 80.68 Must a State fish and wildlife agency 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 Sport Fish Restoration Act between projects with benefits for marine fisheries and projects with benefits for freshwater fisheries.

(a) The subprograms authorized by the Sport Fish Restoration Act do not have to allocate funding in the same manner if the State fish and wildlife agency allocates Sport Fish Restoration

funds equitably 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.

**§ 80.69 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 funds, it must meet the following requirements:

(1) The ratio of total funds allocated for marine fisheries projects to total funds allocated 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 allocated for freshwater fisheries projects to total funds allocated 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 that person maintains legal residence.

(c) Agencies must determine the relative distribution of resident anglers in the State between those who fish in marine environments and those who 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 who fish in marine environments and those who 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 corrective action is taken and the funds have been allocated equitably.

**§ 80.70 May a State fish and wildlife 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 projects, such as construction or acquisition of lands or interests in lands, including water rights. An agency may use funds in this manner, according to a plan approved by the Regional Director and subject to the availability of funds, 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.

(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.

**§ 80.71 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, the agency 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 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200).

**Subpart G—Applying for an Award**

**§ 80.80 How does a State fish and wildlife agency apply for an award?**

(a) A State fish and wildlife agency applies for an award by following the directions in the annual funding announcement available on the electronic Federal financial assistance grants management system.

(b) The director of the State agency or their designee must authorize submission of all requests for Federal financial assistance under the Acts.

(c) If the State supports the process under Executive Order 12372, Intergovernmental Review of Federal Programs, the agency must follow its processes for sending copies of all standard forms and supporting information to the State Clearinghouse or Single Point of Contact.

**§ 80.81 What must a State fish and wildlife agency submit when applying for a comprehensive-management-system award?**

A State fish and wildlife agency must submit the following documents when applying for a comprehensive-management-system award:

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

(b) A statement of cost estimates by subaccount. Agencies may obtain the subaccount numbers from the Regional Wildlife and Sport Fish Restoration Program Office.

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

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

(e) 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.

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

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

(h) A description of how the public can take part in decision making for the comprehensive management system.

**§ 80.82 What must a State fish and wildlife agency submit when applying for a project-by-project award?**

A State fish and wildlife agency must submit the following documents when applying for a project-by-project award:

- (a) The standard form for an application for Federal assistance in a mandatory grant program.
- (b) 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 an identified need(s). The objectives state the desired outcome of the proposed project in terms that are specific and quantified.
  - (4) *Results*. Describe the 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*. Describe the geographic location(s) where activities will occur. Maps or other geographic aids are encouraged and may be attached. Include geographic coordinates in decimal degrees, if relevant and available.
  - (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 cost sharing) of applying program income to Federal and non-Federal outlays. (iii) Request the Regional Director's approval for the additive or cost-sharing method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need when using program income as cost sharing. (iv) Indicate whether the agency wants to treat income that it earns after the period of performance as either license revenue or additional funding for purposes consistent with the award terms and conditions or program regulations. (v) Indicate whether the agency wants to treat income that the subrecipient earns after the period of performance as

license revenue, additional funding for the purposes consistent with the award or subprogram, or income subject only to the terms of the subaward 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 Regional Wildlife and Sport Fish Restoration Program Office.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are pre-award 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.

(11) *Multipurpose projects*. Describe the method for allocating costs in multipurpose projects and facilities as described in §§ 80.66 and 80.67.

(12) *Relationship with other awards*. Describe any relationship between this project and other work funded by Federal awards that is planned, anticipated, or under way.

(13) *Timeline*. Describe significant milestones in completing the project and any accomplishments to date.

(14) *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) Except as provided at paragraphs (e) and (f) of this section, 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 1 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 Sport

Fish Restoration Act. The decision on the specific Federal share between 75 and 100 percent will be based on what the Regional Director 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 provides voluntary committed cost sharing to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless the procedure set forth at paragraph (e) of this section is followed.

(c) The Regional Director may provide funds to pay 75 to 100 percent of the allowable costs of a grant-funded project to the fish and wildlife agency of the Commonwealth of Puerto Rico. The decision on the specific Federal share between 75 and 100 percent will be based on what the Regional Director 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 voluntarily provides cost sharing to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless the procedure set forth at paragraph (e) of this section is followed.

(d) The Regional Director must provide funds to pay 100 percent of the allowable costs of a grant-funded project to a fish and wildlife agency of the Commonwealth of the Northern Mariana Islands and the Territories of Guam, the U.S. Virgin Islands, and American Samoa. The Service is required to waive all cost sharing requirements for these insular areas.

(e) 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.

(f) The Regional Director must provide no more than 90 percent of the allowable costs of a project to a State, the Commonwealth of Puerto Rico, or the District of Columbia for the purposes of acquiring land for, expanding, or constructing a public target range when the agency identifies a project that meets the criteria for 90/10/5 activities.

**§ 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 cost-sharing dollars, consistent with § 80.83(a), (e), and (f).

(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) and (c);

(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 cost sharing requirement.

(c) For the Commonwealth of the Northern Mariana Islands and the Territories of Guam, the U.S. Virgin Islands, and American Samoa (insular areas), the Service must waive all non-Federal cost sharing requirements (see 48 U.S.C. 1469a).

**§ 80.85 What requirements apply to cost sharing?**

(a) The requirements that apply to cost sharing are at 2 CFR 200.306.

(b) The State fish and wildlife agency must fulfill cost sharing requirements at the:

(1) Award level if the award has funds from a single subaccount; or

(2) Subaccount level if the award has funds from more than one subaccount.

**Subpart H—General Award Administration**

**§ 80.90 What are the recipient’s responsibilities?**

A State fish and wildlife agency as a recipient is responsible for all the actions required by this section:

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

(b) Supervising and administering the award to ensure that the work follows the terms and conditions of the award, including:

(1) Properly and effectively using funds;

(2) Maintaining accurate records;

(3) Submitting complete and accurate Federal financial reports and performance reports, using the Federal electronic system(s) designated by the Service, by the due dates in the terms and conditions of the award; and

(4) Regularly inspecting and monitoring work in progress.

(c) Selecting and supervising 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) Settling all procurement-related contractual and administrative issues.

(e) Giving reasonable access to work sites and records to 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 awards issued by the Department of the Interior describe the records that are subject to these access requirements (see 2 CFR part 1402).

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

(f) Controlling all assets acquired under the award 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 later based on a series of actions. All these actions must occur to obligate funds for the formula-based grant programs authorized by the Acts:

(a) The Service sends to a State fish and wildlife agency an annual certificate of apportionment, 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 the agency under the Acts and commits to provide the required cost sharing to carry out projects that are substantial in character and design.

(c) The Regional Director notifies the agency that the application for Federal assistance is approved and states the terms and conditions of the award.

(d) The agency accepts the terms and conditions of the award in one of the following ways:

(1) Starts work on the grant-funded project by placing an order, entering into a contract, entering into a subaward, receiving goods or services, or otherwise incurring allowable costs during the period of performance that will require payment immediately or in the future;

(2) Draws down funds for an allowable activity under the award; or

(3) Accepts the award via electronic means.

**§ 80.92 How long are funds available for a Federal obligation?**

Funds are available for a Federal obligation starting October 1 of the FFY in which they are apportioned and for the number of years indicated in table 1 to § 80.92. Funds not obligated within the required period of availability will revert to the Service and be disbursed as described in the table.

TABLE 1 TO § 80.92

Program/subprogram	Period of availability for obligation	Disbursement of unobligated funds at the end of the period of availability for obligation
<b>WILDLIFE RESTORATION ACT</b>		
Enhanced Hunter Education and Safety program.	1 FFY .....	Reapportioned the following year only to States that have fully obligated the current year’s Basic Hunter Education and Safety program funds to activities at 16 U.S.C. 669g(b) (see §§ 80.50(b) and 80.63).
Traditional Wildlife Restoration program .....	2 FFYs .....	Made available to the Secretary for carrying out the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 <i>et seq.</i> ); hereafter referred to as “migratory bird conservation” (see 16 U.S.C. 669b(a)(1)).
Basic Hunter Education and Safety subprogram.	2 FFYs .....	Migratory bird conservation.

TABLE 1 TO § 80.92—Continued

Program/subprogram	Period of availability for obligation	Disbursement of unobligated funds at the end of the period of availability for obligation
Basic Hunter Education and Safety subprogram for R3 activities at 16 U.S.C. 669c(c)(4).	2 FFYs .....	Migratory bird conservation.
Traditional Wildlife Restoration program for public target ranges (90/10/5).	5 FFYs .....	Migratory bird conservation.
Basic Hunter Education and Safety subprogram for public target ranges (90/10/5).	5 FFYs .....	Migratory bird conservation.
Enhanced Hunter Education and Safety program for public target ranges (90/10/5).	5 FFYs .....	Reapportioned the following year only to States that have fully obligated the current year's Basic Hunter Education and Safety funds to activities at 16 U.S.C. 669g(b) (see §§ 80.50(b) and 80.63).

**SPORT FISH RESTORATION ACT**

Sport Fish Restoration program .....	2 FFYs .....	Available for expenditure by the Secretary of the Interior to supplement the Sport Fish Restoration apportionment, as provided for in 16 U.S.C. 777c(c), the following year.
Aquatic Resource Education program .....	2 FFYs .....	Same as apportioned Sport Fish Restoration funds.
State Outreach and Communications program .....	2 FFYs .....	Same as apportioned Sport Fish Restoration funds.
Recreational Boating Access subprogram .....	5 FFYs .....	Same as apportioned Sport Fish Restoration funds.

**§ 80.93 When may a State fish and wildlife agency incur costs under an award?**

A State fish and wildlife agency may incur costs under an award from the effective date of the period of performance to the end of the period of performance except for pre-award costs that meet the conditions in § 80.94.

**§ 80.94 May a State fish and wildlife agency incur costs before the beginning of the period of performance?**

(a) A State fish and wildlife agency may incur costs of a proposed project before the beginning of the period of performance (*i.e.*, pre-award costs). However, the agency has no assurance that it will receive reimbursement until the Regional Director approves an award that incorporates a project statement demonstrating that the pre-award costs conform to all the conditions set forth in paragraph (b) of this section.

(b) Pre-award costs must meet the following requirements:

(1) The costs are necessary and reasonable for accomplishing the award objectives.

(2) The Regional Director would have approved the costs if the State fish and wildlife agency incurred them during the period of performance.

(3) The agency incurs these costs in anticipation of the award and in conformity with the negotiation of the award with the Regional Director.

(4) The activities associated with the pre-award 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 all the necessary information with enough lead time for the Service to comply with the applicable laws, regulations, and policies.

(6) The agency must not complete the project before the beginning of the period of performance 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 pre-award costs only after the beginning of the period of performance, and, for activities requiring compliance, only after the compliance is satisfied.

**§ 80.95 How does a State fish and wildlife agency receive Federal award funds?**

(a) A State fish and wildlife agency may receive Federal award 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 subrecipient.

(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 a State fish and wildlife agency use Federal funds without using cost sharing?**

(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 cost sharing than total Federal funds bear to total cost sharing unless:

(1) The recipient draws down Federal award funds to pay for construction, including land acquisition;

(2) A third-party in-kind contribution of cost sharing is not yet available for delivery to the recipient or subrecipient; or

(3) The project is not at the point where it can accommodate a third-party in-kind contribution.

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

- (1) Obtain the Regional Director's prior approval; and
- (2) Satisfy the project's cost sharing requirement before submitting the final Federal financial report.

**§ 80.97 What is barter, and may a State fish and wildlife agency use barter of goods or services to carry out a grant-funded project?**

(a) Barter is a nonmonetary exchange of goods or services with another entity (reciprocal transfer). If goods or services are given or received without expectation of a reciprocal transfer, the activity is not barter and is an expense of or donation to the agency.

(b) A State fish and wildlife agency may use barter to carry out a grant-funded project when following approved State policies and procedures that comply with the generally accepted accounting practices as defined by the Governmental Accounting Standards Board. The State processes, as applied by the agency, may identify types of barter (e.g., cooperative farming or grazing) for which the agency will consider the barter transaction to be an even exchange.

**§ 80.98 How must a State fish and wildlife agency include barter in an award and report barter transactions?**

(a) A State fish and wildlife agency must identify when barter exchanges are anticipated in the project when applying for, or carrying out, an award. All activities included in a barter transaction are subject to Federal compliance requirements under an award.

(b) An agency must follow its State processes for authorizing, valuing, and documenting barter transactions, and report barter transactions under an award in the Federal financial report according to table 1 to § 80.98:

TABLE 1 TO § 80.98

If, following the State processes for barter transactions . . .	Then the agency must . . .
(1) The barter transaction is determined to be an even exchange of goods or services.	Disclose in the remarks section that the barter transaction(s) occurred, and the barter transaction(s) resulted in no gain or loss to the agency.
(2) The fair value of the goods or services provided by the State fish and wildlife agency exceeds the fair value of the goods and services received.	Disclose in the remarks section that the barter transaction(s) occurred and report the difference in fair value as award expenses in the Federal financial report.
(3) The fair value of the goods or services received exceeds the fair value of the goods and services the State fish and wildlife agency provided.	Disclose in the remarks section that the barter transaction(s) occurred and report the difference in fair value as program income in the Federal financial report.

**§ 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 Wildlife Restoration Act follows:



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



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



**§ 80.100 Must a State fish and wildlife agency display one of the symbols set forth in this part on a completed project?**

No. A State fish and wildlife agency is not required to display one of the symbols in § 80.99 on a project completed under the Acts.

- (a) However, the Service encourages agencies to display the appropriate symbol on projects funded by the Acts. Appropriate use and requirements for symbols are as follows:

- (i) An agency may display the appropriate symbol(s) on:
  - (i) 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
  - (ii) Printed or web-based material or other visual representations of project accomplishments.
- (2) An agency may establish a requirement for similar standards for displaying the appropriate symbol or symbols, in the places described in paragraph (a) of this section, that is passed through to subrecipients.

- (3) An agency may use the symbols in a manner other than as described in paragraph (a) of this section if authorized by the Director or a Regional Director.

- (b) The Director or Regional Director may authorize other persons, organizations, agencies, or governments

to use the symbols for purposes related to the Acts.

- (c) Restrictions and requirements on other entities are as follows:

- (1) Users of the symbol(s) indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:
  - (i) 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
  - (ii) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the symbol(s).
- (2) 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).

- (3) No one may use any of the symbols in any other manner unless authorized by the Director or Regional Director. 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 earned by the recipient or subrecipient that is directly generated by an award activity or earned as a result of the Federal award during the period of performance (see 2 CFR 200.1 and 200.307).

(b) Program income includes revenue from:

(1) Services performed under an award.

(2) Use or rental of real or personal property acquired, constructed, or managed with award funds.

(3) Payments by concessioners or contractors under an arrangement with the agency or subrecipient to provide a service in support of award objectives on real property acquired, constructed, or managed with award funds.

(4) Sale of items produced under an award.

(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 an award.

(7) Sale of a product of mining, drilling, forestry, or agriculture during the period of performance that supports the:

(i) Mining, drilling, forestry, or agriculture; or

(ii) Acquisition of the land on which these activities occurred.

(8) Barter transactions when the value of goods or services received exceeds the value of goods or services the agency provided.

(c) Program income does not include any of the following:

(1) Interest on award 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 award objectives on real property acquired, constructed, or managed with award funds.

(3) Cash received by the agency or by volunteer instructors to cover incidental costs of 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) Proceeds from the sale of real property, equipment, or supplies.

**§ 80.121 May a State fish and wildlife agency earn program income?**

A State fish and wildlife agency may earn program income from activities incidental to the award purposes if producing income is not a primary purpose. The agency must account for program income received from these activities in the project records and dispose of it according to the terms and conditions of the award.

**§ 80.122 May a State fish and wildlife 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 the agency calculates program income if the agency does not:

(1) Pay these costs with:  
(i) Federal or cost-sharing funds under a Federal award; or  
(ii) Federal funds unrelated to an award.

(2) Cover these costs by accepting:  
(i) Cost-sharing contributions for a Federal award; or

(ii) Donations of services, personal property, or real property unrelated to a Federal award.

(b) Examples of costs of generating program income that may qualify for deduction from gross income if they are consistent with the regulations in paragraph (a) of this section are:

(1) The 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) The 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 a State fish and wildlife 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 period of performance and to the program income that any subrecipient earns during the period of performance. The agency must indicate the method or methods that it wants to use in the project statement that the agency submits with each application for Federal assistance.

(b) Program income must be spent within the period of performance and program in which the income is earned and before the agency requests 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 set forth 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 award 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 the agency 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 award. (iii) The agency must use the program income for the purposes of the award and under the terms of the award.
(3) Cost sharing .....	(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 cost-sharing requirements, how the agency will use program income earned in excess of required cost sharing, and the primary conservation or recreation objective sufficient to show income as a secondary benefit.

TABLE 1 TO § 80.123(c)—Continued

Method	Requirements for using the method
	(iii) If neither the agency's project statement nor the award indicates how program income in excess of cost-sharing requirements will be applied, the agency must use the deduction method.

**§ 80.124 How may a State fish and wildlife 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 award for any activity eligible for funding in the grant program that generated the program income.

**§ 80.125 How must a State fish and wildlife agency treat income that it earns after the period of performance?**

(a) The State fish and wildlife agency must treat income that it earns after the period of performance as either:

- (1) License revenue for the administration of the agency; or
- (2) Additional funding for purposes consistent with the award or the program.

(b) The agency must indicate its choice of one of the alternatives set forth 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 period of performance as license revenue.

**§ 80.126 How must a State fish and wildlife agency treat income earned by a subrecipient after the period of performance?**

(a) The State fish and wildlife agency must treat income earned by a subrecipient after the period of performance as:

- (1) License revenue for the administration of the agency;
- (2) Additional funding for purposes consistent with the award or the program; or
- (3) Income subject only to the terms of the subaward agreement and any subsequent contractual agreements between the agency and the subrecipient.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that the agency submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subrecipient does not have to account for any income earned after the period of performance unless

required to do so in the subaward agreement or in any subsequent contractual agreement.

**Subpart J—Real Property**

**§ 80.130 Must a State fish and wildlife agency hold title to real property acquired under an award?**

A State fish and wildlife agency must hold title to an ownership interest in real property acquired under an award 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 if the agency has the authority to manage the real property for its authorized purpose under the award. 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 subrecipient 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 Must a State fish and wildlife agency hold an easement acquired under an award?**

A State fish and wildlife agency must hold an easement acquired under an award, 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 the holding or enforcement of an easement only in the following situations:

(1) The State or an administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.

(2) The agency may issue a subaward with 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 subrecipient hold the easement and share its rights and responsibilities.

(3) The agency may issue a subaward with a right of enforcement to a nonprofit organization or to a local or Tribal government. This right of enforcement may allow the subrecipient to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subrecipient's right of enforcement must not supersede and must be concurrent with the agency's right of enforcement.

**§ 80.132 Must a State fish and wildlife agency have control over the land or water where it completes capital improvements?**

Yes. A State fish and wildlife agency must control the parcel of land or water on which the agency 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 award funds.

**§ 80.133 Must a State fish and wildlife agency maintain acquired or completed capital improvements?**

Yes. A State fish and wildlife agency is responsible for maintaining capital improvements acquired or completed under an award to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

**§ 80.134 How must a State fish and wildlife agency use real property?**

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

(b) If an award funds construction of a capital improvement, the agency must use the capital improvement for the purpose authorized in the award during the useful life of the capital improvement. The agency must comply with this requirement even if the agency did not use award 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 an award funds management, operation, or maintenance of a parcel of land or water, or a capital improvement, the agency must use the parcel or capital improvement for the purpose authorized in the award during the period of performance. The agency must comply with this requirement even if the agency did not acquire the parcel or construct the capital improvement with award 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 award.

(e) Real property acquired with license revenue (see § 80.20(b)) must be controlled by the State fish and wildlife agency and used only for administration of the agency (see § 80.10(c)).

**§ 80.135 What if a State fish and wildlife 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 the authorized purpose of the real property under an award, 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, then the agency 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 award.

(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) The agency's determination of the value and benefits of the replacement property; and

(2) The documentation supporting this determination.

(f) The agency may have 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 awards in the program or programs that funded the original acquisition.

**§ 80.136 Is it a diversion if a State fish and wildlife agency does not use real property acquired under an award for its authorized purpose?**

If a State fish and wildlife agency does not use real property acquired under an award for its authorized purpose, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as cost sharing for the award; 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 award funds is no longer useful or needed for the original purpose of the real property under the award, 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 a State fish and wildlife agency revise an award?**

(a) A State fish and wildlife agency requests approval for a revision to a project or award by providing the Service the following documents:

(1) The Office of Management and Budget (OMB)-approved common application information for Federal assistance, approved by the director of the agency or the director's designee, to update or request a change in the information that the agency submitted in an approved application.

(2) A statement 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) If the State maintains the process under Executive Order 12372, Intergovernmental Review of Federal Programs, the agency must follow its processes for sending any requested revision of the purpose or objectives of a project or award to the State Clearinghouse or Single Point of Contact.

**§ 80.151 May a State fish and wildlife agency appeal a decision?**

Yes. A State fish and wildlife agency may appeal the Director's or Regional Director's decision on any matter subject to this part.

(a) The 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 on an appeal made under paragraph (a) of this section to the Secretary. An appeal to the Secretary must be made within 30 days of the date the decision was mailed and must follow procedures in 43 CFR part 4, subpart G.

**Subpart L—Information Collection**

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

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part 80 and assigned the following OMB Control Numbers 1018–0088, “National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)” and 1018–0100, “Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs.” Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

**Shannon A. Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks, Department of Interior.*

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