



**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 86**

**[Docket No. FWS-R9-WSR-2011-0083]**

**[FVWF941009000007B-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 are updating the regulations to reflect changes in policy and practice that have occurred since the program's inception in 1998. We are also responding to recommendations received from States carrying out the program, a Federal advisory committee, and organizations with an interest in the program. The proposed rule will clarify the current program requirements, adjust the ranking criteria for competitive awards to correspond to the priorities in the Sportfishing and Boating Safety Act of 1998, organize questions and answers to reflect the life cycle of the grant, and reword and reformat regulations following Federal plain language policy and current rulemaking guidance.

**DATES:** We will accept comments received or postmarked on or before [Insert date 60 days after the date of publication in the FEDERAL REGISTER].

**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 e-mail or faxes. All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional 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**

Boating is a national pastime recognized for decades as a recreational activity that also has a strong economic impact. According to the National Marine Manufacturer's Association Recreational Boating Statistical Abstract, 2009, boating contributes \$30.8 billion in annual sales and services to the U.S. economy. Studies of recreational boaters have shown an increase in the number of boats at least 26 feet long that stay in the water for the entire season and travel throughout the country's waterways. These boaters contribute an estimated 16 percent of the overall boating impact to the economy, over \$5 billion annually. The activities of transient recreational boats at least 26 feet long call for specific accommodations and services for protecting the environment and enjoyment by the public. The purpose of the Boating Infrastructure Grant Program (BIG) is to assist States in addressing the need for more and better facilities to accommodate these boaters. A recent economic study conducted by the U.S. Fish and Wildlife Service (Service) estimates the annual positive impact of the BIG Program in 2009 to be \$34.28 million. This impact reflects the availability of the grants themselves as well as the jobs created to construct facilities, increased boater traffic, positive economic impact due to more and easily accessible facilities, overall improvement to the infrastructure of boating-access facilities, and connections to communities throughout the United States.

Testimony at a congressional hearing in February 1997 introduced awareness of the need for more and better boating access and facilities for recreational boats at least 26 feet long that owners put into the water for a season and travel from place to place. The testimony and further research indicated too few, inadequate, or poorly located facilities available to allow these boaters to travel the United States navigable waters and access

amenities such as dock space, restrooms, showers, fuel, pumpouts, and harbors of safe refuge, and to link boaters to cultural, historic, scenic, and natural resources of the United States.

The Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g-1) amended the Dingell-Johnson Sport Fish Restoration Act. This amendment established a Federal grant program to States for developing and maintaining facilities for transient nontrailerable recreational vessels at least 26 feet long. These vessels must be operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure. The priorities in awarding grants are constructing, renovating, and maintaining facilities; providing for public and private partnership efforts to develop, maintain, and operate facilities; and including new and emerging techniques, ideas, products, and concepts to increase and improve facilities and services.

The Service's Wildlife and Sport Fish Restoration (WSFR) Program and the partnerships it has fostered manage multiple grant programs. Among them is BIG, which offers grants to States to build facilities for eligible transient recreational vessels that support boating, travel, local economies, and environmental improvement, and enhance awareness and public satisfaction.

The Service published the BIG final rule in the **Federal Register** [66 FR 5282] on January 18, 2001. The Catalog of Federal Domestic Assistance (CFDA) describes the program at 15.622.

In 2003, the Director of the Service asked the Sport Fishing and Boating Partnership Council (Council), an advisory group established according to the requirements of the Federal Advisory Committee Act (FACA), to undertake a review of BIG and offer

recommendations for improvement. The Council issued its report in June 2005 and offered recommendations for improvement in program administration; project application, review and selection; awareness and participation; and project execution and reporting. We have considered the issues and recommendations identified in the Council report. This proposed rule includes changes based on our response to advice offered by the Council.

We propose to incorporate changes to the rule based on Service Manual chapter 522 FW 16, "Preagreement Costs," Oct. 13, 2005. The chapter establishes conditions under which a grantee may incur costs before the grant start date. It incorporates recommendations of a joint task force of Federal and State officials.

We will make changes to the rule based on Pub. L. 111-274, "Plain Writing Act of 2010" (October 13, 2010). This Act requires that we use plain language in all proposed and final rulemaking documents published in the **Federal Register**.

The Sportfishing and Boating Safety Act of 1998 required the Service to develop a National Framework for States to collect information on existing facilities and the current state of boating that would allow the Service and States to develop a strategy to address areas of need. States were to complete a survey, based on the National Framework, and the Service would use the information to develop a Comprehensive National Assessment. The Secretary of the Interior adopted the National Framework for Survey of Boating Access Needs through a **Federal Register** notice [65 FR 58284] on September 28, 2000. The Service proposal to implement the survey allowed States to collect data through several methods and allowed States to choose the method they used. The Office of Management and Budget (OMB) rejected the proposal, citing concerns that the variety of

data collection methods would result in the inability of the Service to compile all of the States' information consistently. Funding constraints have prevented the Service from developing standardized collection methods and reporting of this information for States. The current rule contains detailed information for implementing the survey and reporting. We propose to remove these sections from the proposed rule. We will give guidance for the National Framework, State survey, and Comprehensive National Assessment in the future should the Service receive the resources needed to pursue the project.

The current rule contains criteria allowing projects to receive points for completing a State survey based on the National Framework. As we propose to remove all references to the National Framework and State survey, we also propose to remove the criterion allowing projects to receive points for completing a survey. We propose other changes to the ranking criteria for competitive grants based on Service experience and recommendations from participants, interested parties, and Service staff.

### **Updates to the Regulation**

We arrange the sections of the proposed rule into subparts of related subject matter. The gaps in section numbers between each subpart allow us to add new sections in the future. We summarize the changes in the proposed rule by section or by group of sections, and cross-reference proposed section numbers to the corresponding numbers in the current version of 50 CFR part 86 as published in the **Federal Register** [66 FR 5282] on January 18, 2001. We refer to the 2001 version of 50 CFR part 86 when we use the term "current" before a section number or before a reference to 50 CFR part 86. Where we change the format, wording, or both, of a section or topic, but do not change the content in a major way, we indicate that we make no significant changes.

We include new terms in the definitions to make the rule easier to read and understand. We change some definitions in the current rule to clarify the meanings. We divide the rule into more subparts and sections to clarify program details.

We remove all references to “framework,” “boat access survey,” “State plans,” or any other terms or activities found in the current “Subpart J—Service Completion of the National Framework,” “Subpart K—How States Will Complete Access Needs Surveys,” “Subpart L—Completing the Comprehensive National Assessment,” and “Subpart M—How States Will Complete the State Program Plans.” We do not have OMB approval or funding to implement the framework, surveys, assessment, or plans as published in the **Federal Register** [67 FR 744–755] on January 7, 2002. We will publish guidance on these topics when the Service has the resources and approval to implement.

### ***Subpart A—General***

#### **Section 86.1 What does this part do?**

This proposed section corresponds to the current § 86.10. We remove references to both the boat access survey and State plans. We introduce two new terms, “BIG Basic” to replace “Tier 1”, and “BIG Competitive” to replace “Tier 2” for identifying the available grant award types.

#### **Section 86.2 What is the purpose of BIG?**

This proposed section corresponds to the current § 86.11. We make no significant changes.

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

This proposed section corresponds to the current § 86.12. We give definitions for terms as they apply to BIG that improve reader understanding of the program and our

administration of it. The proposed section defines the following terms that are not in the corresponding “Definitions” section of 86.12: BIG-funded facility, Capital improvement, Director, Eligible user, Eligible vessel, Facility, Match, Real property, Regional Office, Scope, Service, and Useful life. We introduce the terms “BIG-funded facility” and “Facility” to differentiate between the components of a facility that receive BIG funding and to which this part applies, from the rest of the facility. We define “Capital improvement” and apply the term to explain useful life, the Federal interest in property, and information to include in the BIG grant application. We introduce the terms “Eligible vessel” and “Eligible user” so that we do not repeat the term “transient nontrailerable recreational vessel at least 26 feet long” throughout the rule. We use “Useful life” to tell applicants how to follow guidance in the rule that shows the responsibilities of grantees to maintain a BIG-funded facility.

We propose to move the section on “Boating infrastructure” from the current § 86.13 and include it as a term in this section. We expand the term “Construction” to include all applicable phases of construction.

We remove the terms: Proposal, Recreational waters, Survey instrument, and Tie-up facilities. We include the information for what is in a “Proposal” in the proposed § 86.41 “How do you apply for a grant?”. We do not need the terms “Recreational waters” and “Survey instrument” because we do not use them in the rule. We remove the term “tie-up facilities” because the term is too restrictive and does not reflect all the eligible activities in BIG.

### ***Subpart B—Program Eligibility***

This proposed subpart does not have a corresponding subpart in the current

regulations. We use this subpart to tell grantees and the public what the basic program requirements are. This subpart lays a foundation for the subparts that follow. We indicate where we relocate current sections to this new subpart. We incorporate and expand the current § 86.15 throughout the subpart.

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

This proposed section corresponds to the current § 86.14. We make no significant changes.

**Section 86.11 What activities are eligible for funding?**

This proposed section corresponds to the current § 86.20. The section lists only eligible activities. We discuss design features at § 86.13. We propose to add to the list of eligible activities those services, equipment, and structures that: (a) Support clean boating and good environmental practices and (b) make boating infrastructure more convenient for eligible users.

The Act requires that we consider as a priority those projects that propose “innovative ways to increase the availability of facilities.” We propose new language to allow flexibility so that we may approve other activities in the future that consider new ideas and technologies, promote environmental stewardship and awareness, and benefit the mission of BIG. We explain some eligible activities in general terms to allow for growth of the program based on our knowledge and judgment year to year.

**Section 86.12 What construction and services does boating infrastructure include?**

This proposed section corresponds to the current § 86.13. We remove the term “Safe harbor” from this section and the rule as a whole. The public now commonly uses the term to define business or financial situations that have no connection to boating and are

not applicable to the BIG rule. Where we refer to a place of safety for boaters in the proposed rule, we use the term “Harbor of safe refuge.”

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

We separate the design criteria from the current § 86.20 to clarify the differences between eligible activities and required design features. All eligible activities must include the required design features, but not all design features are eligible activities. BIG facilities cater to larger boats that contain Marine Sanitation Devices that may require a pumpout, so pumpout service is an integral part of a BIG-funded project. However, we will consider waiving the requirement for a pumpout if: (a) The BIG-funded facility is in an area that does not have existing utilities to operate a pumpout, (b) the applicant can demonstrate it is not feasible to install, or (c) there are legal restrictions that do not allow septic-waste collection facilities in an area. If we waive the requirement to provide a pumpout facility, we will require that the grantee post a sign telling boaters they must hold and dispose of waste properly and indicate where the nearest pumpout or pumpouts are located.

### **Section 86.14 How can I receive BIG funds for maintenance?**

We add this new proposed section to tell applicants how they can receive BIG funds for maintenance. BIG Competitive grants are primarily for construction projects, and grantees must receive funds with the understanding that they are responsible for the continued maintenance of the BIG-funded facility for the useful life of the project. Grantees may propose to include maintenance activities during construction that support the eligible project, such as painting the existing transient docks, replacing worn planks, or overhauling the fuel dock. Applicants may request BIG Basic funding for eligible

maintenance at any BIG-eligible facility any time in the life of the project.

**Section 86.15 How can dredging qualify as an eligible activity?**

We add this new proposed section to expand on how grantees may use BIG funding for dredging projects. The primary purpose of BIG is to construct, renovate, or maintain facilities for eligible users, but sometimes dredging is necessary to provide access to eligible users. We establish a funding limit for dredging of no more than 10 percent of the total BIG-funded project, which includes the Federal grant and match. This limit applies to all activities directly related to dredging. Grantees may pay for additional costs through other funding sources, but they may not use their excess contribution toward any other BIG matching requirements. We limit funding for dredging because it does not produce additional slips or amenities.

**Section 86.16 What activities are ineligible for BIG funding?**

This proposed section corresponds to the current § 86.21. We list ineligible activities and we give other requirements at § 86.16(a)(9) and (b), without which we will consider a project or activity ineligible. We remove references to plans and surveys. We remove the 20-year useful-life requirement from the current section and discuss useful-life requirements at §§ 86.74 and 86.75. We designate as ineligible activities: acquiring land; constructing retail businesses, parking lots, or roads; administering or managing the facility; and purchasing or operating boats to transport boaters.

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

This proposed section does not have a corresponding section in the current regulations. We add it to emphasize the information in the current § 86.20 that allows projects on publicly or privately owned properties.

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

This proposed section does not have a corresponding section in the current regulations. We add this section to tell grantees that they must apply best standards when constructing a project and follow requirements to protect the State and Federal interest in the BIG-funded project.

We affirm the obligation of States to record, or ensure that subgrantees record, the Federal interest in a BIG project and require notice of certain changes that may occur at the project location during its useful life.

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

This proposed section corresponds to the current § 86.44(b). We tell a grantee how to assign costs to the BIG-funded project when components of the project may also include ineligible costs or benefits.

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

We remove references to specific-year funding and dates specific to the grant cycle. We will publish annual funding and date information in the annual Request for Applications (RFA).

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

We add this new section to inform the public of the source of funds for BIG and emphasize the participation of anglers and boaters in supporting the Sport Fish Restoration and Boating Trust Fund.

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

This proposed section replaces the current § 86.40 and § 86.41 in general terms. We discuss the process rather than specific amounts.

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

This proposed section corresponds to the current § 86.42. We add that grantees must not use land or any interest in land for match to emphasize that BIG grants are for boating infrastructure and not land acquisition. States have access to other Federal grants to buy land for boating access. We do not allow using the value of existing structures as match in a BIG project to avoid subsidizing existing facilities.

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

This proposed section does not have a corresponding section in the current regulations. We explain how grantees must show match and match commitments in an application. This will allow reviewers to evaluate the source and value of matching funds more consistently.

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

This proposed section does not have a corresponding section in the current regulations. Match is often associated with partnerships. We consider partnerships as part of the scoring criteria. We include this section to tell applicants how changes in contributions provided by a partner may affect their applications. We emphasize the responsibility of the grantee to provide the match should the providing partner not be able or willing to fulfill their commitment. This section also emphasizes the importance of making sure that partners' commitments are reliable.

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

We remove the current § 86.50 and § 86.51 that give dates and specific contacts for sending in grant applications. We will provide this information in the annual RFA.

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

This proposed section replaces the current § 86.53, replaces some of the information in the current § 86.54, and presents the information in table form. We introduce new funding limits. BIG Basic grants will have an annual minimum award of \$100,000 per State, but the minimum award may increase depending on available annual funds. We will announce the maximum award in each RFA. We will limit BIG Competitive grants to \$1.5 million to allow us to fund more projects. To date, less than 5 percent of the BIG Competitive projects have exceeded \$1.5 million in Federal funds.

#### **Section 86.41 How do I apply for a grant?**

This proposed section includes topics discussed in the current § 86.51. We remove addresses for the Regional Offices and direct the public to <http://www.grants.gov> and the annual RFA for detailed contact information.

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

This proposed section corresponds to the current § 86.52. We include general information and refer applicants to <http://www.grants.gov> and the annual RFA for more guidance.

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

This proposed section does not have a corresponding section in the current regulations. We add this section to improve consistency of information included in

applications, to enable the review and ranking of applications, and to clarify OMB Circular A-102, “Grants and Cooperative Agreements with State and Local Governments.”

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

We propose this new section to describe the need for BIG competitive grant applicants to address ranking criteria and provide maps and drawings to support the proposed project. The section also emphasizes the requirement at the proposed § 86.33 for commitment letters from partners providing match.

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

We propose this new section to inform applicants how to apply for funding if they plan a project that will require more than the \$1.5 million Federal share and the required match to complete. We emphasize that each BIG Competitive grant application must be a discrete project that meets all grant criteria without considering any other BIG grant applications. All BIG Competitive grants will compete equally with all other grant applications, and we will not give preference to an application based on its connection to another application. If one project cannot be completed or be successful without the other, we will either reject it or assign it a low score. States may use BIG Basic funds to assist projects that have received BIG Competitive funds, or to complete portions of projects over several years.

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

We propose this new section to clarify that if you are unsuccessful in receiving a grant for a BIG grant one year, you may reapply in following years.

**Section 86.47 What changes can I make in an application after I submit it?**

We propose this new section to emphasize the responsibility of the applicant to submit a complete application by the due date. We give details that set clear standards and help avoid any unfair interpretation in this national program.

***Subpart E—Project Selection***

This subpart corresponds to the current Subpart F—How the Service Selects Projects to Receive Grants.

We propose sections 86.52–86.58 to explain the criteria at section 86.51. This will help applicants and the public understand how we view each ranking criterion.

**Section 86.50 Who ranks BIG competitive applications?**

This proposed section corresponds to the current § 86.61 with no significant changes.

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

This proposed section corresponds to the current § 86.60. We change the scoring criteria to correspond to the three priorities Congress established in the original Act. We also change the scoring system to a sliding scale for each criterion. We base this change on experience administering BIG and advice from States, a Federal advisory committee, and boating-related organizations. The current rule does not consistently allow sliding scales, and reviewers often must score projects using set points that can negatively affect accurate assessment of projects. For one current criterion, applicants must receive at least 1 point even if the criterion does not apply to their project or they do not address it in the

application. This change allows ranking committee members to consider the need, value, significance, and benefit when scoring the project. We adjust the criterion in the current rule that gives preference to projects at existing marinas to give projects at new locations the ability to rank well. We continue to emphasize partnerships but expand the criteria in response to recommendations that asked us to consider the nonmonetary value of a partner as well as the monetary contributions. The proposed criteria allow for partnerships in small communities to rank well even if they do not result in large financial contributions. We also set new standards for innovation. The intent is to allow reviewers the flexibility to judge applications based on new technologies and techniques each year, and to consider different standards for innovation year-to-year, based on knowledge and availability at the time of the review.

**Section 86.52 What does the Service consider when evaluating a project under the criterion at § 86.51(a)(1) on the need for more or improved boating infrastructure?**

We propose to emphasize that projects must show a need for new or expanded facilities. We wish to avoid funding projects in areas that have sufficient capacity or where eligible boaters are unlikely to travel.

**Section 86.53 What does the Service consider when evaluating a project under the criterion at § 86.51(a)(2) on boater access to significant destinations and services that support transient boater travel?**

We propose to consider not only a destination that is likely to attract boaters, but also access from the BIG-funded facility and how long the attraction is available. We expand this section to include the need for services that help transient boaters. A significant

destination, such as a national park or entertainment attraction, may entice boaters, but if they cannot refuel, stock up on provisions, and take care of basic needs, then it is unlikely they will go there.

**Section 86.54 What does the Service consider under the criterion at § 86.51(a)(3) on cost-benefit analysis?**

We propose to expand on the current criterion (5) that requires a project to be cost-effective. The current criterion requires a cost-per-slip analysis that favors construction in an existing marina or area. We modify this criterion to allow reviewers to look at the cost of a project in relation to the benefit received. This will allow a project that costs more per slip because it is new, but is in an area of great need, to rank well against a project that costs less per slip, but offers less benefit.

**Section 86.55 What does the Service consider when evaluating a project under the criterion for partners at § 86.51(b)(1)?**

We propose to show what applicants must include in their applications to receive points for partners. Applicants must verify the commitment of all partners, including subgrantees, by a signed letter that includes details of the partnership. States, as applicants, are not partners. Governmental entities are partners only if they contribute to the project more than required by legal mandate or administrative assignment. We will allow various types of partners and consider contributions other than monetary.

**Section 86.56 What does the Service consider when evaluating a project under the criterion for match at § 86.51(b)(2)?**

We propose to allow applicants to receive additional points if they or their partners contribute more than the minimum 25-percent matching share. This is similar to the

current § 86.60(b)(4), but has a sliding scale instead of the set breakdown of points.

**Section 86.57 What does the Service consider when evaluating a project for improving or maintaining the quality of the local environment under the criterion at § 86.51(c)(1)?**

We propose this new criterion for projects that include components that improve the local environment or mitigate the impacts of the project. Examples are when applicants propose to:

1. Design or renovate docks to allow more sunlight to pass through, thus benefitting a local fish or plant habitat;
2. Include a structure in the dock system to nurture juvenile aquatic life to be released into the larger area; or
3. Renovate a fuel dock to prevent spills.

**Section 86.58 What does the Service consider when evaluating a project for environmental sustainability under the criterion at § 86.51(c)(2)?**

We propose this new criterion to encourage using new technologies and techniques, environmentally sound best-management practices, and education to produce a project that supports the overall mission of BIG and the Service.

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

This proposed section corresponds to the current § 86.62, but we give further detail on requirements to obligate funding promptly.

***Subpart F—Grant Administration***

This proposed subpart corresponds to the current “Subpart G—How States Manage Grants.” We propose to include questions and answers to give grantees a better understanding of their responsibilities once they receive a BIG grant.

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

We propose minimum standards for construction and a requirement that a licensed engineer or architect design construction.

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

We propose to give a reasonable time frame to complete a BIG project with a baseline of 3 years from the beginning of the grant period. The intent of BIG is to award funds so that projects are completed and available for eligible boater use as soon as possible. However, sometimes there are delays beyond the control of the grantee, so we allow justified grant extensions. We include instructions for grant extensions at § 86.72.

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

We propose this new section to tell grantees how they may request an extension if their project is not completed during the 3-year grant period. The proposed process allows for two 1-year extensions if grantees can document progress. We have included a possibility for further extensions under extreme conditions. We propose this process to encourage grantees to complete projects promptly.

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

This proposed section corresponds to the current § 86.74. The current rule states that a grantee must compete in another grant cycle if it needs more funds. This suggests that

an applicant does not have the responsibility to complete an awarded project as presented and could potentially set up a system where grantees might expect extra funding to finish projects they originally stated they could complete with requested funds. It also suggests that partial projects can successfully compete against full projects. BIG is a competitive program, and when we fund a project through BIG, we expect the grantee to complete the project as proposed. We reject applications that do not propose discrete projects. A grantee may not come back and request more BIG Competitive funds to complete the project. That would be unfair to applicants that competed unsuccessfully and unfair to grantees that completed their projects as proposed. Should the grantee need more money to complete the project, we expect the grantee to find another source of funding to complete the project. If that is not possible, the grantee may ask for a change in scope following our guidance.

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

This proposed section corresponds to the second sentence of the current § 86.20(a)(1) and § 86.70(b). We propose that grantees maintain the BIG project for the useful life specified in the grant agreement instead of the 20 years in the current rule. We address how a catastrophic incident may affect useful life.

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

This proposed section expands on the proposed § 86.74 and tells applicants what information to consider when they propose a useful life for their project in the grant application and how we will include the useful life in the grant agreement.

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

This proposed section corresponds to the current §§ 86.91 and 86.94. We added a graphic of the Sport Fish Restoration logo in the proposed rule. Since the current rule was published, the Division of Federal Aid was renamed the Division of Wildlife and Sport Fish Restoration. We change recommended crediting language to reflect Sport Fish Restoration and BIG. We require that you must credit BIG for the funding.

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

This proposed section corresponds to the current §§ 86.91–86.93. We indicate where grantees and subgrantees may use the Sport Fish Restoration logo. We also state the consequences of unauthorized use.

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

This proposed new section gives the circumstances where program income requirements would apply to a BIG grant.

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

This proposed new section clarifies the requirements for income earned after the grant period.

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

This subpart tells grantees, subgrantees, and operators how a BIG-funded facility must be operated and maintained.

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

This proposed section corresponds to the current § 86.31. According to OMB Circular A–102, “Grants and Cooperative Agreements with State and Local Governments,” grantees must not use grant-acquired assets to compete unfairly with the private sector. It

is unacceptable for grantees to make money using grant funds by charging more than the local market. This section tells grantees: (a) How to propose reasonable fees for BIG-funded projects and (b) that they must include this information in the grant application.

**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?**

This proposed new section does not correspond to a current section. It allows the operator of a BIG-funded project to increase or decrease fees after the grant period based on changes in the local market.

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

This proposed section corresponds to the current § 86.21(a) and § 86.30. We propose no significant changes to the public access requirements. We add a paragraph that allows an operator to limit access temporarily for emergency or other reasonable purposes.

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

This proposed section corresponds in part to the current §§ 86.13(b) and 86.20(a)(5)(ii), which discuss day docks as an eligible activity under BIG. This section allows BIG-funded facilities to be for day use only if proposed in the application.

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

This proposed section corresponds to the current § 86.90 with no significant changes.

***Subpart H—Revisions and Appeals***

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

We propose this new section to inform grantees of the conditions that apply to postaward changes of information in an application.

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

We propose this new section to supplement § 86.100.

**Section 86.102 Can I appeal a decision?**

This proposed section corresponds to the current § 86.63. There are no significant changes, but we include additional guidance.

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

This proposed section is new. It supports the authority of the Director to make exceptions to this rule.

***Subpart I—Information Collection***

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

This proposed section corresponds to the current § 86.52 and “Subpart H—Reporting Requirements for the States.” The proposed section is more general than the current section to allow this regulation to stay current if the frequency and level of reporting change.

**Public Comments**

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail 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, e-mail 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**

#### *Clarity of this Regulation*

We are required by Executive Orders 12866 and 12988 and by Pub. L. 111-274, “Plain Writing Act of 2010” (October 13, 2010), to write all rules in plain language. This means that each rule we publish must:

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

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

### **Regulatory Planning and Review (E.O. 12866)**

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

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

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

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

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

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

The Regulatory Flexibility Act requires an agency to consider the impact of proposed rules on small entities, i.e., small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a Regulatory Flexibility Analysis. This is not required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that the proposed changes do not have a significant impact and do not require a Regulatory Flexibility Analysis because the changes:

a. Give information to State fish and wildlife agencies that allows them to apply for and administer grants more easily, more efficiently, and with greater flexibility. Only

State fish and wildlife agencies may receive grants in BIG, but small entities sometimes voluntarily become subgrantees of agencies. Any impact on these subgrantees would be beneficial.

b. Address changes in law and regulation. This helps grant applicants and recipients by making the regulation consistent with current standards. Any impact on small entities that voluntarily become subgrantees of agencies would be beneficial.

c. Reword and reorganize the regulation to make it easier to understand. Any impact on the small entities that voluntarily become subgrantees of agencies would be beneficial.

The Service has determined that the changes primarily affect State governments. The small entities affected by the changes are primarily concessioners and subgrantees that voluntarily enter into mutually beneficial relationships with an agency. The impact on small entities would be very limited and beneficial in all cases.

Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a Regulatory Flexibility Analysis is not required.

In addition, this proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and would not have a significant impact on a substantial number of small entities because it does not:

a. Have an annual effect on the economy of \$100 million or more.

b. Cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-

based enterprises.

### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. Ch. 25; Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of a proposed rule with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. We have determined the following under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. As discussed in the determination for the Regulatory Flexibility Act, this proposed rule would not have a significant economic effect on a substantial number of small entities.

b. The regulation does not require a small government agency plan or any other requirement for expenditure of local funds.

c. The programs governed by the current regulations and enhanced by the proposed changes potentially assist small governments financially when they occasionally and voluntarily participate as subgrantees of an eligible agency.

d. The proposed rule clarifies and enhances the current regulations allowing State, local, and tribal governments and the private sector to receive the benefits of grant funding in a more flexible, efficient, and effective manner.

e. Any costs incurred by a State, local, or tribal government or the private sector are voluntary. There are no mandated costs associated with the proposed rule.

f. The benefits of grant funding outweigh the costs. The Federal Government provides up to 75 percent of the cost of each grant to the 50 States affected by the proposed rule. The Federal Government will also waive the first \$200,000 of match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of Guam, the U.S. Virgin Islands, and American Samoa. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, 95 percent have participated. This is clear evidence that the benefits of this grant funding outweigh the costs.

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

### **Takings**

This proposed rule would not have significant takings implications under E.O. 12630 because it would not have a provision for taking private property. Therefore, a takings implication assessment is not required.

### **Federalism**

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. We work closely with the States in administration of these programs, and they helped us identify those sections of the current regulations in need of change and new issues in need of clarification through regulation. In drafting the proposed rule, we received comments from the Sport Fishing and Boating Partnership Council, a nongovernment committee established under FACA; the States

Organization for Boating Access; the Joint Federal/State Task Force on Federal Assistance Policy; and individual States.

### **Civil Justice Reform**

The Office of the Solicitor has determined under E.O. 12988 that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed rule will benefit grantees because it:

- a. Updates the regulations to reflect changes in policy and practice and recommendations received during the past 10 years;
- b. Makes the regulations easier to use and understand by improving the organization and using plain language;
- c. Modifies the final rule to amend 50 CFR 86 published in the **Federal Register** at 66 FR 5282 on January 18, 2001, based on subsequent experience; and
- d. Adopts recommendations on new issues received from State fish and wildlife agencies and the Sport Fishing and Boating Partnership Council since we published the current rule.

### **Paperwork Reduction Act**

We examined the proposed rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and there are no new collections of information that require OMB approval. The proposed 50 CFR 86 describes the Boating Infrastructure Grant Program, including application and reporting requirements.

OMB has approved Governmentwide standard forms for: (a) Grant applications (OMB Control No. 4040-0004); (b) certifications related to authority, capability, and legal compliance (OMB Control Numbers 4040-0007 and 4040-0009); (c) reports on

the status of Federal grant funds and any program income earned (OMB Control Number 0348–0061); and (d) reports on real property status and requests for agency instructions on real property (OMB Control Number 3090–0296).

In addition to the above, OMB approved the following information collection requirements associated with the BIG Program: (a) Project statement in support of a grant application, (b) report on progress in completing a grant-funded project, and (c) request to approve an update or another change in information provided in a previously approved application (OMB Control Number 1018-0109).

We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a current OMB control number.

#### **National Environmental Policy Act**

We have analyzed this rule under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and part 516 of the Departmental Manual. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes provided at 516 DM 8.5A(3).

#### **Government-to-Government Relationship with Tribes**

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

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

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

### **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 activities are eligible for funding?

86.12 What construction and services does boating infrastructure include?

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

86.14 How can I receive BIG funds for maintenance?

86.15 How can dredging qualify as an eligible activity?

86.16 What activities are ineligible for BIG funding?

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

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

86.19 What if a project 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 provide on match commitments and where do I provide 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 Basic grants and BIG Competitive grants?

86.41 How do I apply for a grant?

86.42 What do I have to include in an application?

86.43 What information must I put in the project statement?

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

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

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

86.47 What changes can I make in an application after I submit it?

### **Subpart E—Project Selection**

86.50 Who ranks BIG Competitive applications?

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

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

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

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

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

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

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

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

86.59 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 operation and maintenance?

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

86.76 How should I credit the BIG program?

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

86.78 How must I treat program income?

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

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

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

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

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

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

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

### **Subpart H—Revisions and Appeals**

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

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

86.102 Can I appeal a decision?

86.103 Can the Director authorize an exception to this part?

## **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 of the Code of Federal Regulations tells States how they may apply for and receive grants from the Boating Infrastructure Grant program (BIG) Basic and Competitive subprograms. The differences between these two subprograms are described at § 86.40.

(b) The terms *you* and *your* 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 project.

(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:

(a) Construct, renovate, and maintain boating infrastructure facilities for transient recreational vessels at least 26 feet long; and

(b) Produce and distribute information and educational materials about BIG-funded boating infrastructure facilities.

### **§ 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.

*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. Acquiring, clearing, and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, docks, piers, breakwaters, and slips.

*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 commercial vessels that dock or operate from a permanent location or that 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 project 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 does not include routine activities such as janitorial work.

*Match* means the portion of the costs of a grant-funded project or projects not borne by the Federal Government, unless a Federal statute authorizes such match, including the value of any in-kind contributions.

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

*Operation* means activities that allow a project or parts of a project to perform their function on a daily basis.

*Project* means one or more related activities that are eligible for BIG funding and, in the case of a construction project, occur at only one facility.

*Real property* means one, several, or all interests, benefits, and rights inherent in owning a parcel of land or water and includes anything physically and firmly attached to it by natural or human action. Examples of real property include fee and leasehold interests, easements, fixed docks, piers, 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 Washington 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 traveling through and staying at a single facility 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 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 activities are eligible for funding?**

(a) The following activities 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 activities necessary to construct boating infrastructure, such as:

- (i) Engineering, economic, environmental, or feasibility studies or assessments; and
- (ii) Planning, permitting, and contracting.

(3) Dredge 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) Offer services that support clean boating and good environmental practices at facilities.

(6) Produce information and educational materials such as charts, cruising guides, brochures, and public communication pertaining to specific activities or accomplishments of a BIG project or the BIG program.

(7) Administer BIG Statewide using BIG Basic grant awards, including coordinating and monitoring to ensure BIG-funded facilities are well constructed, meet project objectives, and serve the intended purpose for the useful life of the project.

(b) Other activities may qualify for BIG funding, subject to our approval, if they achieve the purposes of BIG as described at § 86.2.

**§ 86.12 What 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 assist 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. The facility must offer a place to secure eligible vessels and provide access to provisions and communication for eligible users.

(e) Pumpouts, oil recycling, bilge-water cleaning, absorbent fuel collars, and other services and structures that support clean and safe boating.

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

(a) At project completion, a BIG-funded facility 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; 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 may waive the pumpout requirement if the grantee demonstrates that installing a pumpout would be a hardship due to lack of utilities or other difficult obstacles, or that State or local law does not allow septic-waste disposal facilities at the location.

(c) If we waive the pumpout requirement, the BIG-funded facility must post a sign that tells boaters:

(1) The requirement to hold and dispose of septic waste; and

(2) Where they can find the nearest pumpout station or stations.

#### **86.14 How can I receive BIG funds for maintenance?**

(a) For BIG Competitive and BIG Basic grants, you may request BIG funds for maintenance if the maintenance activities:

(1) Are a one-time cost; and

(2) Do not extend past the grant period.

(b) For BIG Basic grants, you may also request BIG funds for continued maintenance costs at BIG-eligible facilities.

(c) Facilities need not have received BIG funds in the past.

#### **§ 86.15 How can dredging qualify as an eligible activity?**

(a) Dredging can qualify as an eligible activity under the grant if the costs for the dredging-related activities do not exceed 10 percent of total BIG project costs.

(b) When the project is completed, 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 application that:

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

and

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

(d) You must certify in the 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 project.

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

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

(1) Law enforcement.

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

(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 maintenance and repair shops.

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

(8) Marketing, which is an activity that promotes a product to interested customers for the benefit of the facility. It includes a strategy for sales techniques, business communication, and business development. A business uses marketing to identify, satisfy, and keep a customer.

(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; or

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

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

(1) Purpose of BIG as described at § 86.2; or

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

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

(a) You, a subgrantee, or another entity approved by us must own or have a legal right to operate the site of a BIG-funded facility. You must be able to show 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 the useful life of the BIG-funded project.

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

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

(1) 43 CFR 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 BIG-funded projects continue to serve their intended purpose for their useful life?**

(a) When you design and build your project, you must consider:

(1) The features and location of your project in reference to the geological, geographic, and climatic factors that may have an impact on the useful life of the project; and

(2) The best reasonably available materials and technology.

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

(c) You must require that subgrantees record the Federal interest in real property that includes a BIG-funded capital improvement.

(d) You must notify 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.

(e) You may impose other requirements on subgrantees, as allowed by law, to reduce State liability for the BIG-funded project. Examples are: insurance, deed restrictions, and a security interest agreement.

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

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. If a proposed project or a discrete element of a project would benefit both eligible and ineligible users:

(a) You must divide costs equitably between eligible and ineligible users, even if the benefits for ineligible users are incidental to the objectives of the project. You must assign to the BIG grant only the share of costs that benefits eligible users.

(b) You must not assign any share of the costs to the BIG grant if the project or a discrete element of the project does not benefit eligible users.

(c) You must consider placement of facilities for eligible users and the potential for attracting ineligible users. An example would be transient dock space near a boat ramp that ineligible users could view as a courtesy dock. Any facilities with a potential dual purpose must either divide costs following the guidance at paragraph (e) of this section or post restrictions following the requirements at § 86.94.

(d) You must consider the number of months per year that the BIG-funded project will be available to eligible users.

(e) The following table shows how to apply paragraphs (a) through (d) of this section:

If a discrete element of a project benefits	Then
(1) Only eligible users,	Assign 100 percent of the costs to BIG.
(2) Both eligible and ineligible users,	Divide costs equitably by the method described in the annual Request for Applications at

	<a href="http://www.grants.gov">http://www.grants.gov</a> .
(3) Only ineligible users,	Assign 0 percent of the costs to BIG.

(f) You must clearly post the details of eligible- and ineligible-user access following the guidance at § 86.94.

(g) You must explain in the project statement the basis or method you use to assign costs between eligible and ineligible users. We reject applications that do not divide costs equitably between eligible and ineligible users.

**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 Request for Applications (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, the 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 project 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 to achieve project objectives;

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

(3) Consistent with the applicable sections of:

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

(ii) Applicable Cost Principles at 2 CFR parts 225 or 230; and

(iii) Any regulations or policies that may replace or supplement requirements at paragraphs (c)(3)(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;
- (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 provide on match commitments and where do I provide it?**

(a) You must provide information on the amount and the source of match for your BIG application on the standard grant application form available at

<http://www.grants.gov>.

(b) You must also provide information on:

(1) Your match commitment in the project statement under “Match and Other Contributions;” and

(2) A subgrantee’s or other third party’s match commitment in the project statement under “Match and Other Contributions” and by attaching to the application package a letter signed by the third party’s authorized representative.

(c) In providing the information required at paragraphs (b)(1) and (2) 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) If you discover that a partner is not willing or able to meet a match commitment, you must either:

(1) Replace the original partner with another partner and provide us with a letter of commitment from the new partner; or

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

(b) You must notify us of any changes in your application related to partners before a grant award. Failure to notify us that a contributing partner has withdrawn its support may make your project ineligible.

(c) You must notify us of any changes in partner contributions after an award following the provisions at § 86.100.

(d) If you discover that a partner is not willing or able to meet a match commitment and you do not have enough money to complete the project, 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 Basic grants and BIG Competitive grants?**

Comparison of BIG Basic and Competitive Grants		
	BIG Basic	BIG Competitive

(a) What activities are eligible for funding?	Those listed at § 86.11.	Those listed at § 86.11.
(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.	Up to \$1.5 million.
(c) How many applications can I submit each year?	We will accept only one per State, but it may contain multiple projects.	No limit.
(d) How does the Service choose applications for funding?	We fund one eligible grant per State up to the maximum annual amount available.	We score each application according to ranking criteria at § 86.51. We recommend applications with the highest scores to the Director. The Director selects the applications for award.

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

(a) You apply for a grant by submitting an application to:

(1) <http://www.grants.gov>, Catalog of Federal Domestic Assistance (CFDA) 15.622;  
or

(2) Regional Director, at the address listed in the annual RFA and available at <http://www.grants.gov> for the Regional Office responsible for Service activities in the State where your project is located.

(b) Regional Office addresses are in the annual RFA at <http://www.grants.gov>, CFDA 15.622.

(c) If you send an application to the Regional Director, you may send it by any means authorized in the annual RFA at <http://www.grants.gov>.

(d) The director of your agency or an authorized representative must certify all standard forms submitted in the application process, in the format designated by the

Service.

(e) 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 the Regional Director.

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

(a) When you submit a BIG 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 requested.

(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 project, you must include supporting documentation explaining how the proposed work complies with applicable laws and regulations and identify permits, evaluations, and reviews you will need to obtain in order to complete the project.

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

(1) Consider your application ineligible; or

(2) Terminate your grant agreement.

**§ 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

stated at § 86.2. To support the need for the project you must:

(1) Describe existing facilities available for eligible vessels near the proposed project. Include 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 and objectives.* State the purpose and objectives. The purpose states the desired outcome of the proposed project in general or abstract terms. The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

(c) *Results or benefits expected.* (1) Describe the capital improvement, services, or other products that will result from the project, and the purpose of each of these.

(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.

(d) *Approach.* (1) Describe the methods used to achieve the objectives. Show that you will use sound design and proper procedures. Include enough information for the Service 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.

(e) *Useful life.* State the useful life in years of the capital improvements 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 valued at \$100,000 or more. See §§ 86.74 and 86.75.

(f) *Geographic location.* State the location using Global Positioning System (GPS) coordinates in the format requested in the annual RFA at <http://www.grants.gov>. State the local jurisdiction (county, town, city, or equivalent), street address, and water body associated with the project.

(g) *Budget narrative.* Provide costs and additional information sufficient to show that the project will have benefits that justify the costs. State the percent of project costs that benefit eligible users. Describe any item that requires the Service's approval and estimate its cost or value. Examples are preaward costs and dredging.

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

(i) *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 project.

(2) See §§ 86.78 and 86.79 for an explanation of how you may use program income. If you determine that your project will 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.

(j) *Multipurpose projects and equitable costs for BIG-funded facilities.* You must explain the method used to divide costs equitably between estimated benefits for eligible and ineligible users. Your division of costs must be consistent with the requirements at § 86.19.

(k) *Relationship with other grants.* Describe the relationship between this project and other work funded by Federal and non-Federal grants that is planned, expected, or in progress.

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

(m) *Grantee's contact.* Record the name, work address, and work-telephone number of your representative for day-to-day issues on the project.

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

(a) You must include in all BIG applications:

(1) Maps, 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.

(2) For construction projects, support the description of your project by including images that show existing structures and facilities, the proposed BIG project, and information related to your project such as distances, number of slips, and functions.

(3) Letters of commitment from partners, if applicable, using the guidance at § 86.33.

(4) Any other documents requested in the annual RFA or needed to support your proposed project.

(b) In BIG Competitive applications, you must respond to each of the questions addressing the ranking criteria at § 86.51 in the order in which the questions appear in the table. We publish the questions for these criteria in the annual RFA at

<http://www.grants.gov>. In answering each question, you must include the information at §§ 86.52 through 86.58 and any additional information requested in the annual RFA.

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

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

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

(2) Combine BIG Basic and BIG Competitive funding to complete a project at a single location; or

(3) 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.

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

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

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

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

**§ 86.47 What changes can I make in an application after I submit it?**

(a) After you submit your application, you can add information or make changes 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 make a change in your application only if it does not affect the scope of the project and would not affect the score of the application. If we discover that part of an application contains activities that we cannot fund with a BIG grant, we will determine on a case-by-case basis if we will consider the remainder of the application for funding. We may ask the applicant to change the useful life of the BIG project during this period following guidance at § 86.75.

(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 activity; 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 Competitive applications?**

We assemble a panel of our professional staff to review, rank, and recommend applications for funding to the Director. This panel may include representatives from our Regional Offices, with Washington Office 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 Competitive applications?**

Our panel of professional staff and an advisory panel of nongovernmental organizations evaluate BIG Competitive applications using the ranking criteria in the following table and assigning points within the range for each criterion. We may supplement these criteria in the annual RFA on <http://www.grants.gov>.

Ranking Criteria	Points
<b>(a) Boating Infrastructure</b>	<b>50 percent of total possible points</b>
(1) Will the proposed boating infrastructure meet a need for more or improved facilities?	0–30
(2) Will the proposed boating infrastructure accommodate boater access to significant destinations and services that support transient boater travel?	0–10

(3) Will eligible users receive benefits from the proposed boating infrastructure that justify the cost of the project?	0–10
<b>(b) Partnerships</b>	<b>30 percent of total possible points</b>
(1) Will the proposed project include private or public partnerships to develop, renovate, maintain, or operate facilities?	0–15
(2) Will the proposed project include private, local, or other State funds greater than the required minimum match?	0–15
<b>(c) Environment</b>	<b>20 percent of total possible points</b>
(1) Will the proposed project improve or maintain the quality of the local environment?	0–10
(2) Will the proposed project include physical components or activities that improve the environmental sustainability of the facility?	0–10
<b>(d) Total possible points</b>	<b>100</b>

**§ 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) Comply with 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) Expand an existing marina or mooring site that is unable to accommodate current or projected demand by eligible vessels; or

(d) Produce other improvements to accommodate a demonstrated eligible need.

**§ 86.53 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)(2) on boater access, we consider the degree of access that the BIG-funded facility will give, the significance of the destination, and the services available in the area to support eligible users.

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

We consider these factors in evaluating a proposed project under the criterion at § 86.51(a)(3) on benefits for eligible users that justify the cost of the project:

- (a) Total cost of the project;
- (b) Total benefits available to eligible users upon completion of the project; and
- (c) Credibility of the data and information used to determine benefits relative to costs.

**§ 86.55 What does the Service consider when evaluating a project for partnerships?**

(a) We consider the number of partners and the significance of each partner's contribution in evaluating a project under the criterion at § 86.51(b)(1).

(b) To qualify, a partner's contribution must be necessary to accomplish the eligible project objectives. The application must state specifically how the partnership helps construct, renovate, or maintain the project.

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

(1) A non-Federal entity, including a subgrantee, if it signs a letter that:

(i) Commits to contributing match that is at least 1 percent of the BIG-funded project;

and

(ii) Follows the requirements at § 86.33(b)(2) and (c).

(2) A Federal or non-Federal entity that has taken or commits to take a voluntary action during the grant period. The action must contribute directly and substantively to the completion of the project. You must explain in the application how the action is necessary to complete the project.

(3) A Federal or non-Federal entity that commits to the ongoing objectives of the project, such as providing a service or benefit on a routine basis during or after the grant period. You must explain in the application how the action will contribute, the length of the commitment, and how the commitment benefits the project and eligible users.

(4) 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.

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

When we evaluate a project under the criterion for match at § 86.51(b)(2), we consider cash and the value of allowable in-kind contributions of equipment, services, and supplies.

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

In evaluating a proposed project under the criterion at § 86.51(c)(1), we consider whether the project will:

- (a) Restore, support, or create local habitat;
- (b) Compensate for the impacts of the project on the local environment; or
- (c) Eliminate an existing environmentally harmful practice or situation at or near the facility.

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

(a) In evaluating a proposed project under the criterion at § 86.51(c)(2), we consider whether the project includes equipment, supplies, practices, and other elements that will minimize the global impact or enhance the long-term sustainability of the project.

(b) We may consider activities funded through other sources that benefit eligible users, but are not eligible BIG costs.

**§ 86.59 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) Forms or documents required, including those required for compliance with applicable laws and regulations;
- (3) Approvals needed; and
- (4) Time constraints.

(b) After we receive the required forms and documents, we approve 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 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) You must provide documents to show that a licensed engineer or architect designed the project.

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

(a) We assign a grant period that is no longer than 3 years from the grant start date.

(b) 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 a 1-year extension 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 1-year 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 1-year 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 the Regional Director for your State and the Service's Assistant Director for the Wildlife and Sport Fish Restoration Program approve extensions beyond 2 years.

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

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

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

(2) Request approval to change the scope of the grant by following guidance in subpart I of this part.

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

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

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

(3) Request approval to change the scope of the grant by following guidance in subpart H of this part.

(c) If you do not complete your project, we follow guidance found for non-compliance in 43 CFR 12.83, 43 CFR 12.962, and whatever other regulations may apply.

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

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

(b) Catastrophic events may shorten the identified useful life of a BIG project. You may provide appropriate insurance coverage for the BIG project in order to protect the investment should an event occur. If the event causes sufficient damage that it is not practical to repair or replace the BIG project, you may ask the Regional Director to amend the grant agreement to reduce your useful-life obligation.

(c) You are responsible for the costs of the operation and maintenance of the BIG-funded project for its useful life.

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

(a) To determine and justify the useful life of a project you must:

(1) Identify 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, dredge project, fuel station, or pumpout system.

(2) Show the expected useful life and how you determined the useful life for each capital improvement identified following paragraph (a)(1) of this section.

(3) Use a generally accepted method to determine the useful life of a capital improvement valued at \$100,000 or more.

(4) Determine 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) We may reject your application if you do not adequately justify your determination for the useful life of each capital improvement.

(c) We may adjust the proposed useful life of the BIG project in consultation with you and any subgrantees. We may ask you to justify and change the useful life at any time between receiving your application and when the Regional Office issues the award.

**§ 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.

**§ 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) 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.

(d) 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.

(e) 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.

(f) No one may use any part of the logo in any other manner unless the Director 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.

(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 as long as 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(i)(2); and

(ii) We approve your proposed use of the program income, which must be for one or more of the activities 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 Basic grants that include multiple projects:

If	Then
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<p>(1) The State subgrants one or more projects and an individual subgrantee project is completed,</p>	<p>(i) The State must verify to the WSFR Regional Office that its agreement with the subgrantee has been satisfied.  (ii) The Regional Office will review and approve completion of the project.  (iii) The Regional Office will instruct the State to apply any program income earned by the subgrantee as described at § 86.78(b). The subgrantee will have no further responsibilities for program income.  (iv) The State grant will stay open to allow for completion of other projects, as applicable.</p>
<p>(2) The State will complete one or more projects and an individual State project is completed,</p>	<p>(i) The State must notify the WSFR Regional Office that it has completed one of the projects in the grant.  (ii) The Regional Office must require the State to apply program income to the grant, but may allow the State to apply program income as described in § 86.78(b).</p>

**§ 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 a reasonable fee for using the facility based on prevailing rates at other publicly and privately owned local facilities offering a similar service or amenity.

(b) We review fees as part of the application process. Awarding your grant includes approval of proposed fees unless we indicate otherwise.

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

An operator of a BIG-funded facility may increase or decrease user fees during the useful life of the BIG-funded project if they are consistent with prevailing market rates.

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

(a) An operator of a BIG-funded facility must not limit public access to any part of the facility during the useful life of the BIG-funded project, except as permitted at paragraphs (d) and (e) of this section, unless you describe these limits in the approved application. *Public access* in this section means access by eligible users, other types of boaters, and the general public.

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

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

(c) The public must have access to the shore and related facility features such as fuel stations and restrooms.

(d) 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.

(e) 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 application that the facility is only for day use.

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

(a) You must include clearly visible signs at BIG-funded facilities that:

- (1) Direct eligible users to the BIG-funded facility;
- (2) Include fees, restrictions, operating periods, and contact information; and

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

(b) You must credit BIG as a source of the funding.

(c) When crediting the BIG program you must follow the requirements at §§ 86.76 and 86.77.

## **Subpart H—Revisions and Appeals**

### **§ 86.100 Can I change the information in an application after I receive a grant?**

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

(b) We may approve a proposed revision if it:

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

(2) Would not significantly decrease the benefits of the project; and

(3) Would not increase Federal funds.

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

(d) The Regional Director must review and the Assistant Director for the Wildlife and Sport Fish Restoration Program must approve any changes after we award a grant.

### **§ 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 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) 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 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 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," or any regulations that replace or supplement subpart G.

#### **§ 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) Complete a project statement that describes the need, objectives, results 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) Report real property status or request agency instructions on real property on Standard Form 429, Real Property Status Report (OMB control number 3090–0296).

(5) Follow any future requirements for reporting financial and performance activities of a grant using additional 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 Government,” and in 43 CFR 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 March 12, 2012

Rachel Jacobson

*Acting Assistant Secretary for Fish and Wildlife and Parks*

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