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DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505-AC44

Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of the Treasury is proposing regulations concerning the investment and use of amounts deposited in the Gulf Coast Restoration Trust Fund, which was established in the Treasury of the United States by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The regulations contain procedures required by the RESTORE Act, and generally describe the responsibilities of Federal and State entities which administer RESTORE Act programs and carry out restoration activities in the Gulf Coast region.

DATES: Comment due date: [INSERT DATE THAT IS 60 DAYS AFTER

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Treasury invites comments on the topics addressed in this proposed rule.

Comments may be submitted through one of these methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic

submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> web site can be viewed by other commenters and interested members of the public.

Mail: Send to Department of the Treasury, Attention Janet Vail, Room 2050; 1500 Pennsylvania Avenue, NW; Washington, DC 20220.

In general, Treasury will post all comments to <http://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622-0990. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to RESTOREruleQ@treasury.gov, or contact Janet Vail, 202- 622-2200.

SUPPLEMENTARY INFORMATION:

I. Background

On July 6, 2012, the President signed the RESTORE Act into law. The Act establishes a new Trust Fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust

Fund. Eighty percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* Oil Spill will be deposited into the Trust Fund and invested. Under terms described in the Act, amounts in the Trust Fund will be available for programs, projects, and activities that restore and protect the environment and economy of the Gulf Coast region.

The Act is focused on the five Gulf Coast States – Alabama, Florida, Louisiana, Mississippi, and Texas – and has five components. The Direct Component sets aside 35 percent of the penalties paid into the Trust Fund for eligible activities proposed by the five Gulf Coast States, including local governments within Florida and Louisiana. The Comprehensive Plan Component sets aside 30 percent of the penalties, plus half of all interest earned on Trust Fund investments, to be managed by a new Federal entity called the Gulf Coast Ecosystem Restoration Council (Council). The Council is comprised of members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, the Secretary of Commerce, serves as Chairperson of the Council. The Council will direct Comprehensive Plan Component funds to projects and programs for the restoration of the Gulf Coast region, pursuant to a comprehensive plan that will be developed by the Council. Under the Spill Impact Component, the Gulf Coast States can use an additional 30 percent of penalties in the Trust Fund for eligible activities pursuant to plans approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on Trust Fund investments, will be divided equally between the NOAA RESTORE Act Science Program established by the National Oceanic and Atmospheric Administration (NOAA), and a Centers of Excellence Research Grants Program.

The Act gives Treasury several roles in administering the Trust Fund. One role is to establish procedures, in consultation with the Departments of the Interior and Commerce,

concerning the deposit and expenditure of amounts from the Trust Fund. The procedures must include compliance measures for the programs and activities carried out under the Act, as well as auditing requirements to determine whether amounts are expended as intended. Treasury will also administer grants for the Direct Component and Centers of Excellence Grant Program. The Treasury Inspector General is authorized to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under the Act. In addition, the Act requires Treasury to withhold funds from a Gulf Coast State, Florida county, or Louisiana parish if Treasury determines that Trust Fund monies have been used for an unauthorized purpose, or if a condition on the use of funds has been violated.

II. This Proposed Rule

This proposed rule contains procedures required by the Act. The procedures recognize that, under the statutory scheme, many expenditures from the Trust Fund will be grants. The financial management, auditing, and reporting requirements in Federal grant law and policy, therefore, apply to these expenditures. Overseeing compliance will be a responsibility resting primarily with the Federal and State entities which administer grants for the programs, projects, and activities funded under the Act. Treasury will carry out an important and supplemental role in overseeing the States' compliance with requirements in the Comprehensive Plan Component and the Spill Impact Component. Treasury will receive public comments on this proposed rule for 60 days, and anticipates publishing binding procedures soon thereafter.

Trust Fund Investment

The Act provides that amounts in the Trust Fund shall be invested in accordance with 31 U.S.C. 9702. Following Treasury policy for other Trust Funds invested under 31 U.S.C. 9702, Treasury will invest the Gulf Coast Restoration Trust Fund in non-marketable Treasury securities known as Government Account Series (GAS) securities. GAS securities are sold through Treasury's Federal Investment Program. Treasury policies and procedures for the Federal Investment Program are available at <http://www.treasurydirect.gov>.

Direct Component

For the Direct Component, Treasury will administer grants directly to the Gulf Coast States or local state governments identified in the RESTORE Act. The Act allocates 35 percent of amounts in the Trust Fund, other than interest earned on investments, to the Gulf Coast States in equal shares for eligible activities. Florida's entire share is further divided among 23 counties. Parishes in Louisiana will receive a portion of that State's share. The Act gives States, counties, and parishes significant discretion to choose restoration activities, but that discretion comes with limits and conditions. The Act describes the kinds of activities that can be funded, imposes certain financial restrictions, and identifies specific conditions that recipients must accept before receiving funds. The Act also authorizes Treasury to require additional conditions, including audit requirements, that apply to amounts disbursed from the Trust Fund.

A Gulf Coast State, Florida county, or Louisiana parish will apply for funds by submitting a detailed multi-year plan describing the projects and programs it wants to implement. Among other things, the plan must describe each project and program, and provide a budget, milestones, and the criteria the applicant will use to evaluate success. Before submitting the plan, the Gulf Coast State, county, or parish must publish the plan for public notice and

comment, a process that Treasury expects will enhance the transparency and quality of funding applications. Applicants will be required to demonstrate compliance with applicable environmental laws. Treasury invites comment on appropriate methods for ensuring full compliance with applicable environmental laws while also providing for timely funds disbursement and project implementation. After a grant agreement is signed, funds will be disbursed to the States, counties, and parishes as they are needed for authorized expenditures.

Treasury's statutory role is not to determine which projects and programs will best restore the Gulf Coast region. For the Direct Component, Congress authorized the Gulf Coast States, Florida counties, and Louisiana parishes to make these choices. Instead, Treasury will review applications to determine that they document, with some specificity, compliance with eligibility and other requirements in the RESTORE Act and Federal laws and policies applying to grants. When reviewing applications, Treasury will generally avoid exercising its own judgment on matters requiring special expertise, such as whether a proposed restoration project is based on best available science. Treasury will consider whether the documentation submitted with the application, along with any comments offered during the State's public comment process and any written submissions from Council members, is sufficient for a reasonable person to find that the project or program meets the statutory criteria. For matters requiring special expertise, this approach occupies a middle ground between, on the one hand, accepting a submission without scrutiny, and on the other hand, engaging in fact-finding so that Treasury can render its own, independent judgment.

Treasury's proposed regulations for the Direct Component supplement a framework of Federal requirements that already apply to Federal grants. Many of these requirements are published in circulars issued by the Office of Management and Budget, available at

http://whitehouse.gov/omb/grants_docs/. A grant agreement between Treasury and the State will memorialize the grant terms, as required by Federal law. In addition to these standard grant terms, Treasury's proposed regulations include requirements specific to the RESTORE Act. We invite comments on the application process and on Treasury's proposed approach for evaluating requests for funding, particularly those elements in funding requests that require special expertise and judgment.

Treasury also invites comments on the allocation of funds to certain counties in Florida and the parishes in Louisiana. The Act makes funds available to fifteen Florida counties based on a weighted formula that generally takes into account the average population in the county, sales tax collections, and the distance between the counties' shoreline and the *Deepwater Horizon* oil rig. These fifteen counties have proposed an allocation methodology that can be found at <http://www.fl-counties.com/advocacy/gulf-consortium>. The Act also provides a share to certain Louisiana parishes according to a weighted formula. This formula requires inputs about the weighted average miles of parish shoreline oiled, the weighted average of population of the parish, and the weighted average of the land mass of the parish. We invite comments on the best methodology for determining the facts under both formulas.

Comprehensive Plan Component

The Act provides 30 percent of penalties deposited into the Trust Fund to the Council, plus one-half of the interest earned on Trust Fund investments, to carry out a Comprehensive Plan. The Plan will include a prioritized list of specific projects and programs to be funded and carried out, subject to available funding, within the first three years, a projection for how amounts available to the Council will be used in the first ten years, and periodic updates. The

Council, acting through the Federal agencies and Gulf Coast States represented on the Council, will expend funds to carry out these projects and programs.

The Act describes the Council's responsibilities in detail, including provisions on how the Council will govern itself, the process it must use to develop the Comprehensive Plan, and reporting requirements. The Council will develop standard contract terms for projects and programs awarded pursuant to the Comprehensive Plan, and may develop memoranda of understanding establishing integrated funding and implementation plans among Council members. The statutory scheme makes clear that the Council has a significant role in developing its own compliance procedures and in overseeing the funds provided for carrying out the Comprehensive Plan.

When the Council designates a Gulf Coast State to carry out a project or program, a grant agreement will describe the work and rules applying to it. The Council will use interagency agreements to memorialize its arrangements with Federal agencies. The Council may also award grants to nongovernmental entities. These grant agreements will include standard administrative terms on such topics as recordkeeping, reporting, and auditing, as well as specific certifications and conditions described in Treasury's proposed regulations. The regulations supplement Federal law and policy that generally apply to Federal grants. The proposed regulations require the Council to establish and implement a program to monitor compliance with its grant agreements and any agreements executed with its Federal agency members.

Spill Impact Component

The Act provides 30 percent of the penalties deposited into the Fund to the Gulf Coast States to carry out plans developed by the Gulf Coast States and approved by the Council. The Act specifies particular entities within the States to prepare these plans. The Council will disburse funds based on a formula that the Council establishes by regulation, using criteria provided in the statute.

Like the Direct Component discussed earlier, the Act places restrictions and conditions on the States' use of funds. The list of eligible activities is generally the same, but the States have less discretion under the Spill Impact Component about the activities to fund because such activities must take into consideration and be consistent with the Comprehensive Plan, and the amount of funds available for infrastructure projects is more limited. In addition, the State plans are subject to Council approval.

The funds the Council disburses to the Gulf Coast States will be in the form of grants. As required by Federal law, the Council will prepare a grant agreement with the States and incorporate into the agreement standard administrative terms on such topics as recordkeeping, reporting, and auditing. Treasury's proposed regulations supplement this compliance framework with additional conditions and certifications. Going forward, the Council will need to establish and implement a compliance program to ensure that the grants it issues comply with the terms of the grant agreement.

NOAA RESTORE Act Science Program

The Act allocates 2.5 percent of penalties deposited into the Trust Fund, plus one-quarter of all interest earned on investments, to the National Oceanic and Atmospheric Administration (NOAA). NOAA will establish a new program, called the NOAA RESTORE Act Science

Program, in consultation with the U.S. Fish and Wildlife Service. NOAA's program will support, to the maximum extent practicable, the long-term sustainability of the Gulf Coast ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico.

The Act contemplates that NOAA will use at least part of these funds for grants. The Act permits NOAA, in its discretion, to transfer funds to the Gulf States Marine Fisheries Commission, an organization of the five Gulf Coast States to whom NOAA currently provides grants. The statute leaves open the possibility of additional grants to other recipients. NOAA, as the program agency, will develop grant requirements for this new program that incorporate standard administrative requirements that apply to all Federal grants. Treasury's proposed regulations will supplement these requirements, as permitted by the Act.

Centers of Excellence Research Grants Program

The Act sets aside 2.5 percent of penalties deposited into the Trust Fund, plus one-quarter of the interest earned on Trust Fund investments, for grants to establish Centers of Excellence that will focus on science, technology, and monitoring in a discipline listed in the statute. Each of the five Gulf Coast States receives an equal share of the funds available.

Treasury will make funds available to the Gulf Coast States in the form of a grant, and the States will use these funds to issue their own grants. The Act allows the States to design their own grant application process, within certain boundaries. The Act specifies that States shall select centers of excellence through a competitive process, giving priority to nongovernmental entities and consortia that demonstrate the ability to establish the broadest cross-section of qualified participants. While the nongovernmental entities and consortia must be in the Gulf

Coast region, the Act does not require that they be located in the Gulf Coast State issuing the grant. All grants will be subject to certifications and conditions in these regulations, as well as compliance and auditing requirements imposed by Federal grant law and policies.

Request for Public Comment

Treasury requests public comment on all aspects of its proposed regulation. In addition to the topics discussed above, we would appreciate comments on the following questions:

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

III. Regulatory Planning and Review (Executive Orders 12866 and 13563)

This regulation is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. If adopted, this rule may have an annual effect on the economy of \$100 million or more. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

This rule deals with the transfer of amounts in the Gulf Coast Ecosystem Trust Fund. On March 21, 2013, \$323,392,877 was deposited into the Trust Fund and invested in Treasury

securities. The amount in the Trust Fund is expected to increase due to investments and additional deposits of civil penalties from ongoing litigation.

Description of Need for the Regulatory Action

The RESTORE Act requires Treasury to establish procedures necessary for the deposit into, and expenditure of amounts from, the Gulf Coast Ecosystem Trust Fund. This rulemaking implements those responsibilities. Included in this rulemaking are procedures for issuing grants to the Gulf Coast States, Florida counties, and Louisiana parishes, as well as reporting and auditing requirements. The procedures supplement responsibilities in other Federal laws and policy that apply to grants. Treasury is analyzing the proposed regulation in accordance with the National Environmental Policy Act, and will complete its analysis before finalizing the regulation.

Affected Population

This rulemaking affects those entities in the five Gulf Coast states that are eligible to receive funding under the RESTORE Act. In general, funds will be made available to a State and local governments in the form of grants, and to Federal agencies through interagency agreements, for projects, programs, and activities they select within the broad parameters of the RESTORE Act. Funds are also available to NOAA for a science research program, and to the Gulf Coast Ecosystem Restoration Council, a body comprised of State and Federal entities, for projects and programs the Council identifies in its Comprehensive Plan.

Under the Direct Component and Spill Impact Component, 65 percent of the Trust Fund is available to support projects, programs, and activities proposed by governmental entities in the five Gulf Coast states. The RESTORE Act lists a broad range of eligible activities, including the restoration and protection of natural resources, mitigation of damage to fish and wildlife, and

workforce development and job creation. State entities may apply to the Treasury Department for grant funds under the Direct Component, and to the Gulf Coast Ecosystem Restoration Council for grant funds under the Spill Impact Component.

The Comprehensive Plan Component makes 30 percent of the Trust Fund, plus a portion of accrued interest, available to the Gulf Coast Ecosystem Restoration Council for projects and programs, using best available science, that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast. The Council will identify the projects and programs it wants to fund in its Comprehensive Plan, and assign primary responsibility for them to its members. The Council will provide funds to the States in the form of grants, and may permit its Federal and State members to issue grants to or contract with nongovernmental entities.

The RESTORE Act also makes 2.5 percent of the Trust Fund, plus a portion of accrued interest, available to NOAA for the NOAA RESTORE Act Science Program. In this program, NOAA may use funds to carry out research, observation, and monitoring to support the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico. NOAA may carry out these functions directly, transfer funds to the Gulf States Marine Fisheries Commission, and issue grants.

The fifth RESTORE Act component is the Centers of Excellence Research Grants Program. In this program, Treasury will issue grants to governmental entities in the five Gulf Coast States using 2.5 percent of the Trust Fund, plus a portion of accrued interest. The State entities will use the funds to issue their own competitive grants to establish centers of excellence. These centers will be nongovernmental entities and consortia in the Gulf Coast region, including

public and private institutions of higher education. They will focus on science, technology, and monitoring in five disciplines described in the RESTORE Act.

Baseline

The proposed regulation helps implement the RESTORE Act, which is generally focused on the environmental restoration and economic recovery of the Gulf Coast region. This region is an area in which the people, animals, minerals, land, and water are interconnected. The ecosystem and resources are vitally important to the United States economy, contributing about 30 percent of the nation's gross domestic product in 2009 (National Oceanic and Atmospheric Administration, 2010). The region provides more than 90 percent of the nation's offshore oil and natural gas production (US Information Agency, 2010) and one-third of the nation's seafood (National Marine Fisheries Service, 2010). The region has 13 of the top 20 ports by tonnage and significant recreation and tourism.

On April 20, 2010, the largest oil spill in United States history occurred, exacerbating the effects of previous natural disasters and years of environmental decline in the Gulf Coast region. The cause was an explosion of the *Deepwater Horizon*, an oil drilling rig in the Gulf of Mexico. Before the well was capped, millions of barrels of crude oil were released, closing tens of thousands of square miles of federal waters for fishing while contaminating hundreds of miles of shoreline, bayous, bays, and islands with oil and chemicals used during response activities. The released oil dispersed over Gulf waters, wildlife, and coasts, causing extensive damage to marine and wildlife habitats, fishing, and tourism.

This proposed rule describes procedures concerning the expenditure of amounts from the Trust Fund, including compliance and auditing requirements. The amounts made available from the Trust Fund will continue efforts that provide for the long-term health of the ecosystems and

economy of the Gulf Coast region. The Council, NOAA, and program grantees will determine how to advance these efforts using Trust Fund amounts.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities, and thus no initial regulatory flexibility analysis is required. While this rule describes procedures concerning the allocation and expenditure of amounts from the Trust Fund, most of these requirements come from the RESTORE Act itself or other Federal law. The RESTORE Act or the Gulf Coast Restoration Council determines the percentage of funds available to the Gulf Coast States, Florida counties, and Louisiana parishes, with one exception. In the Direct Component, the RESTORE Act did not specify a method for determining the percentage of funds available to each of the eight disproportionately affected counties in the State of Florida. The proposed rule provides that these counties will determine an allocation formula for themselves by agreement. Because the proposed rule affects the allocation amounts for only eight Florida counties, some of which are small entities, the rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, Treasury invites comments on the rule's impact on small entities.

V. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C., 20503, or email to OIRA_submissions@omb.eop.gov, with copies to the Treasury Department at the email address previously specified. Comments on the information collection should be submitted not later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments are specifically requested concerning:

- Whether the proposed collection[s] of information is necessary for the proper performance of the functions of the Treasury Department, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection[s] of information (see below);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 31 C.F.R. Part 34. This information is required to support applications for grants under the RESTORE Act and monitor the use of RESTORE Act funds. The likely respondents are recipients of these funds, namely

State and local governments, Federal agencies, and nongovernmental entities who apply for grants.

	Direct Component	Centers of Excellence Research Grants Program
Application – number of respondents	47	5
Application – frequency of responses	2	2
Application – burden hours per response	10	10
Application – total burden hours	940	100
Reports – number of respondents	47	5
Reports – frequency of responses	Quarterly	Quarterly
Reports – burden hours per response	3	3
Reports – total burden hours	564	60
Recordkeeping	4,700	500
Total burden hours	6,204	660

Estimated total annual burden hours for applications, reporting and recordkeeping: 6,864 hours for the Direct Component and the Centers of Excellence Research Grants Program. The Federal entities who administer the Comprehensive Plan Component, Spill Impact Component, and the NOAA RESTORE Act Science Program will submit their estimates separately to OMB. The public will have the opportunity to comment at that time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

List of Subjects in 31 CFR Part 34

Coastal zone, Centers of Excellence Research Grants Program, Fisheries, Grant programs, Grants administration, Gulf Coast Ecosystem Restoration Council, Gulf Coast Restoration Trust Fund, Gulf RESTORE Program, Intergovernmental relations, Marine

resources, Natural resources, NOAA RESTORE Act Science Program, Oil pollution, Research, Science and technology, Trusts, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury proposes to amend 31 CFR subtitle A to add new part 34 to read as follows:

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

Subpart A – General Provisions

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- 34.1 Purpose.
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- 34.700 General.
- 34.701 Responsibility for administration.
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- 34.703 Application procedure.
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Subpart I – Agreements

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

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

Subpart A – General Provisions

§ 34.1 Purpose.

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

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

§ 34.2 Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Gulf Coast Region means:

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

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

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

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

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

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

NOAA means the National Oceanic and Atmospheric Administration.

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

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

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

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

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

Trust Fund means the Gulf Coast Restoration Trust Fund.

Subpart B - Trust Fund

§ 34.100 The Trust Fund.

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

§ 34.101 Investments.

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

current market yields on outstanding marketable obligations of the United States of comparable maturities.

§ 34.102 Interest earned.

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

§ 34.103 Allocation of funds.

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

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

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

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

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

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

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

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

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

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

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

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

§ 34.105 Waiver.

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

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

§ 34.200 General.

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

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

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

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

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

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

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

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

§ 34.201 Eligible activities for the Direct Component.

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

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

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

- (c) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.
- (d) Workforce development and job creation.
- (e) Improvements to or on State parks located in coastal areas affected by the *Deepwater Horizon* oil spill.
- (f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.
- (g) Coastal flood protection and related infrastructure.
- (h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.
- (i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.
- (j) Planning limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under § 34.201(a) through (i), including the costs of environmental review and compliance.
- (k) Administrative costs.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

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

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

projects and programs must be carried out in the Gulf Coast Region and be adopted in the Comprehensive Plan.

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

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

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

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

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

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

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

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

§ 34.204 Limitations on activities.

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

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

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

§ 34.205 Limitations on administrative costs and administrative expenses.

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

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

(c) With respect to the Alabama Gulf Coast Recovery Council, administrative duties may only be performed by public officials and employees that are subject to the ethics laws of the

State of Alabama. Trust Fund amounts may not be used for the administrative costs of other personnel.

§ 34.206 Audited financial statements and audits.

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

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

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

(2) Results of operations of the Council.

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

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

Subpart D – Gulf RESTORE Program - Direct Component

§ 34.300 General.

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

§ 34.301 Responsibility for administration.

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

§ 34.302 Allocation of funds.

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

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

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

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

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

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

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

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

§ 34.303 Application procedure.

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

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

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

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

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

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

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

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

§ 34.304 Grant award process.

Upon determining that an application meets the requirements of these regulations and the Act, Treasury will offer the applicant a grant agreement that complies with subpart I and Federal policies applicable to grants.

§ 34.305 Use of funds.

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

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

§ 34.306 Reports.

Grantees must submit timely reports as prescribed by Treasury.

§ 34.307 Recordkeeping.

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

§ 34.308 Audits.

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

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

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

§ 34.401 Responsibility for administration.

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

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

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

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

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

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

§ 34.402 Application procedure and grant award process.

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

§ 34.403 Use of funds.

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

§ 34.404 Reports.

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

§ 34.405 Recordkeeping.

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

§ 34.406 Audits.

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

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

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

§ 34.501 Responsibility for administration.

The Council is responsible for awarding and administering grants under this subpart. The Council must establish and implement a program to monitor compliance with its grant agreements.

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States based on a formula in the Act and a regulation that the Council promulgates. The Council will make allocated funds available

through grants for programs, projects, and activities described in a State expenditure plan approved by the Council.

§ 34.503 State Expenditure Plans.

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

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

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

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

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

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

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

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

(c) For each program, project, and activity, the State Expenditure Plan must include narrative description showing purpose and objectives, estimated expenditures, major milestones, estimated duration, and criteria the State will use to evaluate success. The applicant must also

state whether it has applied for a grant to fund the program, project, or activity under any other part of the Act.

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

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

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

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

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

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

§ 34.504 Grant administration.

If the Council approves a State Expenditure Plan, the State may apply for a grant 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 to the satisfaction of the Federal grant administrator before a grant may be approved.

§ 34.505 Use of funds.

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

§ 34.506 Reports.

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

§ 34.507 Recordkeeping.

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

§ 34.508 Audits.

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

Subpart G – NOAA RESTORE Act Science Program

§ 34.600 General.

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

§ 34.601 Responsibility for administration.

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

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

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

- (a) Marine and estuarine research.

(b) Marine and estuarine ecosystem monitoring and ocean observation.

(c) Data collection and stock assessments.

(d) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.

(e) Cooperative research.

(f) Coordination of science and technology programs, in accordance with section 1604(f) of the Act, including setting priorities and engaging stakeholders. NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities.

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

(a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.

(b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.

(c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

§ 34.604 Limitations on administrative expenses.

(a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses, including staff.

(b) The three percent limit is based on funds that the NOAA RESTORE Act Science Program receives in its fiscal year, and unused amounts may be carried forward into subsequent years. The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

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

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

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

§ 34.607 Audits.

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

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

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

§ 34.701 Responsibility for administration.

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

§ 34.702 Allocation of funds.

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

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

- (a) In Alabama, the Alabama Gulf Coast Recovery Council.
- (b) In Florida, a consortium of public and private research institutions within the State which will include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.
- (c) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

(d) In Mississippi, the Mississippi Department of Environmental Quality.

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

§ 34.703 Application procedure.

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

(a) Each Gulf Coast State must describe the rules and policies the State will apply to the Centers of Excellence grant(s), including the competitive process that the State will use to select a Center of Excellence. The process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher learning, to compete. The process must give priority to entities and consortia that demonstrate the ability to organize the broadest cross-section of participants in the grant with interest and expertise in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest. Centers of Excellence do not need to be located in the Gulf Coast State issuing the grant.

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

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

§ 34.704 Use of grant funds and eligible activities.

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

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

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

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

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

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

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

§ 34.705 Ineligible activities.

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

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

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

(b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

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

§ 34.708 Audits.

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

Subpart I – Agreements

§ 34.800 General.

This subpart describes procedures applicable to grant agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf

Coast States, coastal political subdivision, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part.

§ 34.801 Grant agreements.

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

§ 34.802 Certifications.

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

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

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

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

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

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

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

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

§ 34.803 Conditions.

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

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

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

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

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

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

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

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

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

(4) A certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry. The certification must be signed by a senior authorized official of the organization or entity receiving grant funds, who has oversight and authority over the administration and use of the funds in question.

§ 34.804 Records.

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

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

§ 34.805 Noncompliance.

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

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan

Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the grantee to expend an equal amount from the grantee's own funds for a project or program that meets the requirements of the Act.

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

Richard L. Gregg
Fiscal Assistant Secretary

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