

October 4, 2013

Ms. Sarah M. Bleakley, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

Re: Treasury Department Draft Rule on Gulf Coast Restoration Trust Fund.

Dear Sarah:

You asked that interested and affected counties submit comments on the Treasury Department's Draft Rule on the Gulf Coast Restoration Trust Fund to the Consortium. Bay County staff has reviewed the draft rule and provides these attached initial comments.

Treasury published the draft rule on September 6, 2013, not one month ago. The proposed regulations contain procedures and requirements governing the distribution of Gulf Coast Restoration Trust Funds through the Treasury Department under the RESTORE Act.

Bay County is one of the eight "*disproportionally affected counties*", which are collectively entitled to 75% of funding Florida receives from the 35% allocation to the Gulf Coast States. The draft rule calls this the "*Direct Component*". Given estimates that the Clean Water Act fines against BP could be between 3.5 and 19 billion dollars, the amount potentially available to Bay County is substantial. Consequently, Bay County is directly interested in and is significantly affected by the draft rule.

We understand that the other four states may have been provided prior drafts of the rule in advance of their publication date. If this is true, Bay County and other Florida counties should be provided the same amount of time to review and comment on the rule. The draft rule involves the creation of a federal grant program that affects Bay County.

Quite honestly, while we have initially identified some concerns with the rule, we do not currently have the expertise to propose every solution. Finally, we understand that requests for extension of time to respond to draft rules are routinely granted under the Federal Administrative Procedures Act, especially when requested by parties whose interests are substantially affected by the rule.

Thank you for the opportunity to assist the Consortium with its comments on the draft rule.

Sincerely,

Terrell K. Arline

Cc: County Commissioners
Edwin L. Smith, County Manager
Jim Muller, Bay County Restore Act Coordinator



A PROUD PAST
A BRIGHT FUTURE

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Restoration Trust Fund.

Dear Sarah:

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Treasury published the draft rule on September 6, 2013, not one month ago. The proposed regulations contain procedures and requirements governing the distribution of Gulf Coast Restoration Trust Funds through the Treasury Department under the RESTORE Act.

Bay County is one of the eight "*disproportionally affected counties*", which are collectively entitled to 75% of funding Florida receives from the 35% allocation to the Gulf Coast States. The draft rule calls this the "*Direct Component*". Given estimates that the Clean Water Act fines against BP could be between 3.5 and 19 billion dollars, the amount potentially available to Bay County is substantial. Consequently, Bay County is directly interested in and is significantly affected by the draft rule.

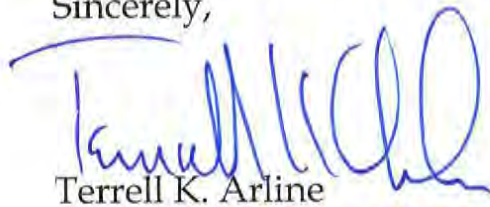


Bay County requests that the Consortium ask for an extension of time to submit comments on the rule beyond the November 5th deadline. We understand that requests for extension of time to respond to draft rules are routinely granted under the Federal Administrative Procedures Act, especially when requested by parties whose interests are substantially affected by the rule.

Quite honestly, while we have initially identified some concerns with the rule, we do not currently have the expertise to address every issue and propose every solution. Additional time would assist in this effort and support our thorough analysis of the rule. An extension would also support public participation in the process and allow the Consortium and affected local governments to schedule and hold public meetings to discuss and revise comments on the rule.

Thank you for the opportunity to assist the Consortium with its comments on the draft rule.

Sincerely,



Terrell K. Arline

Cc: County Commissioners
Edwin L. Smith, County Manager
Jim Muller, Bay County Restore Act Coordinator

General Comments.

One of the biggest issues with the draft rule is whether the thirty percent distribution to Florida for the Spill Impact Component will go through the Consortium. The answer to this question will suggest further comment.

The rule involves federal grantmaking. The Consortium might seek advice from counties proficient in the federal grant process. It would be helpful to know what existing grant programs could be used as a template.

The Consortium should establish a process or checklist to help counties determine what is the best available science for various programs or activities.

Specific Comments.

1. Rule provision: § 34.200 (a)(1) states:

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs incurred, whether charged on a direct or indirect basis, must conform with the applicable OMB circulars and guidance.

Bay County Comment: There are many OMB circulars and guidance memoranda and they vary in complexity. It would provide certainty to identify the particular OMB circulars and guidance that actually govern the process.

2. Rule provision: § 34.200 (a)(3) states:

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

...

(3) Environmental review and compliance procedures must be complied with for each program, project, or activity, as applicable. Grant agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by applicable OMB circulars and guidance.

Bay County Comment: The concern is with the application of NEPA. It would be helpful for Treasury to explain what level of NEPA analysis it expects Bay County to meet when an application for a grant is prepared. As further discussed below, we should know how the agency intends to apply NEPA in the review of the “*multiyear implementation plan*”.

Additionally, the rule should provide for the reimbursement of the County’s administrative expenses incurred prior to the submittal of a grant and the multiyear plan. Notably, the rule provides in § 34.604 that “NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law.”

3. Rule provision: § 34.201 (j) states:

The following activities are eligible for funding under the Direct Component. . . .

(j) Planning limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of environmental review and compliance.

Bay County Comment: These “*planning*” costs should clearly include engineering and other professional expenses. Additionally, these costs should specifically include the costs of preparing and revising a multiyear implementation plan(s).

4. Rule provision: § 34.301 states:

Treasury is responsible for awarding grants and administering grants and grant agreements under this subpart. Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act. Treasury will establish and implement a program to monitor compliance with its grant agreements.

Bay County Comment: Will the development and application of these additional “*policies and procedures*” be adopted under the APA? The rule should include all such existing, applicable “*policies and procedures*”.

5. Rule provision: § 34.302 states:

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares for the Gulf Coast States for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants.

Bay County Comment: What does “*equal shares*” in “*any fiscal year*” mean? Will the total amount of all grants received by any one State control the total amount of grants received by any other State in any particular fiscal year?

6. Rule provision: § 34.303(a) states in part:

(a) The applicant must submit a multiyear implementation plan describing each program, project, and activity for which it seeks funding. For each, the plan must include a narrative description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill. . . . Treasury may require a standard format for the plans and additional information.

Bay County Comment: There are many concerns about the “*multiyear implementation plan*”. Does the rule require Bay County to adopt and submit a “*multiyear implementation plan*” governing every “*program, project, and activity*” for which it will ever seek funding prior to submittal of the first application? If so, this requirement is overly burdensome, expensive, and irrational.

The RESTORE Act states:

(E) CONDITIONS. – As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (F), or a coastal political subdivision shall –

...

(iv) develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

The RESTORE Act, thus implicates programmatic, multiyear plans to support grants for “*such amounts*” and “*activit[ies]*”. The law does not appear to require that a plan encompassing every potential program or activity to be funded under the Act be adopted up front.

Finally, the rule uses the term “*must*” to define the components of such plan. The RESTORE act uses the term “*may*”. The rule thus makes mandatory what the law provides as an alternative. In addition, the rule should provide that the County may prepare multiple plans, and revise and amend plans as desired.

7. Rule provision: § 34.304 states:

Upon determining that the elements for the multi-year implementation plan have been met, an application may be submitted meeting the requirements of these regulations and the Act. Upon submittal of an application, Treasury will offer the applicant a grant agreement that complies with subpart I and Federal policies applicable to grants.

Bay County Comments. Does the agency believe it must approve the multiyear plan in advance? If the agency takes action to approve these plans, NEPA could apply. It does not appear that Treasury will have to approve the State Expenditure Plan or the Comprehensive Plans. So why must it approve the County’s multiyear expenditure plan?

8. Rule provision § 34.305(a) states:

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.

Bay County Comments. The funds should returned to the Direct Component part of the Trust Fund such that the funds remain available for Bay County.

9. Rule provision § 34.805(a) states:

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the grantee to expend an equal amount from the grantee's own funds for a project or program that meets the requirements of the Act.

Bay County Comments. What due process procedures are available to Bay County should it be required to contest the Treasury Department's determination?

Blalock, Sarah

From: Bleakley, Sarah
Sent: Saturday, September 14, 2013 9:09 PM
To: Blalock, Sarah
Cc: Bleakley, Sarah
Subject: Bay Rules comments. Fwd: may to shall
Attachments: image001.gif

Please print

Sent from my iPhone, so please excuse typos.

Begin forwarded message:

From: "Terrell K. Arline" <tarline@baycountyfl.gov>
Date: September 13, 2013, 10:45:54 AM EDT
To: Ginger Delegal <gdelegal@fl-counties.com>, "Sarah Bleakley NGN (sbleakley@ngn-tally.com)" <sbleakley@ngn-tally.com>
Cc: Jim Muller <jmuller@baycountyfl.gov>
Subject: may to shall

The rule takes a may and turns it into a shall.

Under Florida Rule making this would not be allowed. Do you think this can occur under Federal Administrative law?

Restore Act at T 1 E (iv) conditions states:

‘(iv) develop and submit a multiyear implementation plan for the use of such amounts, **which may include** milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

The rule make this mandatory:

§ 34.303 Application procedure.

The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury will develop an application process for grants available under this subpart that is consistent with the Act and Federal policies on grants. At a minimum, the procedure will include the following:

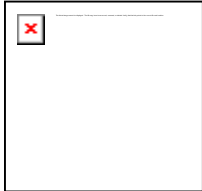
(a) The applicant must submit a multiyear implementation plan describing each program, project, and activity for which it seeks funding. For each, the plan **must include** a narrative

description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the *Deepwater Horizon* oil spill. The applicant must also state 35

whether it has applied for a grant to fund the program, project, or activity under any other part of the Act. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e). Treasury may require a standard format for the plans and additional information.

Thank you.

Terrell K. Arline
Bay County Attorney's Office
840 West 11th Street
Panama City, FL 32401
(850) 248-8175
(850) 248-8189 fax



Please Note: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Blalock, Sarah

From: Bleakley, Sarah
Sent: Friday, October 04, 2013 3:24 PM
To: Blalock, Sarah
Subject: Fwd: Charlotte County's response to Treasury Rules

Sent from my iPhone, so please excuse typos.

Begin forwarded message:

From: "Shoemaker, Kelly" <Kelly.Shoemaker@charlottefl.com>
Date: October 4, 2013 at 2:07:47 PM EDT
To: <sbleakley@ngnlaw.com>
Cc: Jason Stoltzfus <Jason.Stoltzfus@charlottefl.com>
Subject: Fwd: Charlotte County's response to Treasury Rules

Sent from my iPhone

Begin forwarded message:

From: "Shoemaker, Kelly" <Kelly.Shoemaker@charlottefl.com>
Date: October 4, 2013 at 1:35:59 PM EDT
To: <ddarling@fl-counties.com>
Cc: "Cragin Mosteller" <cmosteller@fl-counties.com>, "Stoltzfus, Jason" <Jason.Stoltzfus@charlottefl.com>, "Knowlton, Janette" <Janette.Knowlton@charlottefl.com>
Subject: Charlotte County's response to Treasury Rules

Doug:

Charlotte County Treasury Rules Comments – Gulf Consortium

Charlotte County is generally supportive of and in agreement with the content of the initial Treasury Rules for the Gulf Coast Restoration Trust Fund (Rules). However, there are a number of clarifications that would be appreciated. The purpose of this document is to provide our questions and concerns to the Gulf Consortium to assist in developing a comprehensive set of comments for the Gulf Coast region.

Our primary questions and concerns arise from ambiguity on how the funds for the Spill Impact Component will be administered in Florida and what the Gulf Consortium's role in the process is.

Specifically:

- The Rules do not specifically name or refer to the “Gulf Consortium” as the entity responsible for preparing Florida’s plan for the Spill Impact Component.
- Both the Rules and Restore Act indicate that funds under the Spill Impact Component will be allocated to the “Gulf Coast States”.
- Although a “*consortia of local political subdivisions that includes at a minimum 1 representative from each affected county*” is responsible for preparing Florida’s plan, neither the Restore Act nor the rules state implicitly that the “consortia” will actually receive or be responsible for allocating the funds under this component.
- The rules state that the “Council will prepare a grant agreement with the States...”. This verbiage appears to indicate that the State of Florida will be the formal entity that will apply for, receive, distribute, and report on grants funded through the Spill Impact Component. It would be helpful for the rules to state that “The Gulf Consortium will be responsible for administering grants for Florida”.
- It will be important to clarify exactly what the Gulf Consortium’s formal role will be in this process prior to procuring a consultant to develop a plan. If the State is going to be responsible for reporting on progress of the grants, the “Grant Management” portion of an RFP will not be necessary.

Treasury requested comments on a number of specific items, which the Gulf Consortium should clearly address. Specific questions posted are:

- “Treasury invited comment on appropriate methods for ensuring full compliance with applicable environmental laws while also providing for timely funds disbursement and project implementation.” (*Section: II. Proposed Rule, Page 54802, Paragraph 2*)

Kelly A. Shoemaker
 Deputy County Administrator
 Charlotte County Government
 941.743.1944

www.CharlotteCountyFl.com

“To Exceed Expectations in the Delivery of Public Services”

Blalock, Sarah

From: Bleakley, Sarah
Sent: Thursday, October 03, 2013 8:07 PM
To: Blalock, Sarah
Subject: Fwd: RESTORE Proposed Treasury Rules: Collier County Staff Comments Collier.
Attachments: GCR T Regs Comments 090613.docx; ATT00001.htm; Regulation Comment Matrix.docx; ATT00002.htm; Regulation Comments Short.docx; ATT00003.htm

Please print.

Sent from my iPhone, so please excuse typos.

Begin forwarded message:

From: "LorenzWilliam" <WilliamLorenz@colliergov.net>
To: "Bleakley, Sarah" <sbleakley@ngn-tally.com>
Subject: FW: RESTORE Proposed Treasury Rules: Collier County Staff Comments

I had your wrong address.

Bill Lorenz

William D. Lorenz, Jr., P.E., Director
Collier County Natural Resources Department
Growth Management Division/Planning and Regulation
Tel: 239.252.2951
E-mail: WilliamLorenz@Colliergov.net

From: LorenzWilliam
Sent: Thursday, October 03, 2013 5:28 PM
To: sbleakley@ngnsw.com; ddarling@fl-counties.com
Cc: HenningTom; OchsLeo; CasalanguidaNick; WightDebbie
Subject: RESTORE Proposed Treasury Rules: Collier County Staff Comments

Collier County staff has reviewed the proposed Treasury Rules for the Gulf Coast Restoration Trust Fund. We have concentrated our review primarily on the provisions dealing with the Direct Component. Please consider our recommendations for the Consortium's formal comments on these Rules.

1. The rules allow for administrative costs as eligible activities for the Direct Component. Section 34.205 limits administrative costs "including staff" to a 3% limit applied to the total amount of funds received under each grant. There appears to be no provision for reimbursement of staff time and associated expenses expended before the grants are awarded. It is recommended that Treasury allow for program development expenses incurred in developing County programs and in participating in the Consortium Meetings to include time and transportation expenses.
2. Section 34.301 indicates that "Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies and the Act" regarding the award and administration of grants and grant agreements. When will these be available? It is

recommended that these be developed and published with the current proposed rules so that Counties can understand all of the requirements at one time.

3. Section 34.302 (c) states that Treasury will divide the 25% of funding to the nondisproportionately impacted counties but does not specify a specific allocation formula. The Consortium has proposed a specific allocation methodology. Collier County staff recommends the use of the Consortium's methodology for the funding allocation that impacts Collier County.

4. The proposed rules address the application procedure for receiving the funds for the Direct Component in Section 34.303, describing a "multiyear implementation plan" in 34.303(a). Each plan is to contain a variety of elements including "criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill." Whereas the RESTORE Act identifies these as discretionary activities, the proposed Rule requires these as part of each plan. Typical project management items such as schedules and budgets are reasonable and understood. The required success evaluation criteria, however, should either be removed or more specificity should be provided to understand what would be accepted.

5. Provision 34.303 (c) requires public input to include supporting information that an "implementation plan was made available for public review and comment for a minimum of 30 days, and that each program, project, and activity is adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations". For land use petitions and rezoning activities, Collier County typically requires public notice in a local publication. Would notice in a local publication be sufficient to solicit public input or does Treasury envision a more comprehensive noticing requirement? If so, then this should be specified in the final rule.

Also, we have received comments (Attached) from Monroe County through the September 30th e-mail (below) from Bay County and we support those comments as well.

From: Jim Muller <jmuller@baycountyfl.gov<<mailto:jmuller@baycountyfl.gov>>>

Date: September 30, 2013 9:20:16 AM EDT

To: Alan Pierce <AlanP@fairpoint.net<<mailto:AlanP@fairpoint.net>>>, "Betsy Barfield (bbarfield@jeffersoncountyfl.gov<<mailto:bbarfield@jeffersoncountyfl.gov>>)" <bbarfield@jeffersoncountyfl.gov<<mailto:bbarfield@jeffersoncountyfl.gov>>>, "cfranklin@pascocountyfl.net<<mailto:cfranklin@pascocountyfl.net>>" <cfranklin@pascocountyfl.net<<mailto:cfranklin@pascocountyfl.net>>>, "charlie.hunsicker@mymanatee.org<<mailto:charlie.hunsicker@mymanatee.org>>" <charlie.hunsicker@mymanatee.org<<mailto:charlie.hunsicker@mymanatee.org>>>, Dave Parisot <dparisot@co.okaloosa.fl.us<<mailto:dparisot@co.okaloosa.fl.us>>>, FialaDonna <DonnaFiala@colliergov.net<<mailto:DonnaFiala@colliergov.net>>>, "dustin.hinkel@taylorcountygov.com<<mailto:dustin.hinkel@taylorcountygov.com>>" <dustin.hinkel@taylorcountygov.com<<mailto:dustin.hinkel@taylorcountygov.com>>>, "Jason Stoltzfus (jason.stoltzfus@charlottefl.com<<mailto:jason.stoltzfus@charlottefl.com>>)" <jason.stoltzfus@charlottefl.com<<mailto:jason.stoltzfus@charlottefl.com>>>, "Keith Wilkins (KTWILKIN@co.escambia.fl.us<<mailto:KTWILKIN@co.escambia.fl.us>>)" <KTWILKIN@co.escambia.fl.us<<mailto:KTWILKIN@co.escambia.fl.us>>>, Larry Jones <jonlarry@co.walton.fl.us<<mailto:jonlarry@co.walton.fl.us>>>, "LSossamon@hernandocounty.us<<mailto:LSossamon@hernandocounty.us>>" <LSossamon@hernandocounty.us<<mailto:LSossamon@hernandocounty.us>>>, "lwreford@scgov.net<<mailto:lwreford@scgov.net>>" <lwreford@scgov.net<<mailto:lwreford@scgov.net>>>, "moodyf@circuit8.org<<mailto:moodyf@circuit8.org>>"

<moodyf@circuit8.org<<mailto:moodyf@circuit8.org>>>,
"pbarwick@jeffersoncountyfl.gov<<mailto:pbarwick@jeffersoncountyfl.gov>>"
<pbarwick@jeffersoncountyfl.gov<<mailto:pbarwick@jeffersoncountyfl.gov>>>,"
"rottolini@leegov.com<<mailto:rottolini@leegov.com>>"
<rottolini@leegov.com<<mailto:rottolini@leegov.com>>>,"
"sheilah@santarosa.fl.gov<<mailto:sheilah@santarosa.fl.gov>>"
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HenningTom <TomHenning@colliergov.net<<mailto:TomHenning@colliergov.net>>>,"Towan
Kopinsky (grants@gulfcounty-fl.gov<<mailto:grants@gulfcounty-fl.gov>>)" <grants@gulfcounty-fl.gov<<mailto:grants@gulfcounty-fl.gov>>>

Subject: analysis and comments on draft Treasury RESTORE Act rule

I thought you might be interested in these materials from a detailed analysis of the draft Treasury RESTORE rule prepared by Erin Deady for Monroe County. Monroe County shared them with the FL Gulf coastal counties attorneys last week, but I wasn't sure how closely everyone is working with their attorney's office on prepping comments. If you have Treasury rule comments, I suggest sharing them with other county RESTORE contacts so that the comments we send from each county to Consortium staff by Friday will be as comprehensive as possible.

Jim Muller

Bay County RESTORE Act Coordinator

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Please Note: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Bill Lorenz

William D. Lorenz, Jr., P.E., Director
Collier County Natural Resources Department
Growth Management Division/Planning and Regulation

Tel: 239.252.2951

E-mail: WilliamLorenz@Colliergov.net<<mailto:WilliamLorenz@Colliergov.net>>

General comments/notes for follow-up:

Narrative:

- Double check consultation process and comments/issues from Interior.
- Follow up and id what “compliance procedures” are actually included in the rule.
- “Many expenditures from the Trust Fund will be grants”. What funds will not be grants? Seems inconsistent with what is actually in the rule.
- Note: Research OMB concept of Advance Payments (as opposed to grant reimbursements) and get clarifications on same.
- Direct component background: local government applies for funds “by submitting a detailed MYIP describing projects...” So does this mean the application IS the MYIP or is MYIP submitted in conjunction with a separate application? Level of detail in the MYIP is not clear. Before submitting the MYIP, narrative says the local government must publish the plan for public notice and comment (but not clarified in actual rule).
- Applicants must show compliance with “environmental laws”.¹ Treasury invites comment on methods for assuring full compliance with applicable “environmental laws” while also providing for timely funds disbursement and project implementation. NOTE: suggest Project Implementation Report process from the Comprehensive Everglades Restoration Plan (CERP).² Single set of streamlined approval documents to meet all requirements at once.

¹ At a minimum we are talking about:

- the National Environmental Policy Act (“NEPA”),
- the Clean Water Act (“CWA”),
- the Endangered Species Act (“ESA”),
- the Fish and Wildlife Coordination Act (“FWCA”),
- Flood Control Acts, and
- the Rivers and Harbors Acts.

And likely:

- Chapter 373, F.S.
- Chapter 403, F.S.
- Chapter 161, F.S.

² One example could be development of a model Project Implementation Report (“PIR”) which has to undergo NEPA analysis already. For instance 33 C.F.R. § 385.15 created a “consistency” determination with state requirements for project documentation: ...Project Implementation Reports shall include such information and analyses, consistent with this part, as are necessary to facilitate review and approval of projects by the South Florida Water Management District and the State pursuant to the requirements of Florida law. Finally, 33 C.F.R. § 385.26 most notably states, “To eliminate duplication with State and local procedures, the Project Implementation Report shall also address the factors of relevant state laws....” The Section goes on to list what specific information should be included in a Project Implementation Report.

Depending on its success, the new Civil Works Program Pilot Study to expedite project planning could be used as an example.

- Page 54802: “After a grant agreement is signed, funds will be disbursed to the States, counties, and parishes as they are needed for authorized expenditures”. This seems to support notion of “advance payments”. Now they just need to clarify.
- Same page: what is an “application” that Treasury will review? Define this.
- Same page: what is the “reasonable person” standard for reviewing applications?
- There is concern for additional rule, guidance, policy and other process to be developed that are mentioned or described either in the rule or background. This is similar to CERP in that 6 “Guidance Memoranda” were developed to address sticky issues that couldn’t be addressed in the Rule. For instance, the Council ... “may develop memoranda of understanding establishing integrated and funding and implementation plans among Council members”. What is going to be a ‘forthcoming’ policy or procedure that will significantly shape this process?
- Address the two questions on page 54803:
 1. Are there additional procedures and auditing requirements that Treasury should require to assess whether the programs and activities funded with Trust Fund monies comply with the Act?
 2. Are there procedures Treasury could employ to identify and allocate funds available under other law to pay for administrative expenses attributable to Trust Fund management?^[ED1]
- Very ALARMING ISSUE: page 54803: “Treasury is analyzing the proposed regulation in accordance with the National Environmental Policy Act, and will complete its analysis before finalizing the regulation.”³ In what context are they analyzing this in accordance with NEPA? The application of the Rule as to whether or not it is “major federal action” triggering the NEPA standard or are they going to later talk about how NEPA applies to these various processes? Either way, this analysis is CRITICAL to review before the Regulation is finalized.
- Must review regulation in the context of new “Proposed OMG Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards”. Understanding this is the new “consolidated” federal grant guidance so the question is: what is this consolidating and what does this leave out? Find ARRA and CDBG grant agreements for standard “conditions”, develop similarities and determine what this proposed guidance changes.
- Type page 54804: cite top of second column, it’s the U.S. Energy Information Agency, Energy is missing.

³ Clarify approach to NEPA analysis. The most important point regarding NEPA evaluation is that the Council needs to quickly define programmatic and project-level NEPA analysis requirements for Council actions, State actions and those for coastal political subdivisions. Given that state and local governments are already launching their planning processes, it would be prudent to provide guidance on whether or not these planning efforts will require full NEPA EIS analysis, EA analysis or be categorically exempt. For instance would these efforts fall under a “programmatic” NEPA analysis or require a full range of alternatives analysis?

Rule-Specific Comments:

PART 34 – RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 et seq.

Subpart A – General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act):

(a) Gulf RESTORE Program:

(1) Direct Component (subpart D)

(2) Comprehensive Plan Component (subpart E)

(3) Spill Impact Component (subpart F)

(b) NOAA RESTORE Act Science Program (subpart G)

(c) Centers of Excellence Research Grants Program (subpart H)

§ 34.2 Definitions.

As used in this part:

Act means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Administrative costs means those indirect costs incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services that are allocable to activities authorized under the Act.

Administrative expenses means the expenses incurred by the Council to administer the Comprehensive Plan Component, and NOAA to administer the NOAA RESTORE Act Science Program, that are for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Oversight and monitoring activities are classified as administrative when the activity overseen or monitored is administrative rather than programmatic in nature.^[ED2]

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, Tangipahoa, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury to carry out the purposes of the Act.

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Environmental review and compliance procedures means the procedures under applicable Federal and state environmental laws.

Federal Water Pollution Control Act means 33 U.S.C. 1251 et seq.

Gulf Coast Region means:

(1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;

(2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and

(4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entities means the parties delineated in § 34.702 as being eligible to administer the Centers of Excellence research grants in their respective states.

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Subpart B - Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. The authority for the Trust Fund will terminate on the date all funds owed to the Trust Fund have been returned, and all funds have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates

described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares for the Gulf Coast States to be used for the Direct Component of the Gulf RESTORE Program.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent for formula distribution to Gulf Coast States to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science program.

(2) Twenty-five percent for the Centers of Excellence Research Grants program.

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

Amounts in the Trust Fund will be available for expenditure solely for eligible activities, administrative costs, and administrative expenses without fiscal year limitation. Grantees must minimize the time between the receipt of funds and the disbursement of those funds.^[ED3]

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in these regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted.

Subpart C – Eligible Activities for the Section 311(t) Gulf RESTORE Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component.

Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs incurred, whether charged on a direct or indirect basis, must conform with the applicable OMB circulars and guidance.^[ED4]

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in §§ 34.201, 34.202, or 34.203, according to component.

(3) Environmental review and compliance procedures must be complied with for each program, project, or activity, as applicable. [ED5] Grant agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by applicable OMB circulars and guidance. [ED6]

(4) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component may not be included in any claim for compensation presented to the Oil Spill Liability Trust Fund after July 6, 2012.

(b) A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity as defined in § 34.201 and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Programs, projects, and activities designed to protect or restore natural resources must be based on the best available science.

(a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(b) Mitigation of damage to fish, wildlife, and natural resources.

(c) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(d) Workforce development and job creation.

(e) Improvements to or on State parks located in coastal areas affected by the *DeepwaterHorizon* oil spill.

(f) Infrastructure projects [ED7] benefitting the economy or ecological resources, including port infrastructure.

(g) Coastal flood protection and related infrastructure [ED8].

(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.

(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(j) Planning limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of environmental review and compliance. [ED9]

(k) Administrative costs of complying with this Section [ED10].

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council's activities under section 311(t)(2) and (3) of the Federal Water Pollution Control Act are eligible for funding from the Comprehensive Plan Component, including the following:

(a) The Council may expend funds for projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast Region. All Council projects and programs must be carried out in the Gulf Coast Region and be adopted in the Comprehensive Plan.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to carry out, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

Programs, projects, and activities eligible for funding under the Spill Impact Component must meet the eligibility criteria set forth in § 34.201, as well as the following:

(a) The projects, programs, and activities must be included in a State Expenditure Plan approved by the Council.

(b) The projects, programs, and activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.

§ 34.204 Limitations on activities.

The following limitations apply to the activities of §§ 34.201, 34.202, and 34.203.

(a) Acquisition of land or interests in land by purchase, exchange, or donation must be from a willing seller.

(b) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the State in which the acquisition will take place.⁴

§ 34.205 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish under the Direct Component, ~~Comprehensive Plan Component,~~ and Spill Impact Component, not more than three percent may be used for administrative costs^[ED12] of complying with the Act, ~~including staff~~^[ED13]. The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.^[ED14]

⁴ Concerns, check with overall goals of acquisition and what makes sense because its broader than what the rule seems to list as appropriate for acquisition. Issue is: are the limitations on acquisition by ANY entity or just the feds? Section 1603(t)(2)(D)(iii): "...in selecting projects and programs to include on the 3-year list described in clause (ii)(IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

(b) Of the amounts received by the Council under the Comprehensive Plan Component and NOAA for the RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) With respect to the Alabama Gulf Coast Recovery Council, administrative duties may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama. Trust Fund amounts may not be used for the administrative costs of other personnel.

§ 34.206 Audited financial statements and audits.

Not later than December 1, 2014 and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(a) Each audited financial statement under this section must reflect:

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(b) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(c) The Treasury Inspector General may conduct performance audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D – Gulf RESTORE Program - Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant^[ED15].

§ 34.301 Responsibility for administration.

Treasury is responsible for awarding grants and administering grants and grant agreements under this subpart. Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act^[ED16]. Treasury will establish and implement a program to monitor compliance with its grant agreements.

§ 34.302 Allocation of funds.

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares for the Gulf Coast States for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants.

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Treasury will divide the funds among these counties according to the formula mutually-agreed upon by the counties and included in the multiyear implementation plan submitted by each disproportionately affected county.

(c) Of the amounts available to Florida, 25 percent of funding will be provided to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes based on the formula in section 311(t)(1)(D)(i) of the Federal Water Pollution Control Act. No parish will receive funds until its chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the State's Coastal Master Plan approved by the Louisiana legislature.

(f) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(g) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

§ 34.303 Application procedure.

The entities identified in § 34.302 are eligible to apply for their allocation as a grant^[ED17]. Treasury will develop an application process^[ED18] for grants available under this subpart that is consistent with the Act and Federal policies on grants^[ED19]. At a minimum, the procedure will include the following:

(a) The applicant must submit a multiyear implementation plan before the applicant can apply for any grants describing each program, project, and activity for which it seeks funding^[ED20]. For each, the plan must include a narrative description showing need, purpose, and objectives^[ED21]; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the *Deepwater Horizon* oil spill^[ED22]. The applicant must also state whether it has applied for a grant to fund the program, project, or activity under any other part of the Act^[ED23]. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e).

Treasury may require a standard format for the plans and additional information.^[ED24]

(b) An applicant may satisfy some or all of the requirements in §§ 34.303(a) and 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012^[ED25]:

(1) The applicant established conditions^[ED26] to carry out projects, programs, and activities that are substantively the same as the conditions required in § 34.303(a).

(2) The applicable program, project, or activity qualified as one or more of the eligible activities in § 34.201.

(c) The applicant must include supporting information that proposed activities meet the statutory requirements for eligibility, that its implementation plan was made available for public review and comment for a minimum of 30 days, and that each program, project, and activity is adopted after consideration of all meaningful input from the public,^[ED27] including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations.

(d) The applicant must include supporting information that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science.

§ 34.304 Grant award process.

Upon determining that the elements for the multi-year implementation plan have been met, an application may be submitted meetings the requirements of these regulations^[ED28] and the Act. Upon submittal of an application, Treasury will offer the applicant a grant agreement that complies with subpart I and Federal policies applicable to grants.

§ 34.305 Use of funds.

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.^[ED29]

(b) When awarding contracts to carry out a project or program under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

§ 34.306 Reports.

Grantees must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

Grantees must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee's accounts and activities as deemed appropriate by Treasury.

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with section 311(t)(2) of the Federal Water Pollution Control Act. This Component provides for implementing the projects and programs listed in the Comprehensive Plan.

§ 34.401 Responsibility for administration.

After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council.

(a) In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. The Council must specify whether any part of this responsibility may be further assigned to another entity and under what terms.

(b) When a grant to a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that particular project or program, the Council must publish in the Federal Register and deliver to these Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the grantee, the project's or program's purpose, and the amount of the award.

(1) House of Representative committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its grant agreements and interagency agreements.

§ 34.402 Application procedure and grant award process.

The Council may establish a selection process for assignees to use for awarding grants, cooperative agreements, or contracts to other entities. If the Council does not establish an application and selection process, assignees must use a selection process of their choosing that is

fair, open, and meets the requirements of Federal laws and, for State and local governments that are awarding, the applicable State and local laws.

§ 34.403 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports.

Assignees/grantees must submit reports as prescribed by the Council or Treasury.

§ 34.405 Recordkeeping.

Grantees must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General.

§ 34.406 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee's accounts and activities as any of them deems appropriate.

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart must be in the form of grants.^[ED30]

§ 34.501 Responsibility for administration.

The Council is responsible for awarding and administering grants under this subpart.

The Council must establish and implement a program to monitor compliance with its grant agreements.^[ED31]

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States based on a formula in the Act and a regulation that the Council promulgates.^[ED32] The Council will make allocated funds available through grants for programs, projects, and activities described in a State expenditure plan approved by the Council.

§ 34.503 State Expenditure Plans.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each program, project, and activity for which the State seeks funding. The Council must develop requirements for these plans that include the following:

(a) The State Expenditure Plan must be developed by:

(1) In Alabama, the Alabama Gulf Coast Recovery Council.

(2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.

(3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.

(4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.

(5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must take into consideration the Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.^[ED33]⁵

⁵ It will be difficult for the other planning process to be consistent with the Initial Comprehensive Plan because there is no base of projects to build upon. Without the 3-Year Prioritized Project List, it will be hard to determine consistency amongst the planning efforts. Determining that consistency will include little more than reviewing

(c) For each program, project, and activity, the State Expenditure Plan must include narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success. The applicant must also state whether it has applied for a grant to fund the program, project, or activity under any other part of the Act^[ED34].

(d) The State Expenditure Plan must demonstrate that each program, project, and activity is an eligible activity and that the plan will contribute to the overall economic and ecological recovery of the Gulf Coast.

(e) The State Expenditure Plan must demonstrate that each project, program, and activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.

(f) The State Expenditure Plan may not propose to use more than 25 percent of the funding made available for infrastructure projects, unless the plan certifies that:

(1) The ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(g) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted State in writing and consult with the State to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the State may obtain expedited judicial review within 90 days in a United States district court located in the State seeking the review.

§ 34.504 Grant administration.

If the Council approves a State Expenditure Plan, the State may apply for a grant^[ED35] to carry out specific projects, programs, and activities in the plan.^[ED36] The Council must establish and publish procedures for grants available^[ED37] under this subpart that are consistent with Federal laws, regulations, and policies on grants.^[ED38] At a minimum, the State's application must demonstrate all the elements required for a State Expenditure Plan to the satisfaction of the Federal grant administrator before a grant may be approved.^[ED39]

§ 34.505 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

§ 34.506 Reports.

Grantees must submit reports as prescribed by the Council or Treasury.

§ 34.507 Recordkeeping.

Grantees must maintain records as prescribed by the grant administering agency and make the records available to the grant administering agency, and Treasury, including the Treasury Inspector General.

§ 34.508 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee's accounts and activities as any of them deem appropriate.

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Subpart G – NOAA RESTORE Act Science Program

projects against the 5 very broad goals and 7 objectives in the Plan. Until the first Plan Update occurs, truly harmonizing the planning efforts and projects at the Council, State and local levels will be challenging.

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science program consistent with the Act^[ED40], this subpart and Federal grant laws, regulations, and policies. NOAA must implement a program to monitor compliance with its grant agreements and interagency agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

Amounts made available to NOAA may be expended to carry out a program comprised of the following activities with respect to the Gulf of Mexico:

- (a) Marine and estuarine research.
- (b) Marine and estuarine ecosystem monitoring and ocean observation.
- (c) Data collection and stock assessments.
- (d) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.
- (e) Cooperative research.
- (f) Coordination of science and technology programs, in accordance with section 1604(f) of the Act, including setting priorities and engaging stakeholders. NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities.

None of the Trust Fund amounts may be used for the following activities:

- (a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.
- (b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.
- (c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses.

- (a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff.
- (b) The three percent limit is based on funds that the NOAA RESTORE Act Science Program receives in its fiscal year, and unused amounts may be carried forward into subsequent years. The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.⁶

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

Grantees must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits.

The Treasury Inspector General may conduct audits and reviews of grantee's accounts and activities as it deems appropriate.

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants program. The program's purpose is to establish centers to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration.

Treasury is responsible for awarding grants to the Gulf Coast States, who will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury may develop and apply policies and procedures consistent with this subpart, Federal grant administration requirements, and the Act. Each Gulf Coast State entity issuing a grant must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds.

Each Gulf Coast State will be entitled to an equal share to carry out eligible activities.

The duties of a Gulf Coast State will be carried out by the following entities:

- (a) In Alabama, the Alabama Gulf Coast Recovery Council.
- (b) In Florida, a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.
- (c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.
- (d) In Mississippi, the Mississippi Department of Environmental Quality.
- (e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure.

Treasury will develop an application process for grants available to the Gulf Coast States under this subpart that is consistent with Federal law, regulations, and policies on grants. At a minimum, the process will include the following:

- (a) Each Gulf Coast State must describe the rules and policies the State will apply to the Centers of Excellence grant(s), including the competitive process that the State will use to select a Center of Excellence. The process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher learning, to compete. The process

⁶ On January 3, 2013, Transocean Deepwater Inc. and related entities agreed to pay \$1 billion in civil penalties for violating the Clean Water Act in relation to their conduct in the Deepwater Horizon oil spill. That settlement was approved by the court in February, and Transocean paid the first installment of its civil penalties to the United States at the end of March. These funds are subject to the RESTORE Act.

must give priority to entities and consortia that demonstrate the ability to organize the broadest cross-section of participants in the grant with interest and expertise in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest. Centers of Excellence do not need to be located in the Gulf Coast State issuing the grant.

(b) Each Gulf Coast State must demonstrate that its rules and policies for Centers of Excellence grants, including the competitive selection process, were published and available for public review and comment for a minimum of 30 days, and that they were adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, and non-profit organizations. This requirement does not apply to State statutes and regulations.

(c) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of grant funds and eligible activities.

(a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the Act, these regulations, and other Federal laws, regulations, and policies applying to grants.

(b) Gulf Coast States may use funds available under this subpart to award competitive grants for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

(1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

(a) An annual report to the Council in a form set by the Council that includes information on recipients, grant amounts, disciplines addressed, and any other information required by the Council. When the grant recipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.

(b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

Grantees must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each grantee's accounts and activities as deemed appropriate by Treasury.

Subpart I – Agreements

§ 34.800 General.

This subpart describes procedures applicable to grant agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivision, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part.

§ 34.801 Grant agreements.

The grant agreements used must conform to all applicable Federal laws, regulations, and policies for grants, including audit requirements.^[ED42]

§ 34.802 Certifications.

At a minimum, grant agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. The certification must be signed by an authorized senior official of the organization or entity receiving grant funds with oversight for the administration and use of the funds in question.^[ED43]

(a) I certify that each project, program, and activity funded under this Agreement has been designed to restore and protect [*select all that are appropriate*: the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, economy] of the Gulf Coast.

(b) I certify that each project, program, and activity funded under this Agreement is designed to carry out one or more of the eligible activities for this program/component.

(c) I certify that each project, program, and activity funded under this Agreement was selected after consideration of input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations, as described in the grant application.

(d) I certify that each project, program, and activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR Part 34.

(e) I certify that this Grantee has followed in every material respect the applicable procurement rules applying to contracts in the Grantee's State for each project, program, and activity funded under this Agreement, including rules for competitive bidding and audit requirements.⁷ ^[ED44] This Grantee agrees that it will not request funds under this grant award for any contract unless this certification remains true and accurate with respect to that contract. [*The Council may adapt this certification to account for any standard contract terms that it develops under section 311(t)(2)(C)(vii)(V) of the Federal Water Pollution Control Act.*]

(f) I certify that a conflict of interest ^[ED45] policy is in effect and covering each project, program, and activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this Grantee maintains written documentation sufficient to support each certification made above ^[ED46], and that this Grantee's compliance with each of these certifications is a condition of this Grantee's initial and continuing receipt and use of the funds provided under this Agreement.

§ 34.803 Conditions.

At a minimum, all grant agreements under subparts D, E, F, G, and H of this part must contain the following conditions.

⁷ This section should list all applicable wage and procurement requirements so that entities proposing or implementing projects understand the full array of what is entailed in project implementation. For example, implementation of the Davis Bacon Act (40 U.S.C. § 3141 et seq.) will have a large impact on project implementation and it would be important to list its applicability at this stage.

(a) This Grantee must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) This Grantee must deposit all funds in one or more financial accounts which have the sole purpose of receiving fund amounts and making distributions of fund amounts. This Grantee must maintain detailed program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the program's requirements. This Grantee must track program income and use program income for purposes of the grant before requesting more program funds.^[ED47]

(c) Prior to making any subaward, this Grantee must execute a legally binding written agreement with the entity receiving the subaward. This Grantee and the subawardee must execute the written agreement before any funds are disbursed to the subawardee. The written agreement will extend all the applicable program requirements to the subawardee.^[ED48]

(d) This Grantee must use the funds only for the purposes identified in the Agreement.

(e) This Grantee must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement. The report must be sent to the Federal agency administering the grant and include the following information:

(1) A description of the use of all funds received.

(2) A statement that funds were used only for purposes identified in the agreement.

(3) A certification that the Grantee maintains written documentation sufficient ^[ED49]to demonstrate the accuracy of these statements.

(4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry.

The certification must be signed by a senior authorized official of the organization or entity receiving grant funds, who has oversight and authority over the administration and use of the funds in question.

§ 34.804 Records.

(a) As a condition of receiving funds^[ED50], the Council and its members, NOAA, grantees, and all subrecipients must make available their records and personnel to Treasury, including the Treasury Inspector General, for the purpose of assessing compliance with this Agreement^[ED51], the Act, and other Federal laws applying to their receipt of funds from the Gulf Coast Restoration Trust Fund.

(b) For grant agreements that exceed a three year period, the grantee must make an interim report at the end of every two years. The report must contain the elements listed in § 34.803(e).

§ 34.805 Noncompliance.

In addition to remedies available to the Federal agency administering grants, all grant agreements with the Gulf Coast States must be subject to the following conditions:

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity^[ED52], or

Treasury has authorized the grantee to expend an equal amount from the grantee's own funds for a project or program that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has materially violated a grant agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee corrects the violation.

Richard L. Gregg

Fiscal Assistant Secretary

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Department of Treasury, 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

This Draft Federal Regulation has numerous inconsistencies, undefined process and undefined terms. Fundamentally, the interaction between the planning and application processes needs to be better defined as well as the “payment” process. Further issues are as follows:

General Issues

The Draft Regulations discuss consistency with federal laws, rules and policies pertaining to Federal grants, yet:

- They do not list which laws, rules and policies (specifically) the distribution process must be consistent with for Gulf Funds. They do not list which environmental laws must be adhered to for compliance.
- They do not identify payment procedures as being reimbursable or advance payments- for any expenditures at all, and a “Federal grant program” encompasses both.
- They do not discuss at what level plans or projects must undergo NEPA analysis (and in fact say this Regulation is currently being “analyzed in accordance with NEPA” for incorporation into the Final Regulation). This analysis is unclear.
- The Regulations describe several policies, regulations and guidance that are still to be developed. Not defining these processes now creates uncertainty for the level of effort, staffing and cost for compliance.
- Terminology should be consistent with the RESTORE Act (terminology in the Draft Regulations does not track the RESTORE Act such as the definitions of administrative cost/expense and planning assistance).

Specific Issues

Subpart A: General Provisions

- The Regulations should include definitions for reimbursement and advance payments of grant funds and describe what procedures are applicable for payment.

Subpart C: Eligible Activities

- The Regulations should also include a definition for Pre-Award costs to not only include environmental review and compliance but also planning (consistent with §34.201(j)).
- Eligible activities should clearly include non-construction activities.

- The limitations on land acquisition need to be clarified as applicable to the Federal Government only.

Subpart D: Direct Component

- Better define the sequence of Multi-year implementation submittal and approval, grant application submittal and approval and execution of Grant Agreement. These are inconsistent.
- Assure disbursement is “directly” to the disproportionately and non-disproportionately affected counties. Rule only requires “direct” to one and not the other.
- Provide better detail on what must be in Multi-Year Implementation Plan, particularly the level of “evaluation criteria” which could be costly for future reporting.
- The Plans require identification if other RESTORE Act funds have been applied for aside from what is in that particular “Component”. This is difficult because the project submittal process is unclear (for instance Florida has created a project clearinghouse but does this mean these projects have been applied for under multiple pots)?
- The Regulation provides a process to meet some of its requirements for activities priority to July 6, 2012, but the Regulations lack specificity in how those requirements can be met (for instance “establish conditions” similar to those in the Regulation).
- Clarify level of supporting documentation required for Plans and Certifications (supporting documentation required- but to what level?)

Subpart F: Spill Impact Component

- Council needs to establish monitoring and compliance process now, not defer to a later procedure that may or may not be subject to public comment.
- Define how the State Expenditure Plans will take “into consideration” the Comprehensive Plan (Council Plan).

Subpart I: Agreements

- Describe supporting documentation needs for certifications that must be made in the various plans.
- Provide more detail regarding the certification that applicable procurements rules applying to contracts in the Grantee’s State have been adhered to, is this additive to federal procurement requirements for grants?

Draft Comments: 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

<i>Issue/Section of the Reg</i>	<i>Why this an Issue of Concern</i>	<i>Suggested Edit, Revision or Clarification</i>
<p>The regulation states the program will be run as a grant programs consistent with federal laws, rules and policies pertaining to federal grants & OMB guidance.</p> <p><i>II. This Proposed Rule and throughout Regulation. Page 54801.</i></p>	<p>These federal grant and OMB policies and guidelines are not specifically listed. Not listing these specifically will create confusion and timelines for process grant applications and/or reimbursement requests.</p> <p>In one Section of the Regulation, II. This Proposed Rule. Page 54802, a website is listed with many grant guidelines (OMB circulars) are listed. They are numerous and should be specified.</p>	<p>Please define which federal requirements the grant process will be subject to.</p>
<p>Applicants will be required to demonstrate compliance with applicable environmental laws.</p> <p><i>II. This Proposed Rule/Direct Component. Page 54802.</i></p>	<p>Not listing these environmental requirements will create compliance, documentation and application challenges. Listing the applicable requirements in the regulation will help local governments gauge the time, cost and effort involved in preparing project applications and documentation.</p>	<p>These environmental laws are not stated and some type of list that “includes but is not limited to” should be included in the Regulation.</p>
<p>The Regs state that “After a grant agreement is signed, funds will be disbursed to the States, counties, and</p>	<p>Many federal grants are paid on a reimbursement basis. This could be difficult for some local governments to manage budgets and implementation of projects.</p>	<p>Please clarify whether the program will be administered under a reimbursement or advance payment basis¹ or whether some type of project threshold will be established requiring one or the other.</p>

¹ See 2 CFR Part 215.22 payment procedures, OMB Circular A-110 essentially outlining a preference for advance payments as long as written procedures and financial management systems are in place with reimbursement preferred when those conditions cannot be met. See also §12.61, 43 CFR Subtitle A, Grantees and subgrantees shall be paid in advance provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time between transfer of funds and their disbursement by grantee or subgrantee. Finally, see Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards (pp 36-39), includes similar guidance but elaborates with such requirements as tying advance payments to immediate cash needs, consolidating advances to cover cash needs, etc. and reimbursement used when requirements for reporting and financial management cannot be met.

<p>parishes <u>as they are needed for authorized expenditures.</u>"</p> <p><i>II. This Proposed Rule/Direct Component. Page 54802.</i></p>		
<p>Comprehensive Plan component is described, but it is unclear as to when the first three year list of project will be published making consistency determinations difficult.</p> <p><i>II. This Proposed Rule/Comprehensive Plan Component. Page 54802.</i></p>	<p>Not specifying a process for the Comprehensive Plan update makes it difficult to determine how one will evaluate if a Plan is consistent with the Comprehensive Plan (requirement of Spill Impact Component) or determine if one has applied for project funds pursuant to the RESTORE Act (as required in the Direct Component and Spill Impact Component).</p>	<p>Clarify when the Comprehensive Plan's first three year list of projects will be completed.</p>
<p>Treasury is specifically asking for comment on</p> <ul style="list-style-type: none"> • Appropriate methods for ensuring full compliance with environmental laws while also providing for timely funds disbursement and project implementation.² • The application process and on Treasury's proposed approach for evaluating requests for funding, particularly those elements in funding requests that require special expertise and judgment. • The allocation of funds to certain counties in Florida and the parishes in Louisiana. 		

² One example could be development of a model Project Implementation Report ("PIR") which has to undergo NEPA analysis already. For instance 33 C.F.R. § 385.15 created a "consistency" determination with state requirements for project documentation: "...Project Implementation Reports shall include such information and analyses, consistent with this part, as are necessary to facilitate review and approval of projects by the South Florida Water Management District and the State pursuant to the requirements of Florida law. Finally, 33 C.F.R. § 385.26 most notably states, "To eliminate duplication with State and local procedures, the Project Implementation Report shall also address the factors of relevant state laws...." The Section goes on to list what specific information should be included in a Project Implementation Report.

Depending on its success, the new U.S. Army Corps of Engineer's Civil Works Program Pilot Study to expedite project planning could be used as an example.

At the end of the Background Section, Treasury requests answers to the following two questions:

- Are there additional procedures and auditing requirements that Treasury should require to assess whether programs and activities funded with Trust Fund monies comply with the Act?
- Are there procedures Treasury could employ to identify and allocate funds available under other law to pay for administrative expenses attributable to Trust Fund management?

<p>The Regulation says that “Treasury is analyzing the proposed regulation in accordance with the National Environmental Policy Act, and will complete its analysis before finalizing the regulation.”</p> <p><i>III. Description of Need for the Regulatory Action. Page 54803.</i></p>	<p>Since this is the only specific reference to NEPA in the regulation, it is important that the scope of this review be clarified.</p> <p>The scope of this analysis is unclear and it should be made available as part of the regulation’s review process before the regulation is finalized.</p> <p>The Regulation should be more specific in clarifying at what level and when NEPA analysis will be required. For instance, will this occur at the level when an MYIP is developed or will it be on a case by case basis for projects?</p>	<p>Clarify at what point grant applicants will be required to undertake NEPA review.</p>
<p>Typographical error.</p> <p><i>III. Regulatory Planning and Review. Page 54804.</i></p>	<p>Agency not properly referenced.</p>	<p>U.S. <u>Energy</u> Information Agency, 2010</p>
<p>Definition of administrative cost seems unclear.</p> <p><i>Subpart A § 34.2</i></p>	<p>What are general legal services that are allocable to activities authorized under the Act?</p>	<p>Please provide definition to clarify what legal services are allocable to activities authorized under the Act.</p> <p>Please also clarify if oversight and monitoring is a function to be performed by coastal political subdivisions under administrative cost (as for administrative expense) and what those activities are (administrative rather than programmatic).</p>
<p>Definitions for Direct Component, Disproportionately affected</p>	<p>Inconsistency in use of the term “directly”. While the definition under Direct Component says funds are provided “directly” to the counties, that is not</p>	<p>Amend §34.302(c) as follows: “25 percent of the funding will be provided <u>directly</u> to the nondisproportionately affected...”</p>

<p>counties and Non-Disproportionately affect counties.</p> <p><i>Subpart A § 34.2</i></p>	<p>included in § 34.302(c) describing the flow of funds to non-disproportionately affected counties.</p>	
<p>Grantees must minimize the time between the receipt of funds and the disbursement of those funds.</p> <p><i>Subpart B §34.104</i></p>	<p>This seems to mean that funds will be distributed to grantees before project implementation as advance payments as opposed to reimbursements. A reimbursement program will create difficulty in many instances as the timeframes for receiving funds back is uncertain.</p>	<p>Please clarify whether the program will be administered under a reimbursement or advance payment basis or whether some type of project threshold will be established requiring one or the other.</p>
<p>References to costs conforming to “applicable” OMB circulars and guidance.</p> <p><i>Subpart C §34.200(a)(1)</i></p>	<p>These are numerous and undefined in the regulation.</p>	<p>The regulation should clarify which OMB circulars and guidance are required for compliance.</p>
<p>References to environmental review and compliance.</p> <p><i>Subpart C §34.200(a)(3)</i></p>	<p>Not listing these environmental requirements will create compliance, documentation and application challenges. Listing the applicable requirements in the regulation will help local governments gauge the time, cost and effort involved in preparing project applications and documentation.</p>	<p>These environmental laws are not stated and some type of list that “includes but is not limited to” should be included in the Regulation.</p>
<p>Pre-award costs of environmental review and compliance.</p> <p><i>Subpart C §34.200(a)(3)</i></p>	<p>Very similar to the previous comment, please define actual criteria for pre-award costs to be included in grant agreements. Currently the regulation just references “applicable OMB circulars and guidance”. Clearly answering this question now will streamline how these costs are considered.</p> <p>Additionally, will these pre-award environmental review and compliance need to be identified in the multi-year or state expenditure plans in the Direct or Spill Impact Components?</p>	<p>Clarify what applicable OMB circulars and guidance define how costs for environmental review and compliance are provided for in grant agreements.</p>

<p>Clarify reference to eligible activities.</p> <p><i>Subpart C §34.200(b)</i></p>	<p>The regulation should clarify that RESTORE Act funds can only be used as cost-share for projects that meet both requirements: they must be authorized under the RESTORE Act as an eligible activity and under Federal law. The implication could be that entities attempt to use RESTORE Act funds for other federal grant programs that may not also be eligible activities under the RESTORE Act itself.</p>	<p>A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity <u>as defined in § 34.201</u> and authorized by Federal law.</p>
<p>Clarify scope of eligible activities.</p> <p><i>Subpart C §34.201</i></p>	<p>The language should clarify that planning is not just related to the preparation of the state expenditure or multi-year implementation plans. For instance eligible activities should include disaster resiliency planning (such as infrastructure or coastal flooding) or other studies, analyses that are not necessarily solely construction based.</p>	<p>(j) Planning <u>assistance</u> limited to the costs of data gathering, studies, analysis, and or preparation of plans and actions for eligible activities under §34.201(a) through (i), including the costs of environmental review and compliance.</p> <p>OR</p> <p>(j) Planning <u>assistance</u>. limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under §34.201(a) through (i), including the costs of environmental review and compliance.</p>
<p>Clarify administrative costs.</p> <p><i>Subpart C §34.201</i></p>	<p>The language describing administrative costs should track that in the RESTORE Act.</p>	<p>(k) Administrative costs <u>of complying with this subsection</u>.</p>
<p>Scope of land acquisition activities should be limited to Federal government.</p> <p><i>Subpart C §34.204</i></p>	<p>This section indicates that land acquisition limitations apply also to §§ 34.201, 34.202 and 34.203. This seems to indicate that there are significant limitations on land acquisition activities for eligible activities under the Direct Component and the Spill Impact Component which may or may not be carried out by the Federal government. Additionally, land acquisition may go beyond necessary for the restoration and protection of the natural resources, ecosystem, fisheries, marine and wildlife habitats, beaches and coastal wetlands of the Gulf Coast Region in §34.204(b).</p>	<p>§ 34.204 Limitations on activities <u>federal land acquisition</u>. The following limitations apply to the activities of §§ 34.201, 34.202, and 34.203 <u>for the acquisition of land in fee title by the Federal Government</u>.</p> <p>(a) Acquisition of land or interests in land by purchase, exchange, or donation must be from a willing seller.</p> <p>(b) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and</p>

	<p>Land may need to be acquired by entities other than the federal government and for eligible projects beyond those listed in (b).</p>	<p>has the concurrence of the Governor of the State in which the acquisition will take place. <u>(c) Acquisition by non-Federal entities must be consistent with applicable state and Federal law.</u></p>
<p>Limitations on administrative costs and expenses and language “including staff” costs. <i>Subpart C § 34.205</i></p>	<p>Paragraphs (a) and (b) should be cleaned up because they do not track the RESTORE Act precisely. In particular, (a) adds the phrase “including staff” to the scope of administrative cost (states and coastal political subdivisions). This is not the case in the RESTORE Act, but “including staff” is included in the definition of administrative expense (applicable to the Council and NOAA or collectively the “feds”).</p> <p>“Including staff” with administrative cost could reduce the available amount of administrative money to comply with the Act, although this may not be that significant because the RESTORE Act states, (IX) Administrative costs of <i>complying with this subsection</i>, which likely includes staff cost.</p> <p>This warrants further discussion.</p> <p>Additionally, (a) states that the 3% is applied to the total amount of funds received under “each grant”. This presumes multiple “grants”. If this is the case, this should be described somewhere in the Regulation. Finally, is the 3% applied on an annual basis (language seems to suggest that) and is that problematic?</p>	<p>(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish under the Direct Component, Comprehensive Plan Component, and Spill Impact Component, not more than three percent may be used for administrative costs, including staff <u>of complying with this subsection</u>. The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.</p> <p>If multiple grants are anticipated, as suggested pursuant to (a), then the Regulation should describe that process of multiple “granting”.</p> <p>(b) Of the amounts received by the Council under the <u>Comprehensive Plan Component and NOAA for the RESTORE Act Science Program</u>, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.</p>
<p>Direct Component describing award in form of “grant”. <i>Subpart D § 34.300</i></p>	<p>Better define the grant process to streamline and help recipients get prepared for administration.</p>	<p>Don’t defer more detail on grant procedures to a later undefined rule, policy or guideline. Define it as a new section in the Regulation.</p>

<p>Treasury may define further policies and procedures later for awarding and administering grants.</p> <p><i>Subpart D § 34.301</i></p>	<p>Similar comment to above in that this subsection states that Treasury “may develop and apply policies and procedures consistent with this subpart, applicable federal policies and the Act. While this preserves flexibility, Treasury should consider defining those procedures now.</p>	<p>Treasury should define these policies and procedures now because they go to the heart of the level effort and staff resources necessary to administer a grant. Additionally, the Regulation should define how those policies and procedures will be promulgated, by Rule or some other process so that people can review and comment.</p>
<p>Assure direct disbursement to local governments is consistently applied.</p> <p><i>Subpart D § 34.302</i></p>	<p>“Direct” disbursement of funding is provided for the disproportionately affected counties in (b) but not the nondisproportionately affected counties in (c).</p>	<p>(c) Of the amounts available to Florida, 25 percent of funding will be provided <u>directly</u> to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.</p>
<p>Regulation should articulate the “application” process now.</p> <p><i>Subpart D § 34.303</i></p>	<p>Regulation states that Treasury will develop an “application” process for grants. The description of this process should be included in the regulation now as a new subsection for recipients to determine the effort to comply.</p> <p>The regulation should define in this process whether multiple grants will be awarded or if it will be a single grant to a local government. This process also needs to define the relationship between grantees and sub-grantees (for instance when the local governments hand out money for project implementation). Administration of this process needs to be defined.</p>	<p>Treasury should define these policies and procedures now because they go to the heart of the level effort and staff resources necessary to administer a grant. Additionally, the Regulation should define how those policies and procedures will be promulgated, by Rule or some other process so that people can review and comment.</p>
<p>Clearly identify when the multi-year implementation plan must be submitted.</p> <p><i>Subpart D § 34.303(a)</i></p>	<p>The timeframe to submit an application versus the multi-year implementation is unclear. The problem is the application and multi-year implementation plan are integrally tied together. To avoid delays, the multi-year implementation takes time and money to prepare so this should likely be the first step in the process.</p>	<p>The applicant must submit a multiyear implementation plan, <u>before the applicant can apply for any grants</u>, describing each program, project, and activity for which it seeks funding.</p> <p>OR</p> <p>The applicant must submit a multiyear implementation plan, <u>after an application is approved</u>, describing each program, project, and activity for which it seeks funding.</p>

<p>Better define what is required to be in the MYIP, in particular, the criteria to evaluate success.</p> <p><i>Subpart D § 34.303(a)</i></p>	<p>The Regulation should provide guidance on what level of detail is required to be included in the MYIP. This will result in more uniformity of the MYIPs and streamline review. In particular, evaluation criteria can be technical, quantitative or qualitative and this will result in varying degrees of cost for data compilation.</p>	<p>The Regulation should provide better guidance on what must be included in the MYIP, in particular the evaluation criteria.</p> <p>While the end of subsection states that Treasury may require a “standard format” for the plans and additional information, Treasury should incorporate that into the Regulation now.</p>
<p>Identifying whether applicant has applied for another grant.</p> <p><i>Subpart D § 34.303(a)</i></p>	<p>Right now, this is virtually impossible to do. Florida has created a “clearinghouse” of projects so applicants right now do not know if they have applied for another grant under the Spill Impact or Comprehensive Plan components.</p> <p>The problem is an applicant when “applying” for funds under the Direct Component may not know what projects are being funded under what Components given that the first 3 year queue of projects for the Comprehensive Plan and the State Expenditure Plans have not been initiated.</p>	<p>Until there is more clarity on the use of the Florida “clearinghouse” for projects and what projects are to be funded or included in which plans, this requirement will be difficult to meet. Suggested revision:</p> <p>The applicant must also state whether it has applied for, <u>and funding has been awarded to</u>, a grant to fund the program, project, or activity under any other part of the Act.</p>
<p>Pre-July 6, 2012 conditions met need clarification.</p> <p><i>Subpart D § 34.303(b)(1)</i></p>	<p>This section seems to really be geared towards Louisiana’s Master Plan and allowing that process to meet some of the requirements for direct funds before the date of enactment of the Act. But the language is unclear.</p> <p>(b) states that an applicant can satisfy some of the requirements for preparing their MYIP or their required certifications if certain conditions are met. These conditions need clarification.</p> <p>How does an applicant, “...establish conditions to carry out projects, programs and activities that are substantively the same as conditions required in §34.303(a)”?</p>	<p>The Regulation should define how an applicant can establish conditions to carry out projects, programs and activities that are the same as conditions required in §34.303(a).</p>

	<p>Is a Resolution required? A procurement process? Are certain financial and reporting requirements to be put in place?</p> <p>The Regulation needs to define how an applicant meet these requirements. Additionally, can the applicant meet these same conditions between July 7, 2012-present?</p>	
<p>Clarify level of supporting documentation to satisfy MYIP and certification requirements.</p> <p><i>Subpart D § 34.303(c)</i></p>	<p>(c) states that the applicant must include supporting information that the activities meet the statutory requirements for eligibility, public review was available for 30 days and based on meaningful public input.</p>	<p>Define what level of supporting information is required.</p>
<p>Clarify relationship between submittal and approval of MYIP, application and grant award/agreement.</p> <p><i>Subpart D §34.304</i></p>	<p>Is the MYIP part of the application or is the MYIP approved before application is made? Unclear but seems to suggest that “application” and the submittal of the MYIP are either one in the same or concurrent.</p> <p>Another key component is that the regulations should define what happens if a revision is necessary to the MYIP (which is likely attached as the scope of work to the Grant Agreement). Typical grant guidance and policy include a process for making changes among cost categories over certain thresholds and when “sign off” needs to occur by a Grant Administrator. While this is likely something that will be addressed by the previously mentioned forthcoming “application process”, knowing how to make course corrects in the implementation process is important now.</p>	<p>Upon determining that <u>the elements for the multi-year implementation plan have been met</u>, an application <u>may be submitted</u> <u>meetings</u> the requirements of these regulations and the Act. <u>Upon submittal and approval of an application</u>, Treasury will offer the applicant a grant agreement that complies with subpart I and Federal policies applicable to grants.</p>
<p>Need force majeure clause dealing with unexpended funds.</p>	<p>Need to account for circumstances beyond the control of the grant applicant in not spending funds by the end of the grant period, but does current</p>	<p>Revisions, if necessary, to be developed (look at standard grant agreements on this).</p>

<p><i>Subpart D § 34.305(a)</i></p>	<p>language of “or conclusion of the project, program or activity...” provide enough protection?</p>	
<p>Council to establish later process for monitoring compliance with grant agreements.</p> <p><i>Subpart F §34.501</i></p>	<p>Should move §34.504 “Grant Administration” earlier in the Section because §34.501 addresses establishing a process for monitoring compliance before even discussing the procedures for grants that have yet to be developed.</p> <p>These procedures should be defined in the Regulation and the method for promulgating the policies should also be defined.</p>	<p>§34.501 Responsibility for administration. The Council is responsible for awarding and administering grants under this subpart. <u>The Council must establish and publish procedures for grants available under this subpart that are consistent with Federal laws, regulations, and policies on grants.</u> The Council must <u>also</u> establish and implement a program to monitor compliance with its grant agreements.</p>
<p>Provide more detail on all forthcoming “regulations” and procedures.</p> <p><i>Subpart F §34.502</i></p>	<p>The subsection states that the Council will allocated funds based on a formula in the Act and a “regulation” that the Council promulgates. Additionally, are these the “procedures” described in the previous subsection?</p>	<p>Will this be subject to standard Federal APA rulemaking procedures? All forthcoming processes and procedures should be further described as to the next steps for finalization.</p>
<p>State Expenditure Plan must “take into consideration” the Comprehensive Plan</p> <p><i>Subpart F §34.503(5)(b)</i></p>	<p>Without a 3-year Prioritized Project list, it is difficult to take the Comprehensive Plan into consideration.</p>	<p>The State Expenditure Plan must take into consideration the Comprehensive Plan and be <u>describe how it is consistent with the goals and objectives of the Comprehensive Plan.</u></p>
<p>Applying for grants funds pursuant to other portions of the Act.</p> <p><i>Subpart F §34.503(5)(c)</i></p>	<p>Until there is more clarity on the use of the Florida “clearinghouse” for projects and what projects are to be funded or included in which plans, this requirement will be difficult to meet.</p>	<p>The applicant must also state whether it has applied for, <u>and funding has been awarded to,</u> a grant to fund the program, project, or activity under any other part of the Act.</p>
<p>Discussion of policies and procedures for State Expenditure Plan</p> <p><i>Subpart F § 34.504</i></p>	<p>Moved struck language to earlier part of subsection.</p>	<p>If the Council approves a State Expenditure Plan, the State may apply for a grant to carry out specific projects, programs, and activities in the plan. The Council must establish and publish procedures for grants available under this subpart that are consistent with Federal laws, regulations, and policies on grants. At a minimum, the State’s application must</p>

		demonstrate all the elements required for a State Expenditure Plan to the satisfaction of the Federal grant administrator before a grant may be approved.
Supporting documentation for certifications <i>Subpart I §34.802</i>	(g) states that written documentation will be required for the certifications contained in the subsection.	The subsection should describe any required supporting documentation.
Procurement requirements <i>Subpart I §34.802(e)</i>	The subsection includes a certification requirement that "...this Grantee has followed in every materials respect the applicable procurement rules applying to contracts in the Grantee's State for each project, ... including rules for competitive bidding and audit requirements." Several other places in the Regulation require that all applicable federal grant requirements must be met (assuming procurement).	This subsection should address the relationship between federal and state procurement rules in the context of this certification so that it is clear this certification does not relieve the application of any federal procurement requirements standard in most federal grant agreements.
Advance payments <i>Subpart I § 34.803(b)</i>	The process outlined in this subsection seems to indicate that grant funds will be requested and disbursed on an ongoing basis. If this is the case, then the Regulation should define key processes such as "advance payments" common to federal grant guidelines.	This Grantee must track program income and use program income for purposes of the grant before requesting more program funds <u>in accordance with applicable advance payments or reimbursement procedures</u> .
Advance payments <i>Subpart I § 34.803(c)</i>	Similarly to the previous comment, subsection (c) states that the Grantee and subawardee must execute the written agreement before any funds are disbursed to the subawardee, which indicates that a coastal political subdivision must receive an advance payment before making subawards and a designated entity under the Spill Impact will similarly receive advancement payments.	Prior to making any subaward, this Grantee must execute a legally binding written agreement with the entity receiving the subaward. This Grantee and the subawardee must execute the written agreement before any funds are disbursed to the subawardee <u>in accordance with applicable advance payments or reimbursement procedures</u> . The written agreement will extend all the applicable program requirements to the subawardee .

<p>Written documentation requirements</p> <p><i>Subpart I §34.803(e)(3)</i></p>	<p>Written documentation requirements are not described.</p>	<p>The Regulation should provide more detail as to the written documentation requirements in this subsection.</p>
<p>Records and personnel availability.</p> <p><i>Subpart I §34.804(a)</i></p>	<p>Its somewhere clear what is required to make records available to Treasury for assessing compliance, but clarify the requirements to make personnel available.</p>	<p>This subsection should include additional language such as how records are to be made available (hard copy consistent with routine government records retention requirements or posted electronically and available for inspection). Additionally the subsection should clarify how personnel must be “made available” to Treasury for assessing compliance.</p>

Blalock, Sarah

From: Bleakley, Sarah
Sent: Monday, October 14, 2013 10:12 AM
To: Blalock, Sarah
Subject: FW: Comments Regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking
Attachments: comments RE 31 CFR Pt 34 Gif Coast Restor Trust Fund Notice of proposed rulemaking 10-11-13.pdf
Importance: High

Please print, add to the list and reprint the list of commentators. Include Grover Robinson and Keith Wilkins in the from column, please

Sarah M. Bleakley, Esq.



Nabors, Giblin & Nickerson, P.A.
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From: Becky L. Azelton [<mailto:rlazelto@co.escambia.fl.us>]
Sent: Monday, October 14, 2013 9:46 AM
To: Bleakley, Sarah
Cc: Grover C. Robinson; KEITH T. WILKINS
Subject: Comments Regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking
Importance: High

Ms. Bleakley,

Please find attached a letter, dated October 11, 2013, referencing comments regarding 31 CFR Part 34. If you have any difficulty opening the letter, please do not hesitate to contact me and I will try another format. Also, the hard copy of the letter is coming to you under separate cover.

Thank you for your time and assistance.

*Becky Azelton,
Aide, Commissioner Grover C. Robinson, IV
Escambia County BoCC*

District 4

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October 11, 2013

Ms. Sarah Bleakley
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308

Re: Comments regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking

Dear Ms. Bleakley:

On behalf of Escambia County, Florida, please accept these comments regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking. As you are aware, these rules will establish the blueprint for how the federal government will distribute funds, approve plans and projects, and its expectations for entities receiving amounts from the Trust Fund. We believe that clarifying, refining, and expanding the language used within these rules is of critical importance to the Consortium and its constituent Florida counties because complying with these rules will create obligations on the part of these counties to comply with these program requirements in terms of staff and financial resources. We have attached our recommended amendments and revisions to the proposed Rule utilizing a standard strike/underline format.

The current federal budget impasse and resulting government shutdown have significantly complicated this Rule development process. We would like to seek clarification regarding several terms and concepts contained within the Rule; however, we cannot do so with the assistance of federal staff subject to the shutdown. Accordingly, we echo Bay County's concerns regarding the deadline for the submitting comments to Treasury and ***ask that the Consortium consider asking for a comment deadline extension***. This will allow us to collaborate with key federal staff to clarify Rule intent and meaning and to continue working with them towards consensus Rule language. If that can occur before the comments are due, it will result in a more meaningful set of comments from all stakeholders.

We have put much effort into these comments because if we cannot clarify and streamline this process now, the process may become burdensome and time-consuming if federal, state, and local governmental entities disagree over the meaning of these rules and the distribution of funds. Our approach is to base our revisions on certain federal rules, policies, and guidelines from the Office of Management and Budget ("OMB"), the Department of Commerce, and the Department of Interior, among other resources. Please also note that currently, the federal government is undergoing a process to evaluate potential reforms to its grants policies. The new proposed guidance that OMB is developing

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RE: Comments regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking

will supersede and streamline several sections of the C.F.R. and numerous other Circulars (“Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards” published in January of 2013). This effort represents the latest federal guidance regarding pre and post-federal award requirements, the collection of information, cost principles, and audit requirements. While this guidance is still in the proposal stage, it represents an effort to consolidate in one place what is now spread out over multiple regulations and policies. We have therefore suggested revisions consistent with this proposed guidance. Finally, we have drawn upon concepts from similar environmental restoration initiatives and have incorporated those where appropriate.

In summary, our comments address the following:

1. **Definitions.** The Rule introduces several concepts that are undefined and several key terms from other federal guidance documents are useful for inclusion in the Rule. In particular, Subpart I- Agreements, includes many terms that are common throughout federal grant guidelines, rules and procedures and clarifying what is meant by those terms will help counties understand how to comply. While the following list is not all-inclusive, several of the definitions we propose are:
 - a. Definitions for the different methods that grant funds will be distributed through advance payments or reimbursement;
 - b. Definitions for direct costs that are chargeable to Trust Funds versus indirect costs which are considered administrative and subject to the 3% cap;
 - c. Identification of several key grant process related terms and concepts such as: “award agreement”, “entity”, “grant application”, “pass-through entity”, “performance goal”, “pre-award costs”, “recipient” and “subrecipients”;
 - d. Given that State Expenditure Plans are defined, we suggest a definition for Multiyear Implementation Plan.
 - e. Defining planning costs more broadly to include both costs associated with the preparation of the State Expenditure Plan or Multiyear Implementation Plan, but also planning costs related to eligible activities such as the preparation of a stormwater plan or disaster resiliency plan.
 - f. Defining “contract” and “contractor,” as well as “award” and “sub-award,” which are treated differently within the federal grant context. Contracts and contractors are associated with a procurement process, whereas awards and sub-awards are not necessarily treated the same way.

2. **Advance payments or reimbursements.** This concept is critical and standard throughout federal grant guidelines. Advance payments are the preferred method of grant funds distribution, provided that certain conditions are met, such as maintaining certain procedures and minimizing time between funds distribution and expenditure. This latter concept is actually introduced within the Rule itself and therefore it is hopefully contemplated that advance payments will be available for grant funds, yet the Rule is non-specific about this point, merely referencing funds distribution as a generic “grant”. Although Treasury is likely leaving the concept flexible depending on the situation of the grant recipient, we recommend that the Rule should at least

introduce the possibility that funds can be distributed in advance to prevent cash-flow hardships that reimbursement programs impose.

3. **Pre-awards costs for Planning and Administration.** As mentioned above, we define this term, but also in the Rule we propose that costs associated with the development of Multiyear Implementation Plans and State Expenditure Plans (before grant awards are actually made) are a direct cost chargeable to grants distributed through the Trust Fund and that administrative costs are reimbursable. Such costs before an actual award is made can likely be reimbursed, but our approach is that in both instances, these costs must be identified in a grant application and must be agreed to by Treasury or the Council.
4. **Clarifying the Rule language more consistently with the Act.** There are several places where the Rule departs from the RESTORE Act itself. In some instances the departure is not substantive, but structural in nature and therefore not a significant concern. In other places, the departure is substantive and a concern. An example is §34.201, where the Rule alters the RESTORE Act's language regarding the eligible activities of planning and administrative costs. This is also the case in §34.205 in the context of administrative costs. Inconsistency between the Rule and the Act introduces uncertainty. Accordingly, in many instances, we have directly cited to the language in the Act for clarification.
5. **Direct Component.** In this section, we introduce or clarify several key concepts, such as:
 - a. Where the Rule states that Treasury will be further developing policies and procedures for administering Direct Component funds, we wanted to ensure that these forthcoming efforts would be subject to public notice and comment.
 - b. Funds are provided directly to Gulf Coast States, coastal zone parishes or coastal political subdivisions. In Florida, it is important to note that both disproportionately affected and nondisproportionately impacted counties are provided funds directly. §34.302 for some reason are not treated equitably in this section and that seems to be an inadvertent, yet critical revision.
 - c. An application process for grants is to be developed by Treasury and we suggest that this is also subject to public notice and comment and we suggest other revisions for the application process. Only programs, projects and activities in the Direct Component should be included in a multi-year implementation plan, not every program, project or activity a county is seeking (such as through the NFWF, NRDA or even Spill Impact Components). This will hopefully streamline the multiyear implementation plan.
 - d. A grant award process is outlined but we clarify that the multiyear implementation plan is part of the grant application (not subject to approval before a grant application but in conjunction with it). The Direct Component does not have the same "approval" requirements as does the Spill Impact Component, so we suggest clarifying the Rule to expedite the development and submittal of the multiyear implementation plan and the

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grant application process. We also suggest key concepts that will be included in the award agreement to provide more clarity to what will be covered in that document.

- e. Supporting documentation for the certifications that must be made pursuant to the Act should be included in the grant application.
6. **Comprehensive Plan Component.** We make very few suggested revisions in this Section, largely related to consistency in terminology and ensuring that new Council procedures will be subject to public notice and comment.
 7. **Spill Impact Component.** As a running theme, here we suggest again that any future policies and procedures are subject to public notice and comment. In recognition of the State of Florida and Consortium Memorandum of Understanding, we also introduce the concept throughout our comments that “other authorized entities” can receive funds under the Spill Impact Component. The Act clearly states that disbursement of amounts in the Trust Fund is to the Gulf Coast States, but the State Expenditure Plan shall be developed by certain entities. The rationale for this suggested edit is that this provides flexibility for Gulf Coast States to delegate program management functions, or even the disbursement of funds, to another entity. This preserves future options for Gulf Coast States that could be necessary due to State departmental restructuring, political shifts or the will of the State to appoint another entity to perform these functions. Finally, we suggest revisions to clarify the requirement that the State Expenditure Plan must be approved by the Council, the grant application process requirements, and that supporting documentation for the required certifications should be included in that application.
 8. **NOAA RESTORE Act Science Program and Centers of Excellence Research Grants Program.** We suggest very few edits to these Sections and they are primarily related to consistency in terminology.
 9. **Agreements.** We suggested numerous revisions to this Section, including:
 - a. Clarifying that supporting documentation for the required certifications is to be included in a grant application that will ultimately be the basis of an award agreement;
 - b. Revising language in the certifications to be consistent with the Act;
 - c. Suggesting several revisions in §34.803 (Conditions) such as:
 - i. Linking the terminology in the definitions section to this section and consistently applying that terminology consistent with federal grant guidelines.
 - ii. Including revisions from several federal grant guidelines on award agreement terms and procedures. In particular, our edits recognized that there are differences between recipients, subrecipients and contractors and there will be different agreements and obligations reflecting those relationships.
 - iii. Suggesting edits to clarify subrecipients will be subject to all the same requirements as recipients.

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Finally, we are still working on answering some of the key questions Treasury has posed, such as:

- Applicants must show compliance with “environmental laws”. Treasury invites comment on methods for assuring full compliance with applicable “environmental laws” while also providing for timely funds disbursement and project implementation - in particular, NEPA application.
- Are there additional procedures and auditing requirements that Treasury should require to assess whether the programs and activities funded with Trust Fund monies comply with the Act?
- Are there procedures Treasury could employ to identify and allocate funds available under other laws to pay for administrative expenses attributable to Trust Fund management?

We will likely supplement this initial response by suggesting stand-alone language that could be inserted as new sections in the Rule or incorporated into the Rule in its current configuration. We are still researching examples, and drafting and refining this language, but as it stands now, we are looking to suggest “Additional Concepts and Language to Consider” addressing the following topics:

- In one section, consolidating all of the additional processes, policies and procedures that the Rule says will be developed in the future and creating a clear path forward for that development, including public notice and comment.
- An implementation process that outlines the relationships between plan development, grant application, award agreement, project documentation, permitting, and regulatory approvals and monitoring and assessment.
- Project documentation for environmental review and compliance, including NEPA and Fish and Wildlife Coordination Act requirements.
- Public outreach procedures.
- Plan modifications.
- Future review of the Treasury Regulations.

Additionally, our comments are a work in progress. While we have provided significant comments at this stage, by coordinating with other counties, stakeholders and even other states and local governments in other states, we gain more insights and will be refining our final work product. We will share those revisions with you as we finalize them. For more information on these comments, please contact Keith Wilkins at (850)595-4988 or Ryan Ross at (850)595-4970. Thank you for your time, consideration and assistance.

Sincerely,



Grover Robinson, Commissioner District 4

Enclosure: Proposed Treasury RESTORE Regulation Comments

Rule-Specific Comments:

PART 34 – RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

Subpart A – General Provisions

Sec.

34.1 Purpose.

34.2 Definitions.

Subpart B – Trust Fund

34.100 The Trust Fund.

34.101 Investments.

34.102 Interest earned.

34.103 Allocation of funds.

34.104 Expenditures.

34.105 Waiver.

Subpart C – Eligible Activities for the Section 311(t) Gulf RESTORE Components

34.200 General.

34.201 Eligible activities for the Direct Component.

34.202 Eligible activities for the Comprehensive Plan Component.

34.203 Eligible activities for the Spill Impact Component.

34.204 Limitations on activities.

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- 34.602 Activities for the NOAA RESTORE Act Science Program.
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- 34.700 General.
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- 34.706 Reports.
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Subpart I – Agreements

- 34.800 General.
- 34.801 Grant agreements.
- 34.802 Certifications.
- 34.803 Conditions.
- 34.804 Records.
- 34.805 Noncompliance.

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 et seq.

Subpart A – General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act):

(a) Gulf RESTORE Program:

- (1) Direct Component (subpart D)
 - (2) Comprehensive Plan Component (subpart E)
 - (3) Spill Impact Component (subpart F)
- (b) NOAA RESTORE Act Science Program (subpart G)

(c) Centers of Excellence Research Grants Program (subpart H)

§ 34.2 Definitions.

As used in this part:

Act means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Administrative costs means those indirect costs incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes, or other authorized entities for general management functions, general ledger accounting, budgeting, human resource services that do not directly support a specific project or service, general procurement services, and general legal services that are allocable to activities authorized under the Act but not readily assignable to a particular program or project funding stream¹ or incurred for a common or joint purpose benefitting more than one cost objectiveⁱⁱⁱ.

Administrative expenses means the expenses incurred by the Council to administer the Comprehensive Plan Component, and NOAA to administer the NOAA RESTORE Act Science

Program, that are for general management functions, general ledger accounting, budgeting, human resource services that do not directly support a specific project or service, general procurement services, and general legal services but not readily assignable to a particular program or project funding stream.

Oversight and monitoring activities are classified as administrative when the activity overseen or monitored is administrative rather than programmatic in nature.

Advance payments mean a payment made to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.^{iv} Recipients shall be paid in advance, provided they maintain or demonstrate the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability.^v

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Award Agreement means the document detailing the terms, conditions and amounts of the funding for a particular award, including amounts obligated, and the project period.^{vi} Award agreements shall also include the method of payment.

Award means grants, cost reimbursement, contracts and other agreements between a recipient and Treasury or the Council.^{vii}

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, Tangipahoa, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Contract means a legal instrument by which a recipient purchases property or services needed to carry out the project or program under an award. The term does not include a legal instrument, even if the

Comment [ED1]: Make a distinction here between administrative (indirect) costs and those associated with plan preparation and projects. The key distinction is that "staff costs" can be a "direct cost" if they are directly related to implementation of a plan or project.

Comment [ED2]: Need to clearly define advance payments. Also need to introduce the concept of a "recipient" which is common grant language.

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Comment [ED3]: The first part of this is standard language. Added the "method of payment" to the definition to further force the issues of identifying advance payments versus reimbursements.

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recipient considers it a contract, when the substance of the transaction meets the definition of a subaward. Contracts awarded by entities under Trust Fund awards for the purposes of obtaining good and services for the entity's own use are not considered subawards. Such a contract creates a procurement relationship between the parties.^{vi}

Contractor means a dealer, distributor, merchant, or other seller providing good or services that are required for the conduct of Trust Fund. These goods or services may be for an organization's own use or for the use of beneficiaries of the Trust Fund.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury to carry out the purposes of the Act.

Direct Costs are those that can be identified specifically with a particular project, service, or activity intended to achieve an objective of the grant or that can be directly assigned to activities in support of a grant award. These costs typically include compensation of employees, related fringe benefit costs, contractual services that directly relate to planning or project implementation, the costs of materials, equipment and capital expenditures and other items of expense incurred for the federal award.ⁱⁱ

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Eligible Activities means those activities authorized for expenditure pursuant to approved Multi-Year Implementation Plans or State Expenditure Plans, including activities to promote tourism and seafood in the Gulf Coast region.ⁱ

Environmental review and compliance procedures means the procedures under applicable Federal and state environmental laws.

Federal Water Pollution Control Act means 33 U.S.C. 1251 et seq.

Entity means non-Federal entity.ⁱⁱ

Funding Period means the period of time when Federal funding is available for expenditure by the recipient.^{xi}

Grant means an award of financial assistance, the principal purpose of which is to transfer a thing of value from a federal agency to a recipient to carry out the purposes of section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act.ⁱⁱⁱ

Grant Application is the process by which a Gulf Coast State, coastal zone parish, disproportionately affected county, nondisproportionately impacted county or other entity makes application for the release of Trust Funds to implement a State Expenditure or Multi-Year Implementation Plan.

Gulf Coast Region means:

- (1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;
- (2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

Comment [ED4]: It is important to define contract because a contract is more of the typical procured service, versus a subaward (also defined herein) which is something that an entity "awards" to another entity after an application, etc (versus competed services which is a contract).

Comment [ED5]: The reason for defining this is that there is a distinction in federal grant guidelines between contracts and subawards. Certain federal guidelines attach or don't depending on the relationship and whether or not there is a procurement involved. It is important to define these terms because Subpart I on Agreements raises many of those concepts yet they are not defined in the Rule anywhere.

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Comment [ED6]: Need to better define Direct costs as inclusive of staff costs in some instances when those costs are directly related to a particular project, etc.

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Comment [ED7]: Good Federal terminology for defined timeframe in the Award Agreement.

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Comment [ED8]: Spill Impact component requires an approval process by the Council, yet under Direct developing and submitting a MYIP is a condition of receiving amounts from the Trust Fund. There is no assigned approval entity for Florida under the approval provision. Under Direct, plan approval should be tied to Grant Application approval.

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(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and

(4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entities means the parties delineated in § 34.702 as being eligible to administer the Centers of Excellence research grants in their respective states.

Multi-Year Implementation Plan means a plan for use of funds under the Direct Component prepared by Gulf Coast States, coastal zone parishes, disproportionately affected counties, nondisproportionately impacted counties or other authorized entities. The Multi-Year Implementation Plan may include milestones, projected completion date of each activity, and a mechanism to evaluate the success of each activity, such as performance goals, in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Pass-through entity means a non-Federal entity that provides a Federal subaward to a subrecipient to carry out part of the eligible activities authorized by the Act.^{xiv}

Performance Goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value or rate.^{xv}

Planning Costs means direct costs of data gathering, studies, analysis, and also preparation of plans for eligible activities under §34.201(a) through (i), including the costs of environmental review and compliance of plans and projects including staff cost. Planning costs can include preparation and revision of a Multi-Year Implementation Plan.

Pre-award Costs means those costs incurred prior to the effective date of an award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the approval of the awarding agency.^{xvi}

Previously approved projects and programs mean specific projects or programs where the Gulf Coast State, coastal political subdivision or other authorized entity has established conditions substantively the same as those described herein and the project or program carries out 1 or more eligible activities.^{xvii}

Procurement relationship means the relationship between an entity and a contractor when the entity receiving Trust Funds provides the goods and services within normal business operations, provides similar goods and services to many different purchasers, is typically in a competitive environment and is not subject to compliance requirements of the Trust Fund as a result of the subaward, although similar requirements may apply for other reasons.^{xviii}

Program Income means gross income received by the recipient or subrecipient directly generated by an award supported activity, or earned only as a result of the award during the award period, which is the time between the effective date of the Federal award and the ending date of the Federal award reflected in the notice of award.^{xix}

Recipient means a non-Federal entity that receives an award directly from the Council or Treasury to carry out an activity under the Act.^{xx} Trust Fund recipients include Gulf Coast States, coastal political subdivisions, coast zone parishes, disproportionately affected counties, nondisproportionately impacted counties, NOAA or other authorized entities.^{xxi} Recipients may perform or subaward the performance of all or a portion of a scope of work for amounts from the Trust Fund.^{xxii}

Comment [ED9]: Since State Expenditure and Comprehensive Plan are both defined, this should be defined.

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Comment [ED10]: Important to define because as a State, the Consortium or a local government receives funds, and as they award funds to another entity for project implementation, the local government will basically be providing a "subaward" and is a "pass-through entity".

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Comment [ED11]: They should consider getting away from the more amorphous "milestone" terminology, but its in the Act so we cant wholesale abandon it in my opinion. This is a standard federal definition.

Comment [ED12]: This definition is important. We want to clearly define planning cost as a "direct" cost not subject to the 3% cap.

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Comment [ED13]: Now language to open the door that any other established entity or agency can develop projects and receive funds.

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Comment [ED14]: The concept is fairly consistent in federal guidance and the language at the end is precisely from the RESTORE Act.

Comment [ED15]: This language is from OMB Uniform Guidance and sets up framework for subawards and subrecipients defined below.

Comment [ED16]: Methods of project implementation as terminology defined in federal grant guidelines: performance through "contracts" or subawards.

Reimbursement means the process by which recipients or subrecipients first expend funds for approved or authorized eligible activities and will then be reimbursed for actual costs incurred. Reimbursement is the preferred method of payment when the requirements for advance payments cannot be met.^{xxii}

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, or other authorized entities^{xxv} are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State, or other authorized entity, must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a program for which the recipient received amounts from the Trust Fund. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the recipient calls a contract. A subaward of Trust Fund amounts creates a relationship between a pass-through entity and the subrecipient.^{xxv}

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program.^{xxvi} A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period if a recipient cannot meet the criteria for advance payments and reimbursement is not feasible.^{xxvii}

Comment [ED17]: There is no one good federal definition for this, but generally this concept is outlined in most federal guidance.

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Comment [ED18]: This is an attempt to provide some flexibility "or" other entity authorized by law or agreement. It recognizes that funds go to the State or the State can agree otherwise.

Comment [ED19]: I am not sure how necessary this is since the Act explicitly says the Consortium prepares the Plan, but it is consistent with the previous edit to recognize there may be delegations to receive funds or prepare State Plans.

Comment [ED20]: Again, important to recognize the flow and award of grant funds to other entities for project implementation.

Comment [ED21]: Similar to concept in ED20.

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Subpart B - Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. The authority for the Trust Fund will terminate on the date all funds owed to the Trust Fund have been returned, and all funds have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares for the ~~in which Gulf Coast States, coastal zone parishes, coastal political subdivisions~~^{xxviii} to be used for implementing the Direct Component of the Gulf RESTORE Program.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent ~~by the Council~~^{xxix} for formula distribution to Gulf Coast States, or other authorized entities^{xxx} to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science program.

(2) Twenty-five percent for the Centers of Excellence Research Grants program.

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

Amounts in the Trust Fund will be available for expenditure solely for eligible activities, restoration priorities^{xxxi}, administrative costs, and administrative expenses without fiscal year limitation through either advance payments, reimbursements or other methods consistent with applicable applicable OMB circulars and guidance, the Act and other Federal policies and regulations.^{xxxii} With advance payments or other methods of disbursement, Granteerecipients must minimize the time between the receipt of funds and the disbursement of those funds.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in these regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted.

Subpart C – Eligible Activities for the Section 311(t) Gulf RESTORE Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities and restoration priorities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs incurred, whether charged on a direct or indirect basis, must conform with the ~~applicable OMB circulars and guidance~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in §§ 34.201, 34.202, or 34.203, according to component.

(3) Environmental review and compliance procedures must be complied with for each program, project, or activity, pursuant to as applicable law. ~~Grant-Award~~ agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by ~~applicable OMB circulars and guidance, applicable OMB circulars and guidance, the Act and other Federal policies and regulations.~~

Comment [ED22]: Better tracks the language in the Act. Rule just has 35% going to "States" and we need to specifically reaffirm money flows "directly" to local governments.

Comment [ED23]: Better tracks the Act that the Council disburses funds to the States.

Comment [ED24]: Probably good to add since "Restoration Priorities" are distinct under the Comprehensive Plan Component from "eligible activities" under the Direct and Spill Impact Components.

Comment [ED25]: The "minimization" requirement would only apply to advance payments because you do not "minimize time between receipt of funds" if you are using your own money and then getting reimbursed.

Comment [ED26]: This is just clarifying that there are other Federal and State authorities that will control this process.

(4) Pre-award costs of preparing the State Expenditure Plan or Multiyear Implementation Plans are allowable. These costs may be charged directly to Trust Fund awards with the prior approval of the Treasury or the Council.²⁰⁰³ All such costs should also be identified in a grant application.

(5) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component may not be included in any claim for compensation presented to the Oil Spill Liability Trust Fund after July 6, 2012.

(6) Gulf Coast States, coastal political subdivisions, coastal zone parishes, or other authorized entities may seek reimbursement of administrative costs to the extent permitted by Federal law.²⁰⁰⁴ Such costs should also be identified in a grant application for approval by Treasury or the Council.

(b) A Gulf Coast State, coastal political subdivision, coastal zone parish, or other authorized entity, may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity as defined in § 34.201 and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Programs, projects, and activities designed to protect or restore natural resources must be based on the best available science.

(a) Amounts provided pursuant to the Direct Component may be used to carry out 1 or more of the following activities in the Gulf Coast region:

(1a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(2b) Mitigation of damage to fish, wildlife, and natural resources.

(3) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(4d) Workforce development and job creation.

(5e) Improvements to or on State parks located in coastal areas affected by the DeepwaterHorizon oil spill.

(6f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(7g) Coastal flood protection and related infrastructure.

~~(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.~~

~~(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.~~

(8) Planning assistance, limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of environmental review and compliance.²⁰⁰⁵

(k9) Administrative costs of complying with this Section.²⁰⁰⁶

(b) Amounts provided pursuant to the Direct Component may be used to carry out 1 or more of the following activities in the Gulf Coast region:

(1) Promotion of tourism in the Gulf Coast region, including recreational fishing.

(2) Promotion of the consumption of seafood harvested from the Gulf Coast region.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council's activities under section 311(t)(2) and (3) of the Federal Water Pollution Control Act are eligible for funding from the Comprehensive Plan Component, including the following:

(a) The Council may expend funds for projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast Region. All Council projects and programs must be carried out in the Gulf Coast Region and be adopted in the Comprehensive Plan.

Comment [ED27]: Suggested language is intentionally flexible to allow for a grant that can be submitted for advance payments to develop a plan.

Comment [ED28]: Suggested language is intentionally flexible to allow for a grant to be submitted for immediate reimbursement.

Comment [ED29]: Just a clarification to "eligible activity" to make it clear RESTORE funds can only be used as match for actual eligible projects under the Act itself.

Comment [ED30]: Slight reorganization to track the Act.

Comment [ED31]: This tracks the language in the Act. Planning should be defined as a definition.

Comment [ED32]: Tracks the language in the Act.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to carry out, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component

Programs, projects, and activities eligible for funding under the Spill Impact Component must improve the ecosystems or economy of the Gulf Coast region, meet the eligibility criteria set forth in § 34.201, ~~as well as the following~~ and be included in a State Expenditure Plan for the expenditure of amounts that meets the following criteria:

~~(a) The projects, programs, and activities must be included in a State Expenditure Plan approved by the Council.~~

~~(b) The projects, programs, and activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.~~

(b) The plan must take into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan.

§ 34.204 Limitations on activities.

The following limitations apply to the activities of §§ 34.201, 34.202, and 34.203.

(a) Acquisition of land or interests in land by purchase, exchange, or donation must be from a willing seller.

(b) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the State in which the acquisition will take place.

§ 34.205 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish or other authorized entity under the Direct Component, Comprehensive Plan Component, and Spill Impact Component, not more than three percent may be used for administrative costs of complying with the Act, including staff. ^{new} The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) With respect to the Alabama Gulf Coast Recovery Council, administrative duties may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama. Trust Fund amounts may not be used for the administrative costs of other personnel.

§ 34.206 Audited financial statements and audits.

Not later than December 1, 2014 and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(a) Each audited financial statement under this section must reflect:

Comment [ED33]: Rewrites better track the section of the Act.

Comment [ED34]: The Comprehensive Plan section of the Council's administrative costs include the qualifier "including staff" at the end of the sentence, but the Direct Component has no such limitation on administrative cost. Adding "of complying with the Act" and striking "including staff" tracks the Act.

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(b) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(c) The Treasury Inspector General may conduct performance audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D – Gulf RESTORE Program - Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant.

§ 34.301 Responsibility for administration.

Treasury is responsible for awarding grants and administering grants and ~~award grant~~ agreements under this subpart. Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act, which may be subject to public notice and comment consistent with applicable law. Treasury will establish and implement a program to monitor compliance with its ~~grant- award~~ agreements. Grant recipients that subaward performance of all or a portion of a scope of work to subrecipients for amounts from the Trust Fund will be responsible for monitoring compliance with award agreements.^{xxxxvii}

§ 34.302 Allocation of funds.

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares ~~for across~~ each of the Gulf Coast States, provided directly to coastal zone parishes or coastal political subdivisions^{xxxxix} for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants directly from the Trust Fund.

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Treasury will divide the funds among these counties according to the formula mutually-agreed upon by the counties and included in the multiyear implementation plan submitted by each disproportionately affected county.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes based on the formula in section 311(t)(1)(D)(i) of the Federal Water Pollution Control Act. No parish will receive funds until its chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the State's Coastal Master Plan approved by the Louisiana legislature.

(f) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(g) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

Comment [ED35]: This is why the term should be included in the definitions.

Comment [ED36]: Proposed GMB Uniform Guidelines use "Award Agreement" not "Grant Agreement".

Comment [ED37]: This is usually how it works.

Comment [ED38]: Better tracks the language in the Act. Rule just have 35% going to "States" and we need to specifically reaffirm money flows "directly" to local governments.

Comment [ED39]: Again, preserving the "direct" distribution of funds.

Comment [ED40]: Need to ensure the nondisproportionately counties receive funds directly also.

§ 34.303 Application procedure.

~~The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury will develop an application process for grants and implementation of eligible activities available under this subpart that is consistent with the Act and Federal policies on grants the applicable OMB circulars and guidance, the Act and other Federal policies and regulations and seek public review and comment on that process. At a minimum, the procedure will include the following:~~

~~(a) Funds shall remain in the Trust Fund until such time as the development and submittal of the^d The applicant must submit a multiyear implementation plan to Treasury describing each program, project, and activity for which it seeks funding. Only those programs, projects and activities for which funding is sought under the Direct Component must be included in the multiyear implementation plan. For each program, project and activity, the plan must may include a narrative description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of or performance goals for each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill. The applicant must also state whether it has applied for a grant to fund the program, project, or activity pursuant to under funding sources in any other part of the Act and whether or not that grant has yet been awarded. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e). Treasury may will require a standard format for the plans and additional information.~~

~~(b) An applicant may satisfy some or all of the requirements in §§ 34.303(a) and 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:~~

~~(1) The applicant established conditions to carry out projects, programs, and activities that are substantively the same as the conditions required in § 34.303(a) through written procedures or a previously approved project, program or planning process.~~

~~(2) The applicable program, project, or activity qualified as one or more of the eligible activities in § 34.201.~~

~~(c) The applicant must include supporting information in the grant application that proposed activities meet the statutory requirements for eligibility, that its multiyear implementation plan was made available for public review and comment for a minimum of 30 days, and that each program, project, and activity the plan was adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations.~~

~~(d) and The applicant must include supporting information that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science.~~

§ 34.304 Grant award process.

~~Upon determining that thean application and plan meets the requirements of these regulations and the Act, Treasury will offer the applicant an grant award agreement that complies with subpart I, and applicable OMB circulars and guidance, the Act and other Federal policies and regulations. Federal policies applicable to grants. The award agreement shall include such information as administrative requirements, determinations on pre-award costs, national policy requirements, award-specific terms and conditions including the method of funds distribution, award performance goals, monitoring and compliance procedures for recipients and subrecipients, information consistent with Subpart I- Agreements, and other terms and conditions required in the Act, applicable OMB circulars and guidance and other applicable Federal policies on grants.~~

§ 34.305 Use of funds.

~~(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.~~

Comment [ED41]: Repetitive with the concept in § 34.304 of actually applying. This section describes more of a process to be developed.

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Comment [ED42]: Better tracks the Act.

Comment [ED43]: Specify that MYIP should only include components funded under the Direct Component.

Comment [ED44]: Act says "may". But, if the intent is to get clarification on what is the MYIP, it should probably be specific.

Comment [ED45]: The point is to prevent double dipping among pots, but if you apply, it doesn't mean you got the award.

Comment [ED46]: If that grant is still pending, then it should be able to be funded with Direct Component funds.

Comment [ED47]: Need a better definition of "establishing conditions". Seems to mostly be applicable to CPRA Master Plan, but there may be some instances where this could expedite MYIPs elsewhere.

Comment [ED48]: You adopt a "plan" not each program, project or activity individually.

Comment [ED49]: Paragraph tracks the "conditions" language in the Act and §34.802.

Comment [ED50]: Consistent language throughout the Rule.

Comment [ED51]: While there are numerous authorities that shape what goes into an award agreement, it would be good to list some of this so it is clear that this is the instrument that will specify the requirements for funds expenditure.

(b) When awarding contracts to carry out a project or program under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

§ 34.306 Reports.

GranteeRecipients must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

GranteeRecipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of granteerecipient's accounts and activities as deemed appropriate by Treasury.

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with section 311(t)(2) of the Federal Water Pollution Control Act. This Component provides for implementing the projects and programs listed in the Comprehensive Plan.

§ 34.401 Responsibility for administration.

After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council.

(a) In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. The Council must specify whether any part of this responsibility may be further assigned to another entity and under what terms.

(b) When a grant to a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that particular project or program, the Council must publish in the Federal Register and deliver to these Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the granteerecipient, the project's or program's purpose, and the amount of the award.

(1) House of Representative committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its grant-award agreements and interagency agreements.

§ 34.402 Application procedure and grant award process.

The Council may establish a selection process for assignees to use for awarding grants, cooperative agreements, or contracts to other entities subject to public notice and comment. If the Council does not establish an application and selection process, assignees must use a selection process of their choosing that is fair, open, and meets the requirements of Federal laws and, for State and local governments that are awarding, the applicable State and local laws.

§ 34.403 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports.

Assignees/grantee recipients must submit reports as prescribed by the Council or Treasury.

§ 34.405 Recordkeeping.

Grantee Recipients must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General.

§ 34.406 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee recipient's accounts and activities as any of them deems appropriate.

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart must be in the form of grants.

§ 34.501 Responsibility for administration.

The Council is responsible for awarding and administering grants under this subpart.

The Council must establish and implement a program to monitor compliance with its grant agreements subject to public notice and comment.

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States, or other authorized entities based on a formula in the Act and a regulation that the Council promulgates subject to public review and comment. The Council will make allocated funds available to Gulf Coast States, or other authorized entities, through grants for programs, projects, and activities described in a State expenditure plan which must be first approved by the Council.

§ 34.503 State Expenditure Plans.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each program, project, and activity for which the State seeks funding. Not later than 60 days after the date on which a plan is submitted, the Council shall approve or disapprove the plan.³¹¹ The Council must develop requirements for these plans that include the following:

(a) The State Expenditure Plan must be developed by:

- (1) In Alabama, the Alabama Gulf Coast Recovery Council.
- (2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.
- (3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.
- (4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.
- (5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must take into consideration the Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.

(c) For each program, project, and activity, the State Expenditure Plan must include narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success or performance goals. The applicant must also state whether it has applied for a grant to fund the program, project, or activity from funding sources pursuant to under any other part of the Act and whether or not that grant has yet been awarded.

(d) The State Expenditure Plan must demonstrate that each program, project, and activity is an eligible activity and that the plan will contribute to the overall economic and ecological recovery of the Gulf Coast.

Comment [ED52]: The point is to prevent double dipping among pots, but if you apply, it doesn't mean you got the award and shouldn't be penalized because you may not get it.

~~(e) The State Expenditure Plan must demonstrate that each project, program, and activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.~~

(ef) The State Expenditure Plan may not propose to use more than 25 percent of the funding made available for infrastructure projects, unless the plan certifies that:

(1) The ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(fg) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted State, or other authorized entity, in writing and consult with the State ~~that entity~~ to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the State, or other authorized entity, may obtain expedited judicial review within 90 days in a United States district court located in the State seeking the review.

§ 34.504 Grant administrationward process.

~~If~~ After the Council approves a State Expenditure Plan, the State or other authorized entity may apply for a grant to carry out specific projects, programs, and activities in the plan. ~~The Council must establish and publish procedures for grants available under this subpart that are consistent with Federal laws, regulations, and policies on grants.~~ At a minimum, the State's application must demonstrate all the elements required for a State Expenditure Plan have been met to the satisfaction of the Federal grant administrator before a grant may be approved. The applicant must include supporting information that the State Expenditure Plan was made available for public review and comment for a minimum of 30 days, and that the plan was adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations and that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science. The Council must establish and publish procedures for grants available under this subpart, subject to notice and public comment, that are consistent with applicable OMB circulars and guidance, the Act and other applicable Federal policies on grants.

§ 34.505 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

§ 34.506 Reports.

GranteeRecipients must submit reports as prescribed by the Council or Treasury.

§ 34.507 Recordkeeping.

GranteeRecipients must maintain records as prescribed by the grant administering agency and make the records available to the grant administering agency, and Treasury, including the Treasury Inspector General.

§ 34.508 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of granteerecipient's accounts and activities as any of them deem appropriate.

Subpart G – NOAA RESTORE Act Science Program

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration.

Comment [ED53]: The Act in the Spill Impact Section does not have this specific requirement. Those requirements are also met for the Spill Impact Component in §34.802 of the Rule. Moved concept to paragraph below on grant administration for similar set up as that in Direct Component (this supporting information is a function of the application).

Comment [ED54]: Renamed the same process as Direct Component.

Comment [ED55]: You adopt a "plan" not each program, project or activity individually.

Comment [ED56]: Similar to Direct Component (since both tie back to the conditions language in the Act) this should be the supporting information in the grant application to keep the two components similar in process.

Comment [ED57]: Consistent language throughout the Rule.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science program consistent with ~~the Act, this subpart and Federal grant laws, regulations, and policies~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations. NOAA must implement a program to monitor compliance with its grant agreements and interagency agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

Amounts made available to NOAA may be expended to carry out a program comprised of the following activities with respect to the Gulf of Mexico:

- (a) Marine and estuarine research.
- (b) Marine and estuarine ecosystem monitoring and ocean observation.
- (c) Data collection and stock assessments.
- (d) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.
- (e) Cooperative research.
- (f) Coordination of science and technology programs, in accordance with section 1604(f) of the Act, including setting priorities and engaging stakeholders. NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities.

None of the Trust Fund amounts may be used for the following activities:

- (a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.
- (b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.
- (c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses.

- (a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff.
- (b) The three percent limit is based on funds that the NOAA RESTORE Act Science Program receives in its fiscal year, and unused amounts may be carried forward into subsequent years. The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.
- (c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

Grantee/Recipients must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits.

The Treasury Inspector General may conduct audits and reviews of grantee/recipient's accounts and activities as it deems appropriate.

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants program. The program's purpose is to establish centers to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration.

Treasury is responsible for awarding grants to the Gulf Coast States, who will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury may develop and apply policies and procedures consistent with ~~this subpart, Federal grant administration requirements~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations, and the Act. Each Gulf Coast State entity issuing a grant must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds.

Each Gulf Coast State will be entitled to an equal share to carry out eligible activities.

The duties of a Gulf Coast State will be carried out by the following entities:

- (a) In Alabama, the Alabama Gulf Coast Recovery Council.
- (b) In Florida, a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.
- (c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.
- (d) In Mississippi, the Mississippi Department of Environmental Quality.
- (e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure.

Treasury will develop an application process for grants available to the Gulf Coast States under this subpart that is consistent with ~~Federal law, regulations, and policies on grants~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations. At a minimum, the process will include the following:

- (a) Each Gulf Coast State must describe the rules and policies the State will apply to the Centers of Excellence grant(s), including the competitive process that the State will use to select a Center of Excellence. The process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher learning, to compete. The process must give priority to entities and consortia that demonstrate the ability to organize the broadest cross-section of participants in the grant with interest and expertise in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest. Centers of Excellence do not need to be located in the Gulf Coast State issuing the grant.
- (b) Each Gulf Coast State must demonstrate that its rules and policies for Centers of Excellence grants, including the competitive selection process, were published and available for public review and comment for a minimum of 30 days, and that they were adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, and non-profit organizations. This requirement does not apply to State statutes and regulations.
- (c) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of grant funds and eligible activities.

- (a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with ~~the Act, these regulations, and other Federal laws, regulations, and policies applying to grants.~~ consistent with applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(b) Gulf Coast States may use funds available under this subpart to award competitive grants for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

(1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

(a) An annual report to the Council in a form set by the Council that includes information on recipients, grant amounts, disciplines addressed, and any other information required by the Council. When the grant recipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.

(b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

~~Grantee~~Recipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each ~~grantee~~recipient's accounts and activities as deemed appropriate by Treasury.

Subpart I – Agreements

§ 34.800 General.

This subpart describes procedures applicable to ~~grant~~award agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivisions, ~~and coastal zone parishes and other authorized entities~~ in making awards under subparts D, E, F, G, and H of this part.

§ 34.801 Grant Award agreements.

The ~~grant~~award agreements used must conform to all applicable Federal laws, regulations, and policies ~~for grants~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations, including audit requirements.

§ 34.802 Certifications.

At a minimum, ~~grant~~award agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. Grant applications shall provide supporting documentation for these certifications. The certification must be signed by an authorized senior official of the organization or entity receiving grant funds with oversight for the administration and use of the funds in question.

(a) I certify that each project, program, and activity funded under this Agreement has been designed to restore and protect (*select all that are appropriate*: the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands; or economy) of the Gulf Coast.

Comment [ED58]: See 34.802 below also using the concept of "entities".

(b) I certify that each project, program, and activity funded under this Agreement is designed to carry out one or more of the eligible activities for this program/component.

(c) I certify that each project, program, and activity funded under this Agreement was selected after consideration of input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations, as described in the grant application.

(d) I certify that each project, program, and activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR Part 34.

(e) I certify that each project, program, and activity funded under this Agreement, this Grantee has followed in every material respect the applicable procurement rules applying to contracts in the Grantee and the awarding of a contract for the expenditure of amounts received, are consistent with the standard procurement rules and regulations governing a comparable project or program in that Recipient's State, including rules for competitive bidding and audit requirements.^{31a} This GranteeRecipient agrees that it will not request funds under this grant award for any contract unless this certification remains true and accurate with respect to that contract. *[The Council may adapt this certification to account for any standard contract terms that it develops under section 311(t)(2)(C)(vii)(V) of the Federal Water Pollution Control Act.]*

Comment [ED59]: Tracks the language in the Act.

(f) I certify that a conflict of interest policy is in effect and covering each project, program, and activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this GranteeRecipient has submitted and maintains written documentation sufficient to support each certification made above, and that this GranteeRecipient's compliance with each of these certifications is a condition of this GranteeRecipient's initial and continuing receipt and use of the funds provided under this Agreement.

Comment [ED60]: Clarifying that this would be submitted as part of a grant application.

§ 34.803 Conditions.

At a minimum, all grant award agreements under subparts D, E, F, G, and H of this part must contain the following conditions consistent with applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(a) This GranteeRecipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) This GranteeRecipient must deposit all funds in one or more financial accounts which have the sole purpose of receiving fund amounts and making distributions of fund amounts. This GranteeRecipient must maintain detailed program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the program's requirements. This GranteeRecipient must track program income and use program income for purposes of the grant before requesting more program funds.

Comment [ED61]: Added this to definitions from a standard federal definition.

(c) An entity may concurrently receive Trust Funds as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Treasury, the Council or recipients. Prior to making any subaward, this GranteeRecipient must execute a legally binding written agreement with the entity receiving the subawardsubrecipient. This GranteeRecipient and the subrecipientawardee must execute the written agreement before any funds are disbursed to the subrecipientawardee. The written agreement will extend all the applicable program requirements to the subrecipientawardee.

Comment [ED62]: Added this to definitions from a standard federal definition.

(d) This GranteeRecipient must use the funds only for the purposes identified in the Award agreement.

(e) This GranteeRecipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the award agreement. The report must be sent to the Federal agency administering the grant and include the following information:

- (1) A description of the use of all funds received.
 - (2) A statement that funds were used only for purposes identified in the agreement.
 - (3) A certification that the Grantee/Recipient maintains written documentation sufficient to demonstrate the accuracy of these statements.
 - (4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry.
- The certification must be signed by a senior authorized official of the organization or entity receiving grant funds, who has oversight and authority over the administration and use of the funds in question.

§ 34.804 Records.

(a) As a condition of receiving funds, the Council and its members, NOAA, grantee/recipients, and all subrecipients must make available their records and personnel to Treasury, including the Treasury Inspector General, for the purpose of assessing compliance with this award Agreement, the Act, and other Federal laws applicable OMB circulars and guidance, the Act and other Federal policies and regulations applying to their receipt of funds from the Gulf Coast Restoration Trust Fund.

(b) For grant-award agreements that exceed a three year period, the grantee/recipient must make an interim report at the end of every two years. The report must contain the elements listed in § 34.803(e).

§ 34.805 Noncompliance.

In addition to remedies available to the Federal agency administering grants, all grant-award agreements with the Gulf Coast States must be subject to the following conditions:

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, ~~or~~-coastal zone parish, or other authorized entity has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that grantee/recipient from any part of the Trust Fund until the grantee/recipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the grantee/recipient to expend an equal amount from the grantee/recipient's own funds for a project or program that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, ~~or~~-coastal zone parish, or other authorized entity has materially violated an grant-award agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that grantee/recipient from any part of the Trust Fund until the grantee/recipient corrects the violation.

Richard L. Gregg

Fiscal Assistant Secretary

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ⁱ See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997.

ⁱⁱ See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997.

ⁱⁱⁱ Circular A-87 Revised 5/10/2004.

^{iv} Circular A-110 Revised 11/19/39 as Further Amended 9/30/99 and 40 C.F.R. § 30.2(d). See 2 CFR Part 215.22 payment procedures, OMB Circular A-110 essentially outlining a preference for advance payments as long as written procedures and financial management systems are in place with reimbursement preferred when those conditions cannot be met. See also §12.61, 43 CFR Subtitle A, Recipients and subrecipients shall be paid in advance provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time between transfer of funds and their disbursement by recipient or subrecipient. Finally, see Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards (pp 36-39), includes similar guidance but elaborates with such requirements as tying advance payments to immediate cash needs, consolidating advances to cover cash needs, etc. and reimbursement used when requirements for reporting and financial management cannot be met.

^v Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{vi} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{vii} 2 C.F.R. 225 (A-87)

^{viii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{ix} See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997 and Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^x Section 311(t)(1)(B)(i); (t)(1)(B)(ii); (t)(3)(B)(i)(I) of the Federal Water Pollution Control Act.

^{xi} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xiii} Glossary, www.grants.gov

^{xiv} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xv} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xvi} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xvii} Section 311(t)(1)(J) of the Federal Water Pollution Control Act.

^{xviii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xix} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xx} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xxi} Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.

^{xxii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

^{xxiii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.)

Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

2 C.F.R. § 215.2 and Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards and 43 C.F.R. § 12.61(e)

Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.

Section 311(t)(3)(B) of the Federal Water Pollution Control Act.

Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.

Section 311(t)(2)(D)(iii) of the Federal Water Pollution Control Act.

Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

OMB Circular A-87, Attachment B, Section 33.

See § 34.604(c).

Section 311(t)(1)(B)(i)(VIII) of the Federal Water Pollution Control Act.

Section 311(t)(1)(B)(i)(IX) of the Federal Water Pollution Control Act.

Section 311(t)(1)(B)(iii)(I) of the Federal Water Pollution Control Act.

Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.

Section 311(t)(1)(L) of the Federal Water Pollution Control Act.

Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

Section 311(t)(3)(B)(iv) of the Federal Water Pollution Control Act

Section 311(t)(1)(E) of the Federal Water Pollution Control Act

Blalock, Sarah

From: Bleakley, Sarah
Sent: Friday, October 04, 2013 4:24 PM
To: Blalock, Sarah
Subject: Fwd: Assessment of draft Treasury Rules franklin.

Sent from my iPhone, so please excuse typos.

Begin forwarded message:

From: Alan Pierce <alanp@fairpoint.net>
Date: October 4, 2013 at 4:19:47 PM EDT
To: <sbleakley@ngnlaw.com>
Subject: Assessment of draft Treasury Rules

Dear Ms. Blakely:

As County Planner and staff to the Franklin County RESTORE Council, I have reviewed the draft Treasury rules regarding the RESTORE Act. While I am not an attorney, I am forwarding on the following comments I made to the Franklin County Board of County Commissioners. In general it is my opinion that for a small rural county such as Franklin these draft rules make access to future BP funds harder rather than easier. The issues as I see them are:

*No allowance for reimbursement for planning or administrative activities is allowed prior to an executed grant agreement, and we can't have an executed grant agreement until there are final rules. Since there is no date for final rules Franklin County has no timeline on which it might rely when planning money would become available. Since we are a small rural county we do not have the financial resources to begin plan development without some assurance when and how we would be reimbursed.

*Any project must be permitted by the appropriate federal or state agency before it can commence yet there will be no funds to pay for obtaining state or federal permits until after we have an executed grant agreement. Franklin County has several large scale environmental projects in mind to help restore the Apalachicola Bay oyster industry. These projects will require state permits so we can not even begin the process of obtaining permits until some unknown date in the future.

*The draft rules require all counties to submit a multi-year plan but the counties can not submit a plan because Treasury has yet to determine whether it is going to develop a standard format for plan submission.

*The draft rules do not address the issue of amending the multi-year plan. There needs to be an amendment process for the plans.

Sincerely,
Alan C. Pierce
Director of Administrative Services
34 Forbes Street, Suite 1
Apalachicola, FL 32320
850-653-9783, Ext. 161
850-653-9799

alanp@fairpoint.net

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November 5, 2013

DRAFT 10-15-13

Via Federal eRulemaking Portal:
www.regulations.gov

Department of the Treasury
Attention: Janet Vail, Room 2050
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Notice of Proposed Rulemaking 31 CFR Part 34, *Resources and Ecosystems, Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States* Federal Register Vol. 79, No 73, Sept. 6, 2013

Dear Ms. Vail:

On behalf of Lee County, Florida, the Board of County Commissioners appreciates the opportunity to comment on the U.S. Department of the Treasury's ("Treasury") proposed regulations ("Proposed Regulations") implementing the RESTORE Act (the "Act"). The Deep Water Horizon oil spill impacted all of Florida's Gulf Coast communities, both in terms of environmental and economic damages. The Act and the Proposed Regulation present an unprecedented opportunity to provide direct relief for these impacts to Gulf Coast communities.

I. General Comments

The thrust of our comments are intended to address inconsistencies with the Act, clarify certain processes and procedures required by the Act, and, ultimately, create a user friendly tool for Florida's counties to navigate the various funding opportunities available from the Gulf Coast Restoration Trust Fund ("Trust Fund"). As Florida counties prepare their plans, they must have a clear understanding of how their particular projects, programs and activities may be funded under each funding source in the Act.¹

Generally stated, the Proposed Regulations must:

- Avoid inappropriate restating, paraphrase or supplementing of the Act. Broadly reciting or paraphrasing statutory provisions often creates conflicting or ambiguous provisions. Additionally, rules should only supplement statutory provisions when authorized by

¹ The Trust Fund consists of five sources: Direct Component, Comprehensive Plan Component, Spill Impact Component, NOAA RESOTRE Act Science Program and Centers of Excellence Research Grants Program.

statute² and necessary to effectuate the intent of the statute. In several instances, the Proposed Regulations simply restates or attempt to paraphrase provisions of the Act. If already addressed in the Act, then the Proposed Regulations merely need to reference the applicable provisions of the Act.

- Identify and incorporate Federal grant law and policy by reference to the applicable sections of the Code of Federal Regulations (“CFR”) that will govern the Trust Fund distribution process. This shall include appropriate qualifying language to incorporate, if adopted, the Office of Management and Budget’s (“OMB”) proposed Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.³

II. Specific Comments

Subpart A: General Provisions

Section 34.2, Definitions: Contains the following terms that are defined in the Act. For consistency, these definitions must simply reference the Act’s definitions:

“Administrative costs”⁴
“Best available science”
“Coastal political subdivision”
“Council”
“Deepwater Horizon oil spill”
“Gulf Coast Region”

² The Treasury is authorized to establish such procedures “necessary to deposit amounts in, and expend amounts from, the Trust Fund,” including (1) procedures to assess whether the programs and activities carried out under the achieve compliance with applicable requirements, including procedures by which the Secretary of the Treasury may determine whether an expenditure by a Gulf Coast State or coastal political subdivision pursuant to such a program or activity achieves compliance; (2) auditing requirements to ensure that amounts in the Trust Fund are expended as intended; and (3) procedures for identification and allocation of funds available to the Secretary under other provisions of law that may be necessary to pay the administrative expenses directly attributable to the management of the Trust Fund. Section 1602(e).

³ OMB is currently engaged in rulemaking that proposes to consolidate, streamline and supersede current Federal grant policy. *See* Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (including Single Audit Act), OMB-2013-0001 and Federal Register /Vol. 78, No. 173 / Friday, Sept. 6, 2013. OMB has prepared a “Crosswalk from Existing Guidance to Proposed Guidance” spreadsheet that can be used to determine that applicable guidance under the new rule if adopted. *See* Doc. No. OMB-2013-0001-0003.

⁴ Administrative costs is not listed in the definitions section of the Act, but is listed in eligible activities as “Administrative costs of complying with this subsection.”

“Gulf Coast State”

“Trust Fund”

“Environmental review and compliance procedures” is defined in Section 34.2 as the procedures under applicable Federal and state environmental laws.⁵ For the sake of clarity and bright line standards, this should be defined in terms of the project obtaining any required authorizations or approvals under applicable Federal and state environmental laws. Thus, we recommend modifying these terms, and the definition, in the following manner:

“Environmental review and compliance ~~procedures~~” means the process of securing the procedures required approval or authorization under applicable Federal and state environmental laws for the eligible project, program or activity.

Subpart B: Trust Fund

Sections 34.100, The Trust Fund, 34.102, Interest earned, and 34.103, Allocation of funds: are each covered in the Act. In order to prevent potential conflict, these sections can simply reference the applicable provisions of the Act.

Section 34.104, Expenditures: paraphrases the Act in regards to expenditures and adds reference to the general Federal policy goal of minimizing disbursement of funds by grantees. This Section should cite the appropriate provisions in the Act and delete reference to the general Federal policy goal. Details on expenditures can be included in the Subparts dedicated to each Component.

Subpart C – Eligible Activities for Section 311(t) Gulf RESTORE Components

Section 34.200, General: attempts to establish prerequisites for certain Component project funding, restates various sections of the Act⁶, and adds specific reference to pre-award costs eligibility for environmental review and compliance procedures. Simply put, this section is random and confusing. We suggest Treasury take a new approach to organizing the Proposed Regulations where all policies and procedures for compliance and funding eligibility are located in one place for each respective component of the Trust Fund. This will provide the reader a more user friendly regulation and ensure that the unique statutory requirements for each component are clearly recognized. As a result, this entire section should be deleted. The

⁵ Additionally, “environmental review and compliance procedures” was likely added to the description of the eligible activity of “Planning” in Section 34.201(j) to ensure edibility for funding.

⁶ Section 34.200(a)(4) and (b) are both paraphrase provisions of the Act.

references to the Act, applicable OMB guidance, environmental review and compliance⁷ and pre-award costs⁸ can all be relocated and tailored to each respective component.

Sections 34.201, Eligible activities for the Direct Component: simply restates the eligible activities stated in the Act and should be deleted. In fact, this section provides an example of how restating the Act, instead using citations can be problematic by leading to an inaccurate description of the eligible activity “Planning Assistance.”⁹ Appropriate citations to the Act for Direct Component eligible activities should be included within Subpart D, Direct Component.

Sections 34.202, Eligible activities for Comprehensive Plan Component, 34.203, Eligible activities for the Spill Impact Component, 34.204, Limitations of Activities, and 34.205, Limitations on administrative costs and administrative expenses: delete all sections and incorporated into each respective component Subparts by reference to provisions of the Act and appropriate supplemental language.

Subpart D – Gulf RESTORE Program – Direct Component

Section 34.301, Responsibility for Administration: includes the statement that “Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act.” Any material provisions that address grant policies and procedures must be addressed in the context of the Proposed Regulations. Entities affected or governed by the Proposed Regulations must be able to review and understand any policies and procedures that apply to them. Should the Treasury determined to develop additional policies and procedures in the future, then, the Proposed Regulations would need to be modified by Treasury at that time. The above quoted statement leaves the impression that the Treasury may develop and apply policies and procedures in the future outside the context of the Proposed Regulations.

⁷ Section 34.200(3) of the Proposed Regulations requires each program, project or activity to comply with applicable environmental review and compliance procedures before being awarded Trust Fund money. As described above, this requirement should be adjusted in terms of “authorizations or approvals” to ensure clarity. Demonstration of this compliance can be achieved by offering evidence of the necessary agency authorizations and approvals related to the environmental laws governing the particular project.

⁸ Singling out environmental review and compliance costs for pre-award payment eligibility may imply that this is the only eligible costs for pre-award payment. Section 34.200(3). Eligibility for pre-award costs should be developed for each component considering the timing of plan development and grant application submittals.

⁹ Section 34.201(j) lists “Planning limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under Section 34.201(a) through (i), including the costs of environmental review and compliance.” However, the actually language in the Act lists only “Planning Assistance” as the eligible activity.

Section 34.302, Allocation of funds: Appears to be rephrasing or restating provisions in the Act that governs allocation of the Trust Fund dollars. There is no need to restate or rephrase provisions of the Act. Specific reference to the Act in this section will suffice.

Section 34.303, Application procedure: As in Section 34.301, there is a provision in this Section 34.303 of the Proposed Regulations that provides apparent authority to Treasury to “develop an application process for grants...” This section goes on to outline the minimum elements in the application, including the Multiyear Implementation Plan (“Multiyear Plan”) that includes each project that the county intends to fund,¹⁰ whether the county applied for other Act funds, and supporting documentation verifying eligibility and compliance with the Act. It is difficult, if not impossible, for entities subject to the Proposed Regulations to develop plans, projects, programs and activities without having a clear upfront understanding of the applicable grant application process. Consequently, the application process for grants must be clearly spelled out in the Proposed Regulations in its entirety.

The process for determining whether “previously approved projects and programs” are eligible for inclusion into the Multiyear Plan must be clarified. The Act itself does not define a “previously approved projects and programs.” However, it appears that the intent of the Act was to approve and implement certain projects more quickly by providing a less stringent standard of review. In order to clarify the intent of the Act, Section 34.303(b) of the Proposed Regulations must contain a definition of “previously approved projects and programs” and a clear process that defines this reduced standard of review.

Section 34.304, Grant award process: this section is intended to outline the grant award process. However, this section provides that Treasury will offer the applicant an agreement, “upon determining that an application meets the requirements of these regulations and the Act”. Again, the proposed regulations do not outline a grant application or award process. Entities affected or governed by the proposed regulations must be able to review and understand any grant policies and procedures that apply to them.

Subpart D does not contain language regarding potential subgrants, assignees or cooperative/interagency agreements for Direct Component funds.¹¹ Section 34.803, does include

¹⁰ The Act requires the both the Multiyear Plan (Direct) and the State Expenditure Plan (Spill Impact) to be submitted prior to receiving funds, but only requires the grant application be submitted simultaneously with the Multiyear Plan.

¹¹ Similarly, the Proposed Regulations for the Spill Impact Component does not mention subgrants, assignees or cooperative/interagency agreements. The Comprehensive Plan Component, the NOAA Science Program and the Center of Excellent allocations each have language regarding subgrants, assignees or cooperative/interagency agreements.

a mandatory condition that grant agreements contain conditions for making “subawards.” However, it is not clear if this standard grant agreement condition is intended to give the counties authority to subgrant funds. The Treasury must revise the Proposed Regulations to clearly indicate whether counties have subgranting authority. Additionally, numerous local government agencies, universities, and non-profit/for-profit entities may seek Direct Component Funds from Lee County. In order to develop an adequate project evaluation and approval process for its Multiyear Plan and the type of entities that are eligible for subgranted funds under the Direct Component.¹²

Section 34.305, Use of funds: The commentary on the Proposed Regulations states that after a grant agreement is signed, funds will be disbursed to counties as they are needed for authorized expenditures. These comments indicate the intent to use advance payment methods for the Direct Component. Additionally, to ensure timely implementation of projects, programs and activities, and avoid funding/cash flow limitations, advanced payments must be the preferred method of payment. This section must include specific preference for advance payment methods to grantees. Additionally, to the extent that this section recites or paraphrases the Act, it should be revised to simply reference the specific provisions of the Act.

While current grant policy for local governments sets forth the manner in which the counties can change the terms of its grant agreements,¹³ the Proposed Regulations should include specific provisions governing the process to amend a Multiyear Plan and grant agreement.

Subpart E: Comprehensive Plan Component

This Subpart proposes procedures for implementing the projects and programs contained in the Gulf Coast Ecosystem Restoration Council’s (“Council”) Comprehensive Plan.

Section 34.402, Application procedures and grant award process: states that the Council may establish a selection process for Gulf Coast States and Federal agencies assigned primary responsibility for overseeing and implementing Comprehensive Plan projects and programs. This section further states that in the event the Council does not establish a selection process, the respective Gulf Coast State or Federal agency must use a fair and open selection process that meets Federal or applicable state and local laws. Regardless of what agency establishes the selection process, it must be created through the Federal or the respective state rulemaking process to ensure proper notice and allow opportunity for public input. The Proposed Regulations must include provisions that require rulemaking for the selection process.

¹² Numerous local government agencies, universities, non-profits or for-profits may seek Direct Component Funds from the Lee County. The receiving subgrantee’s status determines what grant policy will govern.

¹³ 7 CFR 3016.30.

Subpart F: Spill Impact Component

Section 34.501, Responsibility for administration: the Proposed Regulations do not reference or recognize in any manner the Council’s Comprehensive Plan adopted on August 28, 2013. The Comprehensive Plan includes the Submittal, Review and Approval Process, the statutory criteria and guidance for development of the State Expenditure Plans (“SEP”). Unless and until, the Treasury and the Council work together to develop consistent processes for both the SEP approval and the subsequent grant approval, the Proposed Regulations offer little value. We suggest that the Treasury consult the Council, the Florida Consortium and the Governor of Florida, during the promulgation of the regulation of the Spill Impact formula or earlier, in an effort to finalize the additional regulations for the Spill Impact Component. These regulations must be consistent with the Submittal, Review and Approval Process for SEP’s set forth in the Comprehensive Plan and provide for grant administration procedures establishing the process for the State of Florida to apply for and receive its allocation of SEP funds. Furthermore, it is critical that these regulations clearly establish the manner in which county projects, programs and activities will be eligible for inclusion into the SEP and funded through the grant process.

Subpart I: Agreements

Section 34.801. Grant agreements: as with many provisions in the proposed regulations, there is a general and far-reaching reference that grant agreements must conform to “all applicable federal laws, regulations, and policies for grants...” Applicable federal laws, regulations, and policies for grants, to the extent applicable to the grant programs encompassed by the proposed regulations, must be specifically referenced in the Proposed Regulations. Additionally, grant conditions unique to a component of the Trust Fund should have those conditions included in the component’s respective subpart. For example, as discussed above, the grant agreements must provide terms describing the process to amend the grant agreements specific for changes in the Multiyear Plan and the SEP.

III. Conclusion

Again, we appreciate the Treasury’s efforts and the opportunity for public input regarding the Proposed Regulations to implement the Act. Proposed Regulations governing the administration of the Trust Fund must establish a well defined and user-friendly process to develop and implement projects, programs and activities that will provide beneficial and needed ecological and economic restoration to Gulf Coast counties.

Sincerely,

Cecil Pendergrass
Lee County Commissioner



BOARD OF COUNTY COMMISSIONERS

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** Board Certified in City, County & Local Govt. Law

October 11, 2013

Ms. Sarah Bleakley
500 Mahan Drive
Suite 200
Tallahassee, Florida 32308

Re: Comments regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking

Dear Ms. Bleakley:

Please accept these comments regarding 31 CFR Part 34: Gulf Coast Restoration Trust Fund Notice of Proposed Rulemaking. As you are aware, these rules will essentially offer the blueprint for how funds will be distributed, plans and projects will be approved and what the expectations will be for entities receiving amounts from the Trust Fund. As such, their importance is significant because complying with these rules will create obligations on the part of Florida counties to comply with these program requirements in terms of staff and financial resources. To that end, we have attached a strike/underline version of the Rule with some comments regarding the basis and need for such revisions.

As we all know, the Federal Shutdown has complicated this Rule development process significantly. There are several terms and concepts that we would like to seek clarification upon, but cannot do so with any Federal staff. We echo Bay County's concerns regarding the deadline for the comments back to Treasury and ***ask that the Consortium consider requesting a comment deadline extension.*** This will allow us to, hopefully, collaborate with some key Federal staff in order to 1) clarify Rule intent and 2) work towards consensus language. If that can occur before the comments are due, it will result in a more meaningful set of comments from all stakeholders.

We have put much effort into these comments because if we cannot clarify and streamline this process now, it will be burdensome and time consuming as these rules are implemented and funds are distributed. Our approach was to base our revisions on certain Federal rules, policies and guidelines from the Office of Management and Budget (“OMB”), Commerce and the Department of Interior among other resources.

Currently, the Federal government is undergoing a process to evaluate potential reforms to Federal grants policies. The new proposed guidance OMB is developing will supersede and streamline several sections of the C.F.R. and numerous other Circulars (“Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards” published in January of 2013). This effort represents the latest Federal guidance on such items as pre- and post- Federal award requirements, collection of information, cost principles and audit requirements. While this Guidance is still proposed, it represents an effort to consolidate in one place what is now spread out over multiple regulations and policies so definitions and processes are not revised as much as just reorganized and streamlined. Finally, we have also drawn up concepts from other restoration initiatives and have incorporated those where appropriate.

In summary, our comments address the following:

1. **Definitions.** The Rule introduces several concepts that are undefined and several key terms from other Federal guidance are useful for inclusion in the Rule. In particular, Subpart I- Agreements, includes many terms that are common throughout federal grant guidelines, rules and procedures and clarifying what is meant by those terms will help counties understand how to comply. While this list is not all-inclusive, several of the definitions we propose:
 - a. Definitions for the different methods that grant funds will be distributed through advance payments or reimbursement;
 - b. Definitions for direct costs that are chargeable to Trust Funds versus indirect costs which are considered administrative and subject to the 3% cap;
 - c. Identification of several key grant process related terms and concepts such as: “award agreement”, “entity”, “grant application”, “pass-through entity”, “performance goal”, “pre-award costs”, “recipient” and “subrecipients”;
 - d. Given that State Expenditure Plans are defined, we suggest a definition for Multiyear Implementation Plan.
 - e. Defining planning costs more broadly to include both costs associated with the preparation of the State Expenditure Plan or Multiyear Implementation Plan, but also planning costs related to eligible activities such as the preparation of a stormwater plan or disaster resiliency plan.

- f. Defining contract and contractor as well as award and subaward which are treated differently within the Federal grant context. Contracts and contractors are associated with a procurement process whereas awards and subawards are not necessarily treated the same way.
2. **Advance payments or reimbursements.** This concept is critical and standard throughout Federal grant guidelines. Advance payments are the preferred method of funds distribution of grant so long as certain conditions are met such as maintaining certain procedures and minimizing time between funds distribution and expenditure. This latter concept is actually introduced within the Rule itself and therefore it is hopefully contemplated that advance payments will be available for grant funds, yet the Rule is non-specific about this point merely referencing funds distribution as a generic “grant”. It is understandable that Treasury is likely leaving the concept flexible depending on the situation of the grant recipient, but the Rule should at least introduce the possibility that funds can be distributed in advance versus resulting in the cash-flow hardships that reimbursement programs impose.
3. **Pre-awards costs for Planning and Administration.** As mentioned above, we define this term, but also in the Rule we propose that costs associated with the development of Multiyear Implementation Plans and State Expenditure Plans (before grant awards are actually made) are a direct cost chargeable to grants distributed through the Trust Fund and that administrative costs are reimbursable. Such costs before an actual award is made can likely be reimbursed, but our approach is that in both instances, these costs must be identified in a grant application and must be agreed to by Treasury or the Council.
4. **Clarifying the Rule language more consistently with the Act.** There are several places where the Rule departs from the RESTORE Act itself. In some instances the departure is not substantive, but structural in nature and therefore not a significant concern. In other places, the departure is substantive and a concern. An example is §34.201 where the Rule attempts to the eligible activities of planning and administrative cost. This is also the case in §34.205 in the context of administrative cost. Not having these concepts in the Rule consistent with the Act introduces uncertainty and in many instances we cite back to the language in the Act for clarify.
5. **Direct Component.** In this section we introduce or clarify several key concepts such as:
 - a. Where the Rule states that Treasury will be further developing policies and procedures for administering Direct Component funds, we wanted to ensure that these forthcoming efforts would be subject to public notice and comment.
 - b. Funds are provided directly to Gulf Coast States, coastal zone parishes or coastal political subdivisions. In Florida, it is important to note that both disproportionately affected and nondisproportionately impacted counties are

provided funds directly. §34.302 for some reason are not treated equitably in this section and that seems to be an inadvertent, yet critical revision.

- c. An application process for grants is to be developed by Treasury and we suggest that this is also subject to public notice and comment and we suggest other revisions for the application process. Only programs, projects and activities in the Direct Component should be included in a multi-year implementation plan. Not every program, project or activity a county is seeking (such as NFWF, NRDA or even Spill Impact Components). This will hopefully streamline the multiyear implementation plan.
 - d. A grant award process is outlined but we clarify that the multiyear implementation plan is part of the grant application (not subject to approval before a grant application but in conjunction with it). The Direct Component does not have the same “approval” requirements as does the Spill Impact Component, so we suggest clarifying the Rule to expedite the development and submittal of the multiyear implementation plan and the grant application process. We also suggest key concepts that will be included in the award agreement to provide more clarity to what will be covered in that document.
 - e. Supporting documentation for the certifications that must be made pursuant to the Act should be included in the grant application.
6. **Comprehensive Plan Component.** We make very few suggested revisions in this Section, largely consistency in terminology and ensuring that new Council procedures will be subject to public notice and comment.
7. **Spill Impact Component.** As a running theme, here we suggest again that any future policies and procedures are subject to public notice and comment. We also introduce the concept throughout our comments that “other authorized entities” can receive funds under the Spill Impact Component. The Act clearly states that disbursement of amounts in the Trust Fund is to the Gulf Coast States, but the State Expenditure Plan shall be developed by certain entities. The rationale for this suggested edit is that this provides flexibility for Gulf Coast States to delegate program management functions, or even the disbursement of funds, to another entity beyond just the preparation of the State Expenditure in the Plan. This preserves future options for Gulf Coast States that could be necessary due to State departmental restructuring, political shifts or the will of the State to appoint another entity to perform these functions. Finally, we suggest revisions to clarify the requirement that State Expenditure Plan must be approved by the Council, grant application process requirements and that supporting documentation for the required certifications should be included in that application.
8. **NOAA RESTORE Act Science Program and Centers of Excellence Research Grants Program.** We suggest very few edits to these Sections and they are primarily consistency in terminology.

9. **Agreements.** We suggested numerous revisions to this Section including:

- a. Clarifying that supporting documentation for the required certifications is to be included in a grant application that will ultimately be the basis of an award agreement;
- b. Revising language in the certifications to be consistent with the Act;
- c. Suggesting several revisions in §34.803 (Conditions) such as:
 - i. Linking the terminology in the definitions section to this Section and consistently applying that terminology consistent with Federal grant guidelines.
 - ii. Including revisions from several Federal grant guidelines on award agreement terms and procedures. In particular, our edits recognized that there are differences between recipients, subrecipients and contractors and there will be different agreements and obligations reflecting those relationships.
 - iii. Suggesting edits to clarify that subrecipients will be subject to all the same requirements as recipients.

A couple of other issues we would like to highlight. We are still working on answering some of the key questions Treasury has posed such as:

- Applicants must show compliance with “environmental laws”. Treasury has invited comment on methods for assuring full compliance with applicable “environmental laws” while also providing for timely funds disbursement and project implementation, in particular NEPA application.
- Are there additional procedures and auditing requirements that Treasury should require to assess whether the programs and activities funded with Trust Fund monies comply with the Act?
- Are there procedures Treasury could employ to identify and allocate funds available under other law to pay for administrative expenses attributable to Trust Fund management?

It is very likely that we will be suggesting stand-alone language that could be inserted as new sections in the Rule or incorporated into the Rule in its current configuration. We are still researching examples, drafting and refining this language, but as it stands now we are looking to suggest “Additional Concepts and Language to Consider” on the following topics:

- Consolidating in one section all of the additional processes, policies and procedures the Rule says will be developed in the future and creating a clear path forward for that including public notice and comment.

- An implementation process that outlines the relationships between plan development, grant application, award agreement, project documentation, permitting and regulatory approvals and monitoring and assessment.
- Project documentation for environmental review and compliance including NEPA and Fish and Wildlife Coordination Act requirements.
- Public outreach procedures.
- Plan modifications.
- Future review of the Treasury Regulations.

Additionally, our comments are a work in progress. While we have provided significant comments at this stage, by coordinating with other counties, stakeholders and even other states and local governments in other states, we gain more insights and will be refining our final work product. We will share those revisions with you as we finalize them. For more information on these comments, please contact Monroe County Government Relations Director Lisa Tennyson at (305) 292-4444, our special counsel Erin Dedy at (954) 593-5102, or me at (305) 292-3470.

Sincerely,



Robert B. Shillinger
County Attorney

Enclosure (1)

Cc: Monroe County Board of County Commissioners
Roman Gastesi, County Administrator
Lisa Tennyson

RBS:eld

Rule-Specific Comments:

PART 34 – RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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Subpart I – Agreements

- 34.800 General.
- 34.801 Grant agreements.
- 34.802 Certifications.
- 34.803 Conditions.
- 34.804 Records.
- 34.805 Noncompliance.

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 et seq.

Subpart A – General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act):

- (a) Gulf RESTORE Program:
 - (1) Direct Component (subpart D)
 - (2) Comprehensive Plan Component (subpart E)
 - (3) Spill Impact Component (subpart F)
- (b) NOAA RESTORE Act Science Program (subpart G)
- (c) Centers of Excellence Research Grants Program (subpart H)

§ 34.2 Definitions.

As used in this part:

Act means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Administrative costs means those indirect costs incurred by the Gulf Coast States, coastal political subdivisions, ~~and~~ coastal zone parishes, or other authorized entities for general management functions, general ledger accounting, budgeting, human resource services that do not directly support a specific project or service, general procurement services, and general legal services that are allocable to activities authorized under the Act but not readily assignable to a particular program or project funding streamⁱⁱ or incurred for a common or joint purpose benefitting more than one cost objectiveⁱⁱⁱ.

Administrative expenses means the expenses incurred by the Council to administer the Comprehensive Plan Component, and NOAA to administer the NOAA RESTORE Act Science

Program, that are for general management functions, general ledger accounting, budgeting, human resource services that do not directly support a specific project or service, general procurement services, and general legal services but not readily assignable to a particular program or project funding stream. Oversight and monitoring activities are classified as administrative when the activity overseen or monitored is administrative rather than programmatic in nature.

Advance payments mean a payment made to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.^{iv} Recipients shall be paid in advance, provided they maintain or demonstrate the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and, financial management systems that meet the standards for fund control and accountability.^v

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Award Agreement means the document detailing the terms, conditions and amounts of the funding for a particular award, including amounts obligated, and the project period.^{vi} Award agreements shall also include the method of payment.^{vii}

Award means grants, cost reimbursement, contracts and other agreements between a recipient and Treasury or the Council.^{viii}

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, Tangipahoa, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Contract means a legal instrument by which a recipient purchases property or services needed to carry out the project or program under an award. The term does not include a legal instrument, even if the

Comment [ED1]: Make a distinction here between administrative (indirect) costs and those associated with plan preparation and projects. The key distinction is that "staff costs" can be a "direct cost" if they are directly related to implementation of a plan or project.

Comment [ED2]: Need to clearly define advance payments. Also need to introduce the concept of a "recipient" which is common grant language.

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Comment [ED3]: The first part of this is standard language. Added the "method of payment" to the definition to further force the issues of identifying advance payments versus reimbursements.

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recipient considers it a contract, when the substance of the transaction meets the definition of a subaward. Contracts awarded by entities under Trust Fund awards for the purposes of obtaining good and services for the entity's own use are not considered subawards. Such a contract creates a procurement relationship between the parties.^{viii}

Contractor means a dealer, distributor, merchant, or other seller providing good or services that are required for the conduct of Trust Fund. These goods or services may be for an organization's own use or for the use of beneficiaries of the Trust Fund.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury to carry out the purposes of the Act.

Direct Costs are those that can be identified specifically with a particular project, service, or activity intended to achieve an objective of the grant or that can be directly assigned to activities in support of a grant award. These costs typically include compensation of employees, related fringe benefit costs, contractual services that directly relate to planning or project implementation, the costs of materials, equipment and capital expenditures and other items of expense incurred for the federal award.^{ix}

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Eligible Activities means those activities authorized for expenditure pursuant to approved Multi-Year Implementation Plans or State Expenditure Plans, including activities to promote tourism and seafood in the Gulf Coast region.^x

Environmental review and compliance procedures means the procedures under applicable Federal and state environmental laws.

Federal Water Pollution Control Act means 33 U.S.C. 1251 et seq.

Entity means non-Federal entity.^{xi}

Funding Period means the period of time when Federal funding is available for expenditure by the recipient.^{xii}

Grant means an award of financial assistance, the principal purpose of which is to transfer a thing of value from a federal agency to a recipient to carry out the purposes of section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act.^{xiii}

Grant Application is the process by which a Gulf Coast State, coastal zone parish, disproportionately affected county, nondisproportionately impacted county or other entity makes application for the release of Trust Funds to implement a State Expenditure or Multi-Year Implementation Plan.

Gulf Coast Region means:

- (1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;
- (2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

Comment [ED4]: It is important to define contract because a contract is more of the typical procured service, versus a subaward (also defined herein) which is something that an entity "awards" to another entity after an application, etc (versus competed services which is a contract).

Comment [ED5]: The reason for defining this is that there is a distinction in federal grant guidelines between contracts and subawards. Certain federal guidelines attach or don't depending on the relationship and whether or not there is a procurement involved. It is important to define these terms because Subpart I on Agreements raises many of these concepts yet they are not defined in the Rule anywhere.

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Comment [ED6]: Need to better define Direct costs as inclusive of staff costs in some instances when those costs are directly related to a particular project, etc.

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Comment [ED7]: Good Federal terminology for defined timeframe in the Award Agreement.

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Comment [ED8]: Spill impact component requires an approval process by the Council, yet under Direct developing and submitting a MYIP is a condition of receiving amounts from the Trust Fund. There is no assigned approval entity for Florida under the approval provision. Under Direct, plan approval should be tied to Grant Application approval.

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- (3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and
- (4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entities means the parties delineated in § 34.702 as being eligible to administer the Centers of Excellence research grants in their respective states.

Multi-Year Implementation Plan means a plan for use of funds under the Direct Component prepared by Gulf Coast States, coastal zone parishes, disproportionately affected counties, nondisproportionately impacted counties or other authorized entities. The Multi-Year Implementation Plan may include milestones, projected completion date of each activity, and a mechanism to evaluate the success of each activity, such as performance goals, in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Pass-through entity means a non-Federal entity that provides a Federal subaward to a subrecipient to carry out part of the eligible activities authorized by the Act.^{xiv}

Performance Goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value or rate.^{xv}

Planning Costs means direct costs of data gathering, studies, analysis, and also preparation of plans for eligible activities under §34.201(a) through (i), including the costs of environmental review and compliance of plans and projects including staff cost. Planning costs can include preparation and revision of a Multi-Year Implementation Plan.^{xvi}

Pre-award Costs means those costs incurred prior to the effective date of an award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the approval of the awarding agency.^{xvii}

Previously approved projects and programs mean specific projects or programs where the Gulf Coast State, coastal political subdivision or other authorized entity has established conditions substantively the same as those described herein and the project or program carries out 1 or more eligible activities.^{xviii}

Procurement relationship means the relationship between an entity and a contractor when the entity receiving Trust Funds provides the goods and services within normal business operations, provides similar goods and services to many different purchasers, is typically in a competitive environment and is not subject to compliance requirements of the Trust Fund as a result of the subaward, although similar requirements may apply for other reasons.^{xix}

Program Income means gross income received by the recipient or subrecipient directly generated by an award supported activity, or earned only as a result of the award during the award period, which is the time between the effective date of the Federal award and the ending date of the Federal award reflected in the notice of award.^{xx}

Recipient means a non-Federal entity that receives an award directly from the Council or Treasury to carry out an activity under the Act.^{xxi} Trust Fund recipients include Gulf Coast States, coastal political subdivisions, coast zone parishes, disproportionately affected counties, nondisproportionately impacted counties, NOAA or other authorized entities.^{xxii} Recipients may perform or subaward the performance of all or a portion of a scope of work for amounts from the Trust Fund.^{xxiii}

Comment [ED9]: Since State Expenditure and Comprehensive Plan are both defined, this should be defined.

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Comment [ED10]: Important to define because as a State, the Consortium or a local government receives funds, and as they award funds to another entity for project implementation, the local government will basically be providing a “subaward” and is a “pass-through entity”.

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Comment [ED11]: They should consider getting away from the more amorphous “milestone” terminology, but its in the Act so we cant wholesale abandon it in my opinion. This is a standard federal definition.

Comment [ED12]: This definition is important. We want to clearly define planning cost as a “direct” cost not subject to the 3% cap.

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Comment [ED13]: New language to open the door that any other established entity or agency can develop projects and receive funds.

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Comment [ED14]: The concept is fairly consistent in federal guidance and the language at the end is precisely from the RESTORE Act.

Comment [ED15]: This language is from OMB Uniform Guidance and sets up framework for subawards and subrecipients defined below.

Comment [ED16]: Methods of project implementation as terminology defined in federal grant guidelines: performance through “contracts” or subawards.

Reimbursement means the process by which recipients or subrecipients first expend funds for approved or authorized eligible activities and will then be reimbursed for actual costs incurred. Reimbursement is the preferred method of payment when the requirements for advance payments cannot be met.^{xxiii}

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, or other authorized entities^{xxiv}, are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State, or other authorized entity, must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a program for which the recipient received amounts from the Trust Fund. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

A subaward may be provided through any form of legal agreement, including an agreement that the recipient calls a contract. A subaward of Trust Fund amounts creates a relationship between a pass-through entity and the subrecipient.^{xxv}

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program.^{xxvi} A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period if a recipient cannot meet the criteria for advance payments and reimbursement is not feasible.^{xxvii}

Comment [ED17]: There is no one good federal definition for this, but generally this concept is outlined in most federal guidance.

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Comment [ED18]: This is an attempt to provide some flexibility "or" other entity authorized by law or agreement. It recognizes that funds go to the State or the State can agree otherwise.

Comment [ED19]: I am not sure how necessary this is since the Act explicitly says the Consortium prepares the Plan, but it is consistent with the previous edit to recognize there may be delegations to receive funds or prepare State Plans.

Comment [ED20]: Again, important to recognize the flow and award of grant funds to other entities for project implementation.

Comment [ED21]: Similar to concept in ED20.

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Subpart B - Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. The authority for the Trust Fund will terminate on the date all funds owed to the Trust Fund have been returned, and all funds have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares ~~for the~~ in which Gulf Coast States, coastal zone parishes, coastal political subdivisions^{xxxviii} to be used for implementing the Direct Component of the Gulf RESTORE Program.

Comment [ED22]: Better tracks the language in the Act. Rule just has 35% going to “States” and we need to specifically reaffirm money flows “directly” to local governments.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent by the Council^{xxxix} for formula distribution to Gulf Coast States, or other authorized entities^{xxx} to be used for the Spill Impact Component of the Gulf RESTORE Program.

Comment [ED23]: Better tracks the Act that the Council disburses funds to the States.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science program.

(2) Twenty-five percent for the Centers of Excellence Research Grants program.

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

Amounts in the Trust Fund will be available for expenditure solely for eligible activities, restoration priorities^{xxxi}, administrative costs, and administrative expenses without fiscal year limitation through either advance payments, reimbursements or other methods consistent with applicable applicable OMB circulars and guidance, the Act and other Federal policies and regulations.^{xxxii} With advance payments or other methods of disbursement, Granteerecipients must minimize the time between the receipt of funds and the disbursement of those funds.

Comment [ED24]: Probably good to add since “Restoration Priorities” are distinct under the Comprehensive Plan Component from “eligible activities” under the Direct and Spill Impact Components.

Comment [ED25]: The “minimization” requirement would only apply to advance payments because you do not “minimize time between receipt of funds” if you are using your own money and then getting reimbursed.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in these regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted.

Subpart C – Eligible Activities for the Section 311(t) Gulf RESTORE Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities and restoration priorities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs incurred, whether charged on a direct or indirect basis, must conform with the ~~applicable OMB circulars and guidance~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in §§ 34.201, 34.202, or 34.203, according to component.

(3) Environmental review and compliance procedures must be complied with for each program, project, or activity, pursuant to as applicable law, Grant Award agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by ~~applicable OMB circulars and guidance~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

Comment [ED26]: This is just clarifying that there are other Federal and State authorities that will control this process.

~~(4) Pre-award costs of preparing the State Expenditure Plan or Multiyear Implementation Plans are allowable. These costs may be charged directly to Trust Fund awards with the prior approval of the Treasury or the Council.^{xxxiii} All such costs should also be identified in a grant application.~~

Comment [ED27]: Suggested language is intentionally flexible to allow for a grant that can be submitted for advance payments to develop a plan.

~~(5) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component may not be included in any claim for compensation presented to the Oil Spill Liability Trust Fund after July 6, 2012.~~

~~(6) Gulf Coast States, coastal political subdivisions, coastal zone parishes, or other authorized entities may seek reimbursement of administrative costs to the extent permitted by Federal law.^{xxxiv} Such costs should also be identified in a grant application for approval by Treasury or the Council.~~

Comment [ED28]: Suggested language is intentionally flexible to allow for a grant to be submitted for immediate reimbursement.

~~(b) A Gulf Coast State, coastal political subdivision, coastal zone parish, or other authorized entity, may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity as defined in § 34.201 and authorized by Federal law.~~

Comment [ED29]: Just a clarification to "eligible activity" to make it clear RESTORE funds can only be used as match for actual eligible projects under the Act itself.

§ 34.201 Eligible activities for the Direct Component.

Comment [ED30]: Slight reorganization to track the Act.

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Programs, projects, and activities designed to protect or restore natural resources must be based on the best available science.

~~(a) Amounts provided pursuant to the Direct Component may be used to carry out 1 or more of the following activities in the Gulf Coast region:~~

~~(1a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.~~

~~(2b) Mitigation of damage to fish, wildlife, and natural resources.~~

~~(e3) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.~~

~~(4d) Workforce development and job creation.~~

~~(5e) Improvements to or on State parks located in coastal areas affected by the *DeepwaterHorizon* oil spill.~~

~~(6f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.~~

~~(7g) Coastal flood protection and related infrastructure.~~

~~(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.~~

~~(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.~~

~~(8j) Planning assistance, limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of environmental review and compliance.^{xxxv}~~

Comment [ED31]: This tracks the language in the Act. Planning should be defined as a definition.

~~(k9) Administrative costs of complying with this Section.^{xxxvi}~~

Comment [ED32]: Tracks the language in the Act.

~~(b) Amounts provided pursuant to the Direct Component may be used to carry out 1 or more of the following activities in the Gulf Coast region:~~

~~(1) Promotion of tourism in the Gulf Coast region, including recreational fishing.~~

~~(2) Promotion of the consumption of seafood harvested from the Gulf Coast region.~~

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council's activities under section 311(t)(2) and (3) of the Federal Water Pollution Control Act are eligible for funding from the Comprehensive Plan Component, including the following:

(a) The Council may expend funds for projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast Region. All Council projects and programs must be carried out in the Gulf Coast Region and be adopted in the Comprehensive Plan.

- (b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to carry out, amend, and update the Comprehensive Plan as required by the Act or as necessary.
- (c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.
- (d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.
- (e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.
- (f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

Programs, projects, and activities eligible for funding under the Spill Impact Component must improve the ecosystems or economy of the Gulf Coast region, meet the eligibility criteria set forth in § 34.201, ~~as well as the following and be included in a State Expenditure Plan for the expenditure of amounts that meets the following criteria:~~

- (a) ~~The projects, programs, and activities must be included in a State Expenditure Plan approved by the Council.~~
- ~~(b)~~ The projects, programs, and activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.
- (b) The plan must take into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan.

§ 34.204 Limitations on activities.

The following limitations apply to the activities of §§ 34.201, 34.202, and 34.203.

- (a) Acquisition of land or interests in land by purchase, exchange, or donation must be from a willing seller.
- (b) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the State in which the acquisition will take place.

§ 34.205 Limitations on administrative costs and administrative expenses.

- (a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish, or other authorized entity, under the Direct Component, ~~Comprehensive Plan Component~~, and Spill Impact Component, not more than three percent may be used for administrative costs of complying with the Act, including staff. ^{xxxvii} The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.

- (b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.
- (c) With respect to the Alabama Gulf Coast Recovery Council, administrative duties may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama. Trust Fund amounts may not be used for the administrative costs of other personnel.

§ 34.206 Audited financial statements and audits.

Not later than December 1, 2014 and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

- (a) Each audited financial statement under this section must reflect:

Comment [ED33]: Rewrites better track the section of the Act.

Comment [ED34]: The Comprehensive Plan section or the Council's administrative costs include the qualifier "including staff" at the end of the sentence, but the Direct Component has no such limitation on administrative cost. Adding "of complying with the Act" and striking "including staff" tracks the Act.

- (1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.
- (2) Results of operations of the Council.
- (b) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.
- (c) The Treasury Inspector General may conduct performance audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D – Gulf RESTORE Program - Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant.

§ 34.301 Responsibility for administration.

Treasury is responsible for awarding grants and administering grants and award grant agreements under this subpart. Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act, which may be subject to public notice and comment consistent with applicable law. Treasury will establish and implement a program to monitor compliance with its grant-award agreements. Grant recipients that subaward performance of all or a portion of a scope of work to subrecipients for amounts from the Trust Fund will be responsible for monitoring compliance with award agreements.^{xxxviii}

§ 34.302 Allocation of funds.

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares for across each of the Gulf Coast States, provided directly to coastal zone parishes or coastal political subdivisions^{xxxix} for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants directly from the Trust Fund.

- (a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.
- (b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Treasury will divide the funds among these counties according to the formula mutually-agreed upon by the counties and included in the multiyear implementation plan submitted by each disproportionately affected county.
- (c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.
- (d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.
- (e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes based on the formula in section 311(t)(1)(D)(i) of the Federal Water Pollution Control Act. No parish will receive funds until its chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the State's Coastal Master Plan approved by the Louisiana legislature.
- (f) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.
- (g) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

Comment [ED35]: This is why the term should be included in the definitions.

Comment [ED36]: Proposed OMB Uniform Guidelines use "Award Agreement" not "Grant Agreement".

Comment [ED37]: This is usually how it works.

Comment [ED38]: Better tracks the language in the Act. Rule just have 35% going to "States" and we need to specifically reaffirm money flows "directly" to local governments.

Comment [ED39]: Again, preserving the "direct" distribution of funds.

Comment [ED40]: Need to ensure the nondisproportionately counties receive funds directly also.

§ 34.303 Application procedure.

~~The entities identified in § 34.302 are eligible to apply for their allocation as a grant.~~ Treasury will develop an application process for grants and implementation of eligible activities available under this subpart that is consistent with ~~the Act and Federal policies on grants~~ the applicable OMB circulars and guidance, the Act and other Federal policies and regulations and seek public review and comment on that process. At a minimum, the procedure will include the following:

(a) ~~Funds shall remain in the Trust Fund until such time as the development and submittal of the^{xi}. The applicant must submit a~~ multiyear implementation plan to Treasury describing each program, project, and activity for which it seeks funding. Only those programs, projects and activities for which funding is sought under the Direct Component must be included in the multiyear implementation plan. For each program, project and activity, the plan ~~must may~~ include a narrative description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of or performance goals for each activity in helping to restore and protect the Gulf Coast region impacted by the *Deepwater Horizon* oil spill. The applicant must also state whether it has applied for a grant to fund the program, project, or activity pursuant to under-funding sources in any other part of the Act and whether or not that grant has yet been awarded. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e). Treasury ~~may will~~ require a standard format for the plans and additional information.

(b) An applicant may satisfy some or all of the requirements in §§ 34.303(a) and 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:

(1) The applicant established conditions to carry out projects, programs, and activities that are substantively the same as the conditions required in § 34.303(a) through written procedures or a previously approved project, program or planning process.

(2) The applicable program, project, or activity qualified as one or more of the eligible activities in § 34.201.

(c) The applicant must include supporting information in the grant application that proposed activities meet the statutory requirements for eligibility, that its multiyear implementation plan was made available for public review and comment for a minimum of 30 days, and that each program, project, and activity ~~the plan was~~ adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations.

~~(d) and The applicant must include supporting information~~ that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science.

§ 34.304 Grant award process.

Upon determining that ~~the an~~ application and plan meets the requirements of these regulations and the Act, Treasury will offer the applicant an grant award agreement that complies with subpart I, ~~and applicable OMB circulars and guidance, the Act and other Federal policies and regulations. Federal policies applicable to grants.~~ The award agreement shall include such information as administrative requirements, determinations on pre-award costs, national policy requirements, award-specific terms and conditions including the method of funds distribution, award performance goals, monitoring and compliance procedures for recipients and subrecipients, information consistent with Subpart I- Agreements, and other terms and conditions required in the Act, applicable OMB circulars and guidance and other applicable Federal policies on grants.^{xii}

§ 34.305 Use of funds.

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.

Comment [ED41]: Repetitive with the concept in § 34.304 of actually applying. This section describes more of a process to be developed.

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Comment [ED42]: Better tracks the Act.

Comment [ED43]: Specify that MYIP should only include components funded under the Direct Component.

Comment [ED44]: Act says “may”. But, if the intent is to get clarification on what is the MYIP, it should probably be specific.

Comment [ED45]: The point is to prevent double dipping among pots, but if you apply, it doesn't mean you got the award.

Comment [ED46]: If that grant is still pending, then it should be able to be funded with Direct Component funds.

Comment [ED47]: Need a better definition of “establishing conditions”. Seems to mostly be applicable to CPRA Master Plan, but there may be some instances where this could expedite MYIPs elsewhere.

Comment [ED48]: You adopt a “plan” not each program, project or activity individually.

Comment [ED49]: Paragraph tracks the “conditions” language in the Act and §34.802.

Comment [ED50]: Consistent language throughout the Rule.

Comment [ED51]: While there are numerous authorities that shape what goes into an award agreement, it would be good to list some of this so it is clear that this is the instrument that will specify the requirements for funds expenditure.

(b) When awarding contracts to carry out a project or program under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

§ 34.306 Reports.

[Grantee/Recipient](#) must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

[Grantee/Recipient](#) must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of [grantee/recipient](#)'s accounts and activities as deemed appropriate by Treasury.

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with section 311(t)(2) of the Federal Water Pollution Control Act. This Component provides for implementing the projects and programs listed in the Comprehensive Plan.

§ 34.401 Responsibility for administration.

After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council.

(a) In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. The Council must specify whether any part of this responsibility may be further assigned to another entity and under what terms.

(b) When a grant to a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that particular project or program, the Council must publish in the Federal Register and deliver to these Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the [grantee/recipient](#), the project's or program's purpose, and the amount of the award.

(1) House of Representative committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its [grant-award](#) agreements and interagency agreements.

§ 34.402 Application procedure and grant award process.

The Council may establish a selection process for assignees to use for awarding grants, cooperative agreements, or contracts to other entities [subject to public notice and comment](#). If the Council does not establish an application and selection process, assignees must use a selection process of their choosing that is fair, open, and meets the requirements of Federal laws and, for State and local governments that are awarding, the applicable State and local laws.

§ 34.403 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports.

Assignees/grantee/recipients must submit reports as prescribed by the Council or Treasury.

§ 34.405 Recordkeeping.

Grantee/Recipients must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General.

§ 34.406 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee/recipient's accounts and activities as any of them deems appropriate.

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart must be in the form of grants.

§ 34.501 Responsibility for administration.

The Council is responsible for awarding and administering grants under this subpart.

The Council must establish and implement a program to monitor compliance with its grant agreements subject to public notice and comment.

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States, or other authorized entities based on a formula in the Act and a regulation that the Council promulgates subject to public review and comment. The Council will make allocated funds available to Gulf Coast States, or other authorized entities, through grants for programs, projects, and activities described in a State expenditure plan which must be first approved by the Council.

§ 34.503 State Expenditure Plans.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each program, project, and activity for which the State seeks funding. Not later than 60 days after the date on which a plan is submitted, the Council shall approve or disapprove the plan.^{xliii} The Council must develop requirements for these plans that include the following:

(a) The State Expenditure Plan must be developed by:

(1) In Alabama, the Alabama Gulf Coast Recovery Council.

(2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.

(3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.

(4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.

(5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must take into consideration the Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.

(c) For each program, project, and activity, the State Expenditure Plan must include narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success or performance goals. The applicant must also state whether it has applied for a grant to fund the program, project, or activity from funding sources pursuant to under any other part of the Act and whether or not that grant has yet been awarded.

(d) The State Expenditure Plan must demonstrate that each program, project, and activity is an eligible activity and that the plan will contribute to the overall economic and ecological recovery of the Gulf Coast.

Comment [ED52]: The point is to prevent double dipping among pots, but if you apply, it doesn't mean you got the award and shouldn't be penalized because you may not get it.

~~(e) The State Expenditure Plan must demonstrate that each project, program, and activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.~~

(ef) The State Expenditure Plan may not propose to use more than 25 percent of the funding made available for infrastructure projects, unless the plan certifies that:

(1) The ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(fg) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted State, or other authorized entity, in writing and consult with ~~the State that entity~~ to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the State, or other authorized entity, may obtain expedited judicial review within 90 days in a United States district court located in the State seeking the review.

§ 34.504 ~~Grant administration~~ ward process.

~~If~~ After the Council approves a State Expenditure Plan, the State or other authorized entity may apply for a grant to carry out specific projects, programs, and activities in the plan. ~~The Council must establish and publish procedures for grants available under this subpart that are consistent with Federal laws, regulations, and policies on grants.~~ At a minimum, the State's application must demonstrate all the elements required for a State Expenditure Plan have been met to the satisfaction of the Federal grant administrator before a grant may be approved. The applicant must include supporting information that the State Expenditure Plan was made available for public review and comment for a minimum of 30 days, and that the plan was adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations and that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science. The Council must establish and publish procedures for grants available under this subpart, subject to notice and public comment, that are consistent with applicable OMB circulars and guidance, the Act and other applicable Federal policies on grants.

§ 34.505 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

§ 34.506 Reports.

Grantee/Recipients must submit reports as prescribed by the Council or Treasury.

§ 34.507 Recordkeeping.

Grantee/Recipients must maintain records as prescribed by the grant administering agency and make the records available to the grant administering agency, and Treasury, including the Treasury Inspector General.

§ 34.508 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee/recipient's accounts and activities as any of them deem appropriate.

Subpart G – NOAA RESTORE Act Science Program

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration.

Comment [ED53]: The Act in the Spill Impact Section does not have this specific requirement. These requirements are also met for the Spill Impact Component in §34.802 of the Rule. Moved concept to paragraph below on grant administration for similar set up as that in Direct Component (this supporting information is a function of the application).

Comment [ED54]: Renamed the same process as Direct Component.

Comment [ED55]: You adopt a "plan" not each program, project or activity individually.

Comment [ED56]: Similar to Direct Component (since both tie back to the conditions language in the Act) this should be the supporting information in the grant application to keep the two components similar in process.

Comment [ED57]: Consistent language throughout the Rule.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science program consistent with ~~the Act, this subpart and Federal grant laws, regulations, and policies applicable~~ OMB circulars and guidance, the Act and other Federal policies and regulations. NOAA must implement a program to monitor compliance with its grant agreements and interagency agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

Amounts made available to NOAA may be expended to carry out a program comprised of the following activities with respect to the Gulf of Mexico:

- (a) Marine and estuarine research.
- (b) Marine and estuarine ecosystem monitoring and ocean observation.
- (c) Data collection and stock assessments.
- (d) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.
- (e) Cooperative research.
- (f) Coordination of science and technology programs, in accordance with section 1604(f) of the Act, including setting priorities and engaging stakeholders. NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities.

None of the Trust Fund amounts may be used for the following activities:

- (a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.
- (b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.
- (c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses.

- (a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff.
- (b) The three percent limit is based on funds that the NOAA RESTORE Act Science Program receives in its fiscal year, and unused amounts may be carried forward into subsequent years. The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.
- (c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

Grantee/Recipients must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits.

The Treasury Inspector General may conduct audits and reviews of grantee/recipient's accounts and activities as it deems appropriate.

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants program. The program's purpose is to establish centers to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration.

Treasury is responsible for awarding grants to the Gulf Coast States, who will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury may develop and apply policies and procedures consistent with ~~this subpart, Federal grant administration requirements applicable OMB circulars and guidance, the Act and other Federal policies and regulations~~, and the Act. Each Gulf Coast State entity issuing a grant must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds.

Each Gulf Coast State will be entitled to an equal share to carry out eligible activities.

The duties of a Gulf Coast State will be carried out by the following entities:

- (a) In Alabama, the Alabama Gulf Coast Recovery Council.
- (b) In Florida, a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.
- (c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.
- (d) In Mississippi, the Mississippi Department of Environmental Quality.
- (e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure.

Treasury will develop an application process for grants available to the Gulf Coast States under this subpart that is consistent with ~~Federal law, regulations, and policies on grants applicable OMB circulars and guidance, the Act and other Federal policies and regulations~~. At a minimum, the process will include the following:

- (a) Each Gulf Coast State must describe the rules and policies the State will apply to the Centers of Excellence grant(s), including the competitive process that the State will use to select a Center of Excellence. The process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher learning, to compete. The process must give priority to entities and consortia that demonstrate the ability to organize the broadest cross-section of participants in the grant with interest and expertise in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest. Centers of Excellence do not need to be located in the Gulf Coast State issuing the grant.
- (b) Each Gulf Coast State must demonstrate that its rules and policies for Centers of Excellence grants, including the competitive selection process, were published and available for public review and comment for a minimum of 30 days, and that they were adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, and non-profit organizations. This requirement does not apply to State statutes and regulations.
- (c) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of grant funds and eligible activities.

- (a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the ~~Act, these regulations, and other Federal laws, regulations, and policies applying to grants. consistent with applicable OMB circulars and guidance, the Act and other Federal policies and regulations.~~

(b) Gulf Coast States may use funds available under this subpart to award competitive grants for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

- (1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast region.
- (2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.
- (3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.
- (4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.
- (5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

- (a) An annual report to the Council in a form set by the Council that includes information on recipients, grant amounts, disciplines addressed, and any other information required by the Council. When the grant recipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.
- (b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

~~Grantee~~Recipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each ~~grantee~~recipient's accounts and activities as deemed appropriate by Treasury.

Subpart I – Agreements

§ 34.800 General.

This subpart describes procedures applicable to grantaward agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivisions, ~~and~~ coastal zone parishes ~~and other authorized entities~~ in making awards under subparts D, E, F, G, and H of this part.

§ 34.801 ~~Grant Award~~ agreements.

The grantaward agreements used must conform to all ~~applicable Federal laws, regulations, and policies for grants applicable OMB circulars and guidance, the Act and other Federal policies and regulations,~~ including audit requirements.

§ 34.802 Certifications.

At a minimum, grantaward agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. Grant applications shall provide supporting documentation for these certifications. The certification must be signed by an authorized senior official of the organization or entity receiving grant funds with oversight for the administration and use of the funds in question.

- (a) I certify that each project, program, and activity funded under this Agreement has been designed to restore and protect [*select all that are appropriate*: the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy] of the Gulf Coast.

Comment [ED58]: See 34.802 below also using the concept of "entities".

(b) I certify that each project, program, and activity funded under this Agreement is designed to carry out one or more of the eligible activities for this program/component.

(c) I certify that each project, program, and activity funded under this Agreement was selected after consideration of input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations, as described in the grant application.

(d) I certify that each project, program, and activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR Part 34.

(e) I certify that ~~each project, program, and activity funded under this Agreement, this Grantee has followed in every material respect the applicable procurement rules applying to contracts in the Grantee and the awarding of a contract for the expenditure of amounts received, are consistent with the State for each project, program, and activity funded under this Agreement, with the standard procurement rules and regulations governing a comparable project or program in that Recipient's State,~~ including rules for competitive bidding and audit requirements.^{xliii} This GranteeRecipient agrees that it will not request funds under this grant award for any contract unless this certification remains true and accurate with respect to that contract. [The Council may adapt this certification to account for any standard contract terms that it develops under section 311(t)(2)(C)(vii)(V) of the Federal Water Pollution Control Act.]

Comment [ED59]: Tracks the language in the Act.

(f) I certify that a conflict of interest policy is in effect and covering each project, program, and activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this GranteeRecipient ~~has submitted and~~ maintains written documentation sufficient to support each certification made above, and that this GranteeRecipient's compliance with each of these certifications is a condition of this GranteeRecipient's initial and continuing receipt and use of the funds provided under this Agreement.

Comment [ED60]: Clarifying that this would be submitted as part of a grant application.

§ 34.803 Conditions.

At a minimum, all grantaward agreements under subparts D, E, F, G, and H of this part must contain the following conditions consistent with applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(a) This GranteeRecipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) This GranteeRecipient must deposit all funds in one or more financial accounts which have the sole purpose of receiving fund amounts and making distributions of fund amounts. This GranteeRecipient must maintain detailed program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the program's requirements. This GranteeRecipient must track program income and use program income for purposes of the grant before requesting more program funds.

Comment [ED61]: Added this to definitions from a standard federal definition.

(c) ~~An entity may concurrently receive Trust Funds as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Treasury, the Council or recipients.~~ Prior to making any subaward, this GranteeRecipient must execute a legally binding written agreement with the entity receiving the subaward~~subrecipient~~. This GranteeRecipient and the subrecipient~~awardee~~ must execute the written agreement before any funds are disbursed to the subrecipient~~awardee~~. The written agreement will extend all the applicable program requirements to the subrecipient~~awardee~~.

Comment [ED62]: Added this to definitions from a standard federal definition.

(d) This GranteeRecipient must use the funds only for the purposes identified in the Award agreement.

(e) This GranteeRecipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the award agreement. The report must be sent to the Federal agency administering the grant and include the following information:

- (1) A description of the use of all funds received.
- (2) A statement that funds were used only for purposes identified in the agreement.
- (3) A certification that the Grantee/Recipient maintains written documentation sufficient to demonstrate the accuracy of these statements.
- (4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry.

The certification must be signed by a senior authorized official of the organization or entity receiving grant funds, who has oversight and authority over the administration and use of the funds in question.

§ 34.804 Records.

(a) As a condition of receiving funds, the Council and its members, NOAA, granteerecipients, and all subrecipients must make available their records and personnel to Treasury, including the Treasury Inspector General, for the purpose of assessing compliance with this award Agreement, the Act, and other Federal laws applicable OMB circulars and guidance, the Act and other Federal policies and regulations applying to their receipt of funds from the Gulf Coast Restoration Trust Fund.

(b) For grant-award agreements that exceed a three year period, the granteerecipient must make an interim report at the end of every two years. The report must contain the elements listed in § 34.803(e).

§ 34.805 Noncompliance.

In addition to remedies available to the Federal agency administering grants, all grant-award agreements with the Gulf Coast States must be subject to the following conditions:

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, ~~or~~ coastal zone parish, or other authorized entity has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that granteerecipient from any part of the Trust Fund until the granteerecipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the granteerecipient to expend an equal amount from the granteerecipient's own funds for a project or program that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, ~~or~~ coastal zone parish, or other authorized entity has materially violated an grant-award agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that granteerecipient from any part of the Trust Fund until the granteerecipient corrects the violation.

Richard L. Gregg

Fiscal Assistant Secretary

[FR Doc. 2013-21595 Filed 09/05/2013 at 8:45 am; Publication Date: 09/06/2013]

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- ⁱ See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997.
- ⁱⁱ See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997.
- ⁱⁱⁱ Circular A-87 Revised 5/10/2004.
- ^{iv} Circular A-110 Revised 11/19/39 as Further Amended 9/30/99 and 40 C.F.R. § 30.2(d). See 2 CFR Part 215.22 payment procedures, OMB Circular A-110 essentially outlining a preference for advance payments as long as written procedures and financial management systems are in place with reimbursement preferred when those conditions cannot be met. See also §12.61, 43 CFR Subtitle A, Recipients and subrecipients shall be paid in advance provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time between transfer of funds and their disbursement by recipient or subrecipient. Finally, see Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards (pp 36-39), includes similar guidance but elaborates with such requirements as tying advance payments to immediate cash needs, consolidating advances to cover cash needs, etc. and reimbursement used when requirements for reporting and financial management cannot be met.
- ^v Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{vi} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{vii} 2 C.F.R. 225 (A-87)
- ^{viii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{ix} See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block. Appropriation and Allocations, 1997 and Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^x Section 311(t)(1)(B)(i); (t)(1)(B)(ii); (t)(3)(B)(i)(I) of the Federal Water Pollution Control Act.
- ^{xi} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xiii} Glossary, www.grants.gov
- ^{xiv} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xv} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xvi} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xvii} Section 311(t)(1)(J) of the Federal Water Pollution Control Act.
- ^{xviii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xix} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xx} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xxi} Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
- ^{xxii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ^{xxiii} Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

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- xxiv Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
- xxv Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.)
- xxvi Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxvii 2 C.F.R. § 215.2 and Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards and 43 C.F.R. § 12.61(e)
- xxviii Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.
- xxix Section 311(t)(3)(B) of the Federal Water Pollution Control Act.
- xxx Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
- xxxi Section 311(t)(2)(D)(iii) of the Federal Water Pollution Control Act.
- xxxii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxxiii OMB Circular A-87, Attachment B, Section 33.
- xxxiv *See* § 34.604(c).
- xxxv Section 311(t)(1)(B)(i)(VIII) of the Federal Water Pollution Control Act.
- xxxvi Section 311 t(1)(B)(i)(IX) of the Federal Water Pollution Control Act.
- xxxvii Section 311(t)(1)(B)(iii)(I) of the Federal Water Pollution Control Act.
- xxxviii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxxix Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.
- xl Section 311(t)(1)(L) of the Federal Water Pollution Control Act.
- xli Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xlii Section 311(t)(3)(B)(iv) of the Federal Water Pollution Control Act
- xliii Section 311(t)(1)(E) of the Federal Water Pollution Control Act

Rule-Specific Comments:

PART 34 – RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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Subpart A – General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act):

- (a) Gulf RESTORE Program:
 - (1) Direct Component (subpart D)
 - (2) Comprehensive Plan Component (subpart E)
 - (3) Spill Impact Component (subpart F)
- (b) NOAA RESTORE Act Science Program (subpart G)
- (c) Centers of Excellence Research Grants Program (subpart H)

§ 34.2 Definitions.

As used in this part:

Act means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Administrative costs means those indirect costs incurred by the Gulf Coast States, coastal political subdivisions, ~~and~~ coastal zone parishes, or other authorized entities for general management functions, general ledger accounting, budgeting, human resource services that do not directly support a specific project or serviceⁱ, general procurement services, and general legal services that are allocable to activities authorized under the Act but not readily assignable to a particular program or project funding streamⁱⁱ or incurred for a common or joint purpose benefitting more than one cost objectiveⁱⁱⁱ. [ED1]

Administrative expenses means the expenses incurred by the Council to administer the Comprehensive Plan Component, and NOAA to administer the NOAA RESTORE Act Science Program, that are for general management functions, general ledger accounting, budgeting, human resource services that do not directly support a specific project or service, general procurement services, and general legal services but not readily assignable to a particular program or project funding stream. Oversight and monitoring activities are classified as administrative when the activity overseen or monitored is administrative rather than programmatic in nature.

Advance payments mean a payment made to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.^{iv} Recipients shall be paid in advance, provided they maintain or demonstrate the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability.^v [ED2]

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Award Agreement means the document detailing the terms, conditions and amounts of the funding for a particular award, including amounts obligated, and the project period.^{vi} Award agreements shall also include the method of payment. [ED3]

Award means grants, cost reimbursement, contracts and other agreements between a recipient and Treasury or the Council.^{vii}

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, Tangipahoa, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Contract means a legal instrument by which a recipient purchases property or services needed to carry out the project or program under an award. The term does not include a legal instrument, even if the

recipient considers it a contract, when the substance of the transaction meets the definition of a subaward. Contracts awarded by entities under Trust Fund awards for the purposes of obtaining good and services for the entity's own use are not considered subawards. Such a contract creates a procurement relationship between the parties.^{viii} [ED4][ED5]

Contractor means a dealer, distributor, merchant, or other seller providing good or services that are required for the conduct of Trust Fund. These goods or services may be for an organization's own use or for the use of beneficiaries of the Trust Fund.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury to carry out the purposes of the Act.

Direct Costs are those that can be identified specifically with a particular project, service, or activity intended to achieve an objective of the grant or that can be directly assigned to activities in support of a grant award. These costs typically include compensation of employees, related fringe benefit costs, contractual services that directly relate to planning or project implementation, the costs of materials, equipment and capital expenditures and other items of expense incurred for the federal award.^{ix} [ED6]

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Eligible Activities means those activities authorized for expenditure pursuant to approved Multi-Year Implementation Plans or State Expenditure Plans, including activities to promote tourism and seafood in the Gulf Coast region.^x

Environmental review and compliance procedures means the procedures under applicable Federal and state environmental laws.

Federal Water Pollution Control Act means 33 U.S.C. 1251 et seq.

Entity means non-Federal entity.^{xi}

Funding Period means the period of time when Federal funding is available for expenditure by the recipient.^{xii} [ED7]

Grant means an award of financial assistance, the principal purpose of which is to transfer a thing of value from a federal agency to a recipient to carry out the purposes of section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act.^{xiii}

Grant Application is the process by which a Gulf Coast State, coastal zone parish, disproportionately affected county, nondisproportionately impacted county or other entity makes application for the release of Trust Funds to implement a State Expenditure or Multi-Year Implementation Plan.[ED8]

Gulf Coast Region means:

- (1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;
- (2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and

(4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entities means the parties delineated in § 34.702 as being eligible to administer the Centers of Excellence research grants in their respective states.

Multi-Year Implementation Plan means a plan for use of funds under the Direct Component prepared by Gulf Coast States, coastal zone parishes, disproportionately affected counties, nondisproportionately impacted counties or other authorized entities. The Multi-Year Implementation Plan may include milestones, projected completion date of each activity, and a mechanism to evaluate the success of each activity, such as performance goals, in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill. [ED9]

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Pass-through entity means a non-Federal entity that provides a Federal subaward to a subrecipient to carry out part of the eligible activities authorized by the Act. ^{xiv} [ED10]

Performance Goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value or rate. ^{xv} [ED11]

Planning Costs means direct costs of data gathering, studies, analysis, and also preparation of plans for eligible activities under §34.201(a) through (i), including the costs of environmental review and compliance of plans and projects including staff cost. [ED12] Planning costs can include preparation and revision of a Multi-Year Implementation Plan.-

Pre-award Costs means those costs incurred prior to the effective date of an award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the approval of the awarding agency. ^{xvi}

Previously approved projects and programs mean specific projects or programs where the Gulf Coast State, coastal political subdivision or other authorized entity [ED13] has established conditions substantively the same as those described herein and the project or program carries out 1 or more eligible activities. ^{xvii}

Procurement relationship means the relationship between an entity and a contractor when the entity receiving Trust Funds provides the goods and services within normal business operations, provides similar goods and services to many different purchasers, is typically in a competitive environment and is not subject to compliance requirements of the Trust Fund as a result of the subaward, although similar requirements may apply for other reasons. ^{xviii}

Program Income means gross income received by the recipient or subrecipient directly generated by an award supported activity, or earned only as a result of the award during the award period, which is the time between the effective date of the Federal award and the ending date of the Federal award reflected in the notice of award. ^{xix}

Recipient means a non-Federal entity that receives an award directly from the Council or Treasury to carry out an activity under the Act. ^{xx} Trust Fund recipients include Gulf Coast States, coastal political subdivisions, coast zone parishes, disproportionately affected counties, nondisproportionately impacted

counties, NOAA or other authorized entities.^{xxi} [ED14] Recipients may [ED15] perform or subaward the performance of all or a portion of a scope of work for amounts from the Trust Fund [ED16].^{xxii}

Reimbursement means the process by which recipients or subrecipients first expend funds for approved or authorized eligible activities and will then be reimbursed for actual costs incurred. Reimbursement is the preferred method of payment when the requirements for advance payments cannot be met. [ED17]^{xxiii}

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, or other authorized entities^{xxiv} [ED18] are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State, or other authorized entity [ED19], must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a program for which the recipient received amounts from the Trust Fund. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the recipient calls a contract. A subaward of Trust Fund amounts creates a relationship between a pass-through entity and the subrecipient.^{xxv} [ED20]

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program.^{xxvi} [ED21] A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period if a recipient cannot meet the criteria for advance payments and reimbursement is not feasible.^{xxvii}

Subpart B - Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. The authority for the Trust Fund will terminate on the date all funds owed to the Trust Fund have been returned, and all funds have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares ~~for the~~ in which Gulf Coast States, coastal zone parishes, coastal political subdivisions^{xxviii} ~~to be used for~~ implementing the Direct Component of the Gulf RESTORE Program.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent by the Council^{xxix} ~~to be used for~~ formula distribution to Gulf Coast States, or other authorized entities^{xxx} to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science program.

(2) Twenty-five percent for the Centers of Excellence Research Grants program.

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

Amounts in the Trust Fund will be available for expenditure solely for eligible activities, restoration priorities^{xxxi} ~~to be used for~~ administrative costs, and administrative expenses without fiscal year limitation through either advance payments, reimbursements or other methods consistent with applicable applicable OMB circulars and guidance, the Act and other Federal policies and regulations.^{xxxii} With advance payments or other methods of disbursement, ~~to be used for~~ Granteerecipients must minimize the time between the receipt of funds and the disbursement of those funds.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in these regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted.

Subpart C – Eligible Activities for the Section 311(t) Gulf RESTORE Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities and restoration priorities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs incurred, whether charged on a direct or indirect basis, must conform with the ~~applicable OMB circulars and guidance~~ applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in §§ 34.201, 34.202, or 34.203, according to component.

(3) Environmental review and compliance procedures must be complied with for each program, project, or activity, pursuant to as applicable law^{ED26}. Grant Award agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by ~~applicable OMB circulars~~

and guidance, applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(4) Pre-award costs of preparing the State Expenditure Plan or Multiyear Implementation Plans are allowable. These costs may be charged directly to Trust Fund awards with the prior approval of the Treasury or the Council.^{xxxiii} All such costs should also be identified in a grant application.[ED27]

(5) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component may not be included in any claim for compensation presented to the Oil Spill Liability Trust Fund after July 6, 2012.

(6) Gulf Coast States, coastal political subdivisions, coastal zone parishes, or other authorized entities may seek reimbursement of administrative costs to the extent permitted by Federal law.^{xxxiv} Such costs should also be identified in a grant application for approval by Treasury or the Council.[ED28]

(b) A Gulf Coast State, coastal political subdivision, coastal zone parish, or other authorized entity, may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity as defined in § 34.201 [ED29] and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.[ED30]

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Programs, projects, and activities designed to protect or restore natural resources must be based on the best available science.

(a) Amounts provided pursuant to the Direct Component may be used to carry out 1 or more of the following activities in the Gulf Coast region:

(1a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(2b) Mitigation of damage to fish, wildlife, and natural resources.

(3) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(4d) Workforce development and job creation.

(5e) Improvements to or on State parks located in coastal areas affected by the *DeepwaterHorizon* oil spill.

(6f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(7g) Coastal flood protection and related infrastructure.

~~(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.~~

~~(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.~~

(8j) Planning assistance limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of environmental review and compliance.^{xxxv}[ED31]

(k9) Administrative costs of complying with this Section.^{xxxvi}[ED32]

(b) Amounts provided pursuant to the Direct Component may be used to carry out 1 or more of the following activities in the Gulf Coast region:

(1) Promotion of tourism in the Gulf Coast region, including recreational fishing.

(2) Promotion of the consumption of seafood harvested from the Gulf Coast region.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council's activities under section 311(t)(2) and (3) of the Federal Water Pollution Control Act are eligible for funding from the Comprehensive Plan Component, including the following:

(a) The Council may expend funds for projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats,

beaches, coastal wetlands, and economy of the Gulf Coast Region. All Council projects and programs must be carried out in the Gulf Coast Region and be adopted in the Comprehensive Plan.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to carry out, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component. [ED33]

Programs, projects, and activities eligible for funding under the Spill Impact Component must improve the ecosystems or economy of the Gulf Coast region, meet the eligibility criteria set forth in § 34.201, ~~as well as the following and be included in a State Expenditure Plan for the expenditure of amounts that meets the following criteria:~~

~~(a) The projects, programs, and activities must be included in a State Expenditure Plan approved by the Council.~~

~~(b) The projects, programs, and activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.~~

(b) The plan must take into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan.

§ 34.204 Limitations on activities.

The following limitations apply to the activities of §§ 34.201, 34.202, and 34.203.

(a) Acquisition of land or interests in land by purchase, exchange, or donation must be from a willing seller.

(b) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the State in which the acquisition will take place.

§ 34.205 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish, or other authorized entity under the Direct Component, ~~Comprehensive Plan Component,~~ and Spill Impact Component, not more than three percent may be used for administrative costs of complying with the Act, ~~including staff.~~ ^{xxxvii} [ED34] The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) With respect to the Alabama Gulf Coast Recovery Council, administrative duties may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama. Trust Fund amounts may not be used for the administrative costs of other personnel.

§ 34.206 Audited financial statements and audits.

Not later than December 1, 2014 and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(a) Each audited financial statement under this section must reflect:

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(b) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(c) The Treasury Inspector General may conduct performance audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D – Gulf RESTORE Program - Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant[ED35].

§ 34.301 Responsibility for administration.

Treasury is responsible for awarding grants and administering grants and award[ED36]~~grant~~ agreements under this subpart. Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act, which may be subject to public notice and comment consistent with applicable law. Treasury will establish and implement a program to monitor compliance with its ~~grant-award~~ agreements. Grant recipients that subaward performance of all or a portion of a scope of work to subrecipients for amounts from the Trust Fund will be responsible for monitoring compliance with award agreements.^{xxxviii}[ED37]

§ 34.302 Allocation of funds.

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares ~~for-across each of~~ the Gulf Coast States, provided directly to coastal zone parishes or coastal political subdivisions^{xxxix} [ED38] for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants directly from the Trust Fund[ED39].

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Treasury will divide the funds among these counties according to the formula mutually-agreed upon by the counties and included in the multiyear implementation plan submitted by each disproportionately affected county.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly[ED40] to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes based on the formula in section 311(t)(1)(D)(i) of the Federal Water Pollution Control Act. No parish will receive funds until its chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the State's Coastal Master Plan approved by the Louisiana legislature.

(f) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(g) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

§ 34.303 Application procedure.

~~The entities identified in § 34.302 are eligible to apply for their allocation as a grant.~~ [ED41] Treasury will develop an application process for grants and implementation of eligible activities available under this subpart that is consistent with ~~the Act and Federal policies on grants~~ the applicable OMB circulars and guidance, the Act and other Federal policies and regulations and seek public review and comment on that process. At a minimum, the procedure will include the following:

(a) Funds shall remain in the Trust Fund until such time as the development and submittal of the^{xi} The applicant must submit a [ED42] multiyear implementation plan to Treasury describing each program, project, and activity for which it seeks funding. Only those programs, projects and activities for which funding is sought under the Direct Component must be included in the multiyear implementation plan.

[ED43] For each program, project and activity, the plan ~~must~~ may [ED44] include a narrative description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of or performance goals for each activity in helping to restore and protect the Gulf Coast region impacted by the *Deepwater Horizon* oil spill. The applicant must also state whether it has applied for a grant to fund the program, project, or activity pursuant to under funding sources in any other part of the Act and whether or not that grant has yet been awarded [ED45] [ED46]. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e). Treasury ~~may~~ will require a standard format for the plans and additional information.

(b) An applicant may satisfy some or all of the requirements in §§ 34.303(a) and 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:

(1) The applicant established conditions to carry out projects, programs, and activities that are substantively the same as the conditions required in § 34.303(a) through written procedures or a previously approved project, program or planning process [ED47].

(2) The applicable program, project, or activity qualified as one or more of the eligible activities in § 34.201.

(c) The applicant must include supporting information in the grant application that proposed activities meet the statutory requirements for eligibility, that its multiyear implementation plan was made available for public review and comment for a minimum of 30 days, and that each program, project, and activity the plan [ED48] was adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations.

~~(d) and The applicant must include supporting information that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science.~~ [ED49]

§ 34.304 Grant award process.

Upon determining that ~~the~~ an application and plan meets the requirements of these regulations and the Act, Treasury will offer the applicant an grant award agreement that complies with subpart I, ~~and applicable OMB circulars and guidance, the Act and other Federal policies and regulations. Federal policies applicable to grants.~~ The award agreement shall include such information as administrative requirements, determinations on pre-award costs, national policy requirements, award-specific terms and conditions including the method of funds distribution, award performance goals, monitoring and compliance procedures for recipients and subrecipients, information consistent with Subpart I- Agreements, and other terms and conditions required in the Act, applicable OMB circulars and guidance and other applicable Federal policies on grants [ED50].^{xii} [ED51]

§ 34.305 Use of funds.

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.

(b) When awarding contracts to carry out a project or program under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

§ 34.306 Reports.

[GranteeRecipients](#) must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

[GranteeRecipients](#) must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of [granteerecipient](#)'s accounts and activities as deemed appropriate by Treasury.

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with section 311(t)(2) of the Federal Water Pollution Control Act. This Component provides for implementing the projects and programs listed in the Comprehensive Plan.

§ 34.401 Responsibility for administration.

After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council.

(a) In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. The Council must specify whether any part of this responsibility may be further assigned to another entity and under what terms.

(b) When a grant to a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that particular project or program, the Council must publish in the Federal Register and deliver to these Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the [granteerecipient](#), the project's or program's purpose, and the amount of the award.

(1) House of Representative committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its [grant-award](#) agreements and interagency agreements.

§ 34.402 Application procedure and grant award process.

The Council may establish a selection process for assignees to use for awarding grants, cooperative agreements, or contracts to other entities [subject to public notice and comment](#). If the Council does not establish an application and selection process, assignees must use a selection process of their choosing that is fair, open, and meets the requirements of Federal laws and, for State and local governments that are awarding, the applicable State and local laws.

§ 34.403 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports.

Assignees/[grantee recipient](#)s must submit reports as prescribed by the Council or Treasury.

§ 34.405 Recordkeeping.

[Grantee Recipients](#) must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General.

§ 34.406 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of [grantee recipient](#)'s accounts and activities as any of them deems appropriate.

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart must be in the form of grants.

§ 34.501 Responsibility for administration.

The Council is responsible for awarding and administering grants under this subpart.

The Council must establish and implement a program to monitor compliance with its grant agreements [subject to public notice and comment](#).

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States, [or other authorized entities](#) based on a formula in the Act and a regulation that the Council promulgates [subject to public review and comment](#). The Council will make allocated funds available [to Gulf Coast States, or other authorized entities](#), through grants for programs, projects, and activities described in a State expenditure plan [which must be first](#) approved by the Council.

§ 34.503 State Expenditure Plans.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each program, project, and activity for which the State seeks funding. [Not later than 60 days after the date on which a plan is submitted, the Council shall approve or disapprove the plan.](#)^{xiii} The Council must develop requirements for these plans that include the following:

(a) The State Expenditure Plan must be developed by:

(1) In Alabama, the Alabama Gulf Coast Recovery Council.

(2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.

(3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.

(4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.

(5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must take into consideration the Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.

(c) For each program, project, and activity, the State Expenditure Plan must include narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success [or performance goals](#). The applicant must also state whether it has applied for a grant to fund the program, project, or activity [from funding sources pursuant to under](#) any other part of the Act [and whether or not that grant has yet been awarded](#)[ED52].

(d) The State Expenditure Plan must demonstrate that each program, project, and activity is an eligible activity and that the plan will contribute to the overall economic and ecological recovery of the Gulf Coast.

~~(e) The State Expenditure Plan must demonstrate that each project, program, and activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.~~^[ED53]

(ef) The State Expenditure Plan may not propose to use more than 25 percent of the funding made available for infrastructure projects, unless the plan certifies that:

(1) The ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(fg) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted State, or other authorized entity, in writing and consult with ~~the State that entity~~ to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the State, or other authorized entity, may obtain expedited judicial review within 90 days in a United States district court located in the State seeking the review.

§ 34.504 Grant administrationward process.^[ED54]

~~If After~~ the Council approves a State Expenditure Plan, the State or other authorized entity may apply for a grant to carry out specific projects, programs, and activities in the plan. ~~The Council must establish and publish procedures for grants available under this subpart that are consistent with Federal laws, regulations, and policies on grants.~~ At a minimum, the State's application must demonstrate all the elements required for a State Expenditure Plan have been met to the satisfaction of the Federal grant administrator before a grant may be approved, The applicant must include supporting information that the State Expenditure Plan was made available for public review and comment for a minimum of 30 days, and that the plan^[ED55] was adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations and that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science.^[ED56] The Council must establish and publish procedures for grants available under this subpart, subject to notice and public comment, that are consistent with applicable OMB circulars and guidance, the Act and other applicable Federal policies on grants^[ED57].

§ 34.505 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

§ 34.506 Reports.

GranteeRecipients must submit reports as prescribed by the Council or Treasury.

§ 34.507 Recordkeeping.

GranteeRecipients must maintain records as prescribed by the grant administering agency and make the records available to the grant administering agency, and Treasury, including the Treasury Inspector General.

§ 34.508 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of granteerecipient's accounts and activities as any of them deem appropriate.

Subpart G – NOAA RESTORE Act Science Program

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science program consistent with ~~the Act, this subpart and Federal grant laws, regulations, and policies applicable~~ OMB circulars and guidance, the Act and other Federal policies and regulations. NOAA must implement a program to monitor compliance with its grant agreements and interagency agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

Amounts made available to NOAA may be expended to carry out a program comprised of the following activities with respect to the Gulf of Mexico:

- (a) Marine and estuarine research.
- (b) Marine and estuarine ecosystem monitoring and ocean observation.
- (c) Data collection and stock assessments.
- (d) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.
- (e) Cooperative research.
- (f) Coordination of science and technology programs, in accordance with section 1604(f) of the Act, including setting priorities and engaging stakeholders. NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities.

None of the Trust Fund amounts may be used for the following activities:

- (a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.
- (b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.
- (c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses.

- (a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff.
- (b) The three percent limit is based on funds that the NOAA RESTORE Act Science Program receives in its fiscal year, and unused amounts may be carried forward into subsequent years. The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.
- (c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

Grantee Recipients must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits.

The Treasury Inspector General may conduct audits and reviews of grantee/recipient's accounts and activities as it deems appropriate.

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants program. The program's purpose is to establish centers to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration.

Treasury is responsible for awarding grants to the Gulf Coast States, who will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury may develop and apply policies and procedures consistent with this subpart, Federal grant administration requirements applicable OMB circulars and guidance, the Act and other Federal policies and regulations, and the Act. Each Gulf Coast State entity issuing a grant must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds.

Each Gulf Coast State will be entitled to an equal share to carry out eligible activities.

The duties of a Gulf Coast State will be carried out by the following entities:

- (a) In Alabama, the Alabama Gulf Coast Recovery Council.
- (b) In Florida, a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.
- (c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.
- (d) In Mississippi, the Mississippi Department of Environmental Quality.
- (e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure.

Treasury will develop an application process for grants available to the Gulf Coast States under this subpart that is consistent with Federal law, regulations, and policies on grants applicable OMB circulars and guidance, the Act and other Federal policies and regulations. At a minimum, the process will include the following:

- (a) Each Gulf Coast State must describe the rules and policies the State will apply to the Centers of Excellence grant(s), including the competitive process that the State will use to select a Center of Excellence. The process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher learning, to compete. The process must give priority to entities and consortia that demonstrate the ability to organize the broadest cross-section of participants in the grant with interest and expertise in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest. Centers of Excellence do not need to be located in the Gulf Coast State issuing the grant.
- (b) Each Gulf Coast State must demonstrate that its rules and policies for Centers of Excellence grants, including the competitive selection process, were published and available for public review and comment for a minimum of 30 days, and that they were adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, and non-profit organizations. This requirement does not apply to State statutes and regulations.
- (c) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of grant funds and eligible activities.

(a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the ~~Act, these regulations, and other Federal laws, regulations, and policies applying to grants.~~ consistent with applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(b) Gulf Coast States may use funds available under this subpart to award competitive grants for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

(1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

(a) An annual report to the Council in a form set by the Council that includes information on recipients, grant amounts, disciplines addressed, and any other information required by the Council. When the grant recipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.

(b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

GranteeRecipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each granteerecipient's accounts and activities as deemed appropriate by Treasury.

Subpart I – Agreements

§ 34.800 General.

This subpart describes procedures applicable to grantaward agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivisions, ~~and~~ coastal zone parishes and other authorized entities [ED58] in making awards under subparts D, E, F, G, and H of this part.

§ 34.801 Grant Award agreements.

The grant award agreements used must conform to all ~~applicable Federal laws, regulations, and policies for grants applicable OMB circulars and guidance, the Act and other Federal policies and regulations,~~ including audit requirements.

§ 34.802 Certifications.

At a minimum, grantaward agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. Grant applications shall provide supporting documentation for these certifications. The certification must be signed by an authorized

senior official of the organization or entity receiving grant funds with oversight for the administration and use of the funds in question.

(a) I certify that each project, program, and activity funded under this Agreement has been designed to restore and protect [*select all that are appropriate*: the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy] of the Gulf Coast.

(b) I certify that each project, program, and activity funded under this Agreement is designed to carry out one or more of the eligible activities for this program/component.

(c) I certify that each project, program, and activity funded under this Agreement was selected after consideration of input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations, as described in the grant application.

(d) I certify that each project, program, and activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR Part 34.

(e) I certify that each project, program, and activity funded under this Agreement, this Grantee has followed in every material respect the applicable procurement rules applying to contracts in the Grantee and the awarding of a contract for the expenditure of amounts received, are consistent 's State for each project, program, and activity funded under this Agreement, with the standard procurement rules and regulations governing a comparable project or program in that Recipient's State, including rules for competitive bidding and audit requirements^{[ED59].^{xliii}} This GranteeRecipient agrees that it will not request funds under this grant award for any contract unless this certification remains true and accurate with respect to that contract. [*The Council may adapt this certification to account for any standard contract terms that it develops under section 311(t)(2)(C)(vii)(V) of the Federal Water Pollution Control Act.*]

(f) I certify that a conflict of interest policy is in effect and covering each project, program, and activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this GranteeRecipient has submitted and ^[ED60] maintains written documentation sufficient to support each certification made above, and that this GranteeRecipient's compliance with each of these certifications is a condition of this GranteeRecipient's initial and continuing receipt and use of the funds provided under this Agreement.

§ 34.803 Conditions.

At a minimum, all grantaward agreements under subparts D, E, F, G, and H of this part must contain the following conditions consistent with applicable OMB circulars and guidance, the Act and other Federal policies and regulations.

(a) This GranteeRecipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) This GranteeRecipient must deposit all funds in one or more financial accounts which have the sole purpose of receiving fund amounts and making distributions of fund amounts. This GranteeRecipient must maintain detailed program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the program's requirements. This GranteeRecipient must track program income ^[ED61] and use program income for purposes of the grant before requesting more program funds.

(c) An entity may concurrently receive Trust Funds as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Treasury, the Council or recipients. Prior to making any subaward^[ED62], this GranteeRecipient must execute a legally binding written agreement with the entity receiving the subawardsubrecipient. This GranteeRecipient and the subrecipientawardee must execute the written agreement before any funds are disbursed to the subrecipientawardee. The written agreement will extend all the applicable program requirements to the subrecipientawardee.

(d) This GranteeRecipient must use the funds only for the purposes identified in the Aaward agreement.

(e) This GranteeRecipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the award agreement. The report must be sent to the Federal agency administering the grant and include the following information:

(1) A description of the use of all funds received.

(2) A statement that funds were used only for purposes identified in the agreement.

(3) A certification that the GranteeRecipient maintains written documentation sufficient to demonstrate the accuracy of these statements.

(4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry.

The certification must be signed by a senior authorized official of the organization or entity receiving grant funds, who has oversight and authority over the administration and use of the funds in question.

§ 34.804 Records.

(a) As a condition of receiving funds, the Council and its members, NOAA, granteerecipients, and all subrecipients must make available their records and personnel to Treasury, including the Treasury Inspector General, for the purpose of assessing compliance with this award Agreement, the Act, and other Federal laws applicable OMB circulars and guidance, the Act and other Federal policies and regulations applying to their receipt of funds from the Gulf Coast Restoration Trust Fund.

(b) For grant-award agreements that exceed a three year period, the granteerecipient must make an interim report at the end of every two years. The report must contain the elements listed in § 34.803(e).

§ 34.805 Noncompliance.

In addition to remedies available to the Federal agency administering grants, all grant-award agreements with the Gulf Coast States must be subject to the following conditions:

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, ~~or~~ coastal zone parish, or other authorized entity has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that granteerecipient from any part of the Trust Fund until the granteerecipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or

Treasury has authorized the granteerecipient to expend an equal amount from the granteerecipient's own funds for a project or program that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, ~~or~~ coastal zone parish, or other authorized entity has materially violated an grant-award agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that granteerecipient from any part of the Trust Fund until the granteerecipient corrects the violation.

Richard L. Gregg
Fiscal Assistant Secretary

[FR Doc. 2013-21595 Filed 09/05/2013 at 8:45 am; Publication Date: 09/06/2013]

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- i See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997.
- ii See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997.
- iii Circular A-87 Revised 5/10/2004.
- iv Circular A-110 Revised 11/19/39 as Further Amended 9/30/99 and 40 C.F.R. § 30.2(d). See 2 CFR Part 215.22 payment procedures, OMB Circular A-110 essentially outlining a preference for advance payments as long as written procedures and financial management systems are in place with reimbursement preferred when those conditions cannot be met. See also §12.61, 43 CFR Subtitle A, Recipients and subrecipients shall be paid in advance provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time between transfer of funds and their disbursement by recipient or subrecipient. Finally, see Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards (pp 36-39), includes similar guidance but elaborates with such requirements as tying advance payments to immediate cash needs, consolidating advances to cover cash needs, etc. and reimbursement used when requirements for reporting and financial management cannot be met.
- v Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- vi Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- vii 2 C.F.R. 225 (A-87)
- viii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- ix See generally CSBG IM No. 37 Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations, 1997 and Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- x Section 311(t)(1)(B)(i); (t)(1)(B)(ii); (t)(3)(B)(i)(I) of the Federal Water Pollution Control Act.
- xi Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xiii Glossary, www.grants.gov
- xiv Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xv Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xvi Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xvii Section 311(t)(1)(J) of the Federal Water Pollution Control Act.
- xviii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xix Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xx Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxi Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
- xxii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxiii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.

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- xxiv Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
- xxv Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.)
- xxvi Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxvii 2 C.F.R. § 215.2 and Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards and 43 C.F.R. § 12.61(e)
- xxviii Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.
- xxix Section 311(t)(3)(B) of the Federal Water Pollution Control Act.
- xxx Section 311(t)(3)(B)(iii)(II) of the Federal Water Pollution Control Act.
- xxxi Section 311(t)(2)(D)(iii) of the Federal Water Pollution Control Act.
- xxxii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxxiii OMB Circular A-87, Attachment B, Section 33.
- xxxiv *See* § 34.604(c).
- xxxv Section 311(t)(1)(B)(i)(VIII) of the Federal Water Pollution Control Act.
- xxxvi Section 311 t)(1)(B)(i)(IX) of the Federal Water Pollution Control Act.
- xxxvii Section 311(t)(1)(B)(iii)(I) of the Federal Water Pollution Control Act.
- xxxviii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xxxix Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.
- xl Section 311(t)(1)(L) of the Federal Water Pollution Control Act.
- xli Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xlii Section 311(t)(3)(B)(iv) of the Federal Water Pollution Control Act
- xliii Section 311(t)(1)(E) of the Federal Water Pollution Control Act

Blalock, Sarah

From: Bleakley, Sarah
Sent: Friday, October 11, 2013 1:40 PM
To: Blalock, Sarah
Subject: FW: Monroe County's comments
Attachments: Monroe County letter to Gulf Consortium counsel re Treasury Rules.pdf; T Regs Cmts to Consortium 101113.docx

Here are Monroe's comments. Please print and save electronically

Sarah M. Bleakley, Esq.



Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
850-224-4070 (office)
850-508-5816 (mobile)

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From: Shillinger-Bob [<mailto:Shillinger-Bob@MonroeCounty-FL.Gov>]
Sent: Friday, October 11, 2013 1:12 PM
To: Bleakley, Sarah
Cc: Tennyson-Lisa; Gastesi-Roman; Erin L. Deady (erin@deadylaw.com)
Subject: Monroe County's comments

Sarah:

Attached please find Monroe County's comments to the Gulf Consortium regarding the Treasury Rules. I have provided the comments in both PDF and Word for ease of convenience. As indicated, these comments are a "work in progress" so we reserve the right to amend these comments based upon further review and input from the County Commission, county staff, and our consultants.

Please contact me should you have any questions or concerns.



Sincerely,

Bob Shillinger
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470

(305) 292-3516 (facsimile)

Please note that Florida has a broad public records law and that any communication with the County could be considered a public record. If you do not wish for your email address to become a public record, use the telephone or some other method of conveying your message.

Blalock, Sarah

From: Bleakley, Sarah
Sent: Monday, October 07, 2013 5:10 PM
To: Blalock, Sarah
Subject: FW: Input on Draft Treasury Rules for RESTORE Act
Attachments: Comments and Questions of Draft Treasury Rules.pdf

Importance: High

Please print and save electronically.

Sarah M. Bleakley, Esq.

Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
850-224-4070 (office)
850-508-5816 (mobile)

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-----Original Message-----

From: Dave Parisot [<mailto:dparisot@co.okaloosa.fl.us>]
Sent: Friday, October 04, 2013 5:04 PM
To: Bleakley, Sarah
Cc: DDarling@fl-counties.com; CHolley@fl-counties.com; Ernie Padgett; John Hofstad; DHoward@clerkofcourts.cc; Gary Stanford; Rick Owen; Jim Trifilio; Davenport@alcalde-fay.com; BBailey@clerkofcourts.cc; sal_nodjomian@matrixdesigngroup.com; vclewis@avconinc.com; JMuller@baycountyfl.gov
Subject: Input on Draft Treasury Rules for RESTORE Act
Importance: High

Sarah,

Attached are my comments on subject. These include comments I have previously submitted to the Consortium so that this is "all inclusive" for your ease of reading and compiling.

This past Wednesday we held a "county meeting" with our Clerk of Courts and his Finance and Grants staff. Of note is that they did not see any major problems in the RESTORE grants process for the Direct Component, as they appear very similar to the way other Federal grants are processed. do need clarification from Treasury, however, as to whether there will be advance payments. Federal grants do not normally make advance payments, but do progress payments as the work is completed. I addressed these in my attached comments.

If you have any comments or questions, do not hesitate to contact me.

As a point of clarification, in Doug's earlier "reminder" email, he mentioned only a conference call on October 25th for the Consortium Directors. May I assume that this will still be a "physical" meeting with the option to teleconference? Thanks. Have a good weekend.

Dave Parisot

Okaloosa County Commissioner, District 2 Board Vice Chairman (2012 & 2013)

1804 Lewis Turner Blvd., Ste 100, Fort Walton Beach, FL 32547

Office: (850) 651-7105; Mobile: (850) 855-1042

"Make it Better; Make it Lasting; MAKE IT HAPPEN."--General Wilbur Creech, USAF, Ret.

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Blalock, Sarah

From: Bleakley, Sarah
Sent: Monday, October 07, 2013 9:26 AM
To: Blalock, Sarah
Subject: Fwd: Okaloosa Input on Draft Treasury Rules for RESTORE Act

not sure if i sent these to you already

Sent from my iPad

Begin forwarded message:

From: "Bleakley, Sarah" <sbleakley@ngn-tally.com>
Date: October 5, 2013, 9:53:58 AM EDT
To: Dave Parisot <dparisot@co.okaloosa.fl.us>
Cc: "Bleakley, Sarah" <sbleakley@ngn-tally.com>, "DDarling@fl-counties.com" <DDarling@fl-counties.com>, "CHolley@fl-counties.com" <CHolley@fl-counties.com>, Ernie Padgett <epadgett@co.okaloosa.fl.us>, John Hofstad <jhofstad@co.okaloosa.fl.us>, "DHoward@clerkofcourts.cc" <DHoward@clerkofcourts.cc>, Gary Stanford <gstanford@clerkofcourts.cc>, Rick Owen <rowen@co.okaloosa.fl.us>, Jim Trifilio <jtrifilio@co.okaloosa.fl.us>, "Davenport@alcalde-fay.com" <Davenport@alcalde-fay.com>, "BBailey@clerkofcourts.cc" <BBailey@clerkofcourts.cc>, "sal_nodjomian@matrixdesigngroup.com" <sal_nodjomian@matrixdesigngroup.com>, "vclewis@avconinc.com" <vclewis@avconinc.com>, "JMuller@baycountyfl.gov" <JMuller@baycountyfl.gov>, Cragin Mosteller <cmosteller@fl-counties.com>
Subject: Okaloosa Input on Draft Treasury Rules for RESTORE Act

Dave, thank you for your comments, especially those about grants. With regard to the October 25th Consortium meeting, there will be a physical location in Tallahassee and an optional call-in number for those that don't travel.

Best regards,
Sarah

Sent from my iPad

On Oct 4, 2013, at 5:11 PM, "Dave Parisot" <dparisot@co.okaloosa.fl.us> wrote:

Sarah,

Attached are my comments on subject. These include comments I have previously submitted to the Consortium so that this is "all inclusive" for your ease of reading and compiling.

This past Wednesday we held a "county meeting" with our Clerk of Courts and his Finance and Grants staff. Of note is that they did not see any major problems in the RESTORE grants process for the Direct Component, as they appear very

similar to the way other Federal grants are processed. do need clarification from Treasury, however, as to whether there will be advance payments. Federal grants do not normally make advance payments, but do progress payments as the work is completed. I addressed these in my attached comments.

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As a point of clarification, in Doug's earlier "reminder" email, he mentioned only a conference call on October 25th for the Consortium Directors. May I assume that this will still be a "physical" meeting with the option to teleconference? Thanks. Have a good weekend.

Dave Parisot

Okaloosa County Commissioner, District 2

Board Vice Chairman (2012 & 2013)

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Office: (850) 651-7105; Mobile: (850) 855-1042

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<Comments and Questions of Draft Treasury Rules.pdf>

SUBJECT: Questions/Comments on Draft Dept. of Treasury, 31 CFR Part 34: Gulf Coast Restoration Trust Fund, **RIN 1505-AC44** (RESTORE Act Draft Treasury Rules) dated Sept 6, 2013

SUBMITTED BY: Dave Parisot, Okaloosa County Commissioner and Director, Gulf Consortium

DATE: October 4, 2013

[Comments/Questions (**Q/C**) are referenced to individual paragraphs of subject.]

Background: III. Regulatory Planning and Review (Executive Orders 12866 and 13563)

A. Description of Need for the Regulatory Action: States “Treasury is analyzing the proposed regulation in accordance with the National Environmental Policy Act, and will complete its analysis before finalizing the regulation.” **Q/C** What timeframe are we looking at here? Are projects going to have to meet NEPA requirements?

Subpart A—General Provisions

B. II. Direct Component: “After a grant agreement is signed, funds will be disbursed to the ... counties ... as they are needed for authorized expenditures.” **Q/C** Will these be advance funds or “progress payments” after work is performed?

C. II. Direct Component: “Treasury invites comments on the allocation of funds to certain counties in Florida We invite comments on the best methodology for determining the facts under both formulas.” **Q/C** The formula for the 8-disproportionately affected counties in Florida (Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, and Wakulla) was derived using the following factors: 20% divided equally among the 8 counties; the remaining 80% was divided using the following factors: 30% based on shoreline oiled; 30% based on per capita sales tax; 20% based on the 2010 Census population of each county; and 20% based on distance from the Deepwater Horizon oil spill. This formula resulted in the following allocations to each of the 8-counties: Escambia 25.334%; Okaloosa 15.226%; Bay 15.101%; Walton 13.712%; Santa Rosa 10.497%; Franklin 8.441%; Gulf 6.743%; and Wakulla 4.943%. This formula was unanimously adopted by Joint Resolution of the Boards of County Commissioners of each of the 8-counties in December, 2012. Concur with this formula.

D. IV. Regulatory Flexibility Act: “Treasury invites comments on the rule’s impact on small counties.” **Q/C** When developing the 8-county formula in B above, concessions and allowances were made for the four small counties (Walton, Franklin, Gulf, and Wakulla) by adjusting the original formula agreed on in 2011 which allocated only 10% to each of the 8-counties equally, to an upward adjustment to 20% to be divided among each county equally. Each of the Boards of Commissioners in the 8-counties unanimously agreed to this formula by Joint Resolution in December 2012 (see C above).

E. Para. 34.2 Definitions: The RESTORE Act states in para. (3) OIL SPILL RESTORATION IMPACT ALLOCATION., (B) DISBURSEMENT OF FUNDS., (iii) DEVELOPMENT, (II) in the State of Florida, a consortia of local political subdivisions that includes at a minimum 1 representative of each affected county;” **Q/C** Recommend a definition of a “**Consortia of Local Political Subdivisions (Florida)**” be defined as “**The Gulf Consortium formed by Interlocal Agreement Relating to Establishment of the Gulf Consortium dated September 19, 2012, among the 23 coastal counties abutting the Gulf of Mexico and by a Memorandum of Understanding Between the State of Florida & Gulf Consortium executed on June 12, 2013 by Governor Rick Scott.**” **Rationale**: Including this definition in this section will clarify the agencies in Florida responsible for the Spill Impact Component.

Subpart B—Trust Fund

F. Para. 34.104 Expenditures: The statement “Grantees must minimize the time between the receipt of funds and the distribution of those funds” implies that project funds may be received in a lump sum for a project rather than as a reimbursement grant. **C/Q** Please clarify.

Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE COMPONENTS

G. Para. 34.200 General, subpara (b): This para. States “funds available under the Direct Component or Spill Impact Component may be used to satisfy the non-Federal cost-share of a project or program that is an eligible activity and authorized by Federal law.” **Q/C** The announcements of these Federal grants with “local matches” are most often received with a short suspense for application, usually a 30-90 day window. In order to take advantage of these Federal grants to leverage RESTORE funds, the agencies involved with the planning and expenditures of funds in the Direct Component and the Spill Impact Component must be given flexibility to make submissions for these projects outside of the confines of the Multi-Year Implementation Plans. Perhaps this could be done via a “supplemental submission” to the respective Multi-Year Plan. The current Draft Treasury Rules do not have these provisions. Also, strongly recommend that RESTORE funds for the Direct Component and the Spill Impact Component be able to be used as the “local match” for State grant projects.

H. Para. 34.201 Eligible Activities for the Direct Component, subpara. (f) “Infrastructure projects”. **Q/C** Do these infrastructure projects include “capital improvement projects” (CIPs)? Hopefully the answer is YES as these are areas where the RESTORE dollars can have the greatest positive impacts on communities and can often be leveraged via local matching funds. Recommend wording to read: “Infrastructure projects (to include capital improvement projects) benefitting the economy or ecological resources, including port infrastructure.”

I. Para. 34.201 Eligible Activities for the Direct Component, subpara. (j): **Q/C** Is it safe to assume that expenses incurred in developing and writing the Multi-Year Implementation Plans are inclusive in “planning costs”? If not, they need to be included as reimbursable expenditures as consultant services are absolutely required to develop all of the aspects and criteria required for these Plans.

J. Para. 34.203 Eligible Activities for the spill Impact Component: **Q/C** Strongly recommend including the following in this Para.:

“(c) Funds may be expended to develop and publish the proposed State Expenditure Plan, and to carry out, amend, and update the State Expenditure Plan as required by the Act or the Council or as necessary.

(d) The States may expend funds to prepare reports to Congress, the Council, and other reports and audits as required by the Act, the Council, these regulations, and other Federal law.

(e) The States may expend funds to establish and operate one or more advisory committees as may be necessary to assist the State.

(f) Administrative costs.”

K. Para. 34.205 Limitations on Administrative Costs and Administrative Expenses, subpara (a): How is a “fiscal year” defined, i.e., the Federal fiscal year (Oct-Sept) or the fiscal year of the political entity, e.g., a state or county?

Subpart D—Gulf RESTORE Program-Direct Component

L. Para. 34.301 Responsibility for Administration: States that “Treasury will establish and implement a program to monitor compliance with its grant agreements.” **Q/C** Any timeframe on these additional rulemakings? Will it delay receipt of any RESTORE grant revenues?

M. Para. 34.302 Allocation of Funds., subpara (b): **Q/C** I interpret this to mean that each of the 8-counties must include the 8-county formula in their Multi-Year Implementation Plan.

N. Para. 34-303 Application Procedure: States “Treasury will develop an application process for grants available under this part that is consistent with the Act and Federal policies on grants.” **Q/C** When can we expect this application process from Treasury? (Delay in receipt will cause delays in development of Multi-Year Implementation Plans.)

O. Para. 34-303 (a): States “The applicant must submit a multiyear implementation plan ...” **Q/C** This rule does not specify a time-period for the multiyear implementation plan. For the Direct Component, recommend a period of 3-5 years on the initial plan. Also, we need provisions to amend or supplement the initial plan due to changing needs and to take

advantage of Federal grants to leverage RESTORE funds used as a local match (See para. G above).

P. Para. 34-303(a): States at the end: “Treasury may require a standard format for the plans and additional information.” **Q/C** When will we know? Delays in receiving such guidance from Treasury, if it is to be forthcoming, will delay development of the Multi-Year Implementation Plans.

Q. Para. 34-305 Use of Funds: Subpara (a) states “Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.” **Q/C** This seems to imply that grant funds may be provided “up-front” for the costs of the projects. Please clarify. Also, will there be provisions for unexpected or unanticipated cost overruns in completing a project?

Subpart F—Gulf RESTORE Program-Spill Impact Component

R. Para. 34-501 Responsibilities for Administration: States “The Council must establish and implement a program to monitor compliance with its grant agreements.” **Q/C** Will the Council’s program be incorporated into the Treasury Rules or will they be in a separate document?

S. Para. 34-503 State Expenditure Plan: **Q/C** Recommend rewriting first sentence to read: “Each Gulf State, through its Governor or the Governor’s designee, or in the case of Florida a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the Deepwater Horizon oil spill, must submit a State Expenditure Plan ...”

T. Para. 34-504 Grant Administration: **Q/C** Recommend rewriting first sentence to read: “If the Council approves a State Expenditure Plan, the State (or in Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the Deepwater Horizon oil spill) may apply for a grant ...”

Subpart I--Agreements

U. Para. 34-802 Certifications: **Q/C** Who does the certifications for each component? For Florida, would it be the Chairman of the Board of County Commissioners for the Direct Component, the Governor (or designated representative) for the spill Impact Component?

<i>Issue/Section of the Reg</i>	<i>Why this an Issue of Concern</i>	<i>Suggested Edit, Revision or Clarification</i>
<i>Supplementary Information section II. Directs distribution of funds in accordance with law and policy.</i>	Source documentation needed to direct grant writer to appropriate information source.	Clarify law and policy code referenced.
<i>Direct Component section. Multiyear plan submittal required</i>	Unclear as to level of and details required for this plan. Will standard description or format be developed and distributed or is each entity going to respond different?	Treasury or another entity develop a standard plan to be used by direct component recipients, define the public comment timeline and process and length of comment period required.
<i>Applicability with environmental laws – direct component</i>	Multitude and source of environmental laws	Require local legal review for compliance prior to submittal of plan.
<i>Fund disbursement – direct component</i>	Administrative costs already incurred should be able to be applied for without grant application occurring.	Allow for up to 3% of the grant amount to be distributed to government entities for incurred administrative costs automatically without application. Proof or statement justifying why reimbursement needed should be provided first.
<i>Fund disbursement – direct component</i>	Reasonable person? Grant application is too general in disbursement requirement	Grant application should be designed with parameters of RESTORE Act built in so application and disbursement does not occur unless some or all of the criteria defined by Act is met.
<i>Fund disbursement – direct component</i>	15 County method for distribution	Approve allocation method adopted and proposed by the Gulf Coast Counties. Revisit the allocation at some interval to allow for changes in demographics.
<i>Fund disbursement – Comprehensive Plan Component</i>	Standard contract terms for projects will be used. Will the Council distribution fall under Treasury cognizance? This seems to imply a different grant process not under Treasury cognizance.	Clarify Council obligations for disbursement.
<i>Fund disbursement – spill component</i>	State entities to prepare plans for fund usage. GCC not called out as owning responsibility in this part	Clarify GCC responsibility on this.
<i>Fund disbursement – spill component - infrastructure</i>	Significantly more limited, but infrastructure not spelled out clearly. Some projects may have conflicts with this	Clarify infrastructure and define what is and isn't considered within the 25% restriction.

<i>Fund disbursement – Grant issuance</i>	Council directing states, will it be standard or state specific in the grant writeup	Uniform grant application or get grant application out for comment to allow regional concerns to be addressed
<i>Fund disbursement - NOAA</i>	Part must be used for grants	What percentage must NOAA put up in the form of grants?
<i>Part 2 – Regulatory Flexibility Act</i>	Will not have a significant impact on large numbers of small entities	How is non-impact justified given the scope of funding and work about to occur?
<i>Estimated burden hours</i>	Will a rate be charged to the RESTORE funds to cover this burden?	Given that the Act defines 3%, at most this should be the amount removed from Treasury funding.
<i>Definitions under 34.2 not complete</i>	Will the definitions of the Act be expanded to include items such as infrastructure, admin expense, reasonable person? Admin expense is defined, but does not specifically address the previously allocated funds by agencies.	Expand to include definitions critical to execution of the funding. Expand definition of admin expense to include previously allocated funds in preparation of the Act.
<i>Definition Gulf Coast region</i>	Does this include the CZ as defined by the Florida Coastal Management Plan of 1981 which includes the whole state of Florida in the plan?	Inclusion of this plan allows projects to be completed well inland of the 25 miles referenced in the Federal document. This may lead to legal conflict later on.
<i>34.101 Investments</i>	Could this interest be used to pay the Treasury for costs incurred to execute the grants?	Recommend interest generated be used to pay for Treasury costs vice directly out of the Act.
<i>34.201 Direct Component</i>	Addresses state park improvements, not local (County owned) properties. Term “located in coastal areas affected by the Deepwater Horizon Oil Spill.” Needs defined. Unclear (j) is limited and not all of the section.	Recommend expanding the wording to include parks and preserves held by any government agency. Clarify the term “located in coastal areas affected by the Deepwater Horizon Oil Spill.” Clarify why subsection (j) is limited and not all of the section
<i>34.205 Limitations of Admin expenses</i>	Does not address costs burdened to date on execution of RESTORE	Expand definition to include the previously incurred expenses for RESTORE. With this definition, previously incurred expenses are not eligible for reimbursement.
<i>34.301 Responsibility for administration</i>	Should include references used to guide grants	Include legal references needed to execute grants
<i>34.302 Allocation of funds</i>	Nondisproportionately affected counties get funds as defined in section 311(t)(1)(c)(ii) of the Federal Water Pollution Control Act	Section of the Federal Water Pollution Control Act is created by the RESTORE Act. http://www.epw.senate.gov/water.pdf Should reference the GCC formula which was
<i>34.303a Application procedure</i>	Multi-year plan component is ambiguous and difficult given trial and amount status	Clarify term MYIP, and make the information for each award amount of the direct component.
<i>34.303b Application</i>	Limits programs and grant application to projects	Remove the date requirement and subsequent writing.

<i>procedure</i>	prior to 7/6/12, placing unnecessary restrictions on the projects that may be completed	Allow the application of projects past that date to be considered. This allows best science to be timely and prevalent.
<i>34.503(a)(2)</i>	GCC not formally named	Name the consortium formally in the Treasury rules.
<i>34.503(a)(f)</i>	Infrastructure not defined	Need to define this term and how it pertains to projects

Blalock, Sarah

From: Bleakley, Sarah
Sent: Wednesday, October 02, 2013 4:29 PM
To: Blalock, Sarah
Subject: Pinellas Treasury Rule Comments

[Pls pdf this and send it to me](#)

From: White, Jewel [<mailto:mjwhite@co.pinellas.fl.us>]
Sent: Wednesday, October 02, 2013 1:44 PM
To: Ginger Delegal
Cc: Squires, Andrew P
Subject: Treasury Rule Comments

Ginger,

Pinellas County agrees with the comments offered by Monroe County, which are obviously very comprehensive. I am not going to restate anything they have included, but would add the following:

- Advance payment versus reimbursement has been addressed throughout Monroe's comments as far as clarifying the availability of advance payment, if that is what is intended. Pinellas would like the clarification to include advance payments as a certainty and see the Consortium's comments advocate for this change as part of the clarification.
- Sections 34.303 and 34.304 should be modified to clarify the process. It seems that the best approach is to adopt a multi-year implementation plan and then apply for grants based upon projects that come out of the MYIP. The regulations are not clear in that regard.
- Section 34.201 should be amended under (e) to include not only state parks, but any publicly owned park so county or municipally owned parks would be eligible
- Section 34.803 covers conditions of the agreements. Once the Treasury rules are promulgated and the administrative and civil penalties have been deposited into the Trust Fund for distribution, will there be an initial deadline in which Multiyear Implementation Plans (MYIPs) must be submitted to qualify for funding under the Direct, Comprehensive, and/or Spill Impact components? Furthermore, as the program proceeds, will there be annual time intervals or date-certain windows for submittal of updated MYIPs and/or project specific grant applications?

On another related matter, do you have any idea how the other counties are handling the staffing of the effort, i.e., have they hired consultants; hired additional, dedicated staff; assigned RESTORE responsibilities to existing staff? Just curious

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Blalock, Sarah

From: Bleakley, Sarah
Sent: Monday, October 07, 2013 9:40 AM
To: Blalock, Sarah
Subject: Sarasota County Comments - US Treasury Draft Rules
Attachments: Scanned from a Xerox multifunction device001.pdf

Sarah M. Bleakley, Esq.

Nabors, Giblin & Nickerson, P.A.
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-----Original Message-----

From: Dianne Robertson [<mailto:droboterts@scgov.net>]
Sent: Monday, October 07, 2013 9:20 AM
To: Bleakley, Sarah
Cc: Amy Meese; David Pearce; Laird Wreford; Linda Benanti; Melissa Wagar
Subject: Sarasota County Comments - US Treasury Draft Rules

Ms. Bleakley: As requested by the Gulf Consortium, and subsequent to staff review, attached are Sarasota County's comments regarding the US Treasury draft rules.

Thank you.

Dianne Robertson
Executive Assistant to Randall Reid, County Administrator
and Thomas Harmer, Deputy County Administrator
1660 Ringling Blvd, 2nd Floor
Sarasota, FL 34236
941.861.5111 (o); 941.861.5987 (f)
droboterts@scgov.net

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SARASOTA COUNTY GOVERNMENT

Office of the County Administrator

TO: Gulf Consortium, c/o Florida Association of Counties
FROM: Randall H. Reed, County Administrator *RHR*
DATE: October 4, 2013
SUBJECT: US Treasury Draft Rules on RESTORE Act Implementation

In response to the Gulf Consortium's call for comments, Sarasota County has completed staff review of the US Treasury draft rules. We are pleased to submit the attached comments, provided in underline/strikethrough and bubble comment format.

We understand that the Gulf Consortium will meet in Tallahassee on October 25, 2013 to consider and vote on its compiled comments to the Treasury. Sarasota County will be represented at that meeting. Thank you for the opportunity to participate in this important process.

c: Sarasota County Commission
Thomas A. Harmer, Deputy County Administrator
Lee Ann Lowery, Assistant County Administrator
Mark A. Cunningham, Assistant County Administrator
Stephen DeMarsh, County Attorney

SARASOTA COUNTY COMMENTS ON RESTORE ACT RULES:

Sarasota County, Florida, a political subdivision of the State of Florida, provides these general comments and recommended language changes to the Gulf Coast Restoration Trust Fund Rules proposed by the Department of Treasury in the Notice of Proposed Rulemaking (78 Fed. Reg. 54801), dated September 6, 2013. All ~~striketrough~~ language constitutes language proposed for removal from the draft rules, and all underlined language constitutes proposed added language to the draft rules.

Department of Treasury

31 C.F.R. Part 34

Subpart A – General Provisions

§ 34.1 Purpose.

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act):

(a) Gulf RESTORE Program:

- (1) Direct Component (subpart D)
- (2) Comprehensive Plan Component (subpart E)
- (3) Spill Impact Component (subpart F)

(b) NOAA RESTORE Act Science Program (subpart G)

(c) Centers of Excellence Research Grants Program (subpart H)

§ 34.2 Definitions.

As used in this part:

Act means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

Administrative costs means those indirect costs incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes, either individually or collectively through written agreement, for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services that are allocable to activities authorized under the Act.

Administrative expenses means the expenses incurred by the Council to administer the Comprehensive Plan Component, and NOAA to administer the NOAA RESTORE Act Science Program, that are for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Oversight and monitoring activities are classified as administrative when the activity overseen or monitored is administrative rather than programmatic in nature.

Alabama Gulf Coast Recovery Council means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

Best available science means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

Centers of Excellence Research Grants Program means the program authorized by section 1605 of the Act.

Coastal political subdivision means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

Coastal zone parishes means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, Tangipahoa, and Vermilion in the State of Louisiana.

Comprehensive Plan Component means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

Deepwater Horizon oil spill means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

Direct Component means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in

which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury to carry out the purposes of the Act.

Disproportionately affected counties means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

Environmental review and compliance procedures means the procedures under applicable Federal and state environmental laws.

Federal Water Pollution Control Act means 33 U.S.C. 1251 et seq.

Gulf Coast Region means:

- (1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;
- (2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;
- (3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and
- (4) All Federal waters in the Gulf of Mexico.

Gulf Coast State means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

Gulf Coast State entities means the parties delineated in § 34.702 as being eligible to administer the Centers of Excellence research grants in their respective states.

NOAA means the National Oceanic and Atmospheric Administration.

NOAA RESTORE Act Science Program means the program authorized by section 1604 of the Act.

Nondisproportionately impacted counties means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component.

Treasury means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

Trust Fund means the Gulf Coast Restoration Trust Fund.

Subpart B - Trust Fund

§ 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. The authority for the Trust Fund will terminate on the date all funds owed to the Trust Fund have been returned, and all funds have been expended.

§ 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

§ 34.103 Allocation of funds.

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

- (1) Thirty-five percent in equal shares for the Gulf Coast States to be used for the Direct Component of the Gulf RESTORE Program.
- (2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.
- (3) Thirty percent for formula distribution to Gulf Coast States to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science program.

(2) Twenty-five percent for the Centers of Excellence Research Grants program.

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

Amounts in the Trust Fund will be available for expenditure solely for eligible activities, administrative costs, and administrative expenses without fiscal year limitation. Grantees must minimize the time between the receipt of funds and the disbursement of those funds.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in these regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted.

Subpart C – Eligible Activities for the Section 311(t) Gulf RESTORE Components

§ 34.200 General.

This subpart describes policies and procedures regarding eligible activities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund money may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs incurred, whether charged on a direct or indirect basis, must conform with the applicable OMB circulars and guidance.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in §§ 34.201, 34.202, or 34.203, according to component.

(3) Environmental review and compliance procedures must be complied with for each program, project, or activity, as applicable. Grant agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by applicable OMB circulars and guidance.

(4) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component may not be included in any claim for compensation presented to the Oil Spill Liability Trust Fund after July 6, 2012.

(b) A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Programs, projects, and activities designed to protect or restore natural resources must be based on the best available science.

(a) Restoration, renourishment, and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(b) Mitigation of damage to fish, wildlife, and natural resources.

(c) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(d) Workforce development and job creation.

(e) Improvements to or on State or local government parks and preserves located in coastal areas affected by the *DeepwaterHorizon* oil spill.

(f) Infrastructure projects benefitting the economy or ecological resources, or to implement adaptation strategies, including port infrastructure, upgrades to stormwater infrastructure to prepare for increased flooding, and replacement of septic systems with central sewer systems.

(g) Coastal flood protection and related infrastructure.

(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.

(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(j) Planning limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of post-disaster redevelopment and adaptation planning, and including the costs of environmental review and compliance.

(k) Administrative costs.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council's activities under section 311(t)(2) and (3) of the Federal Water Pollution Control Act are eligible for funding from the Comprehensive Plan Component, including the following:

(a) The Council may expend funds for projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast Region. All Council projects and programs must be carried out in the Gulf Coast Region and be adopted in the Comprehensive Plan.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to carry out, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

Programs, projects, and activities eligible for funding under the Spill Impact Component must meet the eligibility criteria set forth in § 34.201, as well as the following:

(a) The projects, programs, and activities must be included in a State Expenditure Plan approved by the Council.

(b) The projects, programs, and activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.

§ 34.204 Limitations on activities.

The following limitations apply to the activities of §§ 34.201, 34.202, and 34.203.

(a) Acquisition of land or interests in land by purchase, exchange, or donation must be from a willing seller.

(b) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the State in which the acquisition will take place.

Comment [LSW1]: The intention of this paragraph is unclear. If (as the language indicates) this restriction applies only to acquisitions by the Federal Government, then it really won't have any effect on Sarasota County's interests. However, if the restriction is intended to apply to any acquisition utilizing RESTORE Act funds, then that could be a problem. This paragraph needs additional clarification.

§ 34.205 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish, either individually or collectively through agreement, under the Direct Component, ~~Comprehensive Plan Component~~, and Spill Impact Component, not more than three percent may be used for administrative costs, including staff. The three percent limit is applied to the total amount of funds received under each grant, beginning with the first fiscal year it receives funds through the end of the most recent fiscal year.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses, including staff. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) With respect to the Alabama Gulf Coast Recovery Council, administrative duties may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama. Trust Fund amounts may not be used for the administrative costs of other personnel.

§ 34.206 Audited financial statements and audits.

Not later than December 1, 2014 and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(a) Each audited financial statement under this section must reflect:

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(b) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(c) The Treasury Inspector General may conduct performance audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D – Gulf RESTORE Program - Direct Component

§ 34.300 General.

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant.

§ 34.301 Responsibility for administration.

Treasury is responsible for awarding grants and administering grants and grant agreements under this subpart. Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act. Treasury will establish and implement a program to monitor compliance with its grant agreements.

§ 34.302 Allocation of funds.

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares for the Gulf Coast States for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants.

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Treasury will divide the funds among these counties according to the formula mutually-agreed upon by the counties and included in the multiyear implementation plan submitted by each disproportionately affected county.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes based on the formula in section 311(t)(1)(D)(i) of the Federal Water Pollution Control Act. No parish will receive funds until its chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the State's Coastal Master Plan approved by the Louisiana legislature.

(f) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(g) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

§ 34.303 Application procedure.

The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury will develop an application process for grants available under this subpart that is consistent with the Act and Federal policies on grants. Each grant shall be an advance payment to fund the program, project, or activity. At a minimum, the procedure will include the following:

(a) The applicant must submit a multiyear implementation plan describing each program, project, and activity for which it seeks funding. For each, the plan must include a narrative description showing need, purpose, and objectives; identification of the eligible activity under which it qualifies; location; budget; milestones; projected completion dates; and criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the *Deepwater Horizon* oil spill. The applicant must also state whether it has applied, either individually or collectively through agreement with other applicants, for a grant to fund the program, project, or activity under any other part of the Act. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e). Treasury may require a standard format for the plans and additional information.

(b) An applicant may satisfy some or all of the requirements in §§ 34.303(a) and 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:

(1) The applicant established conditions to carry out projects, programs, and activities that are substantively the same as the conditions required in § 34.303(a).

(2) The applicable program, project, or activity qualified as one or more of the eligible activities in § 34.201.

(c) The applicant must include supporting information that proposed activities meet the statutory requirements for eligibility, that its implementation plan was made available for public review and comment through its adopted procurement procedures for a minimum of 30 days, and that each program, project, and activity is adopted after consideration of all meaningful opportunity for input from the public, including broad-based participation from individuals, businesses, Tribal nations, and non-profit organizations.

(d) The applicant must include supporting information that each program, project, and activity that is designed to protect or restore natural resources is based on the best available science.

§ 34.304 Grant award process.

Upon determining that an application meets the requirements of these regulations and the Act, Treasury will offer the applicant a grant agreement that complies with subpart I and Federal policies applicable to grants.

§ 34.305 Use of funds.

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.

Comment [LSW2]: Most problematic portion of draft rule; this expands the language in the actual RESTORE Act, adding more arduous and expensive requirements to the process and changing what was written as discretionary guidance into mandatory, specific requirements. We recommend this rule simply insert the language from the Act here: "This plan may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill." For clarity, this section should also state 1) that the grant will be an advance payment grant (rather than reimbursement – unrealistic for many of the counties to come up with up-front funding); and 2) that the grant will be for the entire set of submitted projects/programs/activities (rather than an individual grant for each).

(b) When awarding contracts to carry out a project or program under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish, either individually or collectively through agreement, may give local preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in accordance with their adopted local preference procedures in the State of project execution.

§ 34.306 Reports.

Grantees must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

Grantees must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee's accounts and activities as deemed appropriate by Treasury.

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with section 311(t)(2) of the Federal Water Pollution Control Act. This Component provides for implementing the projects and programs listed in the Comprehensive Plan.

§ 34.401 Responsibility for administration.

After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council.

(a) In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. The Council must specify whether any part of this responsibility may be further assigned to another entity and under what terms.

(b) When a grant to a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that particular project or program, the Council must publish in the Federal Register and deliver to these Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the grantee, the project's or program's purpose, and the amount of the award.

(1) House of Representative committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its grant agreements and interagency agreements.

§ 34.402 Application procedure and grant award process.

The Council may establish a selection process for assignees to use for awarding grants, cooperative agreements, or contracts to other entities. If the Council does not establish an application and selection process, assignees must use a selection process of their choosing that is fair, open, and meets the requirements of Federal laws and, for State and local governments that are awarding, the applicable State and local laws.

§ 34.403 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

§ 34.404 Reports.

Assignees/grantees must submit reports as prescribed by the Council or Treasury.

§ 34.405 Recordkeeping.

Grantees must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General.

§ 34.406 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee's accounts and activities as any of them deems appropriate.

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart must be in the form of grants.

§ 34.501 Responsibility for administration.

The Council is responsible for awarding and administering grants under this subpart. The Council must establish and implement a program to monitor compliance with its grant agreements.

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States based on a formula in the Act and a regulation that the Council promulgates. The Council will make allocated funds available through grants for programs, projects, and activities described in a State expenditure plan approved by the Council.

§ 34.503 State Expenditure Plans.

Each Gulf Coast State, through its Governor or the Governor's designee, and to the extent governed by any memorandum of understanding between the Governor and any coastal political subdivision, coastal zone parish, or federal agency, either individually or collectively pursuant to agreement, must submit a State Expenditure Plan to the Council for its approval that describes each program, project, and activity for which the State seeks funding. The Council must develop requirements for these plans that include the following:

(a) The State Expenditure Plan must be developed by:

- (1) In Alabama, the Alabama Gulf Coast Recovery Council.
- (2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.
- (3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.
- (4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.
- (5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must take into consideration the Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.

(c) For each program, project, and activity, the State Expenditure Plan must include narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success. The applicant must also state whether it has applied for a grant to fund the program, project, or activity under any other part of the Act.

(d) The State Expenditure Plan must demonstrate that each program, project, and activity is an eligible activity and that the plan will contribute to the overall economic and ecological recovery of the Gulf Coast.

(e) The State Expenditure Plan must demonstrate that each project, program, and activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.

(f) The State Expenditure Plan may not propose to use more than 25 percent of the funding made available for infrastructure projects, unless the plan certifies that:

Comment [LSW3]: Same issue as raised above, in the Direct Component section. The process needs to be less burdensome and bureaucratic, and more conducive to getting these valuable projects done and in the ground. We should focus these funds on substance over form – outcome over process. We recommend inserting the simpler language from the Act, as described in the previous comment.

(1) The ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(g) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted State in writing and consult with the State to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the State may obtain expedited judicial review within 90 days in a United States district court located in the State seeking the review.

§ 34.504 Grant administration.

If the Council approves a State Expenditure Plan, the State may apply for grants to carry out specific projects, programs, and activities in the plan. Each grant shall be an advance payment to fund the specific projects, programs and activities in the plan. The Council must establish and publish procedures for grants available under this subpart that are consistent with Federal laws, regulations, and policies on grants. At a minimum, the State's application must demonstrate all the elements required for a State Expenditure Plan to the satisfaction of the Federal grant administrator before a grant may be approved.

§ 34.505 Use of funds.

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met. Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.

§ 34.506 Reports.

Grantees must submit reports as prescribed by the Council or Treasury.

§ 34.507 Recordkeeping.

Grantees must maintain records as prescribed by the grant administering agency and make the records available to the grant administering agency, and Treasury, including the Treasury Inspector General.

§ 34.508 Audits.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of grantee's accounts and activities as any of them deem appropriate.

Subpart G – NOAA RESTORE Act Science Program

§ 34.600 General.

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

§ 34.601 Responsibility for administration.

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science program consistent with the Act, this subpart and Federal grant laws, regulations, and policies. NOAA must implement a program to monitor compliance with its grant agreements and interagency agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

Amounts made available to NOAA may be expended to carry out a program comprised of the following activities with respect to the Gulf of Mexico:

- (a) Marine and estuarine research.
- (b) Marine and estuarine ecosystem monitoring and ocean observation.
- (c) Data collection and stock assessments.
- (d) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.
- (e) Cooperative research.
- (f) Coordination of science and technology programs, in accordance with section 1604(f) of the Act, including setting priorities and engaging stakeholders. NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities.

None of the Trust Fund amounts may be used for the following activities:

- (a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.
- (b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.
- (c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses.

(a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff.

(b) The three percent limit is based on funds that the NOAA RESTORE Act Science Program receives in its fiscal year, and unused amounts may be carried forward into subsequent years. The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.¹

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

Grantees must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits.

The Treasury Inspector General may conduct audits and reviews of grantee's accounts and activities as it deems appropriate.

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants program. The program's purpose is to establish centers to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

§ 34.701 Responsibility for administration.

Treasury is responsible for awarding grants to the Gulf Coast States, who will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury may develop and apply policies and procedures consistent with this subpart, Federal grant administration requirements, and the Act. Each Gulf Coast State entity issuing a grant must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds.

Each Gulf Coast State will be entitled to an equal share to carry out eligible activities.

¹ On January 3, 2013, Transocean Deepwater Inc. and related entities agreed to pay \$1 billion in civil penalties for violating the Clean Water Act in relation to their conduct in the Deepwater Horizon oil spill. That settlement was approved by the court in February, and Transocean paid the first installment of its civil penalties to the United States at the end of March. These funds are subject to the RESTORE Act.

The duties of a Gulf Coast State will be carried out by the following entities:

- (a) In Alabama, the Alabama Gulf Coast Recovery Council.
- (b) In Florida, a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.
- (c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.
- (d) In Mississippi, the Mississippi Department of Environmental Quality.
- (e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

§ 34.703 Application procedure.

Treasury will develop an application process for grants available to the Gulf Coast States under this subpart that is consistent with Federal law, regulations, and policies on grants. At a minimum, the process will include the following:

- (a) Each Gulf Coast State must describe the rules and policies the State will apply to the Centers of Excellence grant(s), including the competitive process that the State will use to select a Center of Excellence. The process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher learning, to compete. The process must give priority to entities and consortia that demonstrate the ability to organize the broadest cross-section of participants in the grant with interest and expertise in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest. Centers of Excellence do not need to be located in the Gulf Coast State issuing the grant.
- (b) Each Gulf Coast State must demonstrate that its rules and policies for Centers of Excellence grants, including the competitive selection process, were published and available for public review and comment for a minimum of 30 days, and that they were adopted after consideration of all meaningful input from the public, including broad-based participation from individuals, businesses, and non-profit organizations. This requirement does not apply to State statutes and regulations.
- (c) Each application must state the amount of funding requested and the purposes for which the funds will be used.

§ 34.704 Use of grant funds and eligible activities.

- (a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the Act, these regulations, and other Federal laws, regulations, and policies applying to grants.
- (b) Gulf Coast States may use funds available under this subpart to award competitive grants for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

- (1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast region.
- (2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.
- (3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.
- (4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.
- (5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

§ 34.705 Ineligible activities.

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

- (a) An annual report to the Council in a form set by the Council that includes information on recipients, grant amounts, disciplines addressed, and any other information required by the Council. When the grant recipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.
- (b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

Grantees must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

§ 34.708 Audits.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each grantee's accounts and activities as deemed appropriate by Treasury.

Subpart I – Agreements

§ 34.800 General.

This subpart describes procedures applicable to grant agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivision, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part.

§ 34.801 Grant agreements.

The grant agreements used must conform to all applicable Federal laws, regulations, and policies for grants, including audit requirements.

§ 34.802 Certifications.

At a minimum, grant agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. The certification must be

signed by an authorized senior official of the organization or entity receiving grant funds with oversight for the administration and use of the funds in question.

(a) I certify that each project, program, and activity funded under this Agreement has been designed to restore and protect [*select all that are appropriate*: the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, economy] of the Gulf Coast.

(b) I certify that each project, program, and activity funded under this Agreement is designed to carry out one or more of the eligible activities for this program/component.

(c) I certify that each project, program, and activity funded under this Agreement was selected after consideration of input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations, as described in the grant application.

(d) I certify that each project, program, and activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR Part 34.

(e) I certify that this Grantee has followed in every material respect the applicable procurement rules applying to contracts in the Grantee's State for each project, program, and activity funded under this Agreement, including rules for competitive bidding and audit requirements.² This Grantee agrees that it will not request funds under this grant award for any contract unless this certification remains true and accurate with respect to that contract. [*The Council may adapt this certification to account for any standard contract terms that it develops under section 311(t)(2)(C)(vii)(V) of the Federal Water Pollution Control Act.*]

(f) I certify that a conflict of interest policy is in effect and covering each project, program, and activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this Grantee maintains written documentation sufficient to support each certification made above, and that this Grantee's compliance with each of these certifications is a condition of this Grantee's initial and continuing receipt and use of the funds provided under this Agreement.

§ 34.803 Conditions.

At a minimum, all grant agreements under subparts D, E, F, G, and H of this part must contain the following conditions.

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(a) This Grantee must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) This Grantee must deposit all funds in one or more financial accounts which have the sole purpose of receiving fund amounts and making distributions of fund amounts. This Grantee must maintain detailed program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the program's requirements. This Grantee must track program income and use program income for purposes of the grant before requesting more program funds.

² This section should list all applicable wage and procurement requirements so that entities proposing or implementing projects understand the full array of what is entailed in project implementation. For example, implementation of the Davis Bacon Act (40 U.S.C. § 3141 et seq.) will have a large impact on project implementation and it would be important to list its applicability at this stage.

(c) Prior to making any subaward, this Grantee must execute a legally binding written agreement with the entity receiving the subaward. This Grantee and the subawardee must execute the written agreement before any funds are disbursed to the subawardee. The written agreement will extend all the applicable program requirements to the subawardee.

(d) This Grantee must use the funds only for the purposes identified in the Agreement.

(e) This Grantee must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement. The report must be sent to the Federal agency administering the grant and include the following information:

(1) A description of the use of all funds received.

(2) A statement that funds were used only for purposes identified in the agreement.

(3) A certification that the Grantee maintains written documentation sufficient to demonstrate the accuracy of these statements.

(4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry.

The certification must be signed by a senior authorized official of the organization or entity receiving grant funds, who has oversight and authority over the administration and use of the funds in question.

§ 34.804 Records.

(a) As a condition of receiving funds, the Council and its members, NOAA, grantees, and all subrecipients must make available their records and personnel to Treasury, including the Treasury Inspector General, for the purpose of assessing compliance with this Agreement, the Act, and other Federal laws applying to their receipt of funds from the Gulf Coast Restoration Trust Fund.

(b) For grant agreements that exceed a three year period, the grantee must make an interim report at the end of every two years. The report must contain the elements listed in § 34.803(e).

§ 34.805 Noncompliance.

In addition to remedies available to the Federal agency administering grants, all grant agreements with the Gulf Coast States must be subject to the following conditions:

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the grantee to expend an equal amount from the grantee's own funds for a project or program that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has materially violated a grant agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee corrects the violation.

Blalock, Sarah

From: Bleakley, Sarah
Sent: Monday, October 14, 2013 10:28 AM
To: Blalock, Sarah
Subject: FW: RESTORE Act CFR Draft Matrix of Concerns and Comments for Your Review
Attachments: Comment Matrix-1.docx

As I suspected, here is another one—Wakulla—in draft form.

Sarah M. Bleakley, Esq.



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From: Encinosa, Heather
Sent: Monday, October 14, 2013 10:27 AM
To: Bleakley, Sarah
Subject: FW: RESTORE Act CFR Draft Matrix of Concerns and Comments for Your Review

FYI

From: Sheree Keeler [<mailto:skeeler@mywakulla.com>]
Sent: Monday, October 14, 2013 10:03 AM
To: Eric Livingston; Encinosa, Heather; David Edwards
Subject: RESTORE Act CFR Draft Matrix of Concerns and Comments for Your Review

Attached is my draft matrix of the RESTORE Act rule with concerns and comments to the US Treasury from Wakulla County. I am continuing to proof and edit. This will go before the BoCC Monday, October 21st for approval to submit (upload) to U.S. Treasury. I am preparing a cover letter for Randy's signature and the Agenda item as well.

Please review and provide me with your edits and comments. Thanks much!

(Eric – thank you for offering to review and provide comments – STK)

Sheree

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If you feel you have received this communication in error please notify us immediately by returning this e mail to the sender and deleting it out of your e-mail.



Draft Concerns and Comments: 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
GENERAL OBSERVATIONS		
<p>The proposed CFR:</p> <ul style="list-style-type: none"> • Does not track the RESTORE Act, it contains numerous inconsistencies, undefined processes, terms and documents, and notably the U.S. Treasury is still contemplating additional requirements. It is recommended and requested that the final CFR be succinct, comprehensive, and free of inconsistencies/contradictions and above all the U.S. Treasury should have all contemplated processes and guidance available for public comment before issuing a final CFR. Furthermore, the interaction between the planning and application processes should be better defined as well as the fund disbursement methodology. • Does not always track actual RESTORE Act language. It is recommended and requested that the final CFR language accurately and consistently track the RESTORE Act language, or simply reference the applicable section of the RESTORE Act. • Makes many references to “applicable” laws, CFRs, Circulars, guidance, etc., however, none of these “applicable” laws are ever specifically referenced. It is recommended and requested that these “applicable” laws, CFRs, Circulars, guidance, etc. be cited in the final CFR and the grant agreement. • Does not clarify the disbursement method of grant funds to Direct Components. Many of the Florida counties named in the RESTORE Act, such as Wakulla County, Florida, are small rural counties and it would present a hardship if the grant program is established on a “cost reimbursement” only basis. It is recommended and requested that the CFR allow advance payments or a drawdown as funds are needed; or, at a very minimum allow a first quarter advance and thereafter provide monthly or quarterly performance or deliverable based payments. • Does not address the need for Direct Components or sub-grantees of a Direct Component to be registered in the Federal System for Award Management (SAM) prior to a grant agreement being offered. It is recommended and requested that the final CFR clarify if registration in SAM will be a requirement of a Direct Component and sub grantees. • Makes many references that the U.S. Treasury is further considering issues and requesting comments on specific issues. It is unclear if the U.S. Treasury will amend the proposed CFR and reissue it for further comment “or” if the U.S. Treasury will make changes and then issue a final CFR without further public input. This uncertainty makes it difficult to plan or prepare for the receipt, management, staffing and expenditure of the RESTORE Act funds. It appears the CFR and guidance could be constantly changing and without the opportunity to comment. It is recommended and requested that the U.S. Treasury allow public comment on all substantive changes to the proposed CFR before issuing a final CFR. • Does not establish a clear hierarchy between the RESTORE Act, proposed CFR and the many referenced and unspecified “applicable” laws, CFRs, rules, guidance, etc. In the event of a conflict between terminology, definitions, processes, etc. it may be difficult, if not impossible, to determine which law, CFR, guidance, etc. should be followed. It is recommended and requested that the final CFR, or at a minimum the grant agreement, establish a hierarchy to avoid conflict, confusion and lessen the many potential interpretations that could result in the U.S. Treasury withholding grant funds and/or issuing adverse audit findings. 		



Draft Concerns and Comments: 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
PREAMBLE			
1	Section 1: Background, page 54801: Funds can be withheld if the U.S. Treasury determines that Trust Fund monies have been used for an unauthorized purpose, or if a condition of the use of funds has been violated.	Does not track RESTORE Act language, page 192, section (G) Compliance with Eligible Activities and page 193, (H) Compliance with Conditions.	CFR language should track or simply reference the RESTORE Act language.
2	Section II. This Proposed Rule, page 54801 and throughout the CFR: The CFR states the program will be run as a grant program consistent with federal laws, rules and policies pertaining to federal grants and OMB guidance, which includes financial management auditing and reporting requirements.	The specific federal grant and OMB laws, policies and guidelines are not listed; only a website is referenced with various CFRs. Not providing specific Laws, CFRs, Circulars, etc. may create confusion, conflicts of interpretation, adverse audit findings, and potential for withholding funds and create obstacles to reviewing/approving grant application, awarding and managing grant applications, funds, sub-awards and/or reimbursement requests.	The final CFR and grant agreement should: <ul style="list-style-type: none"> • Clearly define the specific federal requirements applicable to the Direct Components and sub-grantees. • Clarify if registration in SAM (Federal System for Award Management) will be a requirement for RESTORE Act entities and sub-grantees.
3	Section II. Direct Component, page 54802: Applicants will be required to demonstrate compliance with applicable environmental laws.	Not listing the environmental requirements will create compliance, documentation and application challenges. Listing the applicable requirements in the final CFR and grant agreement will help Direct Components, especially small local governments; gauge the time, cost and effort involved in preparing the Multi Year Implementation Plan, project applications and documentation and in making sub-awards.	The final CFR and grant agreement should specify the applicable environmental laws to be followed and the criteria for demonstrating compliance with such laws.
4	Section II. Direct Component, page 54802: The CFR states that “After a grant agreement is signed, funds will be disbursed to the States, counties, and parishes <u>as they are needed for authorized</u>	The proposed CFR does not clarify the method of grant fund disbursements to Direct Components. Many of the Florida counties named in the RESTORE Act, such as Wakulla County, Florida, are small rural counties and it would present a hardship if the grant program is established on a	Allow advance payments or drawdown as funds are needed; or, at a very minimum allow a first quarter advance and thereafter provide monthly or quarterly performance or deliverable based payments. The final CFR and grant agreement should clarify frequency



Draft Concerns and Comments: 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
	expenditures.”	<p>“cost reimbursement” only basis.</p> <p>It appears based on this statement that grant funds will be advanced or setup on a drawdown basis.</p>	and method of financial reporting, grant fund disbursement methodology, etc. and it these activities will be performed through an automated system such as ASAP, LOCCS, etc.
5	<p>Section II. Direct Component, page 54802: States that the Treasury’s statutory role is not to determine which projects and programs will be restoring the Gulf Coast region.Treasury will review applications to determine that they documents, with some specificity, compliance with eligibility and other requires in the Restore act and federal laws and policy applicable to grants. When reviewing applications, Treasury will generally avoid exercising its own judgment on matters requiring specific expertise, such as whether a proposed restoration projects is based on best available science....”</p>	<p>Treasury states in the review and approval of an application (which could also mean the Multi Year Implementation Plan for Direct Components, however this is not clear) it will generally avoid exercising its own judgment on matters requiring specific expertise, etc. However, it has the right to audit and make an “after the fact” determination that could have a financial impact on the grantee.</p>	<p>Recommend and request that the Treasury give much thought to how it will approve Multi Year Implementation Plans, grant applications and the specific requirements that must be met and the laws to be followed to ensure that grantees are successful; and, to minimize “after-the-fact” interpretations of the RESTORE Act, CFR and Multi Year Implementation Plan resulting in withholding of grant funds, adverse audit findings, etc.</p>
6	<p>Section II. Direct Component, page 54802: The U.S. Treasury invites comments on the application process and on Treasury’s proposed approach for evaluating requests for funding, particularly those elements in funding requests that require special expertise and judgment.</p>	<p>The U.S. Treasury is inviting general and specific comments that could potentially and significantly amend the proposed CFR.</p> <p>It is unclear if the Treasury will adopt and amend the proposed CFR based on input and if any changes would be open to public comment.</p> <p>Not knowing what other potential changes and requirements will be mandated and expected</p>	<p>Recommend and request that if significant changes are made to the proposed CFR that those changes be published and open for public comment before issuing the final CFR.</p>
7	<p>Section II. Request for Public</p>		



Draft Concerns and Comments: 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
	<p>Comments, page 54803: The U.S. Treasury invites comments on two specific questions summarized as:</p> <ul style="list-style-type: none"> • <i>Additional procedures and auditing requirements that should be required.</i> • <i>Other procedures under other law to pay for admin expenses attributable to TF management.</i> 	<p>make it difficult for any planning or preparation at the local level.</p>	
8	<p>Section III. Description of Need for the Regulatory Action, page 54803: CRF states “Treasury is analyzing the proposed regulation in accordance with the National Environmental Policy Act, and will complete its analysis before finalizing the regulation.”</p>	<p>This is the only specific reference to NEPA in the proposed CFR, it is important that the scope of this review be clarified.</p> <p>It appears that the proposed CFR could be finalized and issued without public comment in regards to NEPA compliance.</p> <p>The scope of this analysis is unclear and it should be made available as part of the CFR’s review.</p>	<p>The final CFR and grant agreement should clearly state at what level and when NEPA analysis will be required. For instance, will this be a required component of the Multi Year Implementation Plan or will it be on a case by case basis for applicable projects?</p> <p>Public comment on this requirement should be allowed prior to issuing the final CFR.</p>
9	<p>Section III. Affected Population, page 54803: State entities may apply to the Treasury Department for funds under the Direct Component, and to the Gulf Coast Ecosystem Restoral County for grant funds under the Spill Impact Component.</p>	<p>CFR Preamble appears to allow state entities to bypass direct components for funding requests.</p> <p>A process, application or requirements for a State entity to make application for funds direct to the U.S. Treasury <u>is not</u> included in the proposed CFR.</p> <p>Does not appear to be consistent with RESTORE Act Funds allocation language.</p>	<p>Recommend and request this sentence be stricken from the proposed CFR since it does not appear to be consistent with the RESTORE Act or applicable to the State of Florida.</p>
10	<p>Section III. Baseline, page 54804: “The amounts made available from the Trust Fund will <u>continue efforts that provide for the long-term health of the ecosystems</u></p>	<p>It appears that the Preamble is inconsistent in the use of wording describing the general use of the RESTORE Act funds.</p> <p>How long is “long-term” and will the Treasury look</p>	<p>CFR language should track RESTORE Act language throughout the proposed CFR or simply reference the applicable RESTORE Act section.</p> <p>The term “long-term” should be defined or deleted.</p>



Draft Concerns and Comments: 31 CFR, Part 34: Gulf Coast Restoration Trust Fund

	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
	and economy of the Gulf Coast region”	at a project to see how long it will have an impact?	
CFR 34, SUBPART A: GENERAL PROVISIONS			
11	Subpart A § 34.2, page 54806 Definitions of “administrative cost” and “administrative expenses”.	It is unclear: <ul style="list-style-type: none"> • Why there are two definitions for “administrative “cost” and “administrative expenses.” Both definitions are vague. • Why “administrative costs” are permissible only for “indirect” costs, especially since direct and indirect are not defined. • What is meant by “general” management functions, general ledger accounting, budgeting, human resources services, general procurement services and general legal services...” • If administrative funds can be used by Direct Components for management, oversight and monitoring of projects, especially if sub-awards are made. 	Provide one definition for “administrative” costs and expenses, or provide the specific OMB circular, CFR or statutory definition applicable to a grant entity. Ambiguous terms used within the definition should be clarified, e.g., what is meant by general management, general legal services. Clarify if oversight and monitoring is a function to be performed by Direct Components under administrative cost (as for administrative expense). Provide definitions for administrative activities and costs, programmatic activities and costs, direct and indirect costs, and program income, unless there is a specific OMB Circular or CFR definition that should be referenced. Administrative costs/expenses for direct and indirect activities should be allowed.
12	Subpart A § 34.2, page 54806 Environmental review and compliance procedures means the applicable Federal and state environmental laws.	Same concerns as mentioned earlier regarding ambiguity of the general and/or specific environmental laws. In the event of a conflict between the RESTORE Act, CFR, Grant Agreement, and the numerous unspecified laws, circulars, guidance it is unclear which would prevail should a conflict arise for compliance requirements.	The final CFR and grant agreement should provide the specific environmental laws to be followed. Recommend that the CFR and Grant Agreement establish a hierarchy among the multiple referenced applicable but unspecified laws, guidance, etc. to avoid confusion and potential interpretation conflicts.
13	Subpart B §34.104, page 54807: Grantees must minimize the time between the receipt of funds and the disbursement of those funds.	Seems to imply that funds will be distributed to grantees before project implementation as advance payments.	Clarify: <ul style="list-style-type: none"> • Methodology for grant disbursements. • What is meant by “minimizing the time” between receipt of



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
			<p>funds and disbursement of funds</p> <p>If funds are advanced, will grantees be required to deposit advance grant funds into a separate interest bearing account and report interest earned as program income; and will grantees be allowed to keep interest earned (program income) for new or enhancing projects.</p>
14	<p>Subpart C §34.200(a) (1) page 54807: References to costs incurred conforming to “applicable” OMB circulars and guidance.</p>	<p>Same concerns as mentioned earlier, there are numerous and unspecified applicable Federal laws, OMB circulars, guidance, regulations, etc.</p> <p>In the event of a conflict between the RESTORE Act, CFR, Grant Agreement, and the numerous unspecified applicable laws, circulars, guidance it is unclear which would prevail should a conflict arise for compliance requirements.</p>	<p>The CFR and grant agreement should clarify the specific laws, OMB Circulars, guidance, regulations etc. to be followed and required for compliance.</p> <p>Recommend that the CFR and Grant Agreement establish a hierarchy among the multiple referenced applicable but unspecified laws, guidance, etc. in the event of a conflict.</p>
15	<p>Subpart C §34.200(a)(3)page 54807 References to environmental review and compliance and pre-award costs of environmental review and compliance.</p>	<p>Not listing the environmental laws and requirement will create compliance, documentation and application challenges.</p> <p>Listing the applicable requirements in the CFR will help small local governments gauge the time, cost and effort involved in preparing project applications and documentation.</p> <p>Very similar to the previous comment, actual criteria for pre-award costs is not defined. The CFR just references “applicable OMB circulars and guidance”. Clearly answering this question now will streamline how these costs are considered.</p> <p>It is not clear if these pre-award environmental review and compliance cost need to be identified in the Multi Year Implementation Plan, grant application, or a separate but yet to be defined process.</p>	<p>The general and specific environmental laws to be followed should be should be included in the CFR and the Grant Agreement should be specific to an approved program, project, or activity.</p> <p>Define eligible pre-award costs and explain the process and criteria concerning eligible pre-award costs.</p> <p>Clarify if costs incurred are before or after a Direct Component submits and receives approval of its Multi-Year Implementation Plan, grant application or some other process.</p>



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
16	<p>Subpart C §34.200(b) page 54707 Direct Component may use funds to satisfy the non-Federal cost-share of a project or program that is an eligible activity and authorized by Federal Law.</p>	<p>The CFR should clarify that RESTORE Act funds can only be used as cost-share for projects that meet both requirements: authorized under the RESTORE Act as an eligible activity and under Federal law.</p> <p>The implication could be that entities attempt to use RESTORE Act funds for other federal grant programs that may not also be eligible activities under the RESTORE Act itself.</p> <p>Rule is silent on the use of RESTORE Act funds being used for non-State cost-share for a project or program that is an eligible activity.</p>	<p>Recommend that the CFR make it clear that a Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non- Federal cost-share of a project or program that is an eligible activity <u>as defined in § 34.201</u> and which is authorized by Federal law.</p> <p>Advise if RESTORE Act funds can be used for non-state cost-share for a project or program that is an eligible activity under the RESTORE Act.</p>
17	<p>Subpart C §34.201 Eligible Activities for the Direct Component page 54807</p>	<p>The language does not appear to track the RESTORE Act language. Specifically (j) concerning planning and (k) describing administrative costs.</p>	<p>The CFR should track the RESTORE Act language or simply refer to the appropriate RESTORE Act section to avoid confusion and conflicts.</p>
18	<p>Subpart C § 34.205, page 54808, Limitations on administrative costs and expenses and language “including staff” costs.</p>	<p>Paragraphs (a) and (b) do not track the RESTORE Act precisely.</p> <ul style="list-style-type: none"> • (a) adds the phrase “including staff” to the scope of administrative cost (states and coastal political subdivisions • (a) states that the 3% is applied to the total amount of funds received under “each grant”. This presumes multiple “grants”. If this is the case, this should be described somewhere in the CFR. <p>Is the 3% applied on an annual basis (language seems to suggest that).</p>	<p>The CFR should track the RESTORE Act language or simply refer to the appropriate RESTORE Act section to avoid confusion and conflicts.</p> <p>If multiple grants are anticipated, as suggested pursuant to (a), then the CFR should describe that process of multiple “granting”.</p>
SUBPART D: § 34.3 Gulf RESTORE PROGRAM – DIRECT COMPONENT (WAKULLA COUNTY)			
19	<p>Subpart D § 34.300, General,</p>	<p>The grant application, the process and the grant</p>	<p>Request the U.S. Treasury not to defer further detail on grant</p>



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
	page 54808: Direct Component describing award in form of “grant”.	agreement, applicable laws <u>are not</u> provided in the CFR and it appears to anticipate additional guidance, processes and documents. The vagueness and uncertainty of expectations makes it very difficult to anticipate and plan for administration of the funds.	procedures, application, process, polices, procedures etc. Define it now in the proposed CFR and allow for public comment.
20	Subpart D § 34.301, Responsibility for Administration, page 54808: Treasury may develop and apply policies and procedures later for awarding and administering grants.	Similar comment above in that this subsection states that U.S. Treasury “may develop and apply policies and procedures consistent with this subpart, applicable federal policies and the Act. While this preserves flexibility, Treasury should consider defining those procedures now.	Request the U.S. Treasury <u>not to</u> defer further detail on grant procedures, application, process, polices, procedures etc. Define it now in the proposed CFR and allow for public comment.
21	Subpart D § 34.303, Application Process, page 54808: Regulation should articulate the “application” process now.	<p>The proposed CFR states that Treasury will develop an “application” process for grants. The description of this process should be included in the regulation now as a new subsection for recipients to determine the effort to comply.</p> <p>The proposed CFR should define in this process whether multiple grants will be awarded or if it will be a single grant to a Direct Component. This process also needs to define the relationship between grantees and sub-grantees (i.e., if a Direct Component awards a project to a non-governmental entity how grant funds can be disbursed for project costs). Administration of this process needs to be defined.</p>	<p>Request the Treasury define the policies and procedures now since they go to the heart of the level of effort and staff resources necessary to plan for and administer a grant program.</p> <p>Recommend that the CFR define how all future policies and procedures will be promulgated, by Rule or some other process and be open to public review and comment.</p>
22	Subpart D § 34.303(a), Application Process, page 54808 Clearly identify when the multi-year implementation plan must be submitted.	<p>The timeframe to submit a grant application versus the Multi-Year Implementation Plan is unclear.</p> <p>The application process is undefined as stated above. It is unclear if the application and multi-year implementation plan are the same or two separate documents integrally tied together.</p>	<p>The CFR should clearly define the process for applying for funds and allow for public comment.</p> <p>If an application separate from the Multi Year Implementation Plan is going to be required, then the application should be made available for review and comment before implementing.</p>



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
			The CFR should allow for updates and amendments to the Multi Year Implementation Plan.
23	Subpart D § 34.303(a), Application Process, page 54808-09: Better define what is required to be in the MYIP, in particular, the criteria to evaluate success.	The CFR should provide guidance on what level of detail is required to be included in the MYIP. This will result in more uniformity of the MYIPs and streamline review. In particular, evaluation criteria can be technical, quantitative or qualitative and this will result in varying degrees of cost for data compilation. This subsection also states that the Treasury may require a “standard format” for the plans and additional information,	The CFR should provide better guidance on what must be included in the MYIP, in particular the evaluation criteria and allow for public comment before implementing. If the Treasury is going to develop and require a standard format for the Multi Year Implementation Plan it should develop the format, include it in the proposed CFR and allow for public comment.
24	Subpart D § 34.303(a), Application Process, page 54809: Identifying whether applicant has applied for another grant.	This requirement is virtually impossible to do in Florida, since a Florida “clearinghouse” of projects was created and grantees do not know if they have applied for a grant under the Spill Impact or Comprehensive Plan components, or if another entity submitted/was awarded funds for the same or similar project.	Until there is more clarity on the use of the Florida “clearinghouse” for projects and what projects are to be funded or included in which plans, this requirement cannot be meet. Suggested revision: The applicant must also state whether it has applied for <u>and been awarded funding for</u> a program, project, or activity under any other part of the Act.
25	Subpart D § 34.303(b) (1), page 54809: Pre-July 6, 2012 conditions met need clarification.	This section seems to be geared towards Louisiana’s Master Plan and allowing that process to meet some of the requirements for direct funds before the date of enactment of the Act. But the language is unclear. (b) states that an applicant can satisfy some of the requirements for preparing their MYIP or their required certifications if certain conditions are met. These conditions need clarification. How does an applicant, “...establish conditions to carry out projects, programs and activities that are substantively the same as conditions required in	The final CFR should define how an applicant can establish conditions to carry out projects, programs and activities that are the same as conditions required in §34.303(a). Clarify if this section is only specific to certain states.



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
		<p>§34.303(a)”? Is a Resolution required? A procurement process? Are certain financial and reporting requirements to be put in place? The CFR should define how an applicant will meet these requirements. Additionally, can the applicant meet these same conditions between July 7, 2012-present?</p>	
27	<p>Subpart D § 34.303(c), Application Process, page 54809: Clarify level of supporting documentation to satisfy MYIP and certification requirements.</p>	<p>(c) states that the applicant must include supporting information that the activities meet the statutory requirements for eligibility, public review was available for 30 days and based on meaningful public input.</p>	<p>The final CFR should define the level of supporting information is required and “meaningful” public input, or delete it from the CFR.</p>
28	<p>Subpart D §34.304, Grant Award Process, page 54809: Clarify relationship between submittal and approval of MYIP, application and grant award/agreement.</p>	<p>Is the MYIP part of the application or is the MYIP approved before application is made? Unclear but seems to suggest that “application” and the submittal of the MYIP are either one in the same or concurrent. Another key component is that the regulations should define what happens if a revision is necessary to the MYIP (which is likely attached as the scope of work to the Grant Agreement). Typical grant guidance and policy include a process for making changes among cost categories over certain thresholds and when “sign off” needs to occur by a Grant Administrator. While this is likely something that will be addressed by the previously mentioned forthcoming “application process”, knowing how to make course corrects in the implementation process is important now.</p>	<p>Upon determining that <u>the elements for the multi-year implementation plan have been met</u>, an application <u>may be submitted</u> <u>meetings</u> the requirements of these regulations and the Act. <u>Upon submittal and approval of an application</u>, Treasury will offer the applicant a grant agreement that complies with subpart I and Federal policies applicable to grants.</p>



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
29	Subpart D § 34.305(a), Use of Funds, page 54809: Need force majeure clause dealing with unexpended funds.	Need to account for circumstances beyond the control of the grant applicant in not spending funds by the end of the grant period, but does current language of “or conclusion of the project, program or activity...” provide enough protection?	<ul style="list-style-type: none"> • Revisions, if necessary, to be developed (look at standard grant agreements on this). • Are unspent funds at the end of a fiscal year or grant period considered “program income” and, can any interest earned
30	Subpart D § 34.305(b), Use of Funds, page 54809: States that preference for contracts can be given to vendors located, headquartered, principally engaged in business where the project is located.	<p>The CRF is silent on “how” much preference can be given to “state” vendors.</p> <p>The CRF is silent on “local” vendor preference.</p>	<p>Request the U.S. Treasury provide clarification/qualification on “preference.”</p> <p>Request that local vendor preference be allowed in order to stimulate the local economy.</p>
31	Subpart D § 34.306, Reporting, page 54809	CFR requires timely reports as prescribed by the Treasury.	The final CFR should provide clarification on frequency, timeliness, reporting elements and process of reporting requirements.
32	Subpart D § 34.307, Recordkeeping, page 54809	CFR states that records must be maintained as prescribed by Treasury.	The final CFR should provide clarification on records to be kept, length of time for keeping records and records destruction process.
33	Subpart D § 34.308, Audits, page 54809	CFR states that the Treasury and Treasury Inspector General may conduct audits and review of grantees accounts and activities as deemed appropriate by Treasury.	<p>The final CFR should define what is meant by “deemed appropriate.”</p> <p>Please advise if the U.S. Treasury anticipates developing some type of “Risk Analysis” tool/criteria and then creating an audit or monitoring schedule based on the risk level assigned to a project.</p>
SUBPART I: § 34.8 AGREEMENTS			
34	Subpart I §34.801, Grant Agreement, page 54812: States that the grant agreement used must conform to all federal laws,	This statement is unclear. If the U.S. Treasury is going to offer the Grant Agreement, then it is their burden to ensure the Grant Agreement covers all of the requirements and expectations to be met by	<p>Recommend this section be reworded:</p> <p>The U.S. Treasury grant agreement will conform to all federal laws, regulations, and policies for grants including audit</p>



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
	regulations, and policies for grants including audit requirements.	the Grantee.	requirements. Grant agreements offered to sub grantees shall also conform to the requirements of the grant agreement between the U.S. Treasury and the Grantee.
35	<i>Subpart I §34.802, Certification, page 54812:</i> Supporting documentation for certifications	(g) states that written documentation will be required for the certifications contained in the subsection.	The subsection should describe any required supporting documentation.
36	<i>Subpart I §34.802(e), Certification, page 54812:</i> Procurement requirements	<p>The subsection includes a certification requirement that “...this Grantee has followed in every materials respect the applicable procurement rules applying to contracts in the Grantee’s State for each project, ... including rules for competitive bidding and audit requirements.”</p> <p>Several other places in the Regulation require that all applicable federal grant requirements must be met (assuming procurement).</p>	This subsection should address the relationship between federal and state procurement rules in the context of this certification so that it is clear this certification does not relieve the application of any federal procurement requirements standard in most federal grant agreements.
36	<i>Subpart I § 34.803(b), Conditions, page 54812:</i> Advance payments	<p>The process outlined in this subsection seems to indicate that grant funds will be requested and disbursed on an ongoing basis. If this is the case, then the Regulation should define key processes such as “advance payments” common to federal grant guidelines.</p> <p>The CFR as written requires Direct Components to follow state procurement laws; it is unclear if Florida counties will be able to apply local procurement policies and procedures. Chapter 287, Florida Statutes which is Florida procurement law provides for much higher competitive solicitation thresholds. A comparison between State law and Wakulla’s Purchasing Policy and Procedures has not been completed but State law</p>	<p>This Grantee must track program income and use program income for purposes of the grant before requesting more program funds <u>in accordance with applicable advance payments or reimbursement procedures</u>.</p> <p>The CFR needs to clarify if a Direct Component and sub-grantees must follow only the State procurement laws or if they are also subject to local procurement policy and procedures, or follow whichever is the most restrictive.</p>



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	<i>Issue and Section Reference</i>	<i>Why An Issue/Section of Concern</i>	<i>Comments</i>
		could potentially have additional or less requirements depending on the dollar threshold and procurement type.	
37	Subpart I § 34.803(c), Sub-awards, page 54812:	Similarly to the previous comment, subsection (c) states that the Grantee and subawardee must execute the written agreement before any funds are disbursed to the subawardee, which indicates that a coastal political subdivision must receive an advance payment before making subawards and a designated entity under the Spill Impact will similarly receive advancement payments.	Prior to making any subaward, this Grantee must execute a legally binding written agreement with the entity receiving the subaward. This Grantee and the subawardee must execute the written agreement before any funds are disbursed to the subawardee <u>in accordance with applicable advance payments or reimbursement procedures</u> . The written agreement will extend all the applicable program requirements to the subawardee .
39	Subpart I §34.803(e)(3), page 54812: Written documentation requirements	Written documentation requirements are not described.	The Regulation should provide more detail as to the written documentation requirements in this subsection.
40	Subpart I §34.804(a) Records and personnel availability.	It's somewhere clear what is required to make records available to Treasury for assessing compliance, but clarify the requirements to make personnel available.	This subsection should include additional language such as how records are to be made available (hard copy consistent with routine government records retention requirements or posted electronically and available for inspection). Additionally the subsection should clarify how personnel must be “made available” to Treasury for assessing compliance.