

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 86**

[Docket No. FWS-R9-WSR-2011-0083;  
FVWF94100900007B-XXX-FF09W11000]

RIN 1018-AW64

**Boating Infrastructure Grant Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose changes in the regulations governing the administration of the national Boating Infrastructure Grant Program (BIG). We published a proposed rule in the **Federal Register** on March 28, 2012. We received 22 responses from the public during the 60-day comment period that ended May 29, 2012. Fifteen of the responses contained comments applicable to the proposed rule, and 11 asked for more time to review the proposed rule. Some comments expressed full support, and others suggested changes. We amend the proposed rule based on these comments and our further review and consideration of the proposed rule. The amended proposed rule gives the public a 90-day comment period.

**DATES:** We will accept comments received or postmarked on or before July 24, 2014.

**ADDRESSES:** You may submit comments, identified by docket number FWS-R9-WSR-2011-0083, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R9-WSR-2011-0083; U.S. Fish and Wildlife Service; Division of Policy and Directives Management; 4401 North Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

- *Hand Delivery/Courier:* U.S. Fish and Wildlife Service; Division of Policy and Directives Management; 4501 North Fairfax Drive, Room 2042 PDM; Arlington, VA 22203.

We will not accept email or faxes. All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. We will post all comments received without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and other information on the

rulemaking process, see the “Public Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lisa E. Van Alstyne, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-1942.

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

We published a proposed rule for the Boating Infrastructure Grant Program on March 28, 2012 (77 FR 18767). We received 22 responses from the public. Fifteen included comments applicable to the proposed rule, and 11 included requests for more time to review the proposed rule and asked us to extend or reopen the comment period. We decided to respond to applicable comments and offer a second comment period. We respond by clarifying certain sections, leaving sections unchanged where we received support, and making changes based on our further review.

In the proposed rule published on March 12, 2012, we suggested new names for the Tier 1 and Tier 2 subprograms to reflect their role in BIG. Several commenters stated they did not agree with the name changes from “Tier 1” to “BIG-Basic” and from “Tier 2” to “BIG-Competitive.” Their concern was that the term “Basic” misrepresents the intent of the program and compared to “Competitive,” the public could misunderstand it as being a noncompetitive program, when Tier 1 programs may be highly competitive on a State level. We received no other recommendations for new terms to replace the tiered system, but in this amended proposed rule, we propose using “BIG Standard” and “BIG Select.” These names relate to the level and action taken nationally for each grant program. We award BIG Standard grants to States for up to a standard amount that we announce each year for eligible projects. We award BIG Select grants based on a national selection process. We use the terms “BIG Standard” and “BIG Select” in this amended proposed rule and ask for comments on their use.

We amend sections of the amended proposed rule by:

- (1) Removing § 86.44.
- (2) Renumbering §§ 86.45 through 86.47 as §§ 86.44 through 86.46.
- (3) Adding a new § 86.60 and redesignating § 86.60 in the proposed rule as § 86.61 in the amended proposed rule.

**Response to Public Comments**

We arrange the public comments by sections of the proposed rule. Some comments relate to topics that apply to more than one section of the proposed rule. We discuss some of these as they apply to the entire proposed rule or address them in only one applicable section. We will not duplicate a response we give in one section in another section, but will add information if needed to clarify. We do not present comments exactly as stated unless we enclose text with quotes. Some comments represent recommendations or opinions from several commenters with similar ideas or positions. We state in the response to each comment any action taken and explain our response. Some public comments led us to reexamine sections beyond those that the public commented on specifically. Based on this reexamination, we amend the proposed rule to improve clarity, consistency, organization, or comprehensiveness. We change the proposed rule for clarifications and uniformity that we do not discuss. We do not explain minor changes made that do not significantly affect the amended proposed rule. We discuss any substantive changes that resulted from this reexamination in our responses to the comments.

We use the terms “current” or “current rule” to refer to 50 CFR part 86 or any section or paragraph of 50 CFR part 86 that became effective after publication of a final rule in the **Federal Register** at 66 FR 5282, January 18, 2001. We use the terms “proposed” or “proposed rule” to refer to the proposed rule published in the **Federal Register** at 77 FR 18767, March 28, 2012. We use the term “amended” or “amended proposed rule” to refer to this proposed rule, amended from the proposed rule published on March 28, 2012.

We received some comments that asked questions relating to general grant management and some that ask for more guidance, but not at the level of this rulemaking. We do not discuss these questions in our comment review unless we amend the proposed rule based on the comment or it is relevant to changes we make. We will consider the concerns raised and respond through another form of communication, training, or information-sharing Web sites. We share grant information on our Financial Assistance Wiki at <http://fawiki.fws.gov>.

We include all sections of the amended proposed rule and indicate if we received no comments.

*Subpart A—General*

## Section 86.1 What does this part do?

*Comment 1:* Several comments state concern that calling Tier 1 “Basic” and Tier 2 “Competitive” is misleading, suggesting that grantees may use Tier 1 funds only for basic boating needs and that the selection process is not competitive.

*Response 1:* We agree with their comments. As discussed in the background for this amended proposed rule, the names of the subprograms must not be misleading or suggest limitations that do not apply to the type of projects funded under either subprogram. We must be clear that both subprograms are competitive. States develop their process for project review and selection for both subprograms and forward Tier 2 applications for a national ranking. We amend this section to describe Tier 1 as “BIG Standard” and Tier 2 as “BIG Select.” States determine BIG Standard grants at the State level and may apply for a grant for one or multiple projects for an amount up to the maximum stated in the annual Request for Applications (RFA). We score and rank BIG Select grants through the national competitive process. We welcome comments on these terms.

## Section 86.2 What is the purpose of BIG?

*Comment 2:* You should not identify producing information and educational materials as a purpose of BIG.

*Response 2:* Producing and distributing information about BIG is in the current rule at 50 CFR 86.11 describing what the national BIG Program does. It is an eligible action, but the Sportfishing and Boating Safety Act of 1998 (Act) does not identify it as a purpose. We amend the proposed rule to remove it from § 86.2(b), but it will remain an eligible action at § 86.11.

## Section 86.3 What terms do I need to know?

## Capital Improvement

*Comment 3:* Recommend that the definition for capital improvement have a threshold of \$10,000 to be consistent with 50 CFR part 80.

*Response 3:* We do not make the requested change. In an upcoming rulemaking action, we will propose to amend the definition in 50 CFR 80 to agree with the \$25,000 threshold.

*Comment 4:* From this definition, it is not clear if a grant is a single capital improvement or if a single grant can include multiple capital improvements. Need to clarify to apply to useful life.

*Response 4:* We do not change the definition based on this comment. We

make clarifications in § 86.75 for how to apply the definition of capital improvement to grants and useful life.

*Comment 5:* Consider the total cost of the project instead of the cost of each structure when determining useful life.

*Response 5:* We do not change the definition for capital improvement. How to apply the definition as it relates to useful life is in § 86.75. We amend § 86.75 to propose an option to have one useful life for a grant based on the value of each capital improvement.

## Construction

*Comment 6:* Remove the word “acquiring” in the definition of construction.

*Response 6:* We amend the term as suggested. Although acquiring land is part of construction in general terms, it is an ineligible action in BIG.

## Eligible Vessel

*Comment 7:* You expanded the definition and removed the word ‘motorized.’ This will allow solo outrigger canoes and dragon boats to be eligible vessels. Allowing non-motorized boats also conflicts with § 86.13 because these boats do not need a pumpout or 6 feet of water depth. Recommend adding ‘motorized’ to the definition and amending the definition to allow sailboats 26 feet or longer with no motors.

*Response 7:* We do not change the proposed definition as requested in this comment. We amend the term to clarify the vessels not included.

Outrigger canoes and dragon boats are specialty vessels that do not typically travel long distances from one place to another, have no deck, and are not designed for people to live or spend any length of time on board for common recreational purposes. We do not consider them the type of transient vessel that we should include as an eligible vessel.

The word ‘motorized’ is not in 16 U.S.C. 777g–1. When we included the word in the current rule, it had the unintended consequence of excluding nonmotorized, live aboard, recreational sailboats used throughout the country to travel from place to place. The term as presented in the amended proposed rule clarifies the intent of the program.

## Maintenance

*Comment 8:* Clarify the term “maintenance.”

*Response 8:* We replace the word ‘routine’ with ‘operational’ to clarify the definition. We add a clarifying sentence and examples of maintenance actions that are eligible. See also § 86.14 for

other changes that relate to maintenance.

## Real Property

*Comment 9:* Add the word “permanent” to breakwaters in the definition of real property.

*Response 9:* We amend the term as suggested.

*Comment 10:* Remove “fixed” in front of “docks” from definition.

*Response 10:* We do not make this change. Removable docks are personal property and not real property.

## Transient

*Comment 11:* Modify the definition so it is clear that day-use facilities are acceptable.

*Response 11:* We amend the definition to clarify that either day use or staying up to 10 days is acceptable.

## Terms Added or Amended

To clarify the proposed rule, we add definitions for “Contractor,” “Marketing,” “Personal property,” “Program income,” “Project cost,” and “Public communication.” We amend the definitions for “Match” and “Operation” and add examples for operation.

*Subpart B—Program Eligibility*

## Section 86.10 Who may apply for a BIG grant?

No comments.

## Section 86.11 What activities are eligible for funding?

We received several comments supporting the proposed changes in this section. We acknowledge the support, in addition to comments requesting changes. We replace proposed § 86.11(b) to address preaward costs. We add § 86.11(c) to address funding pumpouts through the Clean Vessel Act program (CVA). We move the proposed § 86.11(b) to the end of this section at § 86.11(d).

We received several comments asking us to clarify actions as they relate to marketing, public relations, and information and education. In addition to adding terms at § 86.3, we amend this section to move § 86.11(a)(6) to (5) and add examples of information and education. We move § 86.11(a)(7) to (6) and include the use of BIG funds for monitoring BIG project performance and accomplishments.

We received some comments that supported including as eligible actions services that support clean boating and good environmental practices at facilities. Other commenters suggested that they support the concept, but not as an eligible action under BIG. Some thought this section was too open and

could lend too much flexibility to the use of BIG funds. Others thought it might be difficult to manage the possible project options that could result.

After much consideration we remove § 86.11(a)(5) in the amended proposed rule. We discuss these positive practices later in the amended proposed rule, but only as they apply to BIG-funded facility construction and physical amenities. We believe the changes allow the program to move forward with positive actions in the framework of acceptable, eligible projects.

*Comment 12:* Add the current § 86.20(e) on preliminary costs to the proposed § 86.11(a)(2).

*Response 12:* We do not change § 86.11(a)(2). We capture all of the eligible actions from the current rule at § 86.20(e) in the proposed rule at § 86.11(a)(2). We amend the proposed rule to include a new § 86.11(b) to clarify preaward costs.

*Comment 13:* Change the proposed rule at § 86.11(a)(3) to read, "one-time dredging of . . ."

*Response 13:* We do not make this change. We propose to limit the amount of funds the applicant can request for dredging actions, but not limit how often it can ask for funding to dredge the same basin. The proposed rule limits dredging to 10 percent of the BIG-funded facility costs. A BIG-funded project that includes dredging must use at least 90 percent of the grant for other eligible costs. This requirement places the burden on the grantee to show that the majority of its BIG-funded actions are not dredge related. If a BIG-funded facility succeeds in securing other BIG funds in the future to dredge in the same basin, it shows that the project is acceptable to reviewers and competed well with the dredge project included. We expect dredging to have a small funding impact on the program, and we propose not to include unnecessary restrictions.

*Comment 14:* Grantees should fund pumpouts exclusively through CVA and it should not be an eligible action under BIG.

*Response 14:* The primary purpose of BIG is to build and maintain a facility for eligible vessels. By definition, eligible vessels are transient recreational vessels at least 26 feet long. The vast majority of eligible vessels will have a marine sanitation device that eligible users will want to empty when they use a BIG-funded facility. We are consistent with the current rule by requiring a pumpout as an eligible action for all BIG-funded facilities, unless another is available within 2 miles or the

exceptions apply that we describe in § 86.43(n)(1).

Not all States participate in CVA. States that do participate in CVA may not be able to fund a pumpout at the BIG project location with CVA money due to grant unavailability or for administrative reasons. Pumpouts will remain an eligible action in BIG, but to emphasize the preference to use CVA when available, we add § 86.11(c). This paragraph allows States to limit the use of BIG funds for pumpouts and direct BIG subgrantees in their State to CVA or other funding sources. We encourage subgrantee applicants to work with their States to secure CVA funding before including the action as a cost in a BIG application. If an applicant includes a pumpout as part of its BIG-funded project, we expect the applicant to explain its efforts to secure CVA funding and state why it is not available. As CVA does not require allocating costs among recreational users the same way as BIG does, most applicants will find they receive more funds for their pumpout facility from a CVA grant than from a BIG grant. We expect that requests for funding a pumpout through BIG will be limited to projects in a State that does not participate in CVA, does not have CVA funds available, or has legal or administrative restrictions.

*Comment 15:* We received a few comments suggesting that using BIG funds to support clean boating and good environmental practices as stated in § 86.11(a)(5) could deplete BIG funds for actions not directly benefitting the purpose of BIG. Another comment suggested we say, "include interpretive signs regarding clean boating and good environmental practices at eligible facilities." One commenter was concerned that grantees would use BIG funds directly for Clean Marina programs in States. Another comment supported services that support clean boating and good environmental practices because these practices support Service goals, but stated that we should define the eligible services.

*Response 15:* We discuss in the narrative introducing comments for § 86.11 that we remove § 86.11(a)(5) from the amended proposed rule. We do not amend the proposed rule to include interpretive signs because signs that tell boaters how to use the facility are already eligible costs. We do not intend to fund Clean Marina actions directly through BIG, but some actions eligible under BIG may support clean boating and environmentally sound practices. We discuss services and practices throughout the amended proposed rule as they apply to the purpose of BIG.

*Comment 16:* Production of information and educational materials should be limited to BIG Basic grants for widespread promotion of BIG and not focused on one facility.

*Response 16:* We do not make this change. Other comments support the ability of marinas to use BIG funds to advertise their project, and we agree.

*Comment 17:* Add design and construction of boat wash stations as eligible under BIG.

*Response 17:* We do not make this change and do not support this activity as an eligible cost under BIG. The primary purpose of boat wash stations is to remove aquatic invasive species and other transportable elements from a boat that a person trailers to another location. Trailered boats are not eligible vessels, so this is not an eligible cost. Boat wash stations are eligible actions for States under the Sport Fish Restoration program.

*Comment 18:* Allowing other activities to be eligible with Service approval is too vague, and the process is not clear.

*Response 18:* We move this language from § 86.11(b) to (d) and add that we will describe any other approved actions eligible for funding in the annual RFA. We do not expect these actions to happen often. This paragraph gives the Service the ability to add or expand eligible BIG actions that will benefit applicants and the public while informing applicants so that all may include the added action if they choose.

Section 86.12 What construction and services does boating infrastructure include?

*Comment 19:* Pumpouts should not be included as boating infrastructure, and grantees should fund them through CVA.

*Response 19:* We discuss the need for installing pumpouts in Response 14. For these reasons, we support pumpouts as boating infrastructure. We do not make the requested change.

*Comment 20:* "Oil recycling, bilge-water cleaning, absorbent fuel collars, and other services and structures that support clean and safe boating" should not be part of boating infrastructure.

*Response 20:* We amend § 86.12(e) to include "equipment and structures for collecting, disposing, or recycling liquid or solid waste from eligible vessels." This change eliminates disposable items as eligible, places emphasis on equipment and structures, and focuses on the needs of eligible vessels.

Section 86.13 What design features must a BIG-funded facility have ?

We acknowledge comments in support of parts of this section. We delete § 86.13(c). We amend § 86.13(b) and direct you to § 86.43(n) for more information on pumpout waivers. We add at § 86.13(c) in the amended proposed rule that we will consider water access less than 6 feet deep if the State can demonstrate it will serve the typical eligible users at that location. We add § 86.13(d) to clarify that all design features do not have to be part of the proposed BIG-funded project, but can be an existing part of the marina, a feature added in a prior BIG grant, or a feature funded through other sources.

*Comment 21:* Change § 86.13(b) and (c) of the proposed rule on waivers and signs to remove the responsibility of the marina owner from telling boaters where the nearest pumpout is and posting signs.

*Response 21:* We amend §§ 86.13 and 86.43 as discussed above to clarify the process to request a waiver from the pumpout requirements in the grant application. We remove the requirement for posting signs, allowing you to inform boaters using other communication methods.

*Comment 22:* Change this section to recommend pumpouts instead of requiring them.

*Response 22:* We discuss our support of pumpouts in Responses 14 and 19. For these reasons, we support pumpouts as a required design feature, with the exceptions we allow at § 86.43(n)(1).

*Comment 23:* This section contains both operational and design features. Recommend you distinguish them.

*Response 23:* We agree and change the section to show both types of features.

Section 86.14 How can I receive BIG funds for maintenance?

We received several comments that support grantees being responsible for maintenance of the BIG-funded facility for its useful life. The Act lists maintenance as one of the purposes of BIG, so we must allow maintenance and balance it with need and responsibility. We amend the proposed rule to emphasize “facility” maintenance, allow maintenance only during the grant period, and describe the need for grantees to apply user fees to maintenance after the grant period. We leave the flexibility for States to decide maintenance needs and priorities in BIG Standard grants. Based on one comment, we reviewed the proposed rule to clarify the use of the term ‘maintenance’ and make it consistent throughout the amended proposed rule.

This section has significant changes in the amended proposed rule.

*Comment 24:* You should not allow maintenance as an eligible expense under BIG.

*Response 24:* As discussed above, the Act clearly states facility maintenance is an eligible purpose under BIG.

*Comment 25:* You must prohibit grantees and subgrantees from asking for BIG funding in the future when they charge user fees. Further, when a grantee or subgrantee accepts grant funds they agree to maintain the project for the useful life.

*Response 25:* We amend the language to clarify that only maintenance done during the grant period is eligible for BIG funding. Applicants must clearly show maintenance is necessary and reasonable for the BIG-funded project.

We add a new § 86.14(a)(2) to emphasize that grantees and subgrantees may apply fees toward maintenance. We add in the new § 86.14(b)(2) that if a grantee uses BIG funds for maintenance at a facility that has received BIG funds in the past, the useful life must be extended. This continues the responsibility of the operator and gives extended benefits to the public. We also add § 86.14(b)(3) to allow a State to limit or exclude funding maintenance to subgrantees in its State. The amended § 86.14(c) allows maintenance for BIG Select projects only during the grant period and only if the maintenance directly supports the project.

We cannot guarantee future BIG funding to grantees and subgrantees, so they must commit to using other funding sources for maintaining a BIG-funded facility for its useful life.

*Comment 26:* Maintenance seems to be restricted to structures and equipment, which is more restrictive than the current rule.

*Response 26:* The current rule defines *maintain* as activities that “allow the facility to continue to function, such as repairing docks. These activities exclude routine janitorial activities.” We clarify the term “maintenance” in this amended proposed rule, but we do not make it more restrictive.

Section 86.15 How can dredging qualify as an eligible action?

We received comments supporting the approach to limit funds for dredging. We also received comments asking us to limit dredging projects to the existing channel and designated slips, allow one-time-only dredging, and remove dredging as an eligible activity. As stated in Response 13, we propose to allow dredging under the restrictions discussed and not add any other restrictions or limitations. We add a

general explanation of dredging in the amended proposed rule to clarify that dredging in this part includes all actions related to dredging. The limits on using BIG funds for dredging include all these actions.

*Comment 27:* How does an applicant certify it has resources to maintain the dredge project?

*Response 27:* We do not change this section based on this comment. We require a grantee or subgrantee to maintain a dredge project for its useful life, as we would for any other actions that are part of the project and have a useful life. When reviewing an application, we will consider the information the applicant presents to support its ability to maintain the dredge project. By signing the application, an applicant certifies to all BIG requirements.

Section 86.16 What actions are ineligible for BIG funding?

We received several comments supporting as ineligible actions: retail businesses, parking lots, roads, administering or managing the facility, and purchasing or operating boats to transport boaters. Based on comments and our review we added § 86.16(a)(10) to include as ineligible: supplies and other expendable personal property not directly related to the project objectives.

*Comment 28:* You should reword this section to clarify which actions you consider marketing.

*Response 28:* We amend this section to add examples of marketing activities.

Section 86.17 Who must own the site of a BIG-funded facility?

Based on comments received for this section, we define the term “contractor” at § 86.3.

*Comment 29:* What does an applicant do to show a contractual arrangement for operation of a site?

*Response 29:* We do not change this section based on this question. If the applicant does not own the site where a BIG-funded project is proposed, the applicant will work with us to document an acceptable arrangement to ensure that the site will be available for the useful life of the BIG-funded facility.

*Comment 30:* Requiring the Service to approve general management activities seems cumbersome.

*Response 30:* We do not intend to review all business management activities, but if the applicant is not the operator, we must assess the operator’s ability to manage a BIG-funded facility before we award a grant in this competitive program.

Section 86.18 How can I ensure that BIG-funded projects continue to serve their intended purpose for their useful life?

We received several comments supporting the obligation to record a Federal interest. We amend this section to include flexibility to allow the Regions to consider options for low-value or low-risk improvements and for States to pass along the requirement to subgrantees. Some commenters asked us about the process for carrying out this section. We will publish procedural guidance and examples at <http://fawiki.fws.gov>.

Section 86.19 What if a project would benefit both eligible and ineligible users?

We amend this section to make allocating costs simpler. We emphasize that you must allocate costs if part of the BIG-funded facility or a discrete element will benefit both eligible and ineligible users. Under the current rule, we may reject applications before scoring if the applicant does not allocate costs correctly. We amend the proposed rule to allow us to work with applicants to clarify how you allocate costs before the Director approves awards. We also propose an exception to allocating costs where there are secondary uses or purposes that would benefit all users that do not exclude eligible users from the primary purpose. We give examples on how to allocate costs. We invite comments that tell us if these changes improve the approach to allocating costs.

*Comment 31:* How is it possible to assign 100 percent of project costs to the BIG grant when there is a match requirement?

*Response 31:* We add a definition to proposed § 86.3 for the term “project cost” to clarify that we mean the Federal share and all non-Federal funds given as match or added to the Federal grant to complete the project.

*Comment 32:* Staff is not always available at BIG facilities to monitor, so how do we enforce facility use?

*Response 32:* This section addresses only costs associated with the project and not the actual use. We emphasize that you need to describe the project in your application considering design and anticipated use and how you will allocate costs based on your analysis.

*Comment 33:* What is a “discrete element?”

*Response 33:* We add a description for what we consider a “discrete element.”

*Comment 34:* It is difficult to post signs in mixed-use areas and enforce them.

*Response 34:* We amend this paragraph to include only the need to inform ineligible boaters of areas or actions that are fully restricted or limited. For example, if you design slips for only eligible users and you assign 100 percent of costs to BIG funding, you must inform the public that these slips are limited to eligible users. If you design a tie-up area for exclusive use by eligible boats during certain periods, but all others may use during “off periods,” you must include details in your application and explain how you allocate costs. When the project is complete, you must inform all users. If you propose an action where you expect mixed use, you must describe it in your application, allocate costs accordingly, and you do not need to post any signs.

*Comment 35:* Changes over time may lead to an unexpected use of a BIG-funded facility. States cannot predict and may not be aware of the changes when they occur.

*Response 35:* The State is ultimately responsible for the grant. Section 86.18(e) explains that the grantee must have a contract with subgrantees that includes minimum requirements. The contract must prohibit the subgrantee from altering the ownership, purpose, or use of the BIG-funded facility without approval. The State may include other requirements to protect its interest in the grant project. If the State becomes aware of changes, it must contact us to find out how to address them.

#### *Subpart C—Federal Funds and Match*

Section 86.30 What is the source of BIG funds?

No comments.

Section 86.31 How does the Service know how much money will be available for BIG grants each year?

No comments.

Section 86.32 What are the match requirements?

We received support for making land or an interest in land ineligible.

*Comment 36:* We disagree with excluding the value of structures completed before the beginning of the funding period.

*Response 36:* We amend this section to allow the value of a structure completed before the beginning of the funding period if the Service approves it as a preaward cost. We considered how we might allow the value of existing buildings that you may want to repurpose as part of the BIG-funded facility, but we do not change this section in this regard. We were unable to find a method that we could fairly

and simply apply to the situation because of the many variables, such as the entire building not being used for the project, the building benefitting both eligible and ineligible users, and the repurposing being part of other projects. We welcome suggestions on approaches for using the value of existing structures as part of the BIG-funded project.

Section 86.33 What information must I provide on match commitments, and where do I provide it?

We clarify this section and remove the requirement for a letter signed by a third party’s authorized representative when they intend to provide match. This is consistent with the changes at § 86.43 that remove the requirement for letters of commitment in an application. This requirement complicates the grant process because third party information often changes between the time of the grant application and project completion.

Section 86.34 What if a partner is not willing or able to follow through on a match commitment?

We received comments asking us to remove or simplify this section. We amend this section to remove some of the notices you must give us and emphasize that States are ultimately responsible for all actions and funding commitments in the grant. We still require States to tell us how it will compensate for loss of match if a partner does not follow through on its commitment.

#### *Subpart D—Application for a Grant*

We make changes to this subpart in the amended proposed rule by deleting § 86.44 and incorporating the information into § 86.43. The “other documents and information” discussed in § 86.44 are now included in the project statement.

Section 86.40 What are the differences between BIG Basic grants and BIG Competitive grants?

We received support in setting a minimum award for BIG Basic (now BIG Standard) grants that may increase as funds allow, but will not decrease. We received support for the \$1.5 million limit for BIG Competitive (now BIG Select) grants, but also concern that the limit may not be reasonable in future years. We amend this section to say we “may” limit BIG Select to a maximum of \$1.5 million, but we will post the maximum award in the annual RFA. This allows the Service to respond to current need.

*Comment 37:* We want the Service to allow States to apply for multiple BIG

Standard projects using separate applications as long as they do not exceed the maximum funding limit.

*Response 37:* We agree and amend this section to allow the Service Regions to decide how the State should apply for BIG Standard grants as long as they do not exceed the maximum annual award.

*Comment 38:* Verify that States can ask for an amount that is less than the BIG Standard annual funding limit.

*Response 38:* We do not change this section based on this comment. The proposed rule says States may request any amount “up to” the annual funding limit. We will emphasize this in the annual RFA.

Section 86.41 How do I apply for a grant?

We amend this section to require States to send applications through <http://www.grants.gov>.

*Comment 39:* Emphasize that subgrantees must apply to the State and not directly to the Service.

*Response 39:* We amend § 86.41(a) to tell subgrantees they must send an application to the State following State rules.

Section 86.42 What do I have to include in an application?

A comment asked us to remove information related to postaward actions. We do not make the change requested in this comment because this section addresses the application process.

Section 86.43 What information must I put in the project statement?

As discussed in the introductory paragraph to this subpart, we incorporate information from § 86.44 in the proposed rule into § 86.43 in the amended proposed rule. We separate ‘purpose’ and ‘objectives’ to emphasize the differences between them, changing from paragraph (b) to paragraphs (b) and (c). Paragraphs (c) through (f) of this section are now (d) through (g). Paragraphs (g) through (i) are now (i) through (k). We delete paragraph (j), *Multipurpose projects and equitable cost for BIG-funded facilities*, and add the information to paragraph (i), *Budget narrative*. We amend § 86.43(i) to emphasize the need for good cost estimates in your budget narrative. We delete paragraph (m), *Grantee’s contact*, and add paragraph (h), *Project officer*. Paragraphs (k) through (l) are now (l) through (m). We add paragraphs (n), *General*, and (o), *Ranking criteria*. Our responses to comments reference the proposed rule unless we specify otherwise.

We received several comments regarding grant management issues such as State control of the project, relationships to other grants, preaward costs, and timeline. We will address these items through training and grant management venues. We change the amended proposed rule as described in the introductory paragraph to this subpart.

*Comment 40:* In § 86.43(d)(2) delete “known contractor” or explain what a contractor is.

*Response 40:* We keep the phrase “known contractor” because a State or subgrantee may assign a major role to a contractor. If you know who your contractor will be when you submit your application, you must include this information. We added the definition of a contractor at § 86.3 to clarify.

*Comment 41:* Amend § 86.43(e) to make useful life information optional. It is unreasonable to expect a design at the time they apply.

*Response 41:* We do not make the requested change. If the application includes a capital improvement, the applicant should be able to estimate the useful life. We give further guidance at §§ 86.74 and 86.75.

*Comment 42:* In § 86.43(i) remove the word “must” as some operators do not charge a fee.

*Response 42:* We do not change this section. The proposed rule requires that a BIG-funded project charge fees similar to those charged at other facilities in the area with the same services. If all of the comparable facilities in the area offer services without charge, then the BIG-funded facility may also offer services without charge. We amend § 86.90 to clarify. If an operator charges a fee, it must be in line with that charged by other local facilities.

Section 86.44 What other documents and information must I include in a grant application?

We remove this entire section in the amended proposed rule as described above. We remove the information found in § 86.44(a)(3) of the proposed rule and no longer require letters of commitment from partners. We received comments asking where to ask for a waiver from the requirement to have a pumpout. We describe in § 86.43(n) of the amended proposed rule how to ask for a waiver in the application.

Section 86.45 What if my BIG project needs more than the awarded Federal share and required match to complete?

This is § 86.44 in the amended proposed rule.

We received comments that support this section asking for discrete, stand-

alone projects and supporting a fair, competitive process. Based on comments received and our review we: (1) Move § 86.45(a)(3) in the proposed rule to § 86.44(a)(2) in the amended proposed rule and § 86.45(a)(2) in the proposed rule to § 86.44(a)(3) in the amended proposed rule;

(2) Add § 86.44(b) to the amended proposed rule to address actions if you do not have enough funds and cannot complete a project; and

(3) Move § 86.45(b) and (c) in the proposed rule to § 86.44(c) and (d), respectively, in the amended proposed rule with no further changes.

*Comment 43:* We recommend that all grant applications include a cost analysis and if a BIG Select project does not have enough funds to complete the project, the Service make it a priority and automatically award that project a grant from BIG Standard.

*Response 43:* Both BIG Standard and BIG Select are competitive programs, BIG Standard at the State level and BIG Select at the national level. Allowing BIG Select projects automatically to receive BIG Standard grant funds to complete a project would make the grants noncompetitive, reduce State control of BIG Standard grants, and allow applicants to be careless with cost estimates. We do not make this change.

Section 86.46 If the Service does not select my grant application for funding, can I apply for the same project the following year?

This section is now § 86.45 in the amended proposed rule.

We received one comment supporting the clarity on unsuccessful applications.

Section 86.47 What changes can I make in a grant application after I submit it?

This section is now § 86.46 in the amended proposed rule.

We amend this section to allow the Service and the applicant to discuss the approach in the application for how to allocate costs between eligible and ineligible benefits during the period between when they apply and when the Service awards the grant. Currently, if the grantee does not allocate costs properly, we consider the application ineligible and we do not score it. This practice results in rejecting potentially good projects based solely on improperly allocating costs. This change allows us to score the application and gives the applicant the chance to adjust costs prior to the Director approving awards.

*Subpart E—Project Selection*

## Section 86.50 Who ranks BIG Competitive applications?

No comments.

## Section 86.51 What criteria does the Service use to evaluate BIG Competitive applications?

We received many comments and recommendations for the scoring criteria, and we respond by making significant changes from the proposed rule. We more accurately describe what the ranking criteria relate to by changing headings to paragraph (a) “Need, Access, and Cost Efficiency,” paragraph (b) is “Match and Partnerships,” and paragraph (c) “Innovation.”

We switch criteria at § 86.51(a)(2) and (a)(3), but do not change the language. We move criteria at § 86.51(b)(2) to (b)(1) and clearly state that the criterion at paragraph (b)(1) is to consider match greater than the minimum required. We amend § 86.51(b)(2) to address in-kind contributions at any level.

We amend § 86.51(c)(1) to address innovations that improve eligible user access. We amend § 86.51(c)(2) to address innovations that improve the overall BIG-funded project. We add § 86.51(c)(3) to include a criterion for a marina that demonstrates a high level of commitment to environmental compliance, sustainability, and stewardship through a recognized program. We offer this provision because the actions these marinas have taken to receive this recognition indicates they exceed required compliance and show they are applying innovation and forward thinking to operating the facility where the BIG-funded project is located. This action demonstrates commitment to maintaining the high quality of the facility where the BIG-funded project is located, which will help to attract boaters, keep boaters, and extend the useful life of the BIG-funded project.

We reduce the points for each criterion and now have a maximum total of 36 points instead of 100. We may award up to 20 points (56 percent) for “Need, Access, and Cost Efficiency,” 10 points (28 percent) for “Match and Partnerships,” and 6 points (16 percent) for “Innovation.”

The criteria for Innovation clearly discuss the physical components, technology, and techniques used to improve access, improvements to the BIG-funded project that will extend useful life, and actions taken to improve operations beyond basic regulatory requirements. Many of the considerations for “Innovation” directly

relate to construction actions or improving useful life of the facility.

## Section 86.52 What does the Service consider when evaluating a project on the need for more or improved boating infrastructure?

We received no comments. We add a new paragraph at § 86.52(c) in the amended proposed rule that considers access created for eligible vessels by reducing wave action, increasing depth, or other physical improvements. We move § 86.52(c) and (d) to § 86.52(d) and (e), respectively.

## Section 86.53 What does the Service consider when evaluating a project on boater access to significant destinations and services that support transient boater travel?

This section was moved to § 86.54 in the amended proposed rule to reflect the changes at § 86.51. We amend § 86.53(a)(3) to change from the word “credibility” to “reliability.” We received one comment that fully supports this section and another that wants it removed because of perceived difficulty in assessing all the variables. We add paragraph (b) to tell you that you must describe the benefits in the project statement under *Need*. We add paragraph (c) to say that we will consider all benefits to eligible users described in the project statement and add paragraph (d) to give an example on how we may apply this criterion. The current method assesses cost benefits based on the number of slips. We change the requirement to assess cost benefits as they relate to the needs described in the project statement.

## Section 86.54 What does the Service consider on benefits to eligible users that justify the cost of the project?

This section was moved to § 86.53 in the amended proposed rule to reflect the changes at § 86.51.

*Comment 44:* When you evaluate a project based on access to significant destinations and services that support transient boater travel, the process favors projects close to developed areas. Many areas of interest may be isolated and in quiet, rustic areas. We feel this system penalizes those projects.

*Response 44:* When we consider significant destinations, it means an area where eligible users would want to travel. You must describe the need for access to the remote, rustic area in the project statement. You must include information that addresses § 86.54 (a)–(c). You should also include supporting information and demonstrate to reviewers how the project destination will successfully attract eligible users. It

is possible for these projects to receive points for this criterion.

## Section 86.55 What does the Service consider when evaluating a project for partnerships?

We changed this section in the amended proposed rule to “What does the Service consider as a partner for the purposes of these ranking criteria?”

## Section 86.56 What does the Service consider when evaluating a project that includes greater than the minimum match?

We add a section to the amended proposed rule to separate match and have a criterion for greater than minimum match and a criterion for in-kind match. The new section in the amended proposed rule is § 86.57 “What does the Service consider when evaluating in-kind contributions that a partner brings to a project?” We present amendments, comments, and responses for §§ 86.55 through 57 together because they all discuss the criteria related to partners and the subject matter overlaps.

We reorganize the sections in the amended proposed rule to reflect the changes in the criteria at § 86.51(b) that address one criterion for greater than minimum match and a second criterion for in-kind match. We simplify § 86.55 for what qualifies as a partner under this amended proposed rule by removing the requirement for at least 1 percent match, a letter of commitment, and other requirements that place extra emphasis on the number of partners or the specific contributions of a specific partner. We expand § 86.56 to allow that the greater than minimum match may come from any grantee, single partner, or combination of grantee and partners. We include a table that designates the points we will award for increased match. We add § 86.57 to the amended proposed rule to give direction on in-kind contributions that a partner brings.

Some comments questioned the need to consider partners for each application because BIG as a program offers the opportunity for Federal and State agencies to form partnerships with private subgrantees. The Act states that, “in awarding grants,” we give priority to projects that include public/private partnerships, so we must consider the partnerships in each application. Public/private partnerships leverage Federal and other public funds with private funds to increase support for the project. We must include review of private partnerships for all applications and will give greater consideration for projects that include a private contribution.

We also received comments that convey the difficulties in sustaining partnerships in a project that may take several years to begin construction and several more to complete. Often, a partner cannot fulfill the commitment. We will still award higher points for match above the minimum, but will consider the total cash match and not count each contributor. This system will allow small communities to receive smaller donations or commitments and apply them as one amount toward match. It will benefit the grantee and subgrantees to foster lasting partnerships to meet the excess match. The same logic applies to in-kind match, that it allows project involvement to foster many smaller relationships and receive credit for those contributions. We award fewer total points for in-kind contributions.

*Comment 45:* Clarify what is a duty of an agency. Other agencies may contribute work they are doing only because of the BIG-funded project, and the State cannot complete the project without the other agency's action.

*Response 45:* We reword this section to clarify. We make a clear distinction between a mandatory duty and a voluntary action. If an agency has an obligation to act, it is not a partner. It is fulfilling its duty as an agency. Another agency is a partner if it offers a voluntary action to benefit the project. For example, if another agency offers the use of its equipment, labor, or other action within the scope of work for the BIG-funded project, it is a partner and we will consider its contribution as in-kind. A voluntary action may support the BIG-funded project, but is not part of the scope of BIG-funded work, for example, a parks department that builds a recreational area near the BIG-funded facility that offers entertainment to eligible users. It may contribute to the amenities at the project, but we will not consider it a partner for the in-kind criterion.

**Section 86.57** What does the Service consider when evaluating a project for improving or maintaining the quality of the local environment?

**Section 86.58** What does the Service consider when evaluating a project for environmental sustainability?

We change §§ 86.57 and 86.58 in the proposed rule to §§ 86.58 and 86.59 in the amended proposed rule. We add a new section after § 86.59 in the amended proposed rule as § 86.60 “What does the Service consider when evaluating a project for demonstrating a commitment to environmental compliance, sustainability, and

stewardship?” We add this section to reflect the amended criteria in § 86.51(c), and, in §§ 86.58 through 86.60, we discuss how we will consider them. We do this because the majority of comments we received ask us to rethink our approach.

Most commenters said they did not want a criterion that includes improving the local habitat. We focus the criterion at § 86.58 in the amended proposed rule on innovation that directly relates to the BIG-funded project and eligible-user access. We clarify that we will not consider improvements to access that are mandated by law, but only voluntary actions that the grantee or subgrantee does beyond the minimum requirements.

We amend the criterion at § 86.59 in the amended proposed rule in response to comments stating it may be difficult to measure global impact or sustainability at the application phase. Although several comments suggested we remove this criterion, we are resolute that we should consider and reward this type of innovation. We considered all comments, and we amend the proposed rule to capture the positive aspects of innovation, while narrowing the focus to actions that directly relate to BIG-eligible construction.

We relate the criterion to physical components, technology, or techniques that are new or repurposed in a unique way. We give examples of the type of effects that the innovation should address, such as extending the useful life, reducing maintenance, reducing operating costs, reducing negative impacts during construction, or reducing the carbon footprint of the BIG-funded project. The applicant should be able to address these items in their application. This change relates the innovation directly back to infrastructure, but encourages applicants to be forward thinking while planning and executing the project.

We add the criterion at § 86.60 in the amended proposed rule to allow us to award one point to facilities where a BIG-funded project is proposed that demonstrates it has received official recognition by an organization for its efforts to operate the facility using a high standard of excellence. The awarding organization may be a Federal, State, or local agency, a private or nonprofit organization with focus or expertise in marina operations, or other entity known for working with marinas or boating facilities and supporting innovation, environmental stewardship, sustainability, and best management practices. The recognition the marina receives must be part of an established

program with set standards of excellence. The applicant must include proof they have received this recognition.

**Section 86.59** What happens after the Director approves projects for funding?

No comments. We renumber this section as § 86.61 to reflect the changes earlier in this subpart.

#### *Subpart F—Grant Administration*

**Section 86.70** What standards must I follow when constructing a BIG-funded facility?

We received comments that requiring a licensed engineer or architect would be a burden for small marinas, excessive for small projects, and add unnecessary costs to the BIG-funded project. We agree, and, in response, we amend this section to remove the requirement for all projects to meet this standard. We will leave it up to our Regional Offices to ask you to have an expert review your project if the cost is greater than \$100,000 and there are concerns.

**Section 86.71** How much time do I have to complete the work funded by a BIG grant?

We received comments that suggest 3 years might not be enough time to complete a BIG-funded project and would create a system of continual extension requests. We amend this section to emphasize that we have 3 Federal fiscal years from the beginning of the Federal fiscal award year to obligate funds. For example, for Federal fiscal year 2014, which starts on October 1, 2013, we have until September 30, 2016, to obligate the funding. Grantees may coordinate with us during this period to work on preconstruction planning and compliance. Once the Service and the grantee agree on a start date, we will obligate the funds in our electronic financial system. Grantees will have 3 years from the start date to complete the BIG-funded project. We do not change this section based on this clarification.

**Section 86.72** What if I cannot complete the project during the grant period?

We received a comment supporting the clear deadlines and reasonable approach.

*Comment 46:* Due to the extra work needed to amend a grant, we recommend you change this section from having two 1-year extensions to one 2-year extension.

*Response 46:* We agree with the concept and amend this section to allow us to grant a first extension for up to 2 years. We may grant a shorter extension

if it is in the best interest of the project or program. We keep the option for a second extension and keep the criteria, but do not give a set time. This approach also allows flexibility for the needs and benefits of the project and the program. We amend the section to require approval from the Regional Director and the Service's Assistant Director for Wildlife and Sport Fish Restoration only for extensions beyond 5 years of the start date. In practice, if a grantee is asking for an extension beyond 5 years, it is possible that more than 8 years have passed from the date of the award. Extending grant funds for a project that you do not complete 8 years after we award a grant requires a higher level review.

*Comment 47:* This section conflicts with § 86.47 "What changes can I make in a grant application?" since modifications could affect the score.

*Response 47:* This section does not conflict with § 86.47 because § 86.47 refers to changes in an application, not changes in an awarded grant. Time extensions have no impact on the score. We do not make any changes based on this comment.

**Section 86.73** What if I need more funds to finish a project?

We received several comments supporting this section. We make some edits to text based on suggestions we received. We amend this section to reflect changes we make to subpart H of the proposed rule.

**Section 86.74** How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?

We received several comments supporting this section. We received one comment suggesting that because of State-by-State insurance issues we should remove the suggestion for States to insure a BIG-funded project. We remove that suggestion in this section with the understanding that States know it is an option. We maintain the option in § 86.18(f) for States to require subgrantees to have insurance.

**Section 86.75** How do I determine the useful life of a project?

We received several suggestions for changing the language in this section; some we accept, and others we do not. We also amend this section based on our consideration and changes to other sections. We will reject your application if you do not propose a useful life in your application. We will allow the grantee to negotiate the proposed useful life with us after we receive the application, but before we approve the

grant. We do this so that an application is not rejected based solely on a proposed useful life that we do not agree with at the time we are reviewing applications for awards. However, if you are using an increased useful life to justify more points following the criterion in § 86.51(c), you must give adequate information in your application to support your request for consideration under the criterion. If we find before we approve your grant that you are not able to demonstrate a reasonably expected increased benefit to earn the extra points, we will remove those points from the scoring and adjust awards accordingly. We allow a BIG-funded project to have several useful-life components or to have a single useful life based on the longest useful life of any structure or system in the grant.

**Section 86.76** How should I credit the BIG program?

*Comment 48:* You should add a paragraph to give States the option of having alternative language approved due to local ordinances and restrictions.

*Response 48:* We agree and amend this section to allow approval of alternative language.

**Section 86.77** How can I use the logo for the BIG program?

No comments. We amend this section to add a new paragraph (c) stating that businesses that contribute to or receive from the Trust Fund may display the logo in conjunction with products or projects.

**Section 86.78** How must I treat program income?

We received a comment that the table was too complicated. We remove the table and amend this section to clarify that it only applies if you expect to earn program income during the grant period. We simplify § 86.78(d) to recommend that States work with us to reduce unintended program income, but leave the method up to our Regional Offices.

**Section 86.79** How must I treat program income earned after the grant period?

No comments.

#### *Subpart G—Facility Operations and Maintenance*

**Section 86.90** How much must an operator of a BIG-funded facility charge for using the facility?

*Comment 49:* The proposed rule states that an operator "must" charge a reasonable fee based on the prevailing

rate in the area. It does not allow an operator to offer free services.

*Response 49:* We agree and add a new § 86.90(b) to the amended proposed rule to allow BIG-funded operators to offer services free of charge if that is prevailing practice for the area.

*Comment 50:* The regulations should not involve themselves in the business practices of the marina owner and should not require this information.

*Response 50:* We reiterate our comments found in the preamble of the proposed rule that grantees must not use the benefit of the Federal grant to compete unfairly with similar businesses in the area of the BIG-funded project. We amend the proposed rule by adding § 86.90(c) to allow for a legally imposed fee structure. We move § 86.90(b) to (d) and amend it to require you to state the fees and the basis for the fees in your grant application. We remove the statement that awarding a grant includes approval of proposed fees, as everything in the application becomes part of the grant award and this is unnecessary information.

*Comment 51:* There is no place in the proposed rule that tells a grantee what to include in a grant application for fees.

*Response 51:* We describe what supports this requirement in the new § 86.90(d). You must present the basis for your conclusion in any format that shows the fees comply with the prevailing rate.

**Section 86.91** May an operator of a BIG-funded facility increase or decrease user fees during the useful life of the BIG-funded project?

*Comment 52:* The State should authorize any change in user fees.

*Response 52:* We amend § 86.91 to designate the sole paragraph in the proposed rule as paragraph (a) in the amended proposed rule. We remove the requirement that we approve a change in user fees, but we allow States to be more involved if they choose. We add § 86.91(b) to address how a State or the Service must respond if it discovers an operator of a BIG-funded facility is charging an unreasonable fee. We will not monitor changes in user fees. This paragraph states that the State and the Service must allow an operator to make reasonable business decisions when changing user fees.

**Section 86.92** May an operator of a BIG-funded facility limit public access?

We amend the question in the amended proposed rule to address allowing access rather than limiting access. We received comments that led us to amend this section to add a new § 86.92(a) to clarify the definition of

“public access.” Public access means access by eligible users for eligible actions or other actions that either support or do not interfere with the purposes of the BIG-funded project. We add this definition to emphasize that “public access” does not mean that an operator of a BIG-funded facility should ignore the purpose of the BIG-funded project and allow access that interferes with that purpose. We remove the sentence in § 86.92(a) that allowed applicants to describe other limits to access in their application. We amend § 86.92(b) to state that an operator must allow public access to the BIG-funded facility. We amend § 86.92(c) to state that an operator must allow reasonable public access to other parts of the facility that would normally be open to the public. An operator of a BIG-funded facility must not limit access to only a certain segment of the eligible public, such as members only, or discriminate against an eligible user in a way that interferes with his or her civil rights. We move § 86.92(b) to (d). We replace the language at § 86.92(c) for the reasons in Response 53. We move § 86.92(d) and (e) to § 86.92 (e) and (f), respectively.

*Comment 53:* Section 86.92(c) says that the public must have access to the shore and related facility features such as fuel stations and restrooms. The public does not have direct access to the shore if the BIG-funded project is for mooring buoys. The regulations should have an exception for this requirement.

*Response 53:* We understand the language in the proposed rule may be misinterpreted to require an operator of a BIG-funded facility to provide transportation to and from BIG-funded projects or components that are located away from the shore. We amend the proposed rule to state that an operator must allow reasonable public access that would normally be open to the public. This change states that eligible users must have normal access, but that the operator does not have to create access where it does not exist.

Section 86.93 May I prohibit overnight use by eligible vessels at a BIG-funded facility?

*Comment 54:* At the end of the sentence, add “or if authorized by the State agency.”

*Response 54:* We disagree. We indicate that you must state in your application if you intend your BIG-funded facility to be for day use only, as it is part of the scope of the project. We do not want a grantee or subgrantee changing any part of the scope without going through the revision process, so we do not allow the State to approve a change in scope. We amend this section

to require a grantee to follow subpart H for changes in scope.

Section 86.94 Do I have to include informational signs for eligible users at BIG-funded facilities?

Based on comments received, consideration of new technologies, and changes to this amended proposed rule, we amend this section to expand the technology and methods used to inform boaters so grantees may use signs or any other form of reasonable communication. This change allows grantees to inform boaters through their smart phone, internet, or any other communication technology commonly available. Because of these changes, we also amend the section title. We remove the requirement to post fees. We remove the need to post restrictions for shared-use areas that have had costs allocated as described at § 86.19. We emphasize that an operator must inform the public of BIG-funded benefits that are solely for the use of eligible users. For example, you may estimate the breakdown of users of a BIG-funded fuel dock to be 70 percent ineligible users and 30 percent eligible users. If you allocate costs in the application, then you are not required to notify any users of any restrictions. However, if you build 10 BIG-funded slips for eligible users and they are located next to 20 slips that are available for anyone to use, you must use signs or other methods to inform the public that the 10 slips are only for eligible vessels.

#### Subpart H—Revisions and Appeals

Section 86.100 Can I change the information in an application after I receive a grant?

We amend § 86.100(d) to state that the Regional Office should follow its own procedures for review and approval of changes to a BIG Standard grant. We add § 86.100(e) to state that the Regional Office must receive approval from the Division of Wildlife and Sport Fish Restoration Headquarters Office for any changes to a BIG Select grant that involves cost, project benefits, or another factor that could affect the score.

*Comment 55:* This section includes BIG Standard grants, but talks about national scoring, which does not apply to BIG Standard.

*Response 55:* We agree and amend the section to separate rules that apply to both BIG Standard and BIG Select and those that apply only to BIG Select.

Section 86.101 How do I ask for a revision of a grant?

No comments.

Section 86.102 Can I appeal a decision?

No comments.

Section 86.103 Can the Director authorize an exception to this part?

No comments.

#### Subpart I—Information Collection

Section 86.110 What are the information-collection requirements of this part?

We add § 86.110(a)(3) and (4) on Standard Forms 424 A, 424 C, SF-LLL, and SF-LLLA.

#### Public Comments

You may submit your comments and materials on this proposed rule by 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**. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

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 information from public view, we cannot guarantee that we will be able to do so.

#### Required Determinations

We do not change. Refer to our proposed rule, Boating Infrastructure Grant Program, (77 FR 18767, March 28, 2012), for Required Determinations.

#### List of Subjects in 50 CFR Part 86

Administrative practice and procedure, Boats and boating safety, Fishing, Grants administration, Grant programs, Harbors, Intermodal transportation, Marine resources, Natural resources, Navigation (water), Recreation and recreation areas, Reporting and recordkeeping requirements, Rivers, Signs and symbols, Vessels, Water resources, Waterways.

#### Proposed Regulation Promulgation

For the reasons discussed in the preamble, we propose to amend title 50 of the Code of Federal Regulations, chapter I, subchapter F, by revising part 86 to read as follows:

## PART 86—BOATING INFRASTRUCTURE GRANT PROGRAM

### Subpart A—General

Sec.

- 86.1 What does this part do?  
86.2 What is the purpose of BIG?  
86.3 What terms do I need to know?

### Subpart B—Program Eligibility

- 86.10 Who may apply for a BIG grant?  
86.11 What actions are eligible for funding?  
86.12 What types of construction and services does boating infrastructure include?  
86.13 What operational and design features must a facility have where a BIG-funded facility is located?  
86.14 How can I receive BIG funds for facility maintenance?  
86.15 How can dredging qualify as an eligible action?  
86.16 What actions are ineligible for BIG funding?  
86.17 Who must own the site of a BIG-funded facility?  
86.18 How can I ensure that a BIG-funded facility continues to serve its intended purpose for its useful life?  
86.19 What if a BIG-funded facility would benefit both eligible and ineligible users?

### Subpart C—Federal Funds and Match

- 86.30 What is the source of BIG funds?  
86.31 How does the Service know how much money will be available for BIG grants each year?  
86.32 What are the match requirements?  
86.33 What information must I give on match commitments, and where do I give it?  
86.34 What if a partner is not willing or able to follow through on a match commitment?

### Subpart D—Application for a Grant

- 86.40 What are the differences between BIG Standard grants and BIG Select grants?  
86.41 How do I apply for a grant?  
86.42 What do I have to include in a grant application?  
86.43 What information must I put in the project statement?  
86.44 What if I need more than the maximum Federal share and required match to complete my BIG-funded project?  
86.45 If the Service does not select my grant application for funding, can I apply for the same project the following year?  
86.46 What changes can I make in a grant application after I submit it?

### Subpart E—Project Selection

- 86.50 Who ranks BIG Select grant applications?  
86.51 What criteria does the Service use to evaluate BIG Select applications?  
86.52 What does the Service consider when evaluating a project on the need for more or improved boating infrastructure?  
86.53 What factors does the Service consider for benefits to eligible users that justify the cost?  
86.54 What does the Service consider when evaluating a project on boater access to

significant destinations and services that support transient boater travel?

- 86.55 What does the Service consider as a partner for the purposes of these ranking criteria?  
86.56 What does the Service consider when evaluating a project that includes more than the minimum match?  
86.57 What does the Service consider when evaluating in-kind contributions that a partner brings to a project?  
86.58 What does the Service consider when evaluating a project for a physical component, technology, or technique that will improve eligible user access?  
86.59 What does the Service consider when evaluating a project for innovative physical components, technology, or techniques that improve the BIG project?  
86.60 What does the Service consider when evaluating a project for demonstrating a commitment to environmental compliance, sustainability, and stewardship?  
86.61 What happens after the Director approves projects for funding?

### Subpart F—Grant Administration

- 86.70 What standards must I follow when constructing a BIG-funded facility?  
86.71 How much time do I have to complete the work funded by a BIG grant?  
86.72 What if I cannot complete the project during the grant period?  
86.73 What if I need more funds to finish a project?  
86.74 How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?  
86.75 How do I determine the useful life of a BIG-funded facility?  
86.76 How should I credit the BIG program?  
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- 86.100 Can I change the information in a grant application after I receive a grant?  
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### Subpart I—Information Collection

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

**Authority:** 16 U.S.C. 777c, g, and g–1.

### Subpart A—General

#### § 86.1 What does this part do?

(a) This part tells States how they may apply for and receive grants from the Boating Infrastructure Grant program (BIG) Standard and Select subprograms. Section § 86.40 describes the differences between these two subprograms.

(b) The terms *you*, *your*, and *I* refer to a State agency that applies for or receives a BIG grant. *You* may also apply to a subgrantee with which a State agency has a formal agreement to construct, operate, or maintain a BIG-funded facility.

(c) The terms *we*, *us*, and *our* refer to the U.S. Fish and Wildlife Service.

#### § 86.2 What is the purpose of BIG?

The purpose of BIG is to construct, renovate, and maintain boating infrastructure facilities for transient recreational vessels at least 26 feet long.

#### § 86.3 What terms do I need to know?

For the purposes of this part, we define these terms:

*BIG-funded facility* means only the part of a facility that we fund through a BIG grant.

*Boating infrastructure* means all of the structures, equipment, accessories, and services that are necessary or desirable for a facility to accommodate eligible vessels. See § 86.12 for examples of boating infrastructure.

*Capital improvement* means:

- (1) A new structure that costs at least \$25,000 to build; or
- (2) Altering, renovating, or repairing an existing structure if it increases the structure's useful life by 10 years or if it costs at least \$25,000.

*Construction* means the act of building or significantly altering, renovating, or repairing a structure. Clearing and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, docks, piers, breakwaters, and slips.

*Contractor* means an entity with which a State has a written agreement to operate or manage a BIG-funded facility. You pay a contractor to perform specific duties according to a written agreement. Contractors are not grant recipients.

*Director* means:

- (1) The person whom the Secretary of the Interior:
  - (i) Appointed as the chief executive official of the U.S. Fish and Wildlife Service; and

(ii) Delegated authority to administer BIG nationally; or

(2) A deputy or another person who exercises the Director's Servicewide authority.

*Eligible user* means an operator or passenger of an eligible vessel.

*Eligible vessel* means a transient recreational vessel at least 26 feet long. The term includes vessels that are owned, loaned, rented, or chartered. The term does not include:

(1) Commercial vessels;

(2) Vessels that dock or operate permanently from the BIG-funded facility; or (3) Vessels that receive payment to routinely transport passengers on a prescribed route, such as cruise ships, dive boats, and ferries.

*Facility* means the structures, equipment, and operations that:

(1) Provide services to boaters at one location; and

(2) Are under the control of a single operator or business identified in the grant application.

*Grant* means an award of money, the principal purpose of which is to transfer funds from a Federal agency to a grantee to support or stimulate an authorized public purpose and includes the matching cash and any matching in-kind contributions.

*Maintenance* means keeping structures or equipment in a condition to serve the intended purpose. It includes cyclical or occasional actions done to keep facilities fully functional. It does not include operational actions such as janitorial work. Examples of maintenance actions are:

(1) Lubricating mechanical components of BIG-funded equipment;

(2) Replacing minor components of a BIG-funded improvement, such as bolts, boards, and individual structural components; and

(3) Painting, pressure washing, and repointing masonry.

*Marketing* means an activity that promotes a business to interested customers for the financial benefit of the facility. It may include a plan for sales techniques and strategies, business communication, and business development. A business uses marketing to find, satisfy, and keep a customer.

*Match* means the value of any cash or in-kind contributions required or volunteered to complete the BIG-funded facility that are not borne by the Federal Government, unless a Federal statute authorizes such match.

*Navigable waters* means waters that are deep and wide enough for the passage of eligible vessels.

*Operation* means actions that allow a BIG-funded facility or parts of a BIG-

funded facility to perform their function on a daily or frequent basis. Examples of operation are janitorial work, service labor, facility administration, utilities, rent, taxes, and insurance. *Personal property* means anything tangible or intangible that is not real property.

*Program income* means gross income received by the grantee or subgrantee directly generated by a grant-supported activity, or earned only as a result of the grant during the grant period.

*Project* means one or more related actions that are eligible for BIG funding, achieve specific goals and objectives of BIG, and in the case of construction, occur at only one facility.

*Project cost* means the Federal share awarded through the BIG grant and all non-Federal funds given as the match or added to the Federal and matching shares to complete the BIG-funded project.

*Public communication* means communicating with the public or news media about specific actions or accomplishments directly associated with the BIG-funded project. The purpose is to inform the public about the BIG program or projects that receive BIG funding.

*Real property* means one, several, or all interests, benefits, and rights inherent in owning a parcel of land. A parcel includes anything physically and firmly attached to it by a natural or human action. Examples of real property in this rule include fee and leasehold interests, easements, fixed docks, piers, permanent breakwaters, buildings, utilities, and fences.

*Regional Office* means the main administrative office of one of the Service's geographic Regions in which a BIG-funded project is located. Each Regional Office has a:

(1) *Regional Director* appointed by the Director to be the chief executive official of the Region and authorized to administer Service activities in the Region, except for those handled directly by the Service's Headquarters Office; and

(2) *Division of Wildlife and Sport Fish Restoration (WSFR)* or its equivalent that administers BIG grants.

*Renovate* means to rehabilitate all or part of a facility to restore it to its intended purpose or to expand its purpose to allow use by eligible vessels or eligible users.

*Scope* of a project means the purpose, objectives, approach, and results or benefits expected, including the useful life of any capital improvement.

*Service* means the U.S. Fish and Wildlife Service.

*State* means any State of the United States, the Commonwealths of Puerto

Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa.

*Transient* means travel to a single facility for day use or up to 10 days.

*Useful life* means the period during which a BIG-funded capital improvement is capable of fulfilling its intended purpose with adequate routine care and maintenance. See §§ 86.74 and 86.75.

## Subpart B—Program Eligibility

### § 86.10 Who may apply for a BIG grant?

One agency in each eligible State may apply for a BIG grant if authorized to do so by:

(a) A statute or regulation of the eligible jurisdiction;

(b) The Governor of the State, Commonwealth, or territory; or

(c) The Mayor of the District of Columbia.

### § 86.11 What actions are eligible for funding?

(a) The following actions are eligible for BIG funding if they are for eligible users or eligible vessels:

(1) Construct, renovate, or maintain publicly or privately owned boating infrastructure (see § 86.12) following the requirements at § 86.13.

(2) Conduct actions necessary to construct boating infrastructure, such as:

(i) Engineering, economic, environmental, or feasibility studies or assessments; and

(ii) Planning, permitting, and contracting.

(3) Dredging a channel, boat basin, or other boat passage following the requirements at § 86.15.

(4) Install navigational aids to give transient vessels safe passage between a facility and navigable channels or open water.

(5) Produce information and education materials specific to BIG or a BIG-funded project and that credit BIG as a source of funding when appropriate. Examples of eligible actions include:

(i) Locating BIG-funded facilities on charts and cruising guides;

(ii) Creating Statewide or regional brochures telling boaters about BIG and directing them to BIG-funded facilities;

(iii) Advertising a BIG-funded facility in print or electronic media with the emphasis on BIG, the BIG-funded facility, or services for eligible users, and not on marketing the marina as a whole;

(iv) Marina newsletter articles, marina or agency Web pages, and other

communications you produce that are directly related to the BIG-funded project;

(v) Giving boaters information and resources to help them find and use the BIG-funded facility; and

(vi) Public communication.

(6) Use BIG Standard grant awards to administer BIG Standard and BIG Select grants, or grant programs, Statewide. This includes coordinating and monitoring to ensure BIG-funded facilities are well-constructed, meet project objectives, and serve the intended purpose for their useful life; and to manage BIG grant performance or accomplishments.

(b) An applicant may ask for approval for preaward costs for eligible actions. Your Regional Office must approve preaward costs. You incur preaward costs at your own risk, as we will only reimburse you if you receive a grant.

(c) A State may require a pumpout be funded through the Clean Vessel Act Grant Program (CVA), Catalog of Federal Domestic Assistance number 15.616. We urge applicants to seek funding for installing pumpout facilities through CVA before including the cost as part of a BIG grant application.

(d) Other actions may qualify for BIG funding, subject to our approval, if they achieve the purposes of BIG. We will describe actions we approve and how they are eligible for BIG funding in the annual Request for Applications (RFA).

**§ 86.12 What types of construction and services does boating infrastructure include?**

Boating infrastructure may include:

(a) Boat slips, piers, mooring buoys, floating docks, dinghy docks, day docks, and other structures for boats to tie-up and gain access to the shore or services.

(b) Fuel stations, restrooms, showers, utilities, and other amenities for transient-boater convenience.

(c) Lighting, communications, buoys, beacons, signals, markers, signs, and other means to support safe boating and provide information to aid boaters.

(d) Breakwaters, sea walls, and other physical improvements to allow an area to offer a harbor of safe refuge. A *harbor of safe refuge* is an area that gives eligible vessels protection from storms. To be a harbor of safe refuge, the facility must offer a place to secure eligible vessels and provide access to provisions and communication for eligible users.

(e) Equipment and structures for collecting, disposing, or recycling liquid or solid waste from eligible vessels.

**§ 86.13 What operational and design features must a facility have where a BIG-funded facility is located?**

(a) At project completion, a facility where a BIG-funded facility is located must:

(1) Be open to eligible users and operated and maintained for its intended purpose for its useful life;

(2) Clearly designate eligible uses and inform the public of restrictions;

(3) Offer security, safety, and service for eligible users and vessels;

(4) Be accessible by eligible vessels on navigable waters;

(5) Allow public access as described at § 86.92;

(6) Have docking or mooring sites with water access at least 6 feet deep at the lowest tide or fluctuation, unless following paragraph (c) of this section; and

(7) Have an operational pumpout station if:

(i) Eligible vessels stay overnight; and

(ii) Available pumpout service is not located within 2 nautical miles; or

(iii) State or local laws require one on site.

(b) We will waive the pumpout requirement if you demonstrate in the grant application the inability to install a pumpout, following the requirements at § 86.43(n).

(c) We will allow water access at a depth less than 6 feet if the State can demonstrate the BIG-funded facility will accommodate eligible users for the intended BIG purpose at that location.

(d) Any of these design features may already be part of the facility, or be funded through another source, and need not be included as part of the BIG project.

**§ 86.14 How can I receive BIG funds for facility maintenance?**

(a) For BIG Standard and BIG Select grants:

(1) You may request BIG funds for facility maintenance only if the maintenance action does not extend past the grant period.

(2) You may apply user fees collected at the BIG-funded facility after the grant period to maintain the facility.

(b) For BIG Standard grants:

(1) You may request BIG funds for one-time or as-needed maintenance costs at any BIG-eligible facility as long as the costs are discrete and follow paragraph (a) of this section.

(2) If you use BIG funds for maintenance at a facility that has received a BIG grant in the past, you must extend the useful life of each capital improvement accordingly.

(3) States may limit or exclude BIG-maintenance funding they make available to subgrantees.

(c) For BIG Select grants, you may request BIG funds for maintenance directly related to the BIG project and that benefit eligible users. You are responsible for all maintenance costs after the grant period except as provided in paragraph (b) of this section.

**§ 86.15 How can dredging qualify as an eligible action?**

(a) Dredging in this part includes the physical action of removing sediment from the basin and any associated actions, such as engineering, permitting, dredge material management, and other actions or costs that occur because of the dredging. Dredging can qualify as an eligible action under the grant only if the costs for the dredging-related actions do not exceed 10 percent of total BIG project costs, or \$200,000, whichever is less.

(b) When you complete the project, the BIG-funded dredged area must:

(1) Have navigable water at least 6 feet deep at lowest tide or fluctuation;

(2) Allow safe, accessible navigation by eligible vessels to, from, and within the BIG-funded facility; and

(3) Allow eligible vessels to dock safely and securely at transient slips.

(c) You must show in the grant application that:

(1) Dredging is needed to fulfill the purpose and objectives of the proposed project; and

(2) You have allocated the dredging costs between the expected use by eligible vessels and ineligible vessels.

(d) You must certify in the grant application that you have enough resources to maintain the dredged area at the approved width and depth for the useful life of the BIG-funded facility.

**§ 86.16 What actions are ineligible for BIG funding?**

(a) These actions or costs are ineligible for BIG funding:

(1) Law enforcement.

(2) Direct administration and operation of the facility, such as salaries, utilities, and routine janitorial duties.

(3) Developing a State plan to construct, renovate, or maintain boating infrastructure.

(4) Acquiring land or any interest in land.

(5) Constructing, renovating, or maintaining roads or parking lots.

(6) Constructing, renovating, or maintaining boating infrastructure facilities for:

(i) Shops, stores, food service, other retail businesses, or lodging;

(ii) Facility administration or management, such as a harbormaster's or dockmaster's office; or

(iii) Transportation, storage, or services for boats on dry land, such as dry docks, haul-outs, and boat maintenance and repair shops.

(7) Purchasing or operating service boats to transport boaters to and from mooring areas.

(8) Marketing. Examples of ineligible marketing actions include:

(i) Giveaway items promoting the business or agency;

(ii) General marina or agency newsletters or Web sites promoting the marina or agency;

(iii) Exhibits at trade shows promoting anything other than the BIG-funded facility; and

(iv) Outreach efforts directed at the marina as a business or the agency as a whole and not focused on BIG or the BIG-funded facility.

(9) Constructing, renovating, or maintaining boating infrastructure that does not:

(i) Include design features as described at § 86.13;

(ii) Serve eligible vessels or users; and

(iii) Allow public access as described at § 86.92.

(10) Purchase of supplies and other expendable personal property not directly related to achieving the project objectives.

(b) Other activities may be ineligible for BIG funding if they are inconsistent with the:

(1) Purpose of BIG; or

(2) Applicable Cost Principles at 2 CFR Parts 225 or 230.

#### **§ 86.17 Who must own the site of a BIG-funded facility?**

(a) You or another entity approved by us must own or have a legal right to operate the site of a BIG-funded facility. If you are not the owner, you must be able to show, before we approve your grant, that your contractual arrangements with the owner of the site will ensure that the owner will use the BIG-funded facility for its authorized purpose for its useful life.

(b) Subgrantees or contractors may be a local or tribal government, a nonprofit organization, or a commercial enterprise.

(c) Subgrantees that are commercial enterprises are subject to:

(1) 43 CFR Part 12, subpart F for grant administrative requirements; and

(2) Any future regulations that supplement or replace that subpart.

#### **§ 86.18 How can I ensure that a BIG-funded facility continues to serve its intended purpose for its useful life?**

(a) When you design and build your BIG-funded facility, you must consider the features, location, materials, and

technology in reference to the geological, geographic, and climatic factors that may have an impact on its useful life.

(b) You must record the Federal interest in real property that includes a BIG-funded capital improvement according to the assurances required in the grant application and guidance from the Regional WSFR Office.

(c) If we direct you to do so, you must require that subgrantees record the Federal interest in real property that includes a BIG-funded capital improvement.

(d) If we do not direct you to act as required by paragraph (c) of this section, States may require subgrantees to record the Federal interest in real property that includes a BIG-funded capital improvement.

(e) You must include in your contract with subgrantees that they must not alter the ownership, purpose, or use of the BIG-funded facility as described in the project statement without approval from you and the WSFR Regional Office.

(f) You may impose other requirements on subgrantees, as allowed by law, to reduce State liability for the BIG-funded facility. Examples are insurance, deed restrictions, and a security interest agreement, which uses subgrantee assets to secure performance under the grant.

#### **§ 86.19 What if a BIG-funded facility would benefit both eligible and ineligible users?**

You must not assign any share of the costs to the BIG grant if the BIG-funded facility or a discrete element of the BIG-funded facility does not benefit eligible users. A discrete element has a distinct purpose, such as a fuel station, pumpout facility, breakwater, or dock system.

(a) You must clearly show and explain in the project statement:

(1) The anticipated benefits of each project, discrete elements, and applicable components;

(2) The breakdown of costs, including the basis or method you use to allocate costs between eligible and ineligible users; and

(3) Your reasoning in determining when to allocate costs, based on paragraphs (a) through (e) of this section and any other guidance given in the annual RFA.

(b) You may assign 100 percent of the project costs to the BIG grant if the project and each discrete element of the project benefit only eligible users.

(c) If a proposed project or a discrete element of a project would benefit both eligible and ineligible users, before the Director announces your award, you must allocate costs between eligible and ineligible users based on the expected use.

(d) If a proposed BIG-funded facility, or a discrete element, minor component, or single action of the BIG-funded project, gives a secondary or minimal benefit to all users, we will not require you to allocate costs between eligible and ineligible users for that benefit. Examples for how we will apply this rule are the following:

(1) The primary purpose is directly for the benefit of eligible users, with a secondary benefit for all users. You must clearly state the exclusive benefit to eligible users in your application. The secondary benefit cannot exclude eligible users from the primary purpose. For example, if you construct a dock system for exclusive use by eligible vessels and a secondary benefit of the dock system is protection of the marina from wave action, you would not have to allocate costs for the secondary benefit. However, the secondary benefit cannot be docking for ineligible vessels because it would exclude eligible users from the primary purpose.

(2) The secondary benefit to ineligible users is not the primary purpose, is minimal, and you do not add special features to accommodate ineligible users. For example, you do not have to allocate costs between user groups for a gangway from the transient dock, designed exclusively for eligible users, even though it is accessible to the general public. However, if you construct the gangway to accommodate the expected ineligible users, then you must allocate costs between user groups.

(3) The expected benefits to both eligible and ineligible users have minimal value. If the component has a value of .0025 percent or less than the maximum available Federal award plus required match, you do not have to allocate costs for that component. We will post the amount of the minimal value each year in the annual RFA. For example, if the total maximum Federal award and required match for a BIG Select project is \$2 million, you do not have to allocate costs between user groups for any discrete project element, component, or action with a value of \$5,000 or less.

(e) Examples of actions for which you must allocate costs between user groups are the following, unless paragraph (b) of this section applies:

(1) You propose a 200-foot dock for eligible user tie-up spaces that you attach to the shore at a boat launch. It will attract ineligible use as a tie-up for boaters as they enter and exit the water. You must allocate costs between the expected eligible and ineligible use.

(2) You propose a breakwater, fuel station, pumpout station, restroom,

dredging, navigational aids, or other multiuse or multipurpose action.  
 (f) Examples of actions for which you do not need to allocate costs between user groups are:

(1) You propose to construct, renovate, or maintain docks specifically for eligible vessels.

(2) You propose to produce information and educational materials specific to BIG.

(g) You must clearly inform boaters when access by ineligible users is limited or restricted following the guidance at § 86.94.

(h) We may ask you to clarify or change how you allocate costs in your grant application if they do not meet our standards. We may reject costs or applications that do not allocate costs between eligible and ineligible users according to the requirements of this section and the RFA.

**Subpart C—Federal Funds and Match**

**§ 86.30 What is the source of BIG funds?**

(a) BIG receives Federal funding as a percentage of the annual revenues to the Sport Fish Restoration and Boating Trust Fund (Trust Fund) [26 U.S.C. 4161(a), 4162, 9503(c), and 9504].

(b) The Trust Fund receives revenue from sources including:

(1) Excise taxes paid by manufacturers on sportfishing equipment and electric outboard motors;

(2) Fuel taxes attributable to motorboats and nonbusiness use of small-engine power equipment; and

(3) Import duties on fishing tackle, yachts, and pleasure craft.

**§ 86.31 How does the Service know how much money will be available for BIG grants each year?**

(a) We estimate funds available for BIG grants each year when we issue a RFA at <http://www.grants.gov>. We base this estimate on the revenue projected for the Trust Fund.

(b) We calculate the actual amount of funds available for BIG grants based on tax collections, any funds carried over from previous fiscal years, and available unobligated BIG funds.

**§ 86.32 What are the match requirements?**

(a) The Act requires that the State or another non-Federal partner must pay at least 25 percent of eligible and allowable BIG-funded facility costs. We must waive the first \$200,000 of the required match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of American Samoa, Guam, and the U.S. Virgin Islands (48 U.S.C. 1469(a)).

(b) Match may be cash contributed during the funding period or in-kind contributions of personal property, structures, and services including volunteer labor, contributed during the grant period.

(c) Match must be:

(1) Necessary and reasonable to achieve project objectives;

(2) An eligible activity or cost;

(3) From a non-Federal source, unless you show that a Federal statute authorizes the specific Federal source for use as match; and

(4) Consistent with the applicable sections of:

(i) Uniform Administrative Requirements for Grants and Agreements at 43 CFR 12.64 and 12.923;

(ii) Applicable Cost Principles at 2 CFR Parts 220, 225, or 230; and

(iii) Any regulations or policies that may replace or supplement requirements at paragraphs (c)(4)(i) and (ii) of this section.

(d) Match must not include:

(1) An interest in land or water;

(2) The value of any structure completed before the beginning of the funding period, unless the Service approves the activity as a preaward cost;

(3) Costs or in-kind contributions that have been or will be counted as satisfying the cost-sharing or match requirement of another Federal grant, a Federal cooperative agreement, or a Federal contract, unless authorized by Federal statute; or

(4) Any funds received from another Federal source, unless authorized by Federal statute.

**§ 86.33 What information must I give on match commitments, and where do I give it?**

(a) You must give information on the amount and the source of match for your proposed BIG-funded facility on the standard grant application form at <http://www.grants.gov>.

(b) You must also give information on the match commitment by the State, a subgrantee, or other third party in the project statement under “Match and Other Contributions.”

(c) In giving the information required at paragraph (b) of this section, you must:

(1) State the amount of matching cash;

(2) Describe any matching in-kind contributions;

(3) State the estimated value of any in-kind contributions; and

(4) Explain the basis of the estimated value.

**§ 86.34 What if a partner is not willing or able to follow through on a match commitment?**

(a) You are responsible for all activity and funding commitments in the grant application. If you discover that a partner is not willing or able to meet a grant commitment, you must notify us that you will either:

(1) Replace the original partner with another partner who will provide the action or the funds to fulfill the commitment as stated in the grant application; or

(2) Give either cash or an in-kind contribution(s) that at least equals the value and achieves the same objective as the partner’s original commitment of cash or in-kind contribution.

(b) If a partner is not willing or able to meet a match commitment and you do not have enough money to complete the BIG-funded facility as proposed, you must follow the requirements at §§ 86.73 and 86.100.

**Subpart D—Application for a Grant**

**§ 86.40 What are the differences between BIG Standard grants and BIG Select grants?**

COMPARISON OF BIG STANDARD AND SELECT GRANTS

	BIG Standard	BIG Select
(a) What actions are eligible for funding?	Those listed at § 86.11. ....	Those listed at § 86.11 except § 86.11(a)(6).
(b) What is the amount of Federal funds I can receive in one BIG grant?	Each year we make at least \$100,000 available to each State. States may request any amount up to the annual funding limit. We decide annual funding limits based on the total funds available for BIG. We announce each year in <a href="http://www.grants.gov">http://www.grants.gov</a> the amount of Federal funds you can receive..	We may limit funding to a maximum award of \$1.5 million. We will publish a recommended maximum grant request in the annual RFA.

## COMPARISON OF BIG STANDARD AND SELECT GRANTS—Continued

	BIG Standard	BIG Select
(c) How many grant applications can I submit each year?	Each State may only request up to the annual funding limit each year. You may do this by sending in one grant application with one project or multiple projects. The Regional WSFR Office may ask a State with multiple projects to prepare a separate grant request for each project, as long as the total of all projects does not exceed the annual funding limit.	No limit.
(d) How does the Service choose grant applications for funding?	We fund a single grant or multiple grants per State up to the maximum annual amount available..	We score each grant application according to ranking criteria at §86.51. We recommend applications, based on scores and available funding, to the Director. The Director selects the applications for award.

**§ 86.41 How do I apply for a grant?**

(a) If you want to be a subgrantee, you must send an application to the State agency that manages BIG following the rules given by your State. We award BIG funds only to States.

(b) States must submit a grant application through <http://www.grants.gov>, Catalog of Federal Domestic Assistance (CFDA) 15.622.

(c) The director of your State agency or an authorized representative must certify all standard forms submitted in the grant application process in the format designated by the Service.

(d) If your State supports Executive Order 12372, Intergovernmental Review of Federal Programs, you must send copies of all standard forms and supporting information to the State Clearinghouse or Single Point of Contact before sending it to <http://www.grants.gov>.

**§ 86.42 What do I have to include in a grant application?**

(a) When you submit a BIG grant application, you must include standard forms, budget information, a BIG project statement, documents, maps, images, and other information asked for in the annual RFA at <http://www.grants.gov>, CFDA 15.622, in the format we ask for.

(b) After we review your application, any responses to our requests to give more information or to clarify information become part of the application.

(c) After we award your grant, you must include supporting documentation explaining how the proposed work complies with applicable laws and regulations and tell us the permits, evaluations, and reviews you will need to obtain in order to complete the project.

(d) Misrepresentations of the information you give in an application may be a reason for us to:

(1) Reject your application; or

(2) Terminate your grant and require repayment of Federal funds awarded.

**§ 86.43 What information must I put in the project statement?**

You must put the following information in the project statement:

(a) *Need.* Explain why the project is necessary and how it fulfills the purpose of BIG. To support the need for the project you must:

(1) For construction projects, describe existing facilities available for eligible vessels near the proposed project. Support your description by including images that show existing structures and facilities, the proposed BIG-funded facility, and relevant details, such as the number of transient slips and the amenities for eligible users.

(2) Describe how the proposed project fills a need or offers a benefit not offered by the existing facilities identified at paragraph (a)(1) of this section.

(3) Give information to support the number of transient boats expected to use the area of the proposed project and show that the existing facilities identified at paragraph (a)(1) of this section are not enough to support them.

(b) *Purpose.* State the desired outcome of the project in general or abstract terms, but in such a way that we can review the information and apply it to the competitive review.

(c) *Objectives.* Identify specific, measurable, attainable, relevant, and time-bound outputs that will contribute to the need you are addressing.

(d) *Results or benefits expected.*

(1) Describe each capital improvement, service, or other product that will result from the project, and its purpose.

(2) Describe how the structures, services, or other products will:

(i) Satisfy the need described at paragraph (a) of this section; and

(ii) Benefit eligible users.

(e) *Approach.* (1) Describe the methods used to achieve the objectives.

Show that you will use sound design and proper procedures. Include enough information for us to make a preliminary assessment of compliance needs.

(2) Give the name, contact information, qualifications, and role of each known contractor or subgrantee.

(3) Explain how you will exercise control to ensure the BIG-funded facility continues to fulfill its authorized purpose during the useful life of the BIG-funded project.

(f) *Useful life.* State the useful life in years of each capital improvement for the proposed project. Explain how you determined the useful life of each capital improvement. You must reference a generally accepted method used to determine useful life of a capital improvement. See §§ 86.74 and 86.75.

(g) *Geographic location.* (1) State the location using Global Positioning System (GPS) coordinates in the format we ask for in the annual RFA.

(2) State the local jurisdiction (county, town, city, or equivalent), street address, and water body associated with the project.

(3) Include maps in your application, such as:

(i) A small State map that shows the general location of the project;

(ii) A local map that shows the facility location and the nearest community, public road, and navigable water body; and

(iii) Any other map that supports the information in the project statement.

(h) *Project officer.* Applicant enters only the term *Federal Aid Coordinator* under this heading if the Federal Aid Coordinator for a State fish and wildlife agency will be the project officer. If the Federal Aid Coordinator will not be the project officer, applicant provides the name, title, work address, work email, and work telephone number of the person who will be the contact person. The project officer should have a detailed knowledge of the project.

Applicant states whether the project officer has the authority to sign requests for prior approval, project reports, and other communications committing the grantee to a course of action.

(i) *Budget narrative.* Provide costs and other information sufficient to show that the project will have benefits that justify the costs. You must use reasonably available resources to develop accurate cost estimates for your project to insure the successful completion of your BIG-funded facility. You must state how you will allocate costs between eligible and ineligible users following the requirements at § 86.19 and explain the method used to allocate costs equitably between anticipated benefits for eligible and ineligible users. State sources of cash and in-kind values you include in the project budget. Describe any item that has cost limits or requires our approval and estimate its cost or value. Examples are dredging and preaward costs.

(j) *Match and other partner contributions.* See §§ 86.32 and 86.33 for required information.

(k) *Fees and program income, if applicable.* (1) See § 86.90 for the information that you must include on the estimated fees that an operator will charge during the useful life of the BIG-funded facility.

(2) See §§ 86.78 and 86.79 for an explanation of how you may use program income. If you decide that your project is likely to generate program income during the grant period, you must:

(i) Estimate the amount of program income that the project is likely to generate; and

(ii) Indicate how you will apply program income to Federal and non-Federal outlays.

(l) *Relationship with other grants.* Describe the relationship between the BIG-funded facility and other relevant work funded by Federal and non-Federal grants that is planned, expected, or in progress.

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

(n) *General.* (1) If you seek a waiver based on § 86.13(b), you must include the request and supporting information in the grant application following the instructions given in the annual RFA.

(i) We will review your request and will grant the waiver if you present circumstances that show:

(A) A hardship due to lack of utilities or other difficult obstacles, such as a BIG-funded facility on an island with no power or a remote location where the equipment cannot be serviced or maintained regularly;

(B) State or local law does not allow septic-waste disposal facilities at the location;

(C) The State is in the process of applying for a CVA grant for the same award year as the BIG grant to install a pumpout station as part of the BIG-funded facility; or

(D) The State has received a CVA grant and will install a pumpout station as part of the BIG-funded facility on or before the time the BIG-funded facility is completed.

(ii) When we waive the pumpout requirement, the BIG-funded facility must inform boaters:

(A) They are required to properly treat or dispose of septic waste; and

(B) Where they can find information that will direct them to other nearby pumpout stations.

(iii) If we deny your request, we will follow the process described in the annual RFA.

(2) If you seek an allowance based on § 86.13(c), you must include supporting information in the grant application.

(3) Include any other description or documents we ask for in the annual RFA or that you need to support your proposed project.

(o) *Ranking Criteria.* In BIG Select applications, you must respond to each of the questions found in the ranking criteria at § 86.51. We publish the questions for these criteria in the annual RFA. In answering each question, you must include the information at §§ 86.52 through 86.60 and any added information we ask for in the annual RFA.

**§ 86.44 What if I need more than the maximum Federal share and required match to complete my BIG-funded project?**

(a) If you plan a BIG project that you cannot complete with the recommended maximum Federal award and the required match, you may:

(1) Find other sources of funds to complete the project;

(2) Divide your larger project into smaller, distinct, stand-alone projects and apply for more than one BIG grant, either in the same year or in different years. One project cannot depend on the completion of another; or

(3) Combine BIG Standard and BIG Select funding to complete a project at a single location.

(b) If you cannot complete a BIG project with the amount of the Federal award received and the required match, you may:

(1) Find other sources of funds to complete the project; or

(2) Consider if BIG Standard funds are available to help complete the project. This is not a guaranteed option.

(c) For BIG Select grants, we review and rank each application individually, and each must compete with other applications for the same award year.

(d) If you receive a BIG grant for one of your applications, we do not give preference to other applications you submit.

**§ 86.45 If the Service does not select my grant application for funding, can I apply for the same project the following year?**

If we do not select your BIG grant application for funding, you can apply for the same project the following year or in later years.

**§ 86.46 What changes can I make in a grant application after I submit it?**

(a) After you submit your grant application, you can add information or change up to the date and time that the applications are due.

(b) After the due date of the applications and before we announce successful applicants, you can add information or change your application only if it does not affect the scope of the project and would not affect the score of the application. If part of an application contains actions that we cannot fund with a BIG grant, we will decide on a case-by-case basis whether we will consider the rest of the application for funding. During this period we may ask you to change the useful life following the requirements at § 86.75 or allocating costs between users of the BIG project following the requirements at § 86.19.

(c) You must inform us of any incorrect information in an application as soon as you discover it, either before or after receiving an award.

(d) We may ask you at any point in the application process to:

(1) Clarify, correct, explain, or supplement data and information in the application;

(2) Justify the eligibility of a proposed action; or

(3) Justify the allowability of proposed costs or in-kind contributions.

(e) If you do not respond fully to our questions at paragraph (d) in this section in the time allotted, we will not consider your application for funding.

(f) If funding is limited and we cannot fully fund your project, we may tell you the amount of available funds and ask you if you wish to adjust your application to reduce the amount of funding requested.

**Subpart E—Project Selection**

**§ 86.50 Who ranks BIG Select grant applications?**

We assemble a panel of our professional staff to review, rank, and recommend grant applications for

funding to the Director. This panel may include representatives of our Regional Offices, with Headquarters staff overseeing the review, ranking, and recommendation process. Following the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), the Director may invite nongovernmental

organizations and other non-Federal entities to take part in an advisory panel to make recommendations to the Director.

**§ 86.51 What criteria does the Service use to evaluate BIG Select applications?**

Our panel of professional staff and any invited participants evaluate BIG

Select applications using the ranking criteria in the following table and assign points within the range for each criterion. We may give added information to guide applicants regarding these criteria in the annual RFA on <http://www.grants.gov>.

Ranking criteria	Points
(a) Need, Access, and Cost Efficiency .....	20 total possible points.
(1) Will the proposed boating infrastructure meet a need for more or improved facilities? .....	0–10.
(2) Will eligible users receive benefits from the proposed boating infrastructure that justify the cost of the project? .....	0–7.
(3) Will the proposed boating infrastructure accommodate boater access to significant destinations and services that support transient boater travel? .....	0–3.
(b) Match and Partnerships .....	10 total possible points.
(1) Will the proposed project include private, local, or State funds greater than the required minimum match? ....	0–7.
(2) Will the proposed project include in-kind contributions by private or public partners that contribute to the project objectives? .....	0–3.
(c) Innovation .....	6 total possible points.
(1) Will the proposed project include physical components, technology, or techniques that improve eligible-user access? .....	0–3.
(2) Will the proposed project include innovative physical components, technology, or techniques that improve the BIG-funded project? .....	0–2.
(3) Has the facility where the project is located demonstrated commitment to environmental compliance, sustainability, and stewardship and been officially recognized by an agency or organization? .....	0–1.
(d) Total possible points .....	36.

**§ 86.52 What does the Service consider when evaluating a project on the need for more or improved boating infrastructure?**

In evaluating a proposed project under the criterion at § 86.51(a)(1) on the need for more or improved boating infrastructure facilities, we consider whether the project will:

(a) Construct new boating infrastructure in an area that lacks these facilities, but where eligible vessels now travel or would travel if the project were completed;

(b) Renovate a facility to:  
 (1) Improve its physical condition;  
 (2) Follow local building codes;  
 (3) Improve generally accepted safety standards; or

(4) Adapt it to a new purpose for which there is a demonstrated need;  
 (c) Create accessibility for eligible vessels by reducing wave action, increasing depth, or making other physical improvements;

(d) Expand an existing marina or mooring site that is unable to accommodate current or projected demand by eligible vessels; or

(e) Make other improvements to accommodate a demonstrated eligible need.

**§ 86.53 What factors does the Service consider for benefits to eligible users that justify the cost?**

(a) We consider these factors in evaluating a proposed project under the criterion at § 86.51(a)(2) on benefits for eligible users that justify the cost of the project:

(1) Total cost of the project;  
 (2) Total benefits available to eligible users upon completion of the project; and

(3) Reliability of the data and information used to decide benefits relative to costs.

(b) You must support the benefits available to eligible users by clearly listing and discussing in the project statement how they relate to *Need* (see § 86.43(a)).

(c) We will consider the cost relevant to all benefits to eligible users supported in the application. We may consider the availability of preexisting structures and amenities, but will balance this factor with considering the overall need for the project.

(d) For example, two projects each cost \$2 million. One is for new construction at a location with no prior eligible user access. The project statement describes the needs the BIG-funded project will fulfill as:

(1) Added access where none exists,  
 (2) Added services where none exists, and

(3) New access to a popular boating resource or attraction. The second proposed project is at an existing location, and the project statement describes the need for more slips due to a seasonal event that attracts more boaters than the marina can accommodate. The first project gives more benefits than the second project for the same amount of money, so for this criterion the first project will

receive more points than the second project.

**§ 86.54 What does the Service consider when evaluating a project on boater access to significant destinations and services that support transient boater travel?**

In evaluating a proposed project under the criterion at § 86.51(a)(3) on boater access, we consider:

(a) The degree of access that the BIG-funded facility will give;

(b) The activity, event, or landmark that makes the BIG-funded facility a destination, how well known the attraction is, how long it is available, and how likely it is to attract boaters to the facility; and

(c) The availability of services near the BIG-funded facility, how easily boaters can access them, and how well they serve the needs of eligible users.

**§ 86.55 What does the Service consider as a partner for the purposes of these ranking criteria?**

(a) The following may qualify as partners for purposes of the ranking criterion:

(1) A non-Federal entity, including a subgrantee.

(2) A Federal agency other than the Service.

(b) The partner must commit to a financial contribution, an in-kind contribution, or to take a voluntary action during the grant period.

(c) In-kind contributions or actions must contribute directly and substantively to the completion of the

project. You must explain in the grant application how it is necessary to complete the project.

(d) A governmental entity may be a partner unless its contribution to completing the project is a mandatory duty of the agency, such as reviewing a permit application. A voluntary action by a government agency or employee is a partnership.

**§ 86.56 What does the Service consider when evaluating a project that includes more than the minimum match?**

(a) When we evaluate a project under the criterion for match at § 86.51(b)(1), we consider cash above the required 25 percent match that would reduce the percent Federal share of project costs.

(b) The contribution may be from a State, a single source, or any combination of sources.

(c) We will award points as follows:

Percent cash match	Points
26–29 .....	1
30–39 .....	2
40–49 .....	3
50–59 .....	4
60–69 .....	5
70–79 .....	6
80 or higher .....	7

**§ 86.57 What does the Service consider when evaluating in-kind contributions that a partner brings to a project?**

(a) We consider the non-cash, in-kind contribution that a partner brings to the project and the significance of each action to the objectives and success of the project in evaluating a project under the criterion at § 86.51(b)(2).

(b) To qualify, a partner’s contribution must be necessary to accomplish the project objectives. The grant application must state specifically how the partner’s contribution helps construct, renovate, or maintain the project or otherwise contributes to the success of the project.

(c) In-kind contributions from partners need not exceed the 25 percent required match.

**§ 86.58 What does the Service consider when evaluating a project for a physical component, technology, or technique that will improve eligible user access?**

(a) In evaluating a proposed project under the criterion at § 85.51(c)(1), we consider whether the project will increase the availability of the BIG-funded facility for eligible users or improve eligible boater access to the facility by:

- (1) Using a new technology or technique; or
- (2) Applying a new use of an existing technology or technique.

(b) We will not award points for following access standards set by law.

(c) We will consider when you choose to complete the project using an optional or advanced technology or technique that will improve access, or if you go beyond the minimum requirements.

(d) To receive consideration for this criterion, you must describe in the grant application the current standard and how you will exceed the standard.

**§ 86.59 What does the Service consider when evaluating a project for innovative physical components, technology, or techniques that improve the BIG project?**

(a) In evaluating a proposed project under the criterion at § 86.51(c)(2), we consider if the project will include physical components, technology, or techniques that are:

- (1) Newly available; or
- (2) Repurposed in a unique way.

(b) Examples of the type of innovations we will consider are components, technology, or techniques that:

- (1) Extend the useful life of the BIG-funded project;
- (2) Are designed to allow the operator to save costs, decrease maintenance, or improve operation;
- (3) Are designed to improve BIG-eligible services or amenities;
- (4) During construction, are used specifically to reduce negative environmental impacts; or
- (5) Reduce the carbon footprint of the BIG-funded facility.

**§ 86.60 What does the Service consider when evaluating a project for demonstrating a commitment to environmental compliance, sustainability, and stewardship?**

(a) In evaluating a project under the criterion at § 86.51(c)(3), we consider if the application documents that the facility where the BIG-funded project is located has received official recognition for its voluntary commitment to environmental compliance, sustainability, and stewardship by exceeding regulatory requirements.

(b) The official recognition must be part of a voluntary, established program administered by a Federal or State agency, local governmental agency, Sea Grant or equivalent entity, or a State or Regional marina organization.

(c) The established program must require the facility to use management and operational techniques and practices that will ensure it will continue to meet the high standards of the program and must contain a component that requires periodic review.

(d) The facility must have met the criteria required by the established program and received official

recognition at the time of the application.

**§ 86.61 What happens after the Director approves projects for funding?**

(a) After the Director approves projects for funding, we notify successful applicants of the:

- (1) Amount of the grant;
- (2) Documents or clarifications required, including those required for compliance with applicable laws and regulations;
- (3) Approvals needed and format for processing approvals; and
- (4) Time constraints.

(b) After we receive the required forms and documents, we approve the project and the terms of the grant and obligate the grant in the Federal financial management system.

(c) BIG funds are available for Federal obligation for 3 Federal fiscal years, starting October 1 of the fiscal year that funds become available for award. We do not make a Federal obligation until you meet the grant requirements. Funds not obligated within 3 fiscal years are no longer available.

**Subpart F—Grant Administration**

**§ 86.70 What standards must I follow when constructing a BIG-funded facility?**

(a) You must design and build a BIG-funded facility so that each structure meets Federal, State, and local standards.

(b) A Region or a State may require you to have plans reviewed by a subject-matter expert if there are questions as to the safety, structural stability, durability, or other construction concerns for projects in excess of \$100,000.

**§ 86.71 How much time do I have to complete the work funded by a BIG grant?**

(a) We must obligate a grant within 3 Federal fiscal years of the beginning of the Federal fiscal award year.

(b) We assign a grant period that is no longer than 3 years from the grant start date. (c) You must complete your project within the grant period unless you ask for and receive a grant extension.

**§ 86.72 What if I cannot complete the project during the grant period?**

(a) If you cannot complete the project during the 3-year grant period, you may ask us for an extension. Your request must be in writing, and we must receive it before the end of the original grant period.

(b) An extension is considered a revision of a grant and must follow guidance at § 86.101.

(c) We will approve an extension up to 2 years if your request:

(1) Describes in detail the work you have completed and the work that you plan to complete during the extension;

(2) Explains the reasons for delay;

(3) Includes a report on the status of the project budget; and

(4) Includes assurance that you have met or will meet all other terms and conditions of the grant.

(d) If you cannot complete the project during the extension period, you may ask us for a second extension. Your request must be in writing, and we must receive it before the end of the first extension. Your request for a second extension must include all of the information required at paragraph (b) of this section and, it must show that:

(1) The extension is justified;

(2) The delay in completion is not due to inaction, poor planning, or mismanagement; and

(3) You will achieve the project objectives by the end of the second extension.

(e) We require that your Regional Director and the Service's Assistant Director for the Wildlife and Sport Fish Restoration Program approve requests to extend a project beyond 5 years of the grant start date.

**§ 86.73 What if I need more funds to finish a project?**

(a) If you need more money to finish a BIG Select project, you must:

(1) Complete the project with funds from non-Federal sources; or

(2) Ask for approval to revise the grant by following the requirements in subpart H of this part.

(b) If you need more money to finish a BIG Standard project, you may:

(1) Complete the project with funds from non-Federal sources;

(2) Complete the project with funds from another annual BIG Standard grant; or

(3) Ask for approval to revise the grant by following the requirements in subpart H of this part.

(c) If you do not complete your project, we follow guidance for noncompliance found in 43 CFR 12.83 and 12.962, and any other regulations that may apply.

**§ 86.74 How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?**

(a) You must operate and maintain a BIG-funded facility for its authorized purpose for its useful life. See §§ 86.3, 86.43(f), and 86.75.

(b) Catastrophic events may shorten the identified useful life of a BIG-funded facility. If it is not feasible or is cost-prohibitive to repair or replace the BIG-

funded facility, you may ask to revise the grant to reduce the useful-life obligation.

(c) You are responsible for the costs of the operation and maintenance of the BIG-funded facility for its useful life, except as allowed in § 86.14(b).

**§ 86.75 How do I determine the useful life of a BIG-funded facility?**

Before we approve your grant, you must propose and show the useful life of the BIG-funded facility.

(a) You must determine the useful life of a BIG-funded facility by:

(1) Identifying each capital improvement for your project. The capital improvement must be a structure or system that meets the definition at § 86.3 and serves an identified purpose, such as: A building; dock system; breakwater; seawall; basin, as altered by dredging; fuel station; or pumpout system.

(2) Showing the expected useful life and how you determined the useful life for each capital improvement.

(3) Using a generally accepted method to determine the useful life of a capital improvement.

(4) Determining useful life based on the functional purpose of the capital improvement. For example, if a dock system has a concrete base that will last at least 50 years, but you expect the overall useful life of the dock system to be 20 years, use 20 years.

(b) A BIG-funded facility may have several useful-life components. For example, a single grant may include a fuel dock system with a useful life of 15 years and a breakwater with a useful life of 50 years.

(c) You may include all components of a BIG-funded facility into a single useful life if you use the process in paragraph (a) of this section and determine the useful life for the total project based on the longest useful life of any structure or system in the grant.

(d) We may reject your grant application if you do not adequately justify the useful life of each capital improvement.

(e) If you propose a physical component, technology, or technique under the criterion in § 86.51(c) that will increase the useful life, you must describe in your application:

(1) The expected increase in useful life; and

(2) The sources of information that support your determination of an extended useful life.

(f) If we find before we award the grant that you are unable to support your determination of an extended useful life, we will reduce your score and adjust the ranking of applications accordingly.

(g) We may consult with you and any subgrantees on the proposed useful life of any capital improvement in the BIG project at any time between receiving your application and our approval of the grant. Any changes you make to useful life after we receive your application you must include in the project statement.

**§ 86.76 How should I credit the BIG program?**

(a) You must use the Sport Fish Restoration logo to show the source of BIG funding:



(b) Examples of language you may use to credit the BIG program are:

(1) A Sport Fish Restoration—Boating Infrastructure Grant funded this facility thanks to your purchase of fishing equipment and motorboat fuel.

(2) A Sport Fish Restoration—Boating Infrastructure Grant is funding this construction thanks to your purchase of fishing equipment and motorboat fuel.

(3) A Sport Fish Restoration—Boating Infrastructure Grant funded this pamphlet thanks to your purchase of fishing equipment and motorboat fuel.

(c) States may ask for approval of alternative language to follow ordinances and restrictions for posting information where the project is located.

**§ 86.77 How can I use the logo for the BIG program?**

(a) You must use the Sport Fish Restoration logo on:

(1) BIG-funded facilities;

(2) Printed or Web-based material or other visual representations of BIG projects or accomplishments; and

(3) BIG-funded or BIG-related educational and informational material.

(b) You must require a subgrantee to display the logo in the places and on materials described at paragraph (a) of this section.

(c) Businesses that contribute to or receive from the Trust Fund that we describe in § 86.30 may display the logo in conjunction with its associated products or projects.

(d) The Director or Regional Director may authorize other persons, organizations, agencies, or governments that are not grant recipients to use the

logo for purposes related to the BIG program by entering into a written agreement with the user. The user must state how it intends to use the logo, to what it will attach the logo, and the relationship to the BIG program.

(e) The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the logo as to the quality, utility, suitability, or safety of any product, service, or project associated with the logo.

(f) The user of the logo 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 logo, 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 logo.

(g) No one may use any part of the logo in any other manner unless the Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director authorizes it. Unauthorized use of the logo is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

#### **§ 86.78 How must I treat program income?**

(a) You must follow the applicable program income requirements at 43 CFR 12.65 or 12.924 if you earn program income during the grant period.

(b) We authorize the following options in the regulations cited in paragraph (a) of this section:

(1) You may deduct the costs of generating program income from the gross income if you did not charge these costs to the grant. An example of costs that may qualify for deduction is maintenance of the BIG-funded facility that generated the program income.

(2) Use the addition alternative for program income only if:

(i) You describe the source and amount of program income in the project statement according to § 86.43(k)(2); and

(ii) We approve your proposed use of the program income, which must be for one or more of the actions eligible for funding in § 86.11.

(3) Use the deduction alternative for program income that does not qualify under paragraph (b)(2) of this section.

(c) We do not authorize the cost-sharing or matching alternative in the regulations cited in paragraph (a) of this section.

(d) For BIG Standard grants with multiple projects that you may complete

at different times, we recommend that States seek our advice on how to apply for and manage grants to reduce unintended program income.

#### **§ 86.79 How must I treat income earned after the grant period?**

You are not accountable to us for income earned by you or a subgrantee after the grant period as a result of the grant except as required at §§ 86.90 and 86.91.

#### **Subpart G—Facility Operations and Maintenance**

#### **§ 86.90 How much must an operator of a BIG-funded facility charge for using the facility?**

(a) An operator of a BIG-funded facility must charge reasonable fees for using the facility based on prevailing rates at other publicly and privately owned local facilities offering a similar service or amenity.

(b) If other publicly and privately owned local facilities offer BIG-funded services or amenities free of charge, then a fee is not required.

(c) If the BIG-funded facility has a State or locally imposed fee structure, we will accept the mandated fee structure.

(d) You must state proposed fees and the basis for the fees in your grant application. The information you give may be in any format that clearly shows how you arrived at an equitable amount.

#### **§ 86.91 May an operator of a BIG-funded facility increase or decrease user fees during its useful life?**

(a) An operator of a BIG-funded facility may increase or decrease user fees during its useful life without our prior approval if they are consistent with prevailing market rates. The grantee may impose separate restrictions on an operator or subgrantee.

(b) If the grantee or we discover that fees charged by the operator of a BIG-funded facility do not follow § 86.90 and the facility unfairly competes with other marinas or makes excessive profits, the grantee must notify the operator in writing. The operator must respond to the notice in writing, and either justify or correct the fee schedule. If the operator justifies the fee schedule, the grantee and we must allow reasonable business decisions and only call for a change in the fee schedule if the operator is unable to show that the increase or decrease is reasonable.

#### **§ 86.92 Must an operator of a BIG-funded facility allow public access?**

(a) *Public access* in this part means access by eligible users, for eligible activities, or by other users for other

activities that either support the purpose of the BIG-funded project or do not interfere with the purpose of the BIG-funded project. An operator of a BIG-funded facility must not allow activities that interfere with the purpose of the project.

(b) An operator of a BIG-funded facility must allow public access to any part of the BIG-funded facility during its useful life, except as described at paragraphs (e) and (f) of this section.

(c) An operator of a BIG-funded facility must allow reasonable public access to other parts of the facility that would normally be open to the public and must not limit access in any way that discriminates against any member of the public.

(d) The site of a BIG-funded facility must be:

- (1) Accessible to the public; and
- (2) Open for reasonable periods.

(e) An operator may temporarily limit public access to all or part of the BIG-funded facility due to an emergency, repairs, construction, or as a safety precaution.

(f) An operator may limit public access when seasonally closed for business.

#### **§ 86.93 May I prohibit overnight use by eligible vessels at a BIG-funded facility?**

You may prohibit overnight use at a BIG-funded facility if you state in the approved grant application that the facility is only for day use. If after we award the grant you wish to change to day use only, you must follow the requirements in subpart H of this part.

#### **§ 86.94 Must I give information to eligible users and the public about BIG-funded facilities?**

(a) You must give clear information using signs or other methods at BIG-funded facilities that:

(1) Direct eligible users to the BIG-funded facility;

(2) Include restrictions and operating periods or direct boaters where to find the information; and

(3) Restrict ineligible use at any part of the BIG-funded facility designated only for eligible use.

(i) You do not need to notify facility users of any restrictions for shared-use areas and amenities that you have already decided have predictable mixed use and you have allocated following § 86.19.

(ii) You must notify facility users of benefits that you decide are only for eligible users, such as boat slips and moorage.

(b) You may use new technology and methods of communication to inform boaters.

**Subpart H—Revisions and Appeals****§ 86.100 Can I change the information in a grant application after I receive a grant?**

(a) To change information in a grant application after you receive a grant, you must propose a revision of the grant and we must approve it.

(b) We may approve a revision if:

(1) For BIG Standard and BIG Select awards, the revision:

- (i) Would not significantly decrease the benefits of the project; and
  - (ii) Would not increase Federal funds.
- (2) For BIG Select awards, the revision:

(i) Involves process, materials, logistics, or other items that have no significant effect on the factors used to decide score; and

(ii) Maintains an equal or greater percentage of the non-Federal matching share of the total BIG project costs.

(c) We may approve a decrease in the Federal funds requested in the application subject to paragraph (b) of this section.

(d) The Regional WSFR Office must follow its own procedures for review and approval of any changes to a BIG Standard grant.

(e) The Regional WSFR Office must receive approval from the WSFR Headquarters Office for any changes to a BIG Select grant that involves cost or affects project benefits.

**§ 86.101 How do I ask for a revision of a grant?**

(a) You must ask for a revision of a grant by sending us the following documents:

(1) The standard form used to apply for Federal assistance, which is available at <http://www.grants.gov>. You must use this form to update or ask for a change in the information that you included in the approved grant application. The authorized representative of your agency must certify this form.

(2) A statement attached to the standard form at paragraph (a)(1) of this section that explains:

(i) The proposed changes and how the revision would affect the information that you submitted with the original grant application; and

(ii) Why the revision is necessary.

(b) You must send any revision of the scope to your State Clearinghouse or Single Point of Contact if your State

supports this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

**§ 86.102 Can I appeal a decision?**

You can appeal the Director's, Assistant Director's, or Regional Director's decision on any matter subject to this part.

(a) You must send the appeal to the Director within 30 days of the date that the Director, Assistant Director, or Regional Director mails or otherwise informs you of a decision.

(b) You may appeal the Director's decision under paragraph (a) of this section to the Secretary within 30 days of the date that the Director mailed the decision. An appeal to the Secretary must follow procedures in 43 CFR part 4, subpart G, "Special Rules Applicable to other Appeals and Hearings".

**§ 86.103 Can the Director authorize an exception to this part?**

The Director can authorize an exception to any requirement of this part that is not explicitly required by law if it does not conflict with other laws or regulations or the policies of the Department of the Interior or the OMB.

**Subpart I—Information Collection****§ 86.110 What are the information-collection requirements of this part?**

(a) This part requires each applicant in the BIG program to:

(1) Give us information on Standard Form 424, Application for Federal Assistance (OMB control number 4040-0004).

(2) Certify on Standard Form 424 B, Assurances for Nonconstruction Programs, or Standard Form 424 D, Assurances for Construction Programs, or both if applicable, (OMB control numbers 4040-0007 and 4040-0009) that it:

(i) Has the authority to apply for the grant;

(ii) Has the ability to complete the project; and

(iii) Will follow the laws, regulations, and policies applicable to construction projects, nonconstruction projects, or both.

(3) Submitting on Standard Form 424 A, Budget Information for Non-Construction Programs, or Standard Form 424 C, Budget Information for Construction Programs, or both if applicable, (OMB control numbers

4040-0006 and 4040-0008) costs associated with the project and the categories for the costs.

(4) Submitting on Standard Form SF-LLL Disclosure of Lobbying Activities and Standard Form SF-LLLA Disclosure of Lobbying Activities Continuation Sheet, as appropriate, to disclose lobbying activities pursuant to 31 U.S.C. 1352.

(5) Complete a project statement that describes the need, objectives, results and benefits expected, approach, location, cost explanation, and other information that shows that the project is eligible under the authorizing legislation and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB control number 1018-0109).

(b) This part requires each grantee in the BIG program to:

(1) Update information given to the Service in an earlier approved application (OMB control number 1018-0109).

(2) Report on a Standard Form 425, Federal Financial Report, on the status of Federal grant funds and any program income earned (OMB control number 0348-0061).

(3) Report on progress in completing the grant-funded project (OMB control number 1018-0109).

(4) Follow any future requirements for reporting financial and performance actions of a grant using added forms or formats for inputting information.

(c) The authorizations for information collection under this part are in OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments," and in 43 CFR part 12, subpart C, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(d) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, MS 2042-PDM, Arlington, VA 22203.

Dated: April 3, 2014.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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