

(iii) We prohibit use of Self Contained Underwater Breathing Apparatus (SCUBA) to take fish or invertebrates.

(b) [Reserved]

PART 34—REFUGE REVENUE SHARING WITH COUNTIES

Sec.

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AUTHORITY: 16 U.S.C. 715s, as amended.

SOURCE: 44 FR 33073, June 8, 1979, unless otherwise noted.

§ 34.1 Purpose.

The purpose of the regulations contained in this part is to prescribe the procedures for making payments in lieu of taxes to counties for areas administered by the Secretary through the U.S. Fish and Wildlife Service in accordance with the Revenue Sharing Act.

§ 34.2 Authority.

(a) The Act of October 17, 1978, Pub. L. 95-469, amended the Act of June 15, 1935, as amended by the Act of August 30, 1964 (78 Stat. 701; 16 U.S.C. 715s), by revising the formula and extending the revenue sharing provisions to all fee and reserve areas that are administered solely or primarily by the Secretary through the U.S. Fish and Wildlife Service. Payments under this Act may be used for any governmental purpose.

(b) Pursuant to title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d), and the regulations issued pursuant thereto, which are contained in 43 CFR part 17, counties must file an assurance with the Department, comply with the terms of the assurances, and comply with regulations contained in 43 CFR part 17 in order to continue to receive this Federal financial assistance.

§ 34.3 Definitions.

(a) The term *fee area* means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(b) The term *reserve area* means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through Act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service.

(c) The term *county* means any county, parish, organized or unorganized borough, township or municipality, or other unit of local government that is the primary collector for general purpose real property taxes where fee areas and/or reserve areas are located. For the purpose of sharing revenues, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

(d) The term *fund* means the revenues received by the Service from (1) the sale or disposition of animals, salmonoid carcasses and eggs, products of the soil (including, but not limited to, timber, hay, and grass), minerals, shells, sand, and gravel; (2) leases for public accommodations or facilities incidental to, but not in conflict with, the basic purpose of such areas; and (3) other privileges, including industrial leases at Crab Orchard National Wildlife Refuge, Illinois, as authorized by Section 8 of Pub. L. 95-616, approved October 27, 1978. The Service may pay from such fund any necessary expenses incurred in connection with the revenue producing and revenue sharing activity. The fund shall also include any appropriations authorized by the Act to make up any difference between the total amount of receipts after payments of expenses and the total amount of payments due the counties.

(e) The term *net receipts* means the amount of revenue collected by the Service from an area (including fee

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land and/or reserve land) after the deduction of necessary expenses incurred in producing the particular revenues.

(f) The term *fair market value* means the amount in terms of money for which in all probability a property would be sold if exposed for sale in the open market by a seller who is willing but not obligated to sell, allowing a reasonable time to find a buyer who is willing but not obligated to buy, both parties having full knowledge of all the uses to which the property is adapted, and for which it is capable of being used.

§ 34.4 Eligibility of areas.

In order to receive payments under the Act, a county must qualify under the definition in § 34.3(c) of this part and there must be located within the county, areas of land owned in fee title by the United States and administered by the Secretary of the Interior through the Fish and Wildlife Service, including wildlife refuges, waterfowl production areas, wildlife ranges, wildlife management areas, fish hatcheries, research centers or stations, and administrative sites, and these areas must be solely or primarily administered by the Service. In addition to this Act, reserve areas administered solely or primarily by the Service are entitlement lands under section 6(a) of the Act of October 29, 1976 (Pub. L. 94–565, 31 U.S.C. 1601–1607), for which regulations are published in title 43, part 1880, Code of Federal Regulations.

§ 34.5 Distribution of revenues.

The Act provides that the Secretary, at the end of each fiscal year, shall pay to each county out of the fund:

(a) For reserve areas, an amount equal to 25 per centum of the net receipts, collected by the Secretary in connection with the operation and management of such area, provided that when any such area is situated in more than one county, the distributive share to each from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(b) For fee areas, whichever of the following is greater:

(1) An amount equal to 75¢ per acre for the total acreage of the fee area located within such county.

(2) An amount equal to three-fourths of one per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county. For those areas of fee land within the National Wildlife Refuge System as of September 30, 1977, the amount of payment based on fair market value will not be less than the amount paid on the adjusted cost basis as in effect at that time. Actual cost, or appraised value in case of donation, will be used for lands acquired during fiscal year 1978. For those areas of fee lands added to lands administered by the Service after September 30, 1978, by purchase, donation, or otherwise, fair market value shall be determined by appraisal as of the date said areas are administered by the Service.

(3) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount each such county is entitled to shall be the amount which bears to such 25 per centum, the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(c) In accordance with section 5(A) of the act, each county which receives a payment under paragraphs (a) and (b) of this section, with respect to any fee area or reserve area, shall distribute that payment to those units of local government which have incurred the loss or reduction of real property tax revenues because of the existence of such area in accordance with the following guidelines.

The local units of government entitled to this distribution will be those such as, but not limited to, cities, towns, townships, school districts, and the county itself in appropriate cases, which levy and collect real property taxes separately from the county or other primary taxing authority or those for which a tax is separately stated on a consolidated tax bill of the primary taxing authority in areas wherein eligible lands are located. The amount of distribution or passthrough

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to which each unit of local government shall be entitled shall be in the same proportion as its current tax loss bears to the current whole tax loss.

This proportion may be determined; from representative tax bills for the area; by construction by using assessments and millage rates; or by other suitable methods to achieve an equitable result. An example using the representative tax bill method is:

TYPICAL TAX BILL FOR THE AREA		
County	\$80 or 80%	
School District	20 or 20%	
Total	\$100 or 100%	

The county would receive the total payment, keep 80 percent and pass through 20 percent to the school district. An example using the construction method is:

FOR A TYPICAL ACRE		
Assessed value—		
\$100 × 80 mills County	\$8	80%
\$100 × 20 mills School District	\$2	20%
Total	\$10	100%

Here again, the county would receive the total payment, keep 80 percent and pass through 20 percent to the school district.

Counties shall distribute the payment to eligible local units of government within 90 days from receipt of the payment. In the event a county cannot make the required distribution for reasons of State or local law, or otherwise, the Service will make the payments directly to local units of government upon return of the check and information upon which to make the payments.

(d) Each county which receives a payment under these regulations shall maintain a record for a period of three years as to how the payment was distributed to units of local government under paragraph (c) of this section. The record shall be available for inspection by the regional director, should a dispute arise as to the distribution of payments. See §29.21-2(c) for a listing of the regional directors of the Service.

§ 34.6 Schedule of appraisals.

The Secretary shall make fair market value appraisals of areas administered by the Service within five years after October 17, 1978, beginning with areas established earliest. All areas for

which payments were not authorized prior to fiscal year 1979 (*i.e.*; fish hatcheries, administrative sites, and research stations) shall be included in the areas appraised during the first fiscal year. Once appraised, areas shall be reappraised on a schedule of at least once every five years. Until areas are appraised, the fair market value for the purposes of this regulation shall be the adjusted cost as of September 30, 1978, except that fee lands added to such areas after that date shall be on the basis of fair market value.

§ 34.7 Fair market value appraisals.

Fee areas administered by the Service will be appraised in accordance with standard appraisal procedures in order to estimate the fair market value of each area as a whole. The evaluation will be premised on an appropriate determination of highest and best use in accordance with existing or potential zoning, the present condition of the land and the general economic situation in the vicinity. Standard appraisal techniques will involve a market data comparison of these areas with similar properties which have sold recently in the local market. These techniques may also include consideration of potential income and development of the cost approach for special use properties having limited marketability. An appropriate evaluation of these areas will also take into consideration a discount for size as recognized by the market for large properties where applicable. The appraisals will be accomplished by the regional director, using Service staff appraisers or private appraisers contracted by the Service.

The Act requires that improvements placed upon the land after the date of Federal Acquisition be excluded from the fair market value. The only structures that will be included in the appraisal are those that were present at the time of Federal acquisition and have not been the subject of substantial renovation or modification with Federal funds. Evaluation of improvements will be based on their contributory value to the area as determined by the highest and best use study. Lands occupied by improvements not subject to appraisal will be valued as though unimproved.

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The appraisals will be reviewed by the Service's review appraisers and the determination of the regional director as to fair market value shall be final and conclusive and shall be the basis for computation of revenue sharing payments.

§ 34.8 Appropriations authorized.

The Act authorizes appropriations to the fund for any fiscal year when the aggregate amount of payments required to be made exceeds the net receipts in the fund.

§ 34.9 Protests.

(a) Computation of payments shall be based on Federal records concerning land, real property improvements, and accounting of net receipts from areas administered solely or primarily by the Service.

(b) Any affected county may protest the results of the computations of its payments to the regional director in charge of the State and county affected. See § 29.21-2(c) for a listing of the regional directors of the Service.

(c) Any protesting county shall submit sufficient evidence to show error in the computation or the data from which the computations are made.

(d) All protests to the regional director shall be filed within 90 days from the date of receipt of the payment.

(e) The regional director shall consult with the affected county to resolve conflicts in the computations and/or data. The regional director shall make a determination as to the correct payment, which determination shall be final and conclusive.

PART 35—WILDERNESS PRESERVATION AND MANAGEMENT

Subpart A—General Rules

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Subpart B—Special Regulations for Specific National Wildlife Refuge Wilderness [Reserved]

AUTHORITY: 78 Stat. 890; 16 U.S.C. 1131-1136; 43 U.S.C. 1201.

SOURCE: 36 FR 25426, Dec. 31, 1971, unless otherwise noted.

Subpart A—General Rules

§ 35.1 Definitions.

As used in the rules and regulations in this subchapter:

National Wildlife Refuge System means all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as national wildlife refuges, wildlife ranges, game ranges, wildlife management areas, waterfowl production areas, and areas for the protection and conservation of fish and wildlife which are threatened with extinction.

National Wilderness Preservation System means the units designated as wilderness by the Congress under the provisions of the Wilderness Act (supra).

Wilderness Units shall mean areas in the National Wildlife Refuge System that have been designated by Act of Congress as units of the National Wilderness Preservation System.

Secretary means the Secretary of the Interior.

Director means the Director of the U.S. Fish and Wildlife Service.

§ 35.2 Objectives.

(a) Units of the National Wildlife Refuge System have been established by diverse legal means and are administered for a variety of wildlife program purposes. The establishment of each wilderness unit is within and supplemental to the purposes for which a specific unit of the National Wildlife Refuge System was established and is administered. Each wilderness shall be administered for such other purposes for which the national wildlife refuge