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50 CFR Part 86

Boating Infrastructure Grant Program; Final Rule

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: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising regulations governing the administration of the national Boating Infrastructure Grant Program (BIG). We published a proposed rule in the **Federal Register** on March 28, 2012. We received responses from the public during the 60-day comment period with recommendations for changes, support for certain parts of the proposed rule, and requests for more time to review the proposed rule. We published a second proposed rule in the **Federal Register** on April 25, 2014, with a 90-day comment period. The final rule simplifies and clarifies some sections, responds to comments on both proposed rules, and considers other approaches to carrying out this grant program.

DATES: The final rule is effective on June 5, 2015.

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:

Executive Summary

The Sportfishing and Boating Safety Act of 1998 established the Boating Infrastructure Grant Program (BIG). The Fish and Wildlife Service carries out the program through regulations published at 50 CFR part 86. The regulations establish a process for States, the District of Columbia, Commonwealths, and territories (States) to receive grants by proposing projects to construct and maintain facilities for transient recreational vessels at least 26 feet long. There are two subprograms in BIG. BIG Tier 1—State competes on the State level for eligible projects, and BIG Tier 2—National competes on a national level for eligible projects. Examples of eligible costs are floating docks, piers, navigational aids, boat slips, limited dredging, and restrooms.

BIG receives its funding from 2 percent of the annual appropriation from the Sport Fish Restoration and Boating Trust Fund. The Trust Fund receives revenue from: (a) Taxes on sport fishing equipment, electric outboard motors, and sonar devices; (b) taxes on special motorboat fuels and gasoline attributable to motorboats and nonbusiness use of small power equipment; and (c) import duties on fishing tackle, yachts, and pleasure craft. In FY 2015, the Service awarded over $14.3 million to States for eligible projects.

This BIG final rule is the first comprehensive update since 2001. In developing this rule, we considered the recommendations of the 2005 review of BIG published by the Sport Fishing and Boating Partnership Council, a Service Federal Advisory Committee. We actively worked with the Council and our other partners, such as the States Organization for Boating Access, BoatUS, States, and the boating public.

Background

This final rule revises title 50, part 86 of the Code of Federal Regulations (CFR), which is "Boating Infrastructure Grant (BIG) Program." The primary users of these regulations are agencies in the 50 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. We use *State* or *States* in this document to refer to any or all of these jurisdictions.

These regulations tell States how they may apply for and use funds from the Sport Fish Restoration and Boating Trust Fund that are dedicated by law to BIG (Dingell-Johnson Sport Fish Restoration Act, 16 U.S.C. 777c, g, and g–1).

The Catalog of Federal Domestic Assistance at *https://www.cfda.gov* describes BIG under 15.622. BIG offers grants in two subprograms, BIG Tier 1—State and BIG Tier 2—National, to construct, renovate, and maintain boating infrastructure facilities for transient recreational vessels at least 26 feet long.

We published a proposed rule for BIG in the **Federal Register** on March 28, 2012 (77 FR 18767), with a 60-day comment period ending May 29, 2012. We received 22 responses from the public. Fifteen included comments applicable to the proposed rule and 11 included requests for more time to review the proposed rule. We responded to comments and published a second proposed rule in the **Federal Register** on April 25, 2014 (79 FR 23210), with a 90-day comment period ending July 24, 2014.

We received 13 responses to the proposed rule published at 79 FR 23210. Some of the comments we received support our changes or approaches and others recommend further changes or considerations. A few comments requested more information or explanation.

We address these comments in the following section.

Response to Public Comments

We arrange the public comments by sections of the proposed rule. We do not duplicate a response we give in one section in another section. We do not present comments exactly as stated unless we enclose text within quotation marks. In many instances, we combine several similar comments and show as a single comment. We state in the response to each comment any action taken and explain our response. Some public comments led us to reexamine sections or approaches beyond the specific public comment. Based on this reexamination, we make changes to improve clarity, consistency, organization, or comprehensiveness.

We make some changes for clarification and uniformity that we do not specifically discuss. We do not explain minor changes that do not significantly affect content. We discuss any substantive changes that resulted from this reexamination in our responses to the comments. We use the word *grantee* in our responses to refer to a State that receives a BIG award. It may also apply to a subgrantee with which a State agency has a formal agreement to construct, operate, or maintain a BIG-funded facility.

The regulations at 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (78 FR 78590, December 26, 2013), became effective for Federal grants on December 26, 2014. Many citations within this regulation have been updated to reflect the current authority. The term *grant period* is replaced with the term *period of performance* at 2 CFR 200.77 and we reflect that change in both the Response to Public Comments and the body of the rule.

We use the term *proposed rule* to refer to the proposed rule published in the **Federal Register** at 79 FR 23210, April 25, 2014.

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

Subpart A—General

Section 86.1 What does this part do?

In this section, we introduce the terms BIG Standard and BIG Select to identify the subprograms in BIG. We consider

the terms *Tier 1* and *Tier 2* in the current rule as bureaucratic and nondescriptive of the BIG subprograms, so we proposed different names. We received many comments and some suggestions for alternative subprogram names. Most commenters stated that since the program has been active for so long, a major change would be confusing to those routinely interacting with the program. Some States noted that they have developed materials that use the current subprogram names and they would have to recreate those materials if we were to implement new subprogram names. To compromise between the commenters' desire to keep the familiar *Tier* designations and our desire to make the names more explanatory, we accept a combination of suggested subprogram naming and designate the subprograms as *BIG Tier 1—State* and *BIG Tier 2—National.* Adding the terms *State* and *National* reflects the level at which grants are competed. Continued use of *Tier 1* and *Tier 2* supports familiarity and allows for States to use printed materials on hand, changing to add the new subprogram naming as is practical and convenient for them.

Section 86.2 What is the purpose of BIG?

We received one comment supporting our statement of the purpose of BIG. The commenter said that "the proposed rules are consistent with that mission" and he commends the Service for continuing to focus on such facilities.

Section 86.3 What terms do I need to know?

We received one comment supporting our clarification of *day dock* use.

General

Comment 1: Clarify that the grant for a BIG-funded facility includes both Federal funds plus matching funds.

Response 1: We make no change based on this comment. The definition of *grant* includes this information.

Comment 2: Recommend adding definitions for *grantee* and *subgrantee* to help applicants understand their role in the overall rule.

Response 2: We make no change based on this comment. Section 86.1 distinguishes between a grantee and a subgrantee.

Comment 3: Add the term *subgrantee* and include a description of the wide range of potential subgrantees to include educational institutions.

Response 3: We make no change to definitions based on this comment and refer to Response 2. We do add institutions of higher education to the list of potential subgrantees at § 86.17(b).

Comment 4: Add *award* to the terms and define it as different from a *grant.*

Response 4: We make no change based on this comment. We make minor changes to the definition of *grant* to better reflect the definition at 2 CFR 200.51. The term *Federal award* at 2 CFR 200.38 refers to several types of financial assistance. To define *award* may cause confusion.

Capital Improvement

Comment 5: Clarify what you mean by *repairing.* Does *capital improvement* include routine operation and maintenance?

Response 5: We make no change based on this comment. The word *repairing* is a common term and is clear in that it means to restore an existing structure to serve an intended purpose. *Capital improvement* does not include operation or maintenance in that a capital improvement must increase the structure's useful life by 10 years or cost at least $25,000.

Comment 6: What is the basis for using $25,000 as a cap in the definition of *capital improvement*?

Response 6: We make no change based on this comment. There is not a $25,000 cap in the definition of *capital improvement.* Rather, it is a minimum threshold based on the amount in 49 CFR part 24 above which a grantee must get an appraisal before acquiring real property in a WSFR-administered program. In the coming years, we will change other regulations to reflect this value.

Contractor/Concessioner

Comment 7: We received several comments stating that the term *contractor* was unclear and used inconsistently with the typical understanding of the term.

Response 7: We agree and change the term to *concessioner.* We expanded on the definition to clarify intent.

Facility

Comment 8: Recommend changing the word *boaters* to *eligible users.*

Response 8: We make no change based on this comment. The definition of *BIG-funded facility* is specific to eligible users, but the definition of *facility* is broader and applies to all boaters.

Comment 9: Clarify that a facility can be owned by one entity, but leased long-term to another to operate and manage.

Response 9: We make no change based on this comment. We discuss that an entity other than the owner may operate a facility in the definition of *concessioner* and at § 86.17.

Grants.gov

We received one comment asking us to clarify to subgrantees that States must apply for BIG funds through *http://www.grants.gov.* Upon further consideration, we add the definition of *grants.gov* at § 86.3 to improve clarity in the rule.

Maintenance

We received several comments supporting our definition of *maintenance* and making maintenance an allowable action for BIG Tier 1—State grants.

Comment 10: Suggest you give clarification for janitorial activities in the definition of *maintenance.*

Response 10: We make no change to the definition, but clarify at § 86.16 actions we identify as janitorial.

Comment 11: The examples in the definition of *maintenance* numbered (1) Lubricating components of BIG-funded equipment and (3) Painting, pressure washing, and repointing masonry seem to be janitorial in nature and not maintenance.

Response 11: We make no change based on this comment. The examples given at (1) and (3) are maintenance actions that are done on an occasional or cyclical basis to help maintain the equipment and structures that are part of the BIG-funded facility.

To clarify our approach, *maintenance* is focused on preserving the equipment and structures for use into the future. *Operations* are done on a daily or weekly cycle (more often than cyclical maintenance) and are actions that support the availability of the equipment and structures for current public use.

Navigable Waters

Comment 12: Clarify in the definition if the waterway is supposed to connect to another waterway to give cruising linkage, or if the intent is to open the waterways definition to include large water bodies that do not give linkage to another waterway.

Response 12: We clarify the definition to mean passage of eligible vessels within the water body. To be *navigable water* for the purposes of BIG, we do not require the water body to have a navigable passage to another water body. However, the water body must be large enough to support eligible vessel travel within the water body.

Operation

Comment 13: What does *service labor* mean?

Response 13: We change the term to *service worker.* This means anyone whose job duties are to offer services to

the public. Some examples of service workers are dock hands, rest room/shower attendants, and travel assistants.

Personal Property

Comment 14: Suggest you give examples of personal property that would be eligible as match as described at § 86.32(b). Are there any limits to the types of personal property that would be eligible as match? Allowing personal property as match seems to be in conflict with § 86.32(c)(2) that states match must be an eligible activity or cost, but personal property is not listed as an eligible action at § 86.11.

Response 14: We make no change based on this comment. We do not give a list of examples of personal property in the definition because the possibilities are so extensive, it may be perceived as limiting. Personal property must meet the criteria for match at § 86.32 and must support the BIG-funded project and the eligible actions or costs of the BIG-funded project. Personal property is basically anything that is not real property, and as real property has very limited eligibility in BIG, the majority of actions and costs for a BIG-funded project will involve personal property. Personal property in a BIG-funded project may include equipment, building materials, supplies, and many other items.

Project Cost

Comment 15: Recommend rewording to state, "the Federal Share awarded through the BIG Grant and all Match given that the award is contingent upon combining the two items to complete the Project."

Response 15: We make no change based on this comment. The definition we give is clear and consistent with the definition at other regulations.

Program Income

Comment 16: Does the reference to period of performance include useful life?

Response 16: No. A period of performance begins with the grant start date and ends with the grant end date. All costs for work performed are incurred during the period of performance. The period of useful life extends past the period of performance. We make no change based on this comment.

Real Property

Comment 17: In the examples of real property, suggest removing the term *fixed* dock and replacing it with *permanent* dock.

Response 17: We make no change based on this comment. The word *fixed* supports that the dock is physically and firmly attached to land.

Transient

We received a comment supporting that in the proposed rule we clarify day dock usage.

Comment 18: Recommend that the definition of "transient" be increased to 30 days to allow increased flexibility for long-distance travelers.

Response 18: We received comments in prior reviews asking us to consider increasing the time allowed in the definition of *transient.* We reconsidered all comments on the subject and change the definition of *transient* to include a stay up to 15 days. This will allow for eligible boaters to arrange for a 2-week stay, which is a more typical visit than 10 days, and gives one-day flexibility for arrival and departure.

Comment 19: Clarify if an eligible vessel staying at a large water body that is not navigably connected to another water body must be removed from the water at the end of the transient period.

Response 19: We make no change based on this comment. *Transient* defines the period a recreational vessel at least 26 feet long may stay at any single BIG-funded facility to be an eligible vessel. We make no additional restrictions.

Useful Life

Comment 20: Recommend replacing *routine care* with *operation* in this definition.

Response 20: We make no change based on this comment. *Routine care* is broader and includes operation, best management practices, enforcing marina rules and regulations, and other actions that together add to the care of BIG-funded items.

Subpart B—Program Eligibility

Section 86.10 Who may apply for a BIG grant?

Comment 21: The same commenter suggested at several sections of this rule that we change our grant process to allow individual public and private facility owners to circumvent the State and directly apply for BIG grants. He suggests that States may continue to be advisors, but there is a large burden on States when named as the applicant for all BIG projects. The response below applies to all related comments.

Response 21: We make no change based on this comment. Limiting BIG awards to States is based on the statute that established the program (see Pub. L. 105–178, sec. 7404(a) and (d), June 9, 1998).

Section 86.11 What actions are eligible for funding?

We received several comments that support eligible actions in the proposed rule and one that specifically supports using BIG funding for monitoring BIG projects.

Comment 22: We received a comment supporting our proposed language that boat wash stations are ineligible for funding and another requesting we reconsider allowing boat wash stations as eligible under BIG. One commenter supports boat wash stations as an eligible action, stating that they are used in saltwater environments to prepare the bottom surfaces of transient vessels for boat repairs and to improve performance.

Response 22: We make no change and do not include boat wash stations as eligible because:

- Boat wash stations require that boats be removed from the water to accomplish the desired results. This is potentially an auxiliary service to transient boaters on rare occasions, but not a primary benefit for transient vessels.
- We do not include other equipment to repair and maintain vessels as eligible for BIG funding.

States may seek to fund boat wash stations under the Dingell-Johnson Sport Fish Restoration Recreational Boating Access subprogram as described at 50 CFR part 80.

Comment 23: Add recording fees as an eligible action as this will be required when we record the Notice of Federal Participation as described at § 86.18.

Response 23: We agree and make the change.

Comment 24: Consider adding at § 86.11(a)(2)(i) *cultural* to formally include those studies as eligible.

Response 24: We agree and make the change.

Comment 25: Recommend adding at § 86.11(a)(5)(vi), a reference that directs readers to the definition of *marketing.*

Response 25: We make no change based on this comment. The rule has a definition of public communication and adding a reference to marketing in this paragraph may be confusing.

Comment 26: In reference to § 86.11(a)(6) [(a)(7) in the final rule], can actions such as coordinating and monitoring be used as match for a BIG Tier 2—National grant or is it allowed only under BIG Tier 1—State grants?

Response 26: We make no change based on this comment. These actions may be offered as match when approved as project costs for an individual BIG Tier 2—National grant project and

completed during the period of performance. These actions may be associated with implementing a Statewide BIG program and may be offered as match under BIG Tier 1—State.

Comment 27: What is the process for requesting and receiving prior approval for preaward costs? How far in advance can preaward costs be approved?

Response 27: We make no change based on this comment. We will consider approving preaward costs only if an applicant negotiates with us in anticipation of the BIG award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred during the BIG period of performance and only with our written approval. The applicant assumes all risk and we will not reimburse the preaward costs if it does not receive a BIG grant. An applicant should discuss possible preaward costs with us as early in the process as possible.

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

Comment 28: Recommend adding dredging.

Response 28: We make no change based on this comment. Dredging is an action and not infrastructure.

Comment 29: Recommend adding floating restrooms as possible infrastructure.

Response 29: Floating restrooms are already included at § 86.12(e). We make a minor clarifying change.

Comment 30: Why do you include access to communication and provisions in the definition of harbor of safe refuge?

Response 30: We make no change based on this comment. Our research indicates that a harbor of safe refuge includes these amenities that support vessels during an emergency.

Comment 31: Suggest at § 86.12(e) you refer to § 86.11(c) and encourage Clean Vessel Act funding.

Response 31: We make no change based on this comment. This section describes what is included in boating infrastructure. We would confuse readers to include funding information here.

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

We received a comment that supports the change in the proposed rule that no longer requires operators to inform boaters of the location of other pumpouts. We also received a comment supporting flexibility in water access.

Comment 32: Clarify how security and safety is a required operational and design feature, but law enforcement is not an eligible action.

Response 32: We make no change based on this comment. Law enforcement is inconsistent with the authorizing legislation (Pub. L. 105–178, June 9, 1998) and is not an eligible action. The type of security and safety that a BIG-funded facility must offer is consistent with the mission of BIG in that it offers reasonable accommodations that give eligible users basic protection. Examples are: Lighting, gates, and communication.

Comment 33: Move items at § 86.43(n) to this section as it applies to operation and design and not what to include in a grant application.

Response 33: We agree and move much of the information at § 86.43(n) to § 86.13(b)(1) through (4).

Comment 34: The reference to depth requirements is confusing. Recommend having docking or mooring sites with water access at least 6 feet deep at mean low tide in tidal waters or a minimum of 6 feet in nontidal waters.

Response 34: We make no change based on this comment. We are asking applicants to consider the water conditions at the proposed site of the BIG-funded facility and any reasons for potential depth fluctuation that could affect access by eligible vessels. We do not wish to limit this consideration to tidal or nontidal influences, but to consider natural influences and those created by human activity.

Section 86.14 How can I receive BIG funds for facility maintenance?

We received a comment supporting the flexibility for States to use BIG Tier 1—State funding for maintenance. We received a comment asking us to clarify how to extend useful life when BIG funds are used for maintenance at a facility that has received a BIG grant in the past. We clarify that a grantee must extend the useful life of the capital improvements affected by the maintenance, as appropriate.

Section 86.15 How can dredging qualify as an eligible action?

We received a comment supporting our approach for dredging and dredging-related actions in BIG.

Comment 35: Suggest that the amount of the total BIG grant the Service will allow for dredging be increased from 10 percent to 20 percent.

Response 35: In the proposed rule we allowed using BIG funds for dredging if costs for dredging-related actions do not exceed 10 percent of total BIG project costs or $200,000, whichever is less. After further consideration, we remove the 10 percent limit and will allow dredging costs up to $200,000 for both BIG Tier 1—State and BIG Tier 2—National grants.

Comment 36: Change the term *basin* to *area used by eligible users.*

Response 36: We make no change based on this comment. The regulations limit the amount of BIG funds available for dredging and eliminate the need for allocating funds to only eligible users.

Comment 37: Recommend changing § 86.15(b)(1) from *lowest tide* to *mean low water.*

Response 37: We remove the term at § 86.15(b)(1) and substitute a reference to § 86.13(a)(6) for the language that the commenter finds confusing.

Comment 38: Recommend deleting the requirement at § 86.15(d) as it is unnecessary and will likely require a new form.

Response 38: We make no change based on this comment. We include this paragraph in response to concerns from prior and current comment periods for a method or directive to ensure that grantees maintain a dredged area. A new form will not be necessary. When a State signs the Standard Form 424B or 424D it certifies that it will follow all regulations.

Comment 39: Recommend adding language at § 86.15(d) to allow flexibility for responding to unusual circumstances that affect water level.

Response 39: We add "under typical conditions" to indicate that we will consider flexibility under extraordinary factors that affect water level.

Comment 40: Is dredging eligible only at a facility that has received BIG funds in the past?

Response 40: No. Dredging is an eligible action. As with all other eligible actions, there is no requirement to have received a prior grant. We make no change based on this comment.

Section 86.16 What actions are ineligible for BIG funding?

We received comments that agree with the concepts in this section, specifically that we list land as an ineligible cost.

Comment 41: Clarify the difference between:

- The ineligible action at § 86.16(a)(8)(ii) General marina or agency newsletters or Web sites promoting the marina or agency; and
- The eligible action at § 86.11(a)(5)(iv) Marina newsletter articles, marina or agency Web pages, and other communications you produce

that are directly related to the BIG-funded project.

Response 41: We make no change based on this comment. The difference is that the eligible action at § 86.11(a)(5)(iv) is specific to and directly supports the BIG-funded project. The ineligible action at § 86.16(a)(8)(ii) is general in nature and focused primarily on the marina or agency apart from the BIG project or program. If a marina or agency includes specific BIG-funded project or BIG program information in any general agency communications, it may allocate the information and education costs accordingly.

Comment 42: Suggest you revise § 86.16(a)(5) to clarify that roads and parking lots and possibly other land surface improvements may be funded with BIG if there is damage to the surface as a result of completing the BIG project.

Response 42: We clarify at § 86.11(a)(1) that repairing or restoring roads, parking lots, walkways, and other surface areas damaged as a direct result of BIG-funded construction is an eligible action. This must be limited only to the surface that receives the damage and a reasonable surrounding distance needed to insure the public can safely travel on the surface.

Comment 43: Remove the word *facilities* at § 86.16(a)(6) as it may create confusion when interpreting definitions at § 86.3.

Response 43: We agree and make the change.

Comment 44: Clarify the differences between maintenance and janitorial duties at §§ 86.3 and 86.16.

Response 44: We make no change at § 86.3 based on this comment. We clarify § 86.16(a)(2) by giving examples of possible janitorial duties.

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

Comment 45: What documentation would a grantee need from a subgrantee that does not own the site of a BIG-funded facility to show it follows § 86.17(a)?

Response 45: We make no change based on this comment. We state in § 86.17(a) that any entity that does not own the site of a BIG-funded project must have a contractual arrangement showing that it, or the owner, will operate the BIG-funded facility for the useful life. The contractual arrangement must convey grant responsibilities to a subgrantee or operator and it must be acceptable to the State. The documentation will become part of the application when we award the grant. If the owner signs the grant, there is no need for additional documentation.

Comment 46: Clarify that State agencies other than the agency receiving the grant may be subgrantees.

Response 46: We agree and change the section to clarify this.

Comment 47: May Federal agencies, corporations, companies, and partnerships qualify as subgrantees?

Response 47: We make no change based on this comment. Corporations, companies, and partnerships that we will accept as subgrantees are either commercial enterprises or nonprofit organizations and are already listed as eligible subgrantees. A Federal agency may participate as a landowner that has a contractual relationship with a State subgrantee or through a reimbursable agreement. However, a Federal agency cannot be a subgrantee.

Comment 48: Remove the requirement that subgrantees that are commercial enterprises are subject to future regulations.

Response 48: We agree and removed § 86.17(c)(2) because we are uncertain how future regulations will be applied. We retain information at § 86.17(c)(1) as § 86.17(c) to remind grantees and subgrantees that businesses have other Federal requirements they must follow.

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

We received comments that support this section.

Comment 49: What does the word "record" mean at § 86.18(b)?

Response 49: We make no change based on this comment. Recording means entering into a book of public records the written instruments affecting the grant interest in the real property it is located on. Recording with reference to the deed notifies all interested parties of the grantee's continuing responsibility to manage the BIG-funded facility for the purposes of the grant.

Comment 50: When would we know if a Notice of Federal Participation is required?

Response 50: We make no change based on this comment. A grantee must record a Notice of Federal Participation for all projects according to guidance from your Regional Office. We may, in consultation with a State, conclude that the project is too small to justify the cost of recording. If we approve that approach, the grantee is not required to record the interest for that project. Even if we tell the grantee we do not require them to record the interest, a State may choose to record it, or require its subgrantee to record it.

Comment 51: You should not require recording of the Federal interest after applications are received. Adding these requirements later can jeopardize partner relationships.

Response 51: We make no change based on this comment. We clarify this section based on other comments. It is the State's responsibility to direct potential subgrantees to these regulations or otherwise alert them to this and other potential obligations, compliance requirements, and future responsibilities.

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

We received comments supporting the changes that allow us to work with a grantee to correctly allocate costs after the application is received, but before we consider the application for award. We remove § 86.19(b) as it restates information in the opening paragraph. We renumber §§ 86.19(c) through (h) as §§ 86.19(b) through (g).

Comment 52: Remove assigning "100 percent" of the project costs as it is confusing.

Response 52: We define "project cost" at § 86.3 as the combination of the Federal share and the matching share. However, in the interest of clarity we rephrase to state "all eligible project costs" instead of "100 percent."

Comment 53: Change § 86.19(c) [now § 86.19(b)] so that applicants must properly allocate funds before the due date. The breakdown on allocated costs must be shown at the time of the application and not when the Director announces the award. Applications for BIG Tier 2—National grants cannot be reviewed and ranked without appropriate information.

Response 53: We make changes to clarify this paragraph. We expect that applicants will read both the regulations and the Notice of Funding Opportunity (NOFO) and make good faith efforts to appropriately allocate funds in their applications. However, we do not wish to reject an application simply for an error or misinterpretation in allocating funds. We include this paragraph so that we have the flexibility to work with the applicant before the award to resolve any problems. Paragraph (a) of this section clearly states that we expect an applicant to show and explain in the application the breakdown of costs and reasoning behind the cost allocation. We change paragraph (c) to clarify that after the application due date, we may work with applicants to resolve any issues. However, we must approve how an applicant allocates funds before we will

consider the application for a possible award.

Comment 54: Recommend you refer to § 86.43(i) at § 86.19(a)(2) of this section to link the two sections.

Response 54: We agree and insert the reference.

Comment 55: The example at § 86.19(d)(1) [now § 86.19(c)(1)] should have costs allocated between eligible and ineligible uses. Marinas may intentionally design or relocate uses to take advantage of BIG funding and also get a secondary benefit.

Response 55: We make no change based on this comment. An application must clearly state the primary purpose of the project and justify the approach. If BIG-eligible projects have a secondary use that does not interfere with the primary purpose, there is no loss to the program objectives.

Comment 56: The exception at § 86.19(d)(3) [now § 86.19(c)(3)] could be problematic. For example, a gangway with an estimated cost of $4,500 does not have to allocate funds between eligible and ineligible uses. What happens if the gangway goes to bid and comes in costing $10,000? The first expectation was that the BIG grant would cover 100 percent of the costs; in the second, the BIG grant covers only 90 percent of the costs, leaving $1,000 for the applicant to give as additional match. On top of that, would the $10,000 have to be allocated between eligible and ineligible uses after the fact?

Response 56: We make no change based on this comment. We include this section to reduce the burden of allocating costs for components of the BIG-funded project that have relatively little value. Section 86.19(d)(3) [now § 86.19(c)(3)] states that each year we will post the minimal value in the annual NOFO based on the formula as applied to the maximum award we offer that year. If the maximum award (Federal plus match) is $2 million, applying the formula will allow States to forego allocating costs for a component with a value of $5,000 or less.

In the scenario given in the comment, the total estimate for the gangway is $4,500, which means the grantee will receive $3,375 in BIG funding and give $1,125 in non-Federal match. After the grant is awarded, if the actual cost of an item is $5,500 more than originally projected, the grantee must pay the extra cost from a non-Federal source. If an applicant does not allocate costs for an item because the estimated value is below the threshold and later finds the actual cost exceeds that value, it must contact the Regional Office. The Regional Office will inform the applicant or grantee if it must assume additional costs to compensate for ineligible use. Regardless of whether an applicant chooses the option at § 86.19(c)(3), if the cost of a component is more than twice the original estimate, the grantee will incur additional, unexpected costs.

It is always an option for the applicant to choose to allocate costs for all components of the grant, regardless of the value. We offer the option at § 86.19(c)(3) as an alternative, but applicants do not have to use it.

Subpart C—Federal Funds and Match

We received a comment supporting all amendments and additions to this subpart.

Section 86.30 What is the source of BIG funds?

No comments received.

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

No comments received.

Section 86.32 What are the match requirements?

Comment 57: Recommend you change the word "State" at § 86.32(a) to "you" to reflect the convention stated at § 86.1(b).

Response 57: We agree and make the change.

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

We received comments supporting the changes and specifically for removing the requirement for all match providers to produce a letter of commitment.

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

We received a comment supporting this section.

Subpart D—Application for a Grant

Section 86.40 What are the differences between BIG Standard (now BIG Tier 1—State) and BIG Select (now BIG Tier 2—National) grants?

Comment 58: We received several comments supporting the flexibility to increase annual BIG Tier 1—State funding. We also received comments that stated their support is contingent on adequate funds for BIG Tier 2—National projects.

Response 58: We agree that flexibility for larger funding amounts through Tier 1—State grants will allow States to plan smaller projects that could not successfully compete for Tier 2—National funds, but are beneficial to eligible users. We revised this section to assure States they will receive funding for requests up to $200,000 annually. We also add that we may increase the annual award a State may request if there are enough funds available and it is advantageous to the program. This will allow us to be flexible in awarding funding during the award period and potentially during the funding year, if we determine it is in the best interest of BIG.

Comment 59: Recommend that flexibility for awarding BIG Tier 1—State be considered only if BIG Tier 2—National applications do not exceed available funds in a given fiscal year. The BIG Tier 1—State NOFO should be posted after BIG Tier 2—National applications are received and after consulting with stakeholders.

Response 59: We make no change based on this comment. We adjust this section as discussed in Response 58, but the availability of BIG Tier 1—State funds will not depend on how much remains after the BIG Tier 2—National selections are made. We want to assure States they will have adequate BIG funding to maintain a viable program and to plan for needed actions. However, we will retain the flexibility to limit initial BIG Tier 1—State awards to $200,000 and have the flexibility to consider adding requested BIG funds above this threshold later during the funding year if additional funds are available.

Comment 60: If you are considering more than a 20 percent increase in the minimum funding for BIG Tier 1—State, you should first seek stakeholder input.

Response 60: We make no change based on this comment. However, we will consider consulting with our partners on possible approaches for implementing future annual changes.

Section 86.41 How do I apply for a grant?

Comment 61: You should inform subgrantees in the regulations that the State will send in their applications through *http://www.grants.gov.*

Response 61: We add the definition of *grants.gov* at § 86.3 and state that we require States to use *http://www.grants.gov* to apply for BIG grants.

Comment 62: Clarify at § 86.41(b) that the term "certify" means to sign.

Response 62: We make no change based on this comment. Certifying by an authorized State representative may be done electronically or by other means in the future. We will inform applicants of acceptable ways to certify in the annual NOFO.

Comment 63: Clarify that the agency eligible to apply for a BIG grant must be the one designated by the Governor and not a specific State agency.

Response 63: We make no change based on this comment. It is clear at § 86.10 that only one agency in each State may apply for BIG and the officials who may designate that agency in your State.

Comment 64: Switch § 86.41(b) and (c) to reflect that the form must be certified before submitting the grant application.

Response 64: We agree and make the recommended change.

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

Comment 65: Remove "budget information" from the list of items required in a grant application as it is already required at § 86.43 under project statement.

Response 65: We agree and removed budget information from the list of required items. We also clarify by adding a reference to § 86.43 in this paragraph.

Comment 66: Delete paragraph (c) as it refers to what is needed after the award. Recommend adding this to § 86.61.

Response 66: We agree and clarify this section to reflect what an applicant must include at the time of application. We refer to § 86.61 for additional requirements that will become part of the application after we approve the project.

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

Comment 67: This section is burdensome for applicants, some with minimal grant experience, and requires unnecessary information. Recommend clarifying or changing to indicate additional information would be required once the project is selected for funding.

Response 67: We make no change based on this comment. The commenter did not state what parts of this section are burdensome. The State is the applicant and should work with potential subgrantees to develop the project statement. The information required in the project statement is standard for most grant programs. It is also necessary to determine allowability of costs and to rank applications in a competitive grant program.

Comment 68: The requirement to add names and qualifications of known contractors is burdensome at the application stage.

Response 68: We change the term *contractor* to *concessioner* at § 86.43(e)(2). We ask an applicant to give information in an application on known or anticipated concessioners or subgrantees. If an applicant has not identified concessioners or subgrantees in the application, it must inform us of this and be ready to respond to our requests for this additional information following § 86.42(c).

Comment 69: Combine this section with the criteria at §§ 86.51 through 86.60 to simplify preparing and reviewing applications.

Response 69: We make no change based on this comment. The project statement is required for both BIG Tier 1—State and BIG Tier 2—National applications. The criteria at §§ 86.51 through 86.60 are applied only to BIG Tier 2—National applications. It would be confusing to those applying for a BIG Tier 1—State grant to include criteria with the project statement. We will consider giving nonregulatory assistance to BIG Tier 2—National applicants to help them include criteria in their project statements.

Comment 70: This section appears to be solely for the purpose of aligning with WSFR's project reporting system, Wildlife Tracking and Reporting Actions for the Conservation of Species (TRACS). Clarify the content and reduce redundancy.

Response 70: We make no change based on this comment. A project statement (called a program narrative statement) was required by Office of Management and Budget (OMB) Circular No. A–102 and is supported by 2 CFR part 200, § 200.210 and appendix I to part 200. We give further details in this rule to help applicants give us the information we need to make informed decisions for funding. We use many terms that correlate to the TRACS performance reporting system to reduce confusion when completing those reports.

Comment 71: One commenter suggested alternative language for this section.

Response 71: We do not make any suggested change that applies only to BIG Tier 2—National, or that is a minimal change that does not significantly improve the final rule. We appreciate the examples and additional information the commenter presents and will consider them for future nonregulatory guidance. We did not use the word "engineering" in discussing the approach because we do not want to confuse applicants into thinking it is a requirement to employ an engineer. We used some of the suggestions to reformat the paragraph at § 86.43(i) and to clarify or further explain at paragraphs (b), (c), (e), (g)(3), (i), and (j).

Comment 72: Combine purpose and objective.

Response 72: We make no change based on this comment. Purpose and objective are two separate and distinct parts of a project statement. The purpose refers to the reason for the project and will include verbs such as create, improve, and increase. Objectives are brief guidelines that will help a grantee achieve project goals by stating more specifically the intended outputs, such as: The number of slips for transient boaters, the linear feet of new dock space, the time needed to complete that goal, and any information that describes that the goal is attainable and relevant.

Comment 73: You should give examples of measurable and verifiable objectives.

Response 73: We make no change based on this comment. We will consider offering further guidance outside of regulation.

Comment 74: It may be difficult for applicants to state a useful life for a capital improvement at the application stage.

Response 74: We make changes to clarify approach and expectations. At § 86.43(f), we change "state" to "estimate" and add a sentence that a grantee will finalize useful life during the approval process. This change informs an applicant that it must include information on useful life in the application, but it will be reviewed and may be changed, if necessary, when it receives an award. We also make clarifying changes at § 86.75, which is § 86.74 in this final rule.

An applicant may seek guidance from technical literature and from vendors, engineers, and others knowledgeable individuals to estimate the useful life of each capital improvement. We will reject an application that does not have the required estimates for useful life. Once a project is approved for an award, the Service may confer with the grantee on the estimate given in the application. A grantee must finalize the useful life before the award.

If an applicant is seeking points for the criterion at § 86.51(c)(2) as described at § 86.59(b)(2), it must give adequate information in the application to support the request for consideration under the criterion. If we find before we approve the grant that an applicant cannot show a reasonably expected increased benefit to earn the extra point(s), we will subtract the point(s) related to that criterion from the total score for that project and adjust awards accordingly.

Comment 75: No minimum useful life is identified. The current rule states

useful life is 20 years. Does this mean applicants can decide another period for useful life?

Response 75: We explained in the preamble of the proposed rule published at 77 FR 18767 on March 28, 2012, that we propose to eliminate the 20-year requirement and replace it with a useful life requirement based on capital improvements. The useful life determination described at §§ 86.73 and 86.74 will help grantees to better understand their responsibilities.

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

We revise this section in response to a comment that asked us to reference this section at § 86.73. Upon further consideration, we concluded the two sections contain almost identical content, so we combine all the information at § 86.44.

Comment 76: Add an option to this section that will allow grantees to reduce the scope of their project if they find that actual costs greatly exceed projected costs.

Response 76: We make no change based on this comment. In BIG Tier 2-National project review and ranking, the scope is a major factor that influences the amount of points that a project receives. If the scope were reduced, it could impact the score and ranked order. It is important that applicants are thorough when preparing their application and consider all factors that could influence costs during the period of performance.

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

No comments received.

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

Comment 77: Clarify and give examples for changes after the due date as found at paragraph (b). If part of an application is found to be ineligible, will you allow applicants to change the scope, budget, etc., and continue the review and ranking?

Response 77: We clarify and reformat paragraph (b) to state that if an applicant proposes using BIG funds for an action that we identify as ineligible, we will decide on a case-by-case basis whether we will consider the rest of the application for funding. We do not give examples in the regulation as there are many possible scenarios and to give any examples may make the regulation more confusing. We may seek advice from the applicant or members of the advisory panel, but we will make the final decision. If we decide to accept the application with the ineligible costs removed, we will ask the applicant to change the application accordingly.

Comment 78: Delete paragraph (f) on accepting reduced funding as this does not foster the competitive aspect of the program unless offered to all non-funded applicants.

Response 78: We make changes in this paragraph to clarify this issue. We review and rank all competitive grant applications according to the BIG criteria, arrange them in ranked order, and award available funds to projects, starting with those ranked the highest. The amount of available funds and the amount of funding requests never match. Paragraph (f) describes the approach we may use when funding is still available, but the next ranked project cannot be funded at the level requested. We may approach the applicant for the next highest ranked project to offer the remaining funds. If the applicant declines, we may continue the process to maximize BIG Tier 2—National funding.

Subpart E—Project Selection

We received a comment supporting all amendments and additions to this subpart.

Section 86.50 Who ranks BIG Tier 2—National grant applications?

No comments received.

Section 86.51 What criteria does the Service use to evaluate BIG Tier 2—National applications?

Comment 79: Suggest a project achieve a score of at least 65 percent of the total available in order to be considered for funding. A project that receives below this score is clearly not competitive and should not be considered, even if there is funding available.

Response 79: We agree with the approach to set a minimum standard for funding BIG Tier 2—National applications as an incentive for developing more competitive projects. As we did not discuss this in the proposed rule, we change this section to allow us to set a scoring standard in the NOFO. We will use feedback from States, advisors, and others to assess if we wish to set a minimum total score standard. We may announce in the NOFO a minimum total score of 23, which is 65 percent of the maximum total score available in criterion at paragraphs (a) and (b).

Comment 80: Consider awarding points for projects in federally designated disaster areas so we can leverage BIG funds to aid in the recovery.

Response 80: We make no change based on this comment. We score competitive applications based on need as described at § 86.52. We will consider all factors in an application that address the need for the project, including those factors as they may relate to disaster response and rebuilding.

Comment 81: We received two comments recommending we adjust the points in the ranking criteria to create a possible total of 100. One of these comments includes removing § 86.51(c)(2) and (c)(3). One commenter included a table that showed these changes and added designations from § 86.43 that correspond to the criteria.

Response 81: We do not accept the suggestions for revising scoring and removing two paragraphs at § 86.51(c). Many comments we received in response to the proposed rule published at 77 FR 18767, March 28, 2012, stated they want a point range for scoring each criterion, but that a wide range is not effective. In response, we reduced the point range for scoring in the proposed rule published April 25, 2014. We received comments supporting §§ 86.51(c)(2) and (c)(3) and we will retain those sections.

The criterion at § 86.51(c)(2) is important because it encourages applicants to consider the future, plan for projects that extend the availability of the BIG-funded facility, and improve services to eligible users. This criterion also addresses the desire for grantees to build projects using design and processes that improve resiliency to the effects of climate change. Many States asked us to include the criterion at § 86.51(c)(3) to recognize the value of those operators who voluntarily participate in Clean Marina and other similar programs. We agree and recognize the benefit to eligible users.

We agree that information to help applicants relate criteria to the project statement is desirable, but not through this regulation. We will work with our partners to develop and distribute further guidance to help applicants.

Comment 82: The criterion at § 86.51(a)(2) does not address justification for the cost of the project. Instead, it focuses on comparing costs with benefits as a means of comparing one application to another. Recommend changing the question to be more about how costs compare to benefits rather than if the costs are justified by the benefits.

Response 82: We do not make a change at § 86.51(a)(2), but we agree that the explanation for this criterion at § 86.53 could be interpreted that we would compare an application to others in the same grant cycle. We change § 86.53 to state we will consider the costs as they relate to the benefits for individual projects and not as projects compare to each other in the same grant cycle. We also add guidance at paragraph § 86.53(d) recommending that an applicant inform us if project costs are inflated due to: (a) Specialized materials to increase the useful life, (b) the cost of transporting materials to a remote location, (c) unusual costs associated with producing benefits at a certain site or in a certain geographic area, or (d) the cost of providing environmentally friendly facilities.

Comment 83: Recommend replacing *in-kind* with *substantial* because in-kind is just another type of match and it should not matter what type of match it is.

Response 83: We make no change based on this comment. We received many comments on this subject while preparing for this rulemaking. We responded to recommendations to allow us to consider the nonmonetary contributions of partners as well as the monetary contributions. The purpose of the criterion at § 86.51(b)(2) is to allow for partnerships in smaller communities to rank well even if they do not result in large financial contributions. The word *substantial* is subjective and could result in negating the spirit of giving credit for smaller contributors.

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

When evaluating a project on the need for more or improved boating infrastructure facilities as described at § 86.52(c), we will consider creating accessibility for eligible vessels by increasing water depth. We received a comment supporting this factor.

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

We make changes to this section based on comments received under § 86.51. See Response 82.

Comment 84: Construction costs can vary widely across the country for reasons such as meeting hurricane standards, installing bubbler systems where ice is a factor, and adding transportation costs for remote locations. Recommend applicants be told to explain why higher costs may be justified.

Response 84: We agree and make changes as discussed in Response 82.

Comment 85: Recommend adding consideration for costs associated with making the project a harbor of safe refuge.

Response 85: We agree and add paragraph (e) to tell applicants to include this information.

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

We received a comment supporting the focus on both attractions and boater services in the ranking criterion at § 86.51(a)(3).

Comment 86: Recommend including proximity to a harbor of safe refuge under this criterion.

Response 86: We agree and add at paragraph (c) that we will consider *safety* as well as services.

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

No comments received.

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

Comment 87: Recommend deleting the word *cash* at paragraph (a) because it precludes additional points for in-kind contributions.

Response 87: We make no change based on this comment. In-kind contributions are discussed at § 86.57.

Comment 88: We received two comments recommending a different standard for awarding points based on percentage of additional cash match. Both recommendations were based on increasing the total points at § 86.51 that may be considered for this criterion for a maximum of 25 points.

Response 88: We did not accept the recommended changes at this section as we did not accept the related recommended changes in Comment 81. However, upon further review we change the percent ranges to encourage applicants to offer more match to their project.

Section 86.57 What does the Service consider when evaluating contributions that a partner brings to a project?

No comments received.

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

No comments received.

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

Comment 89: We consider § 86.59(b)(4) and (5) to be unneeded and a potential obstacle to participation. These two requirements are typically considered during project design and would be enforced during the permitting process.

Response 89: We make no change based on this comment. This section is not a requirement, and there is no reason for it to be an obstacle to participation. This section allows us to consider additional points for innovative physical components, technology, or techniques that improve the BIG project. The items at § 86.59(b)(4) and (5) are examples of how an applicant could qualify for these additional points by exceeding the compliance requirements. If an applicant is required to use a physical component, technology, or technique to comply with local, State, or Federal regulations, then we do not consider additional points under this criterion. This section is for applicants who voluntarily choose an innovative approach that increases the resilience of project components or otherwise improves the project.

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

We received a comment that supports the additional point we offer for marinas that have received official recognition for their voluntary commitment to exceeding required standards.

Section 86.61 What happens after the Director approves projects for funding?

No comments received. We delete § 86.42(c) and refer to this section.

Subpart F—Grant Administration

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

No comments received.

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

We received several comments supporting the length of the period of performance and the amendment to allow a first extension for up to 2 years. The commenters state that the length of the period of performance is important to ensure project completion.

Comment 90: Clarify that we could have almost 6 years to complete a project if we combine the 3-year period of performance with the 3-year period of obligation.

Response 90: There is potential that combining the obligation period with the period of performance could result in 6 years from the beginning of the fiscal year the project is awarded to the end of the period of performance. However, this may not always be true. A grantee may coordinate with us after we award a grant to set a start date for the period of performance within the obligation period. We add that we will work with a grantee to set a start date within the 3-year period of obligation.

Section 86.72 What if I cannot complete the project during the period of performance?

No comments received.

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

Comment 91: Recommend adding a reference in this section to § 86.44 as the two sections are related.

Response 91: We agree, and upon further review we consider most of § 86.73 and § 86.44 to be redundant. We revise § 86.44 to include additional information from § 86.73 and delete the content of § 86.73. We renumber §§ 86.74 through 86.79 as §§ 86.73 through 86.78.

Section 86.74 [now § 86.73] How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?

Comment 92: Recommend the owner of the BIG-funded facility be responsible for continued operation and maintenance and not the State.

Response 92: We make no change based on this comment. A State may enter into a contractual agreement with the facility owner, subgrantee, or other type of operator that designates them as the responsible party for continued operation and maintenance. However, should they not fulfill their obligations, the State as grantee is ultimately responsible.

Section 86.75 [now § 86.74] How do I determine the useful life of a BIG-funded facility?

Comment 93: We received two comments recommending this section be simplified to avoid confusion.

Response 93: We considered these comments and clarify this section by presenting it as a step-by-step process. We emphasize that the initial application must include a useful life estimate, but the estimate may be based on information from resources that are typically available when developing a grant application. We also clearly allow a State to choose only one of the methods for finalizing useful life in the grant and use that method exclusively for BIG in that State.

Comment 94: Recommend changing the language so that it is clear how to apply the process. It is unclear how components relate to the larger systems and what would happen if a smaller component is no longer useful, but necessary for continued use of a larger one. For example, if a gangway costs less than $25,000 and it falls into disrepair, can the operator remove and not replace it, even if it is necessary to access the dock system?

Response 94: We changed this section to clarify at § 86.74(a)(1)(iv) and (v) that each smaller component must be associated with a capital improvement. If it supports more than one, the smaller component must be associated with the capital improvement with the longest expected useful life.

Section 86.76 [now § 86.75] How should I credit BIG?

No comments received.

Section 86.77 [now § 86.76] How can I use the logo for BIG?

No comments received.

Section 86.78 [now § 86.77] How must I treat program income?

We received a comment supporting our approach to clarifying program income.

Comment 95: Recommend you add that we should tell you if project construction is completed before the end of the period of performance to reduce the impact of income earned.

Response 95: We agree and add paragraph (e) to recommend grantees tell us when project construction is completed.

Section 86.79 [now § 86.78] How must I treat income earned after the period of performance?

No comments received.

Subpart G—Facility Operations and Maintenance

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

We received several comments supporting the change to allow marinas to offer services for free if that is the prevailing rate.

Comment 96: What if a town or city council mandates a high fee just to raise revenue? It seems unfair to make boaters pay the higher fee.

Response 96: We agree and added language at § 86.90(c) that we will accept a State or locally imposed fee schedule if it is reasonable and does not impose an undue burden on eligible users.

Comment 97: Clarify that when determining prevailing rates that similar facilities are being compared. It would not be fair to compare the rates from a private, member-only marina to a public or private marina open to the public. Another example of differing types of facilities would be a public dock connected to a city center compared to a public dock connected to an island.

Response 97: We state at § 86.90(a) that the facilities we consider when determining prevailing rates must offer similar services or amenities. We respond to this comment by adding that they are to be similarly situated as well.

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

No comments received.

Section 86.92 Must an operator of a BIG-funded facility allow public access?

Comment 98: Change the word "operator" to "contractor" to match the definitions.

Response 98: We make no change to this section based on this comment. We clarify by adding the term "operator" at § 86.3.

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

Comment 99: Clarify if we can change to a day-use only facility after the project is completed, but before it reaches the end of its useful life. Would we use the guidance at Subpart H to do this?

Response 99: If a grantee wishes to convert a Tier 1-State or a Tier 2-National project from an overnight to a day-use facility, it must contact the Regional Office for guidance. A subgrantee must contact their State, which will in turn contact the Regional Office. The change in usage will alter the scope of the project, and deviation from the original project scope may constitute a breach of a grant agreement. Grantees must receive our approval before making any changes in the scope of a project at any time during its useful life. [See 2 CFR 200.201(b)(5) and 200.308(b)]

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

We received several comments supporting the change to allow using signs and other forms of emerging communication to inform eligible users about the facility and eligible uses.

Subpart H—Revisions and Appeals

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

No comments received.

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

No comments received.

Section 86.102 Can I appeal a decision?

No comments received.

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

No comments received.

Subpart I—Information Collection

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

No comments received.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

The Regulatory Flexibility Act requires an agency to consider the impact of final 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 will 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 will not have a significant economic impact on a substantial number of small entities.

We have examined this final rule's potential effects on small entities as required by the Regulatory Flexibility Act. We have determined that the changes in the final rule 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 BIG grants.

b. Address changes in law and regulation. This helps grant applicants and recipients by making the regulation consistent with current standards.

c. Reword and reorganize the regulation to make it easier to understand.

d. Allow small entities to voluntarily become subgrantees of agencies and any impact on these subgrantees would be beneficial.

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

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

In addition, this final rule is not a major rule under SBREFA (5 U.S.C. 804(2)) and will 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. 1501 *et seq.*) 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 final 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:

a. As discussed in the determination for the Regulatory Flexibility Act, this final rule will 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 expending local funds.

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

d. The final rule clarifies and improves upon 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 final rule.

f. The benefits of grant funding outweigh the costs. The Federal Government provides up to 75 percent of the total project costs in each requested grant to the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. 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 final rule will 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 final rule will not have significant takings implications under E.O. 12630 because it will not have a provision for taking private property. Therefore, a takings implication assessment is not required.

Federalism

This final rule will not have sufficient Federalism effects to warrant preparing a federalism summary impact statement under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response. In drafting the final rule, we received comments from the Sport Fishing and Boating Partnership Council, a nongovernmental committee established under the Federal Advisory Committee Act; 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 will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The final rule will help grantees because it:

a. Updates the regulations to reflect changes in policy and practice and recommendations received during the past 14 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 part 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

This final rule does not contain new information collection requirements that require approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the U.S. Fish and Wildlife Service application and reporting requirements associated with the Boating Infrastructure Grant Program and assigned OMB Control Number 1018–0109, which expires September 30, 2015. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid 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 given 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 final rule will 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.

Regulation Promulgation

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

PART 86—BOATING INFRASTRUCTURE GRANT PROGRAM

Subpart A—General

Sec.

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

Subpart B—Program Eligibility

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

Subpart C—Federal Funds and Match

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

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86.72 What if I cannot complete the project during the period of performance?
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86.74 How do I determine the useful life of a BIG-funded facility?
86.75 How should I credit BIG?
86.76 How can I use the logo for BIG?
86.77 How must I treat program income?
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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 its useful life?
86.92 Must an operator of a BIG-funded facility allow public access?
86.93 May I prohibit overnight use by eligible vessels at a BIG-funded facility?
86.94 Must I give information to eligible users and the public about BIG-funded facilities?

Subpart H—Revisions and Appeals

86.100 Can I change the information in a grant application after I receive a grant?
86.101 How do I ask for a revision of a grant?
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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 tells States how they may apply for and receive grants from the Boating Infrastructure Grant program (BIG) Tier 1-State and Tier 2-National subprograms. Section 86.40 describes the differences between these two subprograms.

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

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

§ 86.2 What is the purpose of BIG?

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

§ 86.3 What terms do I need to know?

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

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

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

Capital improvement means:

(1) A new structure that costs at least $25,000 to build; or

(2) Altering, renovating, or repairing an existing structure if it increases the structure's useful life by 10 years or if it costs at least $25,000.

Concessioner means an entity with which a State has a written agreement to operate or manage a BIG-funded facility. The agreement with a concessioner may or may not involve a financial exchange. A concessioner is not a contractor or vendor. You pay a contractor or vendor to perform specific duties or supply specific materials according to a written contract. Concessioners, vendors, and contractors are not grant recipients.

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

Director means:

(1) The Director of the Fish and Wildlife Service whom the Secretary of the Interior has delegated authority to administer BIG nationally; or

(2) A deputy or another person whom the Director has delegated authority over BIG.

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

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

(1) Commercial vessels;

(2) Vessels that dock or operate permanently from the facility where a BIG-funded project is located; or

(3) Vessels that receive payment to routinely transport passengers on a prescribed route, such as cruise ships, dive boats, and ferries.

Facility means the structures, equipment, and operations that:

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

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

Grant means an approved award of money, the principal purpose of which is to transfer funds from a Federal awarding agency to the non-Federal entity (grantee) to carry out an authorized public purpose and includes the matching cash and any matching in-kind contributions. The legal instrument used is a grant agreement.

Grants.gov is a centralized location for States and other entities to find and apply for Federal funding. It is located at *http://www.grants.gov.* We require States to use grants.gov, or any system that replaces it, to apply for BIG grants.

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

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

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

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

Marketing means an activity that promotes a business to interested

customers for the financial benefit of the facility. It may include a plan for sales techniques and strategies, business communication, and business development. A business uses marketing to find, satisfy, and keep a customer.

Match means the value of any cash or in-kind contributions required or volunteered to complete the BIG-funded facility that are not borne by the Federal Government, unless a Federal statute authorizes such match. Match must follow the criteria at 2 CFR 200.306(b).

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

Operation means actions that allow a BIG-funded facility or parts of a BIG-funded facility to perform their function on a daily or frequent basis. Examples of operation are janitorial work, service workers, facility administration, utilities, rent, taxes, and insurance.

Operator means an individual or entity that is responsible for operating a BIG-funded facility. An operator may be a grantee, a subgrantee, a concessioner, or another individual or entity that the grantee has an arrangement with to operate the BIG-funded facility.

Personal property means anything tangible or intangible that is not real property.

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

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

Project cost means total allowable costs incurred under BIG and includes Federal funds awarded through the BIG grant and all non-Federal funds given as the match or added to the Federal and matching shares to complete the BIG-funded project.

Public communication means communicating with the public or news media about specific actions or achievements directly associated with BIG. The purpose is to inform the public about BIG-funded projects or the BIG program.

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

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

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

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

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

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

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

State means any State of the United States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa.

Transient means travel to a single facility for day use or staying at a single facility for up to 15 days.

Useful life means the period during which a BIG-funded capital improvement is capable of fulfilling its intended purpose with adequate routine care and maintenance. See §§ 86.73 and 86.74.

Subpart B—Program Eligibility

§ 86.10 Who may apply for a BIG grant?

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

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

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

(c) The Mayor of the District of Columbia.

§ 86.11 What actions are eligible for funding?

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

(1) Construct, renovate, or maintain publicly or privately owned boating infrastructure (see § 86.12) following the requirements at § 86.13. This may include limited repair or restoration of roads, parking lots, walkways, and other surface areas damaged as a direct result of BIG-funded construction.

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

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

(ii) Planning, permitting, and contracting.

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

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

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

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

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

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

(iv) Marina newsletter articles, marina or agency Web pages, and other communications you produce that are directly related to the BIG-funded project;

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

(vi) Public communication.

(6) Record the Federal interest in the real property.

(7) Use BIG Tier 1—State grant awards to administer BIG Tier 1—State and BIG Tier 2—National grants, or grant programs, Statewide. This includes coordinating and monitoring to ensure BIG-funded facilities are well-constructed, meet project objectives, and serve the intended purpose for their useful life; and to manage BIG grant performance or accomplishments.

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

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

(d) Other actions may qualify for BIG funding, subject to our approval, if they

achieve the purposes of BIG. We will describe actions we approve and how they are eligible for BIG funding in the full text of the annual Notice of Funding Opportunity (NOFO).

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

Boating infrastructure may include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Have an operational pumpout station if:

(i) Eligible vessels stay overnight; and

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

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

(b) We will waive the pumpout requirement if you show in the grant application the inability to install a pumpout.

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

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

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

(iii) You are in the process of applying for a CVA grant for the same award year as the BIG grant to install a pumpout station as part of the BIG-funded facility; or

(iv) You have received a CVA grant and will install a pumpout station as part of the BIG-funded facility on or before the time the BIG-funded facility is completed.

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

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

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

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

(4) If you seek an allowance based on this paragraph, you must include supporting information in the grant application as described at § 86.43(n)(1).

(c) We will allow water access at a depth less than 6 feet if you can show that the BIG-funded facility will serve its intended purpose for typical eligible users that visit that location.

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

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

(a) For BIG Tier 1—State and BIG Tier 2—National grants:

(1) You may request BIG funds for facility maintenance only if you will complete the maintenance action during the period of performance.

(2) You may apply user fees collected at the BIG-funded facility after the period of performance to the maintenance of the facility.

(b) For BIG Tier 1—State grants:

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

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

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

(c) For BIG Tier 2—National grants, you may request BIG funds for maintenance if it directly benefits eligible users and is directly related to the BIG project. You are responsible for all maintenance costs after the period of performance except as provided at paragraph (b) of this section.

§ 86.15 How can dredging qualify as an eligible action?

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

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

(1) Have navigable water depth to accommodate eligible vessels as described at § 86.13(a)(6);

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

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

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

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

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

(d) You certify by signing the grant application that you have enough resources to maintain the dredged area at the approved width and depth for the useful life of the BIG-funded facility, under typical conditions.

§ 86.16 What actions are ineligible for BIG funding?

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

(1) Law enforcement.

(2) Direct administration and operation of the facility, such as salaries, utilities, and janitorial duties. Janitorial duties may include:

(i) Routine cleaning;

(ii) Trash and litter collection and removal; and

(iii) Restocking paper products.

(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,

except limited action as described at § 86.11(a)(1).

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

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

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

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

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

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

(i) Giveaway items promoting the business or agency;

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

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

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

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

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

(ii) Serve eligible vessels or users; and

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

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

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

(1) Purpose of BIG; or

(2) Applicable Cost Principles at 2 CFR part 200, subpart F.

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

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

(b) Subgrantees or concessioners may be a local or tribal government, a nonprofit organization, a commercial enterprise, an institution of higher education, or a State agency other than the agency receiving the grant.

(c) Subgrantees that are commercial enterprises are subject to 2 CFR part 200, subparts A through D, for grant administrative requirements.

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

(a) When you design and build your BIG-funded facility, you must consider the features, location, materials, and technology in reference to the geological, geographic, and climatic factors that may have an impact on its useful life.

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

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

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

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

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

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

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

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

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

(2) The breakdown of costs, as described at § 86.43(i), including the basis or method you use to allocate costs between eligible and ineligible users; and

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

(b) After you submit the application, if we do not agree with your cost allocation using paragraph (a) of this section, we will contact you. We may ask you to clarify your information. If we do not agree that the allocation is equitable, we may negotiate an equitable allocation. We must be able to agree that you are appropriately allocating costs between eligible and ineligible users based on the expected use before we consider your application for award.

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

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

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

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

discrete project element, component, or action with a value of $5,000 or less.

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

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

(2) You propose a breakwater, fuel station, pumpout station, restroom, dredging, navigational aids, or other multiuse or multipurpose action.

(e) Examples of actions for which you do not need to allocate costs between user groups are:

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

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

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

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

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 based on the revenue projected for the Trust Fund. We include this estimate when we issue a NOFO at *http://www.grants.gov.*

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

§ 86.32 What are the match requirements?

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

(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 period of performance.

(c) Match must be:

(1) Necessary and reasonable to achieve project objectives;

(2) An eligible activity or cost;

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

(4) Consistent with 2 CFR 200.29 and 200.306, and any other applicable sections of 2 CFR part 200. This includes any regulations or policies that replace or supplement 2 CFR part 200.

(d) Match must not include:

(1) An interest in land or water;

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

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

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

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

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

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

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

(1) State the amount of matching cash;

(2) Describe any matching in-kind contributions;

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

(4) Explain the basis of the estimated value.

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

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

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

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

(b) If a partner is not willing or able to meet a match commitment and you do not have enough money to complete the BIG-funded facility as proposed, you must follow the requirements at §§ 86.44 and 86.100.

Subpart D—Application for a Grant

§ 86.40 What are the differences between BIG Tier 1—State grants and BIG Tier 2—National grants?

COMPARISON OF BIG TIER 1—STATE AND BIG TIER 2—NATIONAL GRANTS

	BIG Tier 1—State	BIG Tier 2—National
(a) What actions are eligible for funding?	Those listed at § 86.11	Those listed at § 86.11 except § 86.11(a)(7).
(b) What is the amount of Federal funds I can receive in one BIG grant?	Each year we make at least $200,000 available to each State. We may increase the award that States may request annually to an amount above $200,000 if enough funds are available and it is advantageous to the program mission. We announce each year in the annual NOFO posted at *http://www.grants.gov* the maximum Federal funds you may request.	We may limit funding to a maximum award of $1.5 million. We may increase the maximum funding you may request if enough funds are available and it is advantageous to the program mission. We announce each year in the annual NOFO posted at *http://www.grants.gov* the recommended maximum Federal funds you may request.
(c) How many grant applications can I submit each year?	Each State can only request up to the annual funding limit each year. You can do this by sending in one grant application with one project or multiple projects. The Regional WSFR Office may ask a State with multiple projects to prepare a separate grant request for each project, as long as the total of all projects does not exceed the annual funding limit.	No limit.
(d) How does the Service choose grant applications for funding?	We fund a single grant or multiple grants per State up to the maximum annual funding amount for that year.	We score each grant application according to ranking criteria at § 86.51. We recommend applications, based on scores and available funding, to the Director. The Director selects the applications for award.

§ 86.41 How do I apply for a grant?

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

(b) The director of your State agency (see § 86.10) or an authorized representative must certify all standard forms submitted in the grant application process in the format that we designate.

(c) States must submit a grant application through *http://www.grants.gov.* The Catalog of Federal Domestic Assistance (CFDA) number for BIG is 15.622.

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

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

(a) When you submit a BIG grant application, you must include standard forms, a BIG project statement as described at § 86.43, documents, maps, images, and other information asked for in the annual NOFO at *http://www.grants.gov,* CFDA 15.622, in the format we ask for.

(b) You must include supporting documentation explaining how the proposed work complies with applicable laws and regulations. You must also state the permits, evaluations, and reviews you need to complete the project. After we approve your project, you will follow guidance at § 86.61 to complete requirements that will become part of your application.

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

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

(1) Reject your application; or

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

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

You must put the following information in the project statement:

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

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

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

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

(b) *Purpose.* State the desired outcome of the project in general or abstract terms, but in such a way that we can review the information and apply it to the competitive review. Base the purpose on the need as described in paragraph (a) of this section.

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

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

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

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

(ii) Benefit eligible users.

(e) *Approach.* (1) Describe the methods to be used to achieve the objectives. Show that you will use sound design and proper procedures. Include enough information on the status of needed permits, land use approvals, and other compliance requirements for us to make a preliminary assessment.

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

(3) Explain how you will exercise control to ensure the BIG-funded facility continues to achieve its authorized

purpose during the useful life of the BIG-funded project.

(f) *Useful life.* Estimate the useful life in years of each capital improvement for the proposed project. Explain how you estimated the useful life of each capital improvement. You must reference a generally accepted method used to determine useful life of a capital improvement. You will finalize useful life during the approval process. See §§ 86.73 and 86.74.

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

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

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

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

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

(iii) Maps or images that show proximity to significant destinations, services that support eligible users, terrain considerations, access, or other information applicable to your project.

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

(h) *Project officer.* If the Federal Aid Coordinator for the State agency will be the project officer, enter the term *State Federal Aid Coordinator* under this heading. If the State Federal Aid Coordinator will not be the project officer, give the name, title, work address, work email, and work telephone number of the contact person. The project officer identified should have a detailed knowledge of the project. State whether the project officer has the authority to sign requests for prior approval, project reports, and other communications committing the grantee to a course of action.

(i) *Budget narrative.* Provide costs and other information sufficient to show that the project will result in benefits that justify the costs. You must use reasonably available resources to develop accurate cost estimates for your project to insure the successful completion of your BIG-funded facility. You should discuss factors that would influence project costs as described at § 86.53(d). Costs must be necessary and reasonable to achieve the project objectives.

(1) You must state how you will allocate costs between eligible and ineligible users following the requirements at § 86.19 and explain the method used to allocate costs equitably between anticipated benefits for eligible and ineligible users.

(2) State sources of cash and in-kind values you include in the project budget.

(3) Describe any item that has cost limits or requires our approval and estimate its cost or value. Examples are dredging and preaward costs.

(j) *Match and other partner contributions.* Identify the cash and in-kind contributions that you, a partner, or other entity contribute to the project and describe how the contributions directly and substantively benefits completion of the project. See §§ 86.32 and 86.33 for required information.

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

(2) See §§ 86.77 and 86.78 for an explanation of how you may use program income. If you decide that your project is likely to generate program income during the period of performance, you must:

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

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

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

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

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

(2) Include any other description or document we ask for in the annual NOFO or that you need to support your proposed project.

(o) *Ranking criteria.* In BIG Tier 2—National applications, you must respond to each of the questions found in the ranking criteria at § 86.51. We also publish the questions for these criteria in the annual NOFO at *http://www.grants.gov.*

(1) In addressing the ranking criteria, refer to the information at §§ 86.52 through 86.60 and any added information we ask for in the annual NOFO.

(2) You may give information relevant to the ranking criteria as part of the project statement. If you take this approach, you must reference the criterion and give supporting information to reflect the guidance at §§ 86.52 through 86.60.

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

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

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

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

(3) Combine your BIG Tier 1—State and BIG Tier 2—National funding to complete a project at a single location.

(b) If you are awarded a grant and find you cannot complete a BIG project with the Federal funds and required match, you may:

(1) Find other sources of non-Federal funds to complete the project.

(2) Consider if BIG Tier 1—State funds are available to help complete the project. This is not a guaranteed option.

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

(c) For BIG Tier 2—National grants, we review and rank each application individually, and each must compete with other applications for the same award year.

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

(e) If you do not complete your project, we may take one or more of the remedies for noncompliance found at 2 CFR 200.338, and any other regulations that apply.

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

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

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

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

(b) After the application due date and before we announce selected projects, you can add or change information in your application only if it does not affect the scope of the project, would not affect the score of the application,

and is not a correction (see paragraph (c) of this section).

(1) During this period we may ask you to change the useful life following the requirements at § 86.74 or allocation of costs between users of the BIG project following the requirements at § 86.19.

(2) If your application proposes using BIG funds for an action we identify as ineligible, we will decide on a case-by-case basis whether we will allow you to change your application to remove identified ineligible costs and if we will consider your application for funding.

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

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

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

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

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

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

(f) If your application is competitive, but 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 accept the reduced funding amount. We will decide on a case-by-case basis if we will consider changes to the scope of your project based on the reduced funding. Any changes to the scope of a project must not result in reducing the number of points enough to lower your project's ranking position. If you choose to accept the reduced amount, you must amend your application to reflect all changes, including the difference in Federal and non-Federal funding.

Subpart E—Project Selection

§ 86.50 Who ranks BIG Tier 2—National grant applications?

We assemble a panel of our professional staff to review, rank, and recommend grant applications for funding to the Director. This panel may include representatives of our Regional Offices, with Headquarters staff overseeing the review, ranking, and recommendation process. Following the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), the Director may invite nongovernmental organizations and other non-Federal entities to take part in an advisory panel to make recommendations to the Director.

§ 86.51 What criteria does the Service use to evaluate BIG Tier 2—National applications?

Our panel of professional staff and any invited participants evaluate BIG Tier 2—National applications using the ranking criteria in the following table and assign points within the range for each criterion. We may give added information to guide applicants regarding these criteria in the annual NOFO on *http://www.grants.gov.* This may include the minimum total points that your application must receive in order to qualify for award.

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

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

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

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

(b) Renovate a facility to:

(1) Improve its physical condition;

(2) Follow local building codes;

(3) Improve generally accepted safety standards; or

(4) Adapt it to a new purpose for which there is a demonstrated need;

(c) Create accessibility for eligible vessels by reducing wave action, increasing depth, or making other physical improvements;

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

(e) Make other improvements to accommodate an established eligible need.

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

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

(1) Total cost of the project;

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

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

(b) You must support the benefits available to eligible users by clearly

describing them in the project statement and explaining how they relate to *Need* at § 86.43(a).

(c) We will consider the cost relevant to all benefits to eligible users that are adequately supported in the application. We may consider the availability of preexisting structures and amenities, but only in the context of the need identified at § 86.43(a).

(d) Describe in your application any factors that would influence project costs, such as:

(1) The need for specialized materials to meet local codes, address weather or terrain, or extend useful life;

(2) Increased transportation costs due to location; or

(3) Other factors that may increase costs, but whose actions support needed benefits.

(e) Describe any costs that are associated with providing a harbor of safe refuge.

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

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

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

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

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

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

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

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

(2) A Federal agency other than the Service.

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

(c) In-kind contributions or actions must be necessary and contribute directly and substantively to the completion of the project. You must explain in the grant application how they are necessary and contribute to completing the project.

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

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

(a) When we evaluate a project under the criterion for match at § 86.51(b)(1), we consider how much cash the applicant and partners commit above the required minimum match of 25 percent of project costs.

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

(c) We will award points as follows:

Percent cash match	Points
26–30	1
31–35	2
36–40	3
41–45	4
46–50	5
51–80	6
81 or higher	7

(d) We must waive the first $200,000 in match for the entities described at § 86.32(a). We will determine the required match by subtracting the waived amount from the required 25 percent match and award points using the table at paragraph (c) of this section.

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

(a) We consider these factors for partner contributions in evaluating a proposed project under the criterion at § 86.51(b)(2):

(1) The significance of the contribution to the success of the project;

(2) How the contribution supports the actions proposed in the project statement;

(3) How the partner demonstrates its commitment to the contribution; and

(4) The ability of the partner to fulfill its commitment.

(b) We may consider the combined contributions of several partners, according to the factors at paragraph (a) of this section.

(c) To receive consideration for this criterion, you must show in your application how a partner, or group of partners, significantly supports the project by addressing the factors in paragraph (a) of this section.

(d) You may describe partner contributions in the project statement.

(e) Under this criterion, partner contributions need not exceed the 25 percent required match.

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

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

(1) Using a new technology or technique; or

(2) Applying a new use of an existing technology or technique.

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

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

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

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

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

(1) Newly available; or

(2) Repurposed in a unique way.

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

(1) Extend the useful life of the BIG-funded project;

(2) Are designed to allow the operator to save costs, decrease maintenance, or improve operation;

(3) Are designed to improve BIG-eligible services or amenities;

(4) Reduce the carbon footprint of the BIG-funded facility. *Carbon footprint* means the impact of the total set of greenhouse gas emissions;

(5) Are used during construction specifically to reduce negative environmental impacts, beyond compliance requirements; or

(6) Improve facility resilience.

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

(a) In evaluating a project under the criterion at § 86.51(c)(3), we consider if the application documents that the facility where the BIG-funded project is located has received official recognition for its voluntary commitment to

environmental compliance, sustainability, and stewardship by exceeding regulatory requirements.

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

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

(d) The facility must have met the criteria required by the established program and received official recognition by the due date of the application.

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

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

(1) Amount of the grant;

(2) Documents or clarifications required, including those required for compliance with applicable laws and regulations;

(3) Approvals needed and format for processing approvals; and

(4) Time constraints.

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

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

Subpart F—Grant Administration

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

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

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

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

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

(b) We will work with you to set a start date within the 3-year period of obligation. We assign a period of performance that is no longer than 3 years from the grant start date.

(c) You must complete your project within the period of performance unless you ask for and receive a grant extension.

§ 86.72 What if I cannot complete the project during the period of performance?

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

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

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

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

(2) Explains the reasons for delay;

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

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

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

(1) The extension is justified;

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

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

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

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

(a) You must operate and maintain a BIG-funded facility for its authorized purpose for its useful life. See §§ 86.3, 86.43(f), and 86.74.

(b) Catastrophic events may shorten the useful life of a BIG-funded facility. If it is not feasible or is cost-prohibitive to repair or replace the BIG-funded facility, you may ask to revise the grant to reduce the useful-life obligation.

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

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

You must determine the useful life of your BIG-funded project using the following:

(a) You must give an informed estimate of the useful life of the BIG-funded project in your grant application, including the information in Steps 1, 2, and 3, in paragraphs (a)(1) through (3) of this section, as applicable.

(1) *Step 1.* Identify all capital improvements that are proposed in your project. We may reject your application if you do not include an estimate for useful life.

(i) Use the definition of *capital improvement* at § 86.3.

(ii) The capital improvement must be a structure or system that serves an identified purpose.

(iii) Consider the function of the components in your application and group those with a similar purpose together as structures or systems.

(iv) All auxiliary components of your project (those that are not directly part of the structure or system) must be identified as necessary for the continued use of an identified capital improvement. For example, a gangway is not part of the dock system, but is necessary for access to and from the dock system, so it could be included in the useful life of the dock system.

(v) Attach an auxiliary component as identified at paragraph (a)(1)(iv) of this section to only one capital improvement. If it supports more than one, choose the one with the longest useful life.

(vi) Examples of structures or systems that could potentially make up a single capital improvement are a: Rest room/shower building; dock system; breakwater; seawall; basin, as altered by dredging; or fuel station.

(2) *Step 2.* Estimate the useful life of each capital improvement identified in Step 1 in paragraph (a)(1) of this section.

(i) State how you determine the useful life estimate.

(ii) Identify factors that may influence the useful life of the identified capital improvement, such as: Marine environment, wave action, weather conditions, and heavy usage.

(iii) Examples of sources to obtain estimates for useful life information when developing your application are: Vendors, engineers, contractors, or others with expertise or experience with a capital improvement.

(3) *Step 3.* If you are asking us to consider additional points for a physical

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

(i) The capital improvement or component that you will apply the criterion at § 86.51(c) to;

(ii) The expected increase in useful life;

(iii) The sources of information that support your determination of an extended useful life; and

(iv) A description of how you expect the useful life will be increased.

(b) After you submit your application, but before we award your grant, you must:

(1) Confirm the useful life for each capital improvement using a generally accepted method.

(2) Provide any additional documents or information, if we request it.

(3) Consult and obtain agreement for your final useful life determinations at the State or Regional level, or both.

(4) Revise your application, as needed, to include the final useful life determination(s).

(c) If we find before we award the grant that you are unable to support your determination of an extended useful life at § 86.51(c), we will reduce your score and adjust the ranking of applications accordingly.

(d) You must finalize useful life in your grant by one of the following methods:

(i) State several useful-life expectations, one for each individual capital improvement you identified at paragraph (a)(1) of this section; or

(ii) State a single useful life for the whole project, based on the longest useful life of the capital improvements you identified at paragraph (a)(1) of this section.

(e) States may decide to use only one of the methods described at paragraph (d) of this section for all BIG-funded projects in their State.

§ 86.75 How should I credit BIG?

(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 BIG are:

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

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

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

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

§ 86.76 How can I use the logo for BIG?

(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 achievements; and

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

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

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

(d) The Assistant Director or Regional Director may authorize other persons, organizations, agencies, or governments not identified in this section to use the logo for purposes related to BIG 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 BIG.

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

(f) The user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

(1) Any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and

(2) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo.

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

§ 86.77 How must I treat program income?

(a) You must follow the applicable program income requirements at 2 CFR 200.80 and 200.307 if you earn program income during the period of performance.

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

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

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

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

(ii) We approve your proposed use of the program income, which must be for one or more of the actions eligible for funding at § 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 at paragraph (a) of this section.

(d) For BIG Tier 1-State grants with multiple projects that you may complete at different times, we recommend that States seek our advice on how to apply for and manage grants to reduce unintended program income.

(e) If your project is completed before the end of the period of performance, we recommend you notify us and ask for advice on how to adjust the period of performance to manage potential program income.

§ 86.78 How must I treat income earned after the period of performance?

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

Subpart G—Facility Operations and Maintenance

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

(a) An operator of a BIG-funded facility must charge reasonable fees for using the facility based on prevailing rates at other publicly and privately owned local facilities similarly situated

and offering a similar service or amenity.

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

(c) If the BIG-funded facility has a State or locally imposed fee structure, we will accept the mandated fee structure if it is reasonable and does not impose an undue burden on eligible users.

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

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

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

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

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

(a) *Public access* in this part means access by eligible users, for eligible activities, or by other users for other activities that either support the purpose of the BIG-funded project or do not interfere with the purpose of the BIG-funded project. An operator of a BIG-funded facility must not allow activities that interfere with the purpose of the project.

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

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

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

(1) Accessible to the public; and

(2) Open for reasonable periods.

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

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

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

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

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

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

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

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

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

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

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

Subpart H—Revisions and Appeals

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

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

(b) We may approve a revision if:

(1) For BIG Tier 1—State and BIG Tier 2—National awards, the revision:

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

(ii) Would not increase Federal funds.

(2) For BIG Tier 2—National awards, the revision:

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

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

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

(d) The Regional WSFR Office must follow its own procedures for review and approval of any changes to a BIG Tier 1—State grant.

(e) The Regional WSFR Office must receive approval from the WSFR Headquarters Office for any changes to a BIG Tier 2—National grant that involves cost or affects project benefits.

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

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

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

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

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

(ii) Why the revision is necessary.

(b) You must send any revision of the scope to your State Clearinghouse or Single Point of Contact if your State supports this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

§ 86.102 Can I appeal a decision?

You can appeal the Director's, Assistant Director's, or Regional Director's decision on any matter subject to this part according to 2 CFR 200.341.

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

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

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

The Director can authorize an exception to any requirement of this part that is not explicitly required by

law if it does not conflict with other laws or regulations or the policies of the Department of the Interior or the Office of Management and Budget (OMB).

Subpart I—Information Collection

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

OMB has reviewed and approved the U.S. Fish and Wildlife information collection requirements (project narratives, reports, and amendments) in this part and assigned OMB Control No. 1018–0109. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on any aspect of the information collection requirements to the Service Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

Dated: April 21, 2015.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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