

County of Monroe

The Florida Keys



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Department of the Treasury
Attention: Ms. Janet Vail
Room 2050
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

November 4, 2013

Via Rulemaking Portal: www.regulations.gov

Re: *Comments on Notice of Proposed Rulemaking, Department of the Treasury. 31 C.F.R. Part 34. Federal Register Number: 2013-21595. Docket ID: TREAS-DO-2013-0005-0001; RIN: 1505-AC44.*

Dear Ms. Vail:

Please accept these comments for the abovementioned Notice of Proposed Rulemaking for 31 C.F.R., Part 34 (“the Rule”) concerning the investment and use of amounts deposited in the Gulf Coast Restoration Trust Fund established in the Treasury by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revised Economies of the Gulf Coast States Act of 2012 (“RESTORE Act” or “the Act”). Monroe County (“the County”) appreciates the significance of the Rule and the opportunity to provide comments in this rulemaking process.

It is important to note Florida's degree of coastal vulnerability to the Deepwater Horizon Oil Spill disaster. With almost 770 miles of coastline on the Gulf of Mexico, Florida constitutes almost half of the combined coastlines of the five Gulf States. Within Florida, the County (which includes the Florida Keys within its boundaries) is the largest county in geographic area and is one of only 4 designated Areas of Critical State Concern. The County has a total area of 3,737.15 square miles, of which 996.91 square miles (or 26.68%) is land and 2,740.24 square miles (or 73.32%) is water. The Florida Keys extend 233 miles southwestward in a gradual arc from Biscayne Bay to the Dry Tortugas in the Gulf of Mexico. The Florida Keys contain one of the Country's most diverse assemblages of terrestrial, estuarine, and marine flora and fauna. The region includes the vast freshwater wetlands of the Florida Everglades and Big Cypress, the transitional areas where the waters of the Everglades discharge into the estuarine environment of Florida Bay, one of the world's largest coral reef tracts (the only one in the continental United States), the largest contiguous seagrass community in the world and unique subtropical habitats in the island chain. The environmental setting of the Keys is exceptional and unique, making the region a major travel destination. Due to the County's location; it's unique and diverse biota; the conservation requirements and habitat protections; the Keys archipelago is a unique part of the natural heritage of the United States. In the Florida Keys, the economy is integrally linked to, and dependent upon, the health of our environment.

The impact of the Deepwater Horizon Spill on the five (5) states across the Gulf of Mexico has been devastating, but implementing the Act provides a much needed opportunity for the recovery to start addressing the environmental and economic impacts we all felt. This Rule will implement the Act which will guide that recovery. While the County strongly supports the expeditious implementation of projects and distribution of funds under the Act, we wish to underscore the importance of this Rule. This Rule will set the stage for a restoration program that will be implemented over several years. Creating a solid roadmap now for that recovery is absolutely critical to its success.

Please accept the attached comments on the Rule in strike/underline form. We understand that this is a first Draft of the Rule, but in the spirit of providing the most meaningful input, we believe that this format will be most helpful. Our comments are provided addressing the following key issues:

The Process

- Create new definitions, or modify existing ones, to assist in the interpretation of terminology and process.
- Ensure consistency between the language in the Rule and the Act.
- Streamline documentation to meet requirements for plans, grant applications, environmental compliance and grant reporting.
- Provide direction on actual project implementation from the steps of inclusion in a plan to actual construction, monitoring and assessment.
- Define all procedures now (such as content of plans, reporting, recordkeeping and auditing) and do not defer this guidance for development at a later date or, in the alternative, create a transparent process for finalizing those procedures.
- Identify a process to review and revise the Rule if necessary.

The Flow of Funds

- Clarify and coordinate the steps for submitting plans, grant applications, grant awards, and ultimately, any needed approvals before funds can be disbursed.
- Better define the flow of funds through the use of advance payments and reimbursements.
- Provide reimbursement for all pre-award costs incurred to date.
- Articulate how grant awards and sub-awards will be made.
- Clearly define direct and indirect costs that are related to planning and administration.

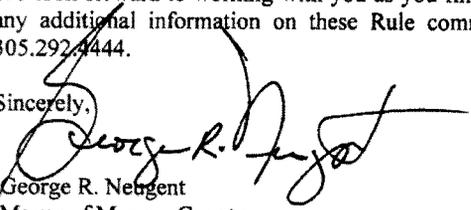
The Planning and Environmental Compliance Processes

- Create clear requirements for the content of multi-year implementation plans ("MYIPs").
- Define the National Environmental Policy Act ("NEPA") requirements in the implementation process through the use of categorical exclusions, environmental assessments and environmental impact statements for both Plans and projects.
- Define how plans can be modified and what the approval process will be for them.

The County appreciates the enormous task of finalizing this Rule and the tremendous effort it will take to review and address the significant comments that likely will be received. Because there is so much interest in this Rule, Treasury could consider publishing a supplemental draft for additional public review and comment. To emphasize, the County does not want to delay the process for funds distribution, but we do believe this Rule is too important to not resolve these issues now. We are at the forefront of creating a multi-year restoration and recovery program for the Gulf of Mexico. Having a Rule that is unclear will result in more delay and slow down that process that is so desperately needed.

We look forward to working with you as you finalize this Rule and consider ourselves a partner in that process. For any additional information on these Rule comments, please do hesitate to contact myself or Lisa Tennyson at 305.292.4444.

Sincerely,


George R. Neigent
Mayor of Monroe County

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.

34.205 Limitations on administrative costs and administrative expenses.

34.206 Audited financial statements and audits.

Subpart D – Gulf RESTORE Program - Direct Component

34.300 General.

34.301 Responsibility for administration.

34.302 Allocation of funds.

34.303 Application procedure.

34.304 Grant award process.

34.305 Use of funds.

34.306 Reports.

34.307 Recordkeeping.

34.308 Audits.

Subpart E – Gulf RESTORE Program - Comprehensive Plan Component

34.400 General.

34.401 Responsibility for administration.

34.402 Application procedure and grant award process.

34.403 Use of funds.

34.404 Reports.

34.405 Recordkeeping.

34.406 Audits.

Subpart F – Gulf RESTORE Program - Spill Impact Component

34.500 General.

34.501 Responsibility for administration.

- 34.502 Allocation of funds.
- 34.503 State Expenditure Plans.
- 34.504 Grant administration.
- 34.505 Use of funds.
- 34.506 Reports.
- 34.507 Recordkeeping.
- 34.508 Audits.

Subpart G – NOAA RESTORE Act Science Program

- 34.600 General.
- 34.601 Responsibility for administration.
- 34.602 Activities for the NOAA RESTORE Act Science Program.
- 34.603 Limitations on activities.
- 34.604 Limitations on administrative expenses.
- 34.605 Records.
- 34.606 Recordkeeping.
- 34.607 Audits.

Subpart H - Centers of Excellence Research Grants Program

- 34.700 General.
- 34.701 Responsibility for administration.
- 34.702 Allocation of funds.
- 34.703 Application procedure.
- 34.704 Use of grant funds and eligible activities.
- 34.705 Ineligible activities.
- 34.706 Reports.
- 34.707 Recordkeeping.
- 34.708 Audits.

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.

Other Section of Proposed language as appropriate.

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.

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.

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

Comment [ED2]: Clearly define advance payments. Introduce the concept of a "recipient".

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.

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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.

Comment [ED3]: The first part of this is standard language. Added the "method of payment" to the definition.

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

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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.

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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 goods and services for the entity's own use are not considered subawards. Such a contract creates a procurement relationship between the parties.^{xvii}

Contractor means a dealer, distributor, merchant, or other seller providing good or services that are required for the conduct of the 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.^{xviii}

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.^{xix}

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

Comment [ED4]: Important to define contract for a procured service versus a subaward that an entity "awards" to another entity after an application.

Comment [ED5]: Recognize distinction in federal grant guidelines between contracts and subawards.

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Comment [ED6]: 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]: Spill impact component requires an approval process by the Council, yet under Direct Impact Component, 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.

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- 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.

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.^{xv}

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

Comment [ED8]: Since State Expenditure and Comprehensive Plan are both defined, this should be defined.
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Comment [ED9]: 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 [ED10]: Standard grant terminology.

Comment [ED11]: Clearly define planning cost as a "direct" cost not subject to the 3% cap.

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Comment [ED12]: Provides flexibility that any other established entity or agency can develop projects and receive funds, but only after some "authorized" act.

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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}

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 [ED13]: The concept is fairly consistent in federal guidance and the language at the end is precisely from the RESTORE Act.

Comment [ED14]: This language is from OMB Uniform Guidance and sets up framework for subawards and subrecipients defined below.

Comment [ED15]: Methods of project implementation as terminology defined in federal grant guidelines: performance through "contracts" or subawards.

Comment [ED16]: Concept is outlined in most federal guidance.

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Comment [ED17]: Captures possibility that another authorized entity, such as the Florida Gulf Consortium, by law or agreement prepared the State Expenditure Plan.

Comment [ED18]: Recognize the flow and award of grant funds to other entities for project implementation.

Comment [ED19]: Similar to concept in Recipient definition.

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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^{xxxii} to be used funds for implementing the Direct Component of the Gulf RESTORE Program.

Comment [ED20]: Better tracks the language in the Act. Rule just has 35% going to "States" and should 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^{xxxiii} 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 [ED21]: 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 OMB circulars and guidance, the Act and other Federal policies and regulations.^{xxxii} With advance payments or other methods of disbursement, Grantee recipients must minimize the time between the receipt of funds and the disbursement of those funds.

Comment [ED22]: 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 [ED23]: The "minimization" requirement would only apply to advance payments because minimizing the time between receipt of funds necessitates getting it in advance.

§ 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 for an activity can to receive funding.^{xxxiii}

Comment [ED24]: Note that the Act does not require the multiyear implementation plans must be approved before receiving funding. This is distinct from the requirement that state expenditure plans must be approved before funds are received.

(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.

Comment [ED25]: Using consistent terminology.

(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.^{xxxiv} 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]: 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.^{xxxv} All such costs should also be identified in a grant application.

Comment [ED27]: Suggested language is intentionally flexible to allow a grant to 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.^{xxxvi} 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.

Comment [ED28]: 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.

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.

Comment [ED29]: Slight reorganization to track the Act.

(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 Deepwater Horizon 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.^{xxxvii}

(k9) Administrative costs of complying with this Section.^{xxxviii}

Comment [ED30]: This tracks the language in the Act. Planning should be included as a definition.

(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:

Comment [ED31]: Tracks the language in the Act.

(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:

Comment [ED32]: Track the section of the Act.

(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 be 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.~~ ²⁰⁰⁸ ~~The three percent limit is applied to the total amount of funds received under each grant, beginning with from the first fiscal year it receives funds through the end of the most recent fiscal year.~~

Comment [ED33]: 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. Edit tracks the Act.

(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 ~~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.^{xi}

Comment [ED34]: Proposed OMB Uniform Guidelines use "Award Agreement" not "Grant Agreement".

§ 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^{xii} for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants directly from the Trust Fund.

Comment [ED35]: Better tracks the language in the Act to specifically reaffirm money flows "directly" to local governments.

Comment [ED36]: Again, preserving the "direct" distribution of funds.

- (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 [ED37]: 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 the³⁰³. The applicant must submit a multiyear implementation plan to Treasury describing each program, project, and activity, applied for either individually or collectively, for which it seeks funding is sought. 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. Plans can be phased or incremental and may be modified. 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 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.³⁰⁴

§ 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. Plans can be phased or incremental and may be modified. Unexpended funds at the

Comment [ED38]: 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 [ED39]: Better tracks the Act.

Comment [ED40]: Allows coastal political subdivisions to jointly pursue eligible activity funds.

Comment [ED41]: Specify that MYIP should only include components funded under the Direct Component.

Comment [ED42]: Act says "may".

Comment [ED43]: If application is made, it doesn't mean award received.

Comment [ED44]: If that grant is still pending, then it should be able to be funded with Direct Component funds.

Comment [ED45]: Create 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 [ED46]: Adopt a "plan" not each program, project or activity individually.

Comment [ED47]: Paragraph tracks the "conditions" language in the Act and §34.802.

Comment [ED48]: 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.

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.

Grantee/Recipients must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

Grantee/Recipients 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 on the 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.^{xiv} 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. Plans can be phased or incremental and may be modified. 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.

Comment [ED49]: If you apply, it doesn't mean you got the award and shouldn't be penalized because you may not get it.

(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.~~

(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 ~~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

Comment [ED50]: 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 [ED51]: Renamed the same process as Direct Component.

Comment [ED52]: Adopt a "plan" not each program, project or activity individually.

Comment [ED53]: 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 [ED54]: Consistent language throughout the Rule.

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.

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.

Comment [ED55]: See 34.802 below also using the concept of "entities".

(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 with 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.~~ ^{slv} 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 [ED56]: 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 [ED57]: 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 [ED58]: 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 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 [ED59]: 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 Grantee/Recipient 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.

Subpart J – Additional Guidance on Implementation Activities.

§ 34.900 General.

This subpart describes procedures for developing addition guidance described in subparts D, E, F, G, H and I of this part.

§ 34.901 Form and Content of guidance.

(a) Technical guidance for Treasury and Council management of the Trust Fund during implementation of the Act will be normally issued in the form of Regulations, Circulars, Manuals, or Pamphlets, or other appropriate form of guidance.

(b) Guidance on the following subjects shall be promulgated in accordance with paragraphs (c) and (d) of this section:

(1) Treasury policies and procedures for Direct Component grant applications, the standard format for development of the Multi-year Implementation Plan and State Expenditure Plan, phasing or incremental

Comment [ED60]: Intent of Section is to consolidate in one place additional policies and procedures to be developed later.

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planning and grant approaches, project documentation requirements, treatment of previously approved projects and programs, awards, expenditures, a program to monitor compliance, reporting, recordkeeping and audits.

Comment [ED61]: 31 C.F.R. §§ 34.301, 303 and generally under Subpart D.

(2) Council policies and procedures for the Comprehensive Plan Component for selecting Comprehensive Plan projects and programs to be funded, assignment of responsibility for overseeing and implementing projects and programs, Project documentation requirements, treatment of previously approved projects and programs, awards, expenditures, a program to monitor compliance, reporting, recordkeeping and audits.

Comment [ED62]: Subpart E.

(3) Council policies and procedures for the Spill Impact Component including a standard format and content for the State Expenditure Plan, the grant application process, project documentation requirements, awarding and administering grants, a program to monitor compliance with its award agreements reporting, recordkeeping and audits.

Comment [ED63]: Subpart F.

(4) NOAA policies and procedures for the NOAA RESTORE Act Science program including consultation procedures with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission and a program to monitor compliance with its grant agreements and interagency agreements funded through the Trust Fund.

Comment [ED64]: Subpart G.

(5) Treasury policies and procedures for awarding grants to the Gulf Coast States, who will use the amounts to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence and a program to monitor compliance with its grant agreements.

Comment [ED65]: Subpart H.

(6) Procedures applicable to award 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 including the process for making subawards.

Comment [ED66]: Subpart I.

§ 34.902 Process to develop and revise guidance.

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(a) Treasury and the Council shall develop the six guidance memoranda described in §34.901(b) of this section for approval by those respective entities. The following procedures shall apply to the specific guidance memoranda described in this section:

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(1) Guidance memoranda shall be consistent with this part, applicable law, and achieving the goals and purposes of the Act.

(2) Treasury and the Council shall afford the public an opportunity to comment on each guidance memorandum prior to approval through the issuance of a notice of availability in the Federal Register.

(3) Approved guidance memoranda shall be made available to the public upon adoption.

(4) The guidance memoranda specifically referenced in this part shall be developed by _____, 2014.

(b) Treasury and the Council may, whenever it is necessary, revise guidance memoranda that have been completed. Such revisions shall be developed and approved consistent with the provisions of paragraph (a) of this section.

§ 34.903 Other guidance.

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Nothing in this part shall be considered or construed to preclude the ability of the Treasury or the Council from issuing other guidance or policy to assist in implementing the Act. Any such guidance or policy shall be consistent with applicable law, policy, and regulations.

Subpart K – Implementation process for projects. ^{xvii}

§ 34.1000 General.

Generally, eligible activities and projects shall be developed and implemented with the following process:

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(a) Award Agreement. The Award Agreement will be consistent with the Multi-Year Implementation Plan, Comprehensive Plan or State Expenditure Plan and describe the activities, tasks, and responsibilities to implement the projects or the phase or increment of a Plan.

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(b) Project documentation consistent with the Multi-Year or State Expenditure Plan. Project documentation shall be prepared to support meeting environmental review and compliance requirements for individual or phased projects. Eligible activity or project documentation shall be streamlined to meet all applicable federal and state environmental regulatory requirements and facilitate expeditious review and approvals.^{xlviii}

(c) Plans and specifications. During this phase, final design of the project is completed and plans and specifications are prepared. Plans and specifications contain the information necessary to bid and construct the project.

(d) Real estate acquisition. The lands, easements, and rights-of way necessary for the project acquired prior to construction.

(e) Construction. This phase is the actual construction of a project's components.

(f) Monitoring and assessment. After the project has been constructed, monitoring is conducted as necessary to assess the effectiveness of the project and to provide information that will be used for environmental review, compliance and criteria the applicant will use to evaluate the success or performance goals of the project.

Subpart L – Project documentation for environmental review and compliance^{xlix}

§ 34.1100 General.

This subpart describes procedures applicable to documentation for eligible activities contained within the Multiyear Implementation, Comprehensive and State Expenditure Plans in subparts D, E and F of this Part.

§ 34.1101 Content of project documentation.

(a) Project documentation shall provide information on eligible activity formulation and evaluation, engineering and design, estimated benefits and costs, environmental effects, any project phasing approaches and the additional information and analysis necessary for environmental review and compliance requirements. Project documentation shall provide information transitioning from a conceptual level of detail contained in the Multi-Year Implementation Plan, Comprehensive Plan or State Expenditure Plan, or Plan phase, and the detailed design necessary to prepare plans and specifications and permitting required to proceed to construction. To eliminate duplication with State and local procedures, Project documentation shall also address the factors of relevant State laws and support all environmental review and compliance actions.¹

(b) Project documentation shall:

- (1) Be consistent with the Act and applicable law, policy, and regulation;
- (2) In the case of a natural resource protection or restoration project, be based on the best available science;
- (3) Comply with all applicable Federal, State, and Tribal laws;
- (4) Contain sufficient information for proceeding to final design of the project, such as: additional project formulation and evaluation, environmental and/or economic benefits, engineering and design costs, environmental impacts, real estate requirements, and the preparation of the appropriate National Environmental Policy Act documentation;
- (5) Include a discussion of any significant changes in cost or scope of the project from that were presented in the requisite Plan; and
- (6) Include information supporting the certifications required in Section 311(t)(1)(E) of the Federal Water Pollution Control Act.

§ 34.1102 NEPA documentation.

(a) A recipient shall prepare the appropriate NEPA document to accompany the Project documentation if required or document consistency with a categorical exclusion.

(b) The NEPA official shall prepare the Record of Decision for the project documentation if required.

Comment [ED67]: Make clear distinction between plan development and requirements for actual project implementation. Streamline project documentation process to the extent practicable.

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Comment [ED68]: Clear recognition of the appropriate and required level of NEPA documentation at the project implementation phase.

Comment [ED69]: Make distinction that certifications are required in the requisite plan but documentation supporting those certifications should be evidenced at the project level consistent with 34.802(g).

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§ 34.1103 Fish and Wildlife Coordination Act Requirements.

(a) The recipient shall coordinate with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the requisite state environmental resource agencies, and other appropriate agencies in the preparation of Project documentation, as required by applicable law.

(b) Project documentation shall include a discussion of activities to be conducted for compliance with the Fish and Wildlife Coordination Act and other applicable laws.

(c) Project documentation shall be consistent with applicable law, policy, and regulations, coordination shall include preparation of the following documents as appropriate to the eligible activity:

(1) Planning Aid Letter that describes issues and opportunities related to the conservation and enhancement of fish and wildlife resources; and

(2) Draft and final Fish and Wildlife Coordination Act Reports that provide the formal views and recommendations of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, and the requisite state environmental resource agencies.

§34.1103 Project documentation submittal process.

(a) The recipient shall provide opportunities for the public to review and comment on the draft project documentation and NEPA document, in accordance with applicable law.

(b) Project documentation shall be submitted to the various required environmental review and compliance agencies as eligible activity or project thresholds necessitate.

Subpart M – Incorporation of NEPA and related considerations into the implementation process.ⁱⁱ

§ 34.1200 General.

This subpart describes procedures applicable to NEPA, 42 U.S.C. 4321, and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. Parts 1500-1508 documentation for eligible activities contained within the Multiyear Implementation, Comprehensive and State Expenditure Plans as well as the projects implemented consistent with those plans.

§ 34.1201 Consistency with NEPA.

(a) In implementing the Act, Federal and Non-Federal entities shall comply with the requirements of NEPA and applicable implementing regulations, including determining whether a specific action, when considered individually and cumulatively, will have a significant impact on the human environment.

(b) The _____ is the NEPA official responsible for compliance with NEPA for actions conducted to implement the Act.

§ 34.1202 Actions requiring an Environmental Impact Statement (EIS), Environmental Assessment (EA) or Categorical Exclusion (CE).

(a) Actions normally requiring an EIS are:

(1) Feasibility reports for authorization and construction of major projects.

(2) Proposed changes in projects which increase the size substantially or add additional purposes.

(3) Proposed major changes in the operation and/or maintenance of completed projects.

(4) The NEPA official may consider the use of an EA on the types of actions described in this paragraph if early studies and coordination show that a particular action, considered individually and cumulatively, is not likely to have a significant impact on the quality of the human environment.

(b) Actions normally requiring an EA, but not necessarily an EIS. Actions normally requiring an EA, but not necessarily an EIS, are:

(1) The Comprehensive Plan.

(2) Regulatory actions as appropriate.

(3) Changes to authorized projects or project under construction that were not considered in the project EIS or EA.

(c) Categorical exclusions (CE).ⁱⁱⁱ The following actions do not require separate NEPA documentation, either because, when considered individually and cumulatively, they do not have significant effects on

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the quality of the human environment or because any such effects will already have been considered in NEPA documentation prepared in accordance with paragraphs (b) and (c) of this section. However, the NEPA official should be alert for extraordinary circumstances that may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a "categorical exclusion," that fact does not exempt the action from compliance with any other applicable Federal, State, or Tribal law, including but not limited to, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, the Coastal Zone Management Act, and the Marine Mammal Protection Act.

- (1) Award Agreements;
 - (2) Multi-Year Expenditure Plans^{liii};
 - (3) State Expenditure Plans;
 - (4) Planning and technical studies which may recommend further study^{liv};
 - (5) Operations and maintenance plans to carry out measures in other approved plans or reflected in project NEPA documents^{lv};
 - (6) Plans and specifications for projects^{lvi};
 - (7) Modifications to State Expenditure Plans or Multi-Year Implementation Plans;
 - (8) Development or revision of guidance memoranda or methods.^{lvii}
- (d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 C.F.R. §1508.4) of this section may be designated as CEs only after the approval of the NEPA official. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.^{lviii}
- (e) Where a pattern emerges of granting CE status for a particular type of action, Treasury will initiate rulemaking proposing to add this type of action to the list of CEs contained within this Section.^{lix}

Subpart N— Public outreach.^{lx}

§ 34.1300 General.

This subpart describes procedures applicable to public outreach for Plans and the Gulf Restoration process to the extent they are required by the Act or other environmental regulatory and compliance procedures. In meeting any condition of this section, an entity may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with one or more established task forces or other entities, to develop recommendations for proposed projects and programs that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands and economy of the Gulf Coast.

§ 34.1301 Goals.

(a) Public outreach activities should be conducted to open and maintain channels of communication with the public throughout the implementation process for the Act in order to:

- (1) Provide information about proposed activities;
- (2) Make the public's desires, needs, and concerns known to decision-makers before decisions are reached; and
- (3) Consider and respond to the public's views in reaching decisions.

(b) In carrying out implementation activities for the Act, outreach activities should:

- (1) Involve interested groups and interested communities in the Plan development process and incorporate public values into decisions;
- (2) Involve minority communities and traditionally underserved communities, persons with limited English proficiency, and socially and economically disadvantaged individuals; and
- (3) Improve the substantive quality of decisions as a result of public participation.

§ 34.1302 Process for Public Involvement.

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- (a) Plans shall include information concerning outreach activities undertaken during Plan development and implementation of the project or eligible activity.
- (b) Projects and programs shall consider meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations.
- (c) The process shall be consistent with any applicable environmental compliance and regulatory requirements.
- (d) Outreach activities for projects or eligible activities should provide information to the public and provide opportunities for involvement by the public.
- (e) Public meetings and workshops shall be held at such times and locations as to facilitate participation by the public.
- (f) Opportunities for the public to review and comment on Plans shall be provided for a minimum of thirty (30) days.

Subpart O –Plan Modifications.^{ixi}

§ 34.1400 General.

Whenever the Council or a recipient determine that changes to the Multi-Year Implementation, Comprehensive or State Expenditure Plan are necessary to ensure compliance with the Act, the Council or a recipient shall revise the Plan in the form of a Grant Agreement modification.

§ 34.1401 General requirements.

Recipients are required to report on deviations from budget and Plans and request prior approvals for one of more of the following reasons:

- (a) A major change in the scope or objective of the Plan or eligible activity;
- (b) The need for additional funding;^{ixii}
- (c) The transfer of amount budgeted between indirect and direct costs;
- (d) A change in contracted services (unless described in the application and funded in the approved awards or subawards);^{ixiii}

§ 34.1402 Plan Modification Process.

(a) The Plan of Grant Agreement Modification shall:

- (1) Be initiated at the discretion of the Council or recipient;
- (2) To the extent required, comply with all applicable Federal and State laws, including the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Coastal Zone Management Act, the Marine Mammal Protection Act, and any other applicable law;
- (3) Contain information such as: Plan and project formulation and evaluation, engineering and design, estimated benefits and costs, and environmental effects;
- (4) Include appropriate analyses justifying the change;
- (5) Include projections of Plan, eligible activity or project benefits;
- (6) Contain appropriate NEPA documentation as required by law; and
- (7) Include coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the requisite state environmental resource agencies, and other appropriate agencies in the preparation of the Plan Modification, as required by applicable law.

(b) Review and approval of Plan Modifications.

- (1) The Council or recipient shall provide opportunities for the public to review and comment on the draft Plan Modification and NEPA document, if required, in accordance with applicable law.
- (2) Upon the completion of the Plan Modification and NEPA document, if required, the recipient shall develop and submit (MYIP), or seek approval for (SEP), the Modification and NEPA document to Treasury or the Council as appropriate.

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(5) Treasury or the Council shall conduct a review in accordance with applicable policies and regulations not to exceed 60 days.

(c) Minor adjustments in the Plan may be made by written approval by the grant official overseeing the particular grant or Plan and shall constitute a Grant Agreement Modification.

Subpart P – Review of the Treasury Regulations.^{ixiv}

(a) Treasury and the Council shall review, and, if necessary, revise, the regulations of this part at least every three (3) years. In addition, the Treasury and the Council may review and revise the regulations of this part whenever such review and revision is necessary to implement the Act. Treasury and the Council shall place appropriate notice in the Federal Register upon initiating review of the regulations of this part.

(b) Upon completing the review of the regulations of this part, Treasury and the Council shall promulgate any revisions to the regulations after notice and opportunity for public comment in accordance with applicable law.

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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.
- 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 Section 311(t)(1)(E)(iv) of the Federal Water Pollution Control Act stating that a multiyear implementation plan must be developed and submitted as opposed to Section 311(t)(3)(A)(i) where funds are disbursed "on the approval" of the plan.
- xxxiv Consider listing these as including but not limited to: 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.
- xxxv OMB Circular A-87, Attachment B, Section 33.
- xxxvi See § 34.604(c).
- xxxvii Section 311(t)(1)(B)(i)(VIII) of the Federal Water Pollution Control Act.
- xxxviii Section 311(t)(1)(B)(i)(IX) of the Federal Water Pollution Control Act.
- xxxix Section 311(t)(1)(B)(iii)(I) of the Federal Water Pollution Control Act.
- xl Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xli Section 311(t)(1)(B) & (C) of the Federal Water Pollution Control Act.
- xlii Section 311(t)(1)(L) of the Federal Water Pollution Control Act.
- xliiii Proposed OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.
- xliiv Section 311(t)(3)(B)(iv) of the Federal Water Pollution Control Act
- xliv Section 311(t)(1)(E) of the Federal Water Pollution Control Act
- xlvi See generally, 33 C.F.R. §385.5.
- xlvii See generally, 33 C.F.R. §385.11.
- xlviii See 33 C.F.R. § 1506.2
- xlix See generally, 33 C.F.R. §385.26. 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.
- l See 33 C.F.R. § 1506.2

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ⁱⁱ See generally, 33 C.F.R. §385.14.

ⁱⁱⁱ Categorical exclusions are defined 40 C.F.R. §1508.4. See also 23 C.F.R. § 771.117(a) as an example: "They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts."

ⁱⁱⁱ Since the Multi-Year Implementation Plans do not require approval per the RESTORE Act, they do not require Federal "approval" and should be a categorical exclusion. See 23 C.F.R. §771.109(a)(1) as an example: "Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation." See also 23 C.F.R. §771.117(c)(1) as an example: "Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed...." See also 23 C.F.R. §771.118(c)(4) Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts...." Finally, there are categorical exclusions for land management plans (*Ohio Forestry Ass'n v. Sierra Club*, 553 U.S. 726 (1998) & *Norton v. Southern Utah Wilderness Alliance*, 301 F. 3d 1217 (2004).

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For support of specific types of project categorical exclusions:

- See 23 C.F.R. §771.117(c)(3) as an example: "Construction of bicycle and pedestrian lanes, paths, and facilities." (RESTORE Infrastructure projects).
- See 23 C.F.R. § 771.117(c)(6) as example: "The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction." (RESTORE Infrastructure projects to serve publicly owned building such as stormwater). See also 24 C.F.R. §58.35(a)(1): "Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- See 23 C.F.R. §771.117(c)(19): "Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site." (RESTORE Infrastructure projects such as pumps or structures to improve water quality that would undergo state permitting standards).
- See 23 C.F.R. §771.118(c)(3): "Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or revegetation." (RESTORE mitigation activities).
- See 23 C.F.R. §771.118(c)(6): "Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: acquisition for scenic easements or historic sites for the purpose of preserving the site...." (RESTORE land acquisition for restoration and protection of natural resources).
- See 23 C.F.R. §771.118(c)(8): "Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds." (RESTORE port infrastructure).

- See 24 C.F.R. §58.35(b)(4), HUD: “Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.” (RESTORE workforce development and job creation or infrastructure projects benefitting the economy).
See 36 C.F.R. §220.6(e) new categorical exclusions for soil and water restoration activities, USDA: http://www.fs.fed.us/emc/nepa/restorationCE/includes/130912_FR_CE_FinalRule.pdf. This new Rule creates exclusions for activities that (1) restore lands negatively impacted by water control structures, (2) disturbance events, and (3) roads and trails. These will allow the Forest Service to more efficiently analyze and document the potential environmental effects of soil and water restoration projects that are intended to restore the flow of waters into natural channels and floodplains by removing water control structures, such as dikes, ditches, culverts, and pipes; restore lands and habitat to pre-disturbance conditions, to the extent practicable, by removing debris and sediment following disturbance events; and restore lands occupied by roads and trails to natural conditions.

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See generally, 33 C.F.R. 230.9(d).

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See generally, 33 C.F.R. 230.9(e).

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See generally, 33 C.F.R. 230.9(e).

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See generally, 23 C.F.R. §771.117(c)(20) as an example, “Promulgation of rules, regulations, and directives.”

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See 23 C.F.R. §771.117(d).

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See 23 C.F.R. §771.117(e).

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See generally, 33 C.F.R. §385.18.

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See generally, 33 C.F.R. §385.32

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See generally, 43 C.F.R. §12.70(c)

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See generally, 2 C.F.R. §215.25.

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See generally, 33 C.F.R. §385.6.